

case of block transfers (as defined in paragraph (e)(2) of this section), the percentage interests in partnership capital or profits represented by partnership interests that are transferred during a taxable year of the partnership is equal to the sum of the percentage interests transferred for each calendar month during the taxable year of the partnership in which a transfer of a partnership interest occurs (other than a private transfer as described in paragraph (e) of this section). The percentage interests in capital or profits of interests transferred during a calendar month is determined by reference to the partnership interests outstanding during that month.

(3) *Monthly conventions.* For purposes of paragraph (k)(2) of this section, a partnership may use any reasonable convention in determining the interests outstanding for a month, provided the convention is consistently used by the partnership from month to month during a taxable year and from year to year. Reasonable conventions include, but are not limited to, a determination by reference to the interests outstanding at the beginning of the month, on the 15th day of the month, or at the end of the month.

(4) *Block transfers.* For purposes of paragraph (e)(2) of this section (defining block transfers), the partnership must determine the percentage interests in capital or profits for each transfer of an interest during the 30 calendar day period by reference to the partnership interests outstanding immediately prior to such transfer.

(5) *Example.* The following example illustrates the rules of this paragraph (k):

Example. Conventions. (i) ABC limited partnership, a calendar year partnership formed in 1996, has 1,000 units of limited partnership interests outstanding on January 1, 1997, representing in the aggregate 95 percent of the total interests in capital and profits of ABC. The remaining 5 percent is held by the general partner.

(ii) The following transfers take place during 1997—

(A) On January 15, 10 units of limited partnership interests are sold in a transaction that is not a private transfer;

(B) On July 10, 1,000 additional units of limited partnership interests are issued by the partnership (the general partner's percentage interest is unchanged); and

(C) On July 20, 15 units of limited partnership interests are sold in a transaction that is not a private transfer.

(iii) For purposes of determining the sum of the percentage interests in partnership capital or profits transferred, ABC chooses to use the end of the month convention. The percentage interests in partnership capital and profits transferred during January is .95 percent, determined by dividing the number of transferred units (10) by the total number

of limited partnership units (1,000) and multiplying the result by the percentage of total interests represented by limited partnership units ($(10/1,000) \times .95$). The percentage interests in partnership capital and profits transferred during July is .7125 percent ($(15/2,000) \times .95$). ABC is not required to make determinations for the other months during the year because no transfers of partnership interests occurred during such months. ABC may qualify for the 2 percent rule for its 1997 taxable year because less than 2 percent (.95 percent + .7125 percent = 1.6625 percent) of its total interests in partnership capital and profits was transferred during that year.

(iv) If ABC had chosen to use the beginning of the month convention, the interests in capital or profits sold during July would have been 1.425 percent ($(15/1,000) \times .95$) and ABC would not have satisfied the 2 percent rule for its 1997 taxable year because 2.375 percent (.95 + 1.425) of ABC's interests in partnership capital and profits was transferred during that year.

(1) *Effective date—(1) In general.* Except as provided in paragraph (l)(2) of this section, this section applies to taxable years of a partnership beginning after December 31, 1995.

(2) *Transition period.* For partnerships that were actively engaged in an activity before December 4, 1995, this section applies to taxable years beginning after December 31, 2005, unless the partnership adds a substantial new line of business after December 4, 1995, in which case this section applies to taxable years beginning on or after the addition of the new line of business. Partnerships that qualify for this transition period may continue to rely on the provisions of Notice 88-75 (1988-2 C.B. 386) (see § 601.601(d)(2) of this chapter) for guidance regarding the definition of readily tradable on a secondary market or the substantial equivalent thereof for purposes of section 7704(b).

(3) *Substantial new line of business.* For purposes of paragraph (1)(2) of this section—

(i) Substantial is defined in § 1.7704-2(c); and

(ii) A new line of business is defined in § 1.7704-2(d), except that the applicable date is "December 4, 1995" instead of "December 17, 1987".

(4) *Termination under section 708(b)(1)(B).* The termination of a partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits is disregarded in determining whether a partnership qualifies for the transition

period provided in paragraph (l)(2) of this section.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: November 21, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD-FRL-5339-1]

Title V Clean Air Act Final Interim Approval of Operating Permits Program; State of Delaware

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permits program submitted by the State of Delaware. This program was submitted by the State for the purpose of complying with federal requirements for an approvable program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: January 3, 1996.

ADDRESSES: Copies of the State of Delaware's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Robin M. Moran, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-3023.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Title V of the 1990 Clean Air Act Amendments (section 501-507 of the Clean Air Act (CAA)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that states seeking to administer a Title V operating permits program develop and submit a program to EPA by November 15, 1993, and that EPA act to approve or disapprove each program

within 1 year after receiving the submittal. EPA's program review is conducted pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval of an operating permits program submittal. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or, in the case of interim approval, by the expiration of the interim approval period, it must establish and implement a federal program.

On September 21, 1995, EPA proposed interim approval of the operating permits program for the State of Delaware. (See 60 FR 48944). EPA compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. In this notice, EPA is taking final action to promulgate interim approval of the operating permits program for the State of Delaware.

II. Analysis of State Submittal

On November 15, 1993, the State of Delaware submitted an operating permits program to satisfy the requirements of the CAA and 40 CFR part 70. The submittal was supplemented by additional materials on November 22, 1993, and was found to be administratively incomplete pursuant to 40 CFR 70.4(e)(1) on January 18, 1994. Additional materials were submitted on February 9, 1994, and May 15, 1995. Based on the additional information, EPA found the submittal to be administratively complete on May 19, 1995. The State submitted supplemental information on September 5, 1995. EPA reviewed Delaware's program against the criteria for approval in section 502 of the CAA and the part 70 regulations. EPA determined, as fully described in the notice of proposed interim approval of Delaware's operating permits program (see 60 FR 48944; September 21, 1995) and the TSD for this action, that Delaware's operating permits program substantially meets the requirements of the CAA and part 70.

III. Public Comments

EPA received no public comments on the notice of proposed interim approval.

IV. Insignificant Activities

In the notice of proposed interim approval, EPA generally described Delaware's list of insignificant activities contained in Appendix A of Regulation No. 30. Today, EPA is clarifying its

rationale for approving Delaware's insignificant activities provision. Although Delaware's Regulation No. 30 states that any information required by the permit application need not be submitted for insignificant activities listed or described in Appendix A, sources must provide a list of any activities excluded because of size, emissions rate, or production rate. The application form reflects this requirement and provides detail on the specific information that must be included. Delaware's regulation also requires applications to include information needed to determine the applicability of, or to impose, any applicable requirement, and that the emissions from insignificant activities shall be included when determining the applicability of any applicable requirement.

Paragraph (i) of Appendix A allows sources flexibility to consider as insignificant those activities for which no applicable requirement applies and which are not otherwise listed in the rule if they have the potential to emit at less than the following aggregate rates: 25 tons per year (tpy) of VOC in New Castle or Kent Counties or 50 tpy of VOC in Sussex County; 40 tpy of particulate [matter]; 15 tpy of PM-10; 40 tpy of sulfur dioxide (SO₂); and 25 tpy of nitrogen oxides (NO_x) in New Castle or Kent Counties or 100 tpy of NO_x in Sussex County. While these emission levels for insignificant activities are higher than those approved by EPA for other states, EPA believes that Delaware's program is acceptable because Delaware, in fact, requires the application to contain more detailed information about these activities than many other State programs. Delaware's permit application form (#AQM-1001DD, submitted on February 9, 1994 and May 15, 1995) requires sources to identify the following information for insignificant activities based on emissions levels: the pollutant, emission rate (e.g., tons per year, pounds per day), number of units and type of source. This level of detail should ensure that Delaware has enough information to adequately establish permitting requirements and the applicable requirements of the Act. Because Delaware requires an acceptable level of information in the permit application form, EPA believes that the emission thresholds established in paragraph (i) of Appendix A need not be an interim approval issue for Delaware's program. Since this decision depends on the safeguard provided by the requirements in the application form, EPA will process changes to the

application form that may reduce the quality or level of information relative to insignificant activities as a formal program revision; that is, application form revisions relative to insignificant activities will not be approved by way of an exchange of letters between EPA and the State of Delaware. Further, EPA's approval of Delaware's insignificant activities is based on Section 5(d) of Regulation No. 30 (Standard Application Form and Required Information) which states that the activities listed in Appendix A are to be included for purposes of determining whether a source is subject to the regulation. This provision ensures that the emissions levels established in paragraph (i) of Appendix A will not interfere with the determination of whether a source is major under the Clean Air Act.

Final Action

EPA is promulgating interim approval of the operating permits program submitted by the State of Delaware on November 15, 1993, with supplemental submittals on November 22, 1993, February 9, 1994, May 15, 1995, and September 5, 1995. The State of Delaware must make the changes identified in the notice of proposed rulemaking in order to fully meet the requirements of the July 21, 1992 version of part 70. (See 60 FR 48944, September 21, 1995). Delaware must adopt acid rain regulations by July 1, 1996, consistent with the commitment made in a September 5, 1995 letter to EPA.

The scope of the State's part 70 program applies to all part 70 sources ("covered sources" as defined in the State's program) within the State, except for sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the CAA 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; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until January 5, 1998. During the interim approval period, Delaware is protected from sanctions for failure to have a fully approved Title V, part 70 program, and EPA is not obligated to promulgate, administer and enforce a federal permits program in the State. Permits issued

under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

If the State fails to submit a complete corrective program for full approval by July 7, 1997, EPA will start an 18-month clock for mandatory sanctions. If the State then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the CAA, which will remain in effect until EPA determines that the State has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the State has come into compliance. In any case, if, six months after application of the first sanction, the State still has not submitted a corrective program that EPA finds complete, a second sanction would be required.

If EPA disapproves the State's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to the date on which the sanction would be applied the State has submitted a revised program and EPA has determined that this program corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determines that the State has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State has not submitted a revised program that EPA has determined corrects the deficiencies that prompted disapproval, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to the State's program by the expiration of the interim approval period, EPA must promulgate, administer and enforce a federal

operating permits program for the State upon the date the interim approval period expires.

Requirements for approval, specified in 40 CFR 70.4(b), encompass the CAA's section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by 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, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

Additionally, EPA is promulgating approval of Delaware's operating permit program under the authority of Title V and part 70 for the purpose of implementing section 112(g) to the extent necessary during the transition period between promulgation of the federal section 112(g) rule and adoption of any necessary State rules to implement EPA's section 112(g) regulations. However, since this approval is for the purpose of providing a mechanism to implement section 112(g) during the transition period, the approval of the operating permits program for this purpose will be without effect if 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. Although section 112(l) generally provides the authority for approval of state air toxics programs, Title V and section 112(g) provide authority for this approval because of the direct linkage between implementation of section 112(g) and Title V. The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide the State with adequate time to adopt regulations consistent with federal requirements.

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

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 to propose interim approval of the State of Delaware's operating permits program pursuant to Title V of the CAA and 40 CFR part 70 does not impose any new requirements, it does

not have a significant impact on a substantial number of small entities.

EPA has determined that this action, promulgating interim approval of the State of Delaware's operating permits program, does not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector result from this action.

List of Subjects in 40 CFR Part 70

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

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

Dated: November 22, 1995.

W. Michael McCabe,
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, *et seq.*

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

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

* * * * *

Delaware

(a) Department of Natural Resources and Environmental Control: submitted on November 15, 1993 and amended on November 22, 1993, February 9, 1994, May 15, 1995 and September 5, 1995; interim approval effective on January 3, 1996; interim approval expires January 5, 1998.

(b) [Reserved]

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