

Dated: November 26, 2001.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[HIO62-OPP; FRL-7111-5]

Clean Air Act Full Approval of the Operating Permits Program; State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to fully approve the State of Hawaii's operating permits program. Hawaii's program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. On December 1, 1994 EPA granted interim approval to the Hawaii operating permits program. Hawaii revised its program to satisfy the conditions of the interim approval, and EPA proposed full approval in the **Federal Register** on October 15, 2001. EPA did not receive any comments on the proposed action, so this action promulgates final full approval of the State of Hawaii's operating permits program.

EFFECTIVE DATE: This rule is effective on November 30, 2001.

ADDRESSES: Copies of the Hawaii submittal and other supporting information used in developing this final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, and Oahu: Clean Air Branch, Department of Health, 919 Ala Moana Blvd., Room 203, Honolulu.

FOR FURTHER INFORMATION CONTACT: Robert Baker, EPA Region IX, at (415) 972-3979 (*Baker.Robert@epa.gov*).

SUPPLEMENTARY INFORMATION: This section contains additional information about our final rulemaking, organized as follows:

I. Background on the Hawaii operating permits program.

II. Comments received by EPA on our proposed rulemaking and EPA's responses.

III. EPA's final action.

IV. Effective date of EPA's full approval of the Hawaii operating permits program.

I. Background on the [District/State] Operating Permits Program

The Clean Air Act (CAA) Amendments of 1990 required all state and local permitting authorities to develop operating permits programs that meet certain federal criteria. The State of Hawaii's operating permits program was submitted in response to this directive. Because the State's program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the program in a rulemaking published on December 1, 1994 (59 FR 61549). The interim approval notice described the conditions that had to be met in order for the State program to receive full approval.

After Hawaii revised its program to address the conditions of the interim approval, EPA promulgated a proposal to approve Hawaii's Title V operating permits program on October 15, 2001 (66 FR 52368).

II. Comments Received by EPA on Our Proposed Rulemaking and EPA's Responses

EPA did not receive any comments on the proposed action, so this action promulgates final full approval of the State of Hawaii's operating permits program.

III. EPA's Final Action

EPA is granting full approval to the operating permits program submitted by the State of Hawaii based on the revisions submitted on September 21, 2001, which satisfactorily address the program deficiencies identified in EPA's July 26, 1994 interim approval (see 59 FR 37957). In addition, the State has made other changes to its operating permit program that are unrelated to the changes made to correct interim approval deficiencies. EPA is not taking any action on these additional program changes in this notice. EPA will evaluate the additional program changes and will take appropriate action at a later date.

IV. Effective Date of EPA's Full Approval of the Hawaii Operating Permits Program

EPA is using the good cause exception under the Administrative Procedure Act (APA) to make the full approval of the State's program effective on November 30, 2001. In relevant part, section 553(d)

provides that publication of "a substantive rule shall be made not less than 30 days before its effective date, except— * * * (3) as otherwise provided by the agency for good cause found and published with the rule. Good cause may be supported by an agency determination that a delay in the effective date is "impracticable, unnecessary, or contrary to the public interest." EPA believes that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. The interim approved program expires on December 1, 2001. In the absence of this approved program taking effect on November 30, the federal program would automatically take effect and would remain in place until the effective date of the fully-approved state/district program. EPA believes it is in the public interest for sources, the public and the State to avoid any gap in coverage of the State program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because the State of Hawaii has been administering the Title V permit program for seven years under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially but did not fully meet the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state approved program and the federal program. Finally, sources are already complying with all of the newly approved requirements as a matter of state law. Thus, there is little or no additional burden with complying with these requirements under the federally approved program.

Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this final approval is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. 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 (Pub. L. 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 rule 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). This rule 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 final approval 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 significant 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. Section 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. 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. section 804(2). This rule will be effective on November 30, 2001.

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 February 4, 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 section 307(b)(2).)

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: November 27, 2001.

Wayne Nastri,
Regional Administrator, Region 9.

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. Appendix A to part 70 is amended by adding paragraph (b) under Hawaii to read as follows:

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

* * * * *

Hawaii

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(b) Revisions were submitted on September 21, 2001. The rule amendments contained in the September 21, 2001 submittal adequately addressed the conditions of the interim approval effective on December 1, 1994. The Department of Health, State of Hawaii, is hereby granted final full approval effective on November 30, 2001.

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[FR Doc. 01-29959 Filed 12-3-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IL; FRL-7112-1]

Clean Air Act Final Full Approval of the Operating Permits Program; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to fully approve the Illinois Clean Air Act Permit Program (CAAPP), 415 ILCS 5/39.5, submitted by Illinois pursuant to subchapter V of the Clean Air Act, which requires states to develop and submit to EPA for approval, programs for issuing operating permits to all major stationary sources and to certain other sources.

DATES: The effective date of this action is November 30, 2001.

ADDRESSES: Copies of the state's submittal and other supporting information used in developing the full approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois, 60604. Please contact Steve Marquardt at (312) 353-3214 to arrange a time if inspection of the submittal is desired.