

US EPA ARCHIVE DOCUMENT

## Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

## Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

## Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2-1, (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

## List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46

2. Revise § 165.T01-171 published at 66 FR 49283-49284 to read as follows:

### § 165.T01-171 Safety and Security Zones: Boston Marine Inspection Zone and Captain of the Port Zone.

(a) *Location.* The following are established as safety and security zones:

(1) All waters of the Mystic River within a five hundred (500) yard radius of the Distrigas terminal pier in Everett, MA.

(2) All waters of Boston Harbor, including the Reserved Channel, west of a line connecting the Southeastern tip of the North Jetty and the Northeastern corner of the Paul W. Conley Marine Terminal pier.

(3) All waters of Boston Inner Harbor within a two hundred (200) yard radius of Pier 2 at the Coast Guard Integrated Support Command Boston, Boston, MA.

(4) All waters of Salem Harbor within a five hundred (500) yard radius of the PG & E U.S. Generating power plant pier in Salem, MA.

(b) *Effective dates.* This section is effective from September 18, 2001 until June 30, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 12, 2002.

**G. N. Naccara,**

*Rear Admiral, U.S. Coast Guard, District Commander, First U.S. Coast Guard District.*

[FR Doc. 02-6459 Filed 3-13-02; 3:48 pm]

**BILLING CODE 4910-15-U**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 50

### National Primary and Secondary Ambient Air Quality Standards

#### CFR Correction

In Title 40 of the Code of Federal Regulations, parts 50 to 51, revised as of July 1, 2001, on page 62, in Part 50 Appendix H, under the third heading, the fifth paragraph is amended by

correcting the formula to read as follows:

### Appendix H to Part 50—Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone

\* \* \* \* \*

#### 3. Estimating the Number of Exceedances for a Year

\* \* \* \* \*

$$e = v + [(v/n) * (N-n-z)] \quad (1)$$

\* \* \* \* \*

[FR Doc. 02-55506 Filed 3-14-02; 8:45 am]

**BILLING CODE 1505-01-D**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[IA 150-1150; FRL-7158-6]

### Approval of Operating Permit Program; State of Iowa

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is announcing its approval of the amendments to the Iowa Title V operating permit program. EPA announced its proposed approval of these amendments on January 11, 2002. These amendments incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements.

**DATES:** This rule is effective on April 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Lynn M. Slugantz at (913) 551-7883.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is the Part 70 operating permit program?

What is the Federal approval process for the Part 70 operating permit program?

What does Federal approval of a state operating permit program mean to me?

What is being addressed in this document?

Have the requirements for approval of a revision to the operating permit program been met?

What action is EPA taking?

### What Is the Part 70 Operating Permit Program?

The Clean Air Act (CAA) Amendments of 1990 require all states to develop an operating permit program that meets certain Federal criteria listed

in 40 Code of Federal Regulations (CFR) part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permit program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: "major" sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or particulate matter that is 10 micrometers in size (PM<sub>10</sub>); those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies' operating permit program are subject to public notice, comment, and our approval.

#### **What Is the Federal Approval Process for the Part 70 Operating Permit Program?**

In order for state regulations to be incorporated into the Federally enforceable Title V operating permit program, states must formally adopt the regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the operating permit program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under

section 502 of the CAA are incorporated into the Federally approved operating permit program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled "Approval Status of State and Local Operating Permits Program."

#### **What Does Federal Approval of a State Operating Permit Program Mean to Me?**

Enforcement of the state regulation before and after it is incorporated into the Federally approved operating permit program is primarily a state responsibility. However, after the state program is Federally approved, we oversee the program and review proposed permits submitted by the state in accordance with 40 CFR part 70. We are also authorized to enforce the permit program and individual permits issued under the program. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

#### **What Is Being Addressed in This Document?**

The Iowa Department of Natural Resources (IDNR) has adopted amendments to 567 Iowa Administrative Code (IAC) 22.108(3). The purpose of the amendments is to incorporate IDNR's existing Title V Periodic Monitoring Guidance into its rules. Periodic monitoring is required by 40 CFR 70.6 and 71.6 where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring. Also, the amendments to 567 IAC 22.108(3) adopt by reference Compliance Assurance Monitoring (CAM) that is required to be included in 40 CFR part 70 or 71 operating permits for major stationary sources of air pollution that are required to obtain operating permits under Title V of the CAA. Periodic monitoring and CAM are needed to provide reasonable assurance of compliance with applicable requirements under the CAA. The amendments were adopted and filed by the Environmental Protection Commission on June 21, 2001; published on July 11, 2001; and became effective on August 15, 2001.

As a part of our review of these amendments, EPA requested clarification from IDNR regarding the list of factors to be considered in evaluating the type of periodic monitoring appropriate for an applicable requirement, as set forth in the narrative of the June 18, 2001, Periodic Monitoring Guidance. This narrative lists numerous factors to be considered, while Attachment 1 to that guidance contains a decision matrix considering only type of source and

whether the source is controlled or uncontrolled. In response to EPA's request, IDNR sent EPA a November 7, 2001, letter in which the state clarified that it has flexibility in deciding to follow the matrix which is found in appendix A to that guidance or to make a case-by-case determination that differs from the periodic monitoring guidance and the matrixes. EPA believes that the state's ability to deviate from the guidance on a case-by-case basis is essential to implementation of this program, and our approval of the state program revisions is based, in part, on the state's assurance that it retains authority to establish appropriate periodic monitoring on a case-by-case basis. EPA reserves our authority to object to permit provisions regarding periodic monitoring if they do not meet the requirements of the CAA or 40 CFR 70.6(a)(3).

On January 11, 2002, we proposed to approve this rule revision. In the proposal, EPA expressly stated its understanding that IDNR retained authority to establish periodic monitoring on a case-by-case basis, and also stated that it retained authority to object to periodic monitoring which did not meet the requirements of the CAA (67 FR 1432). The public comment period was open through February 11, 2002. No comments were received.

This **Federal Register** document takes final action to approve the amendments to Iowa's Title V operating permit program to incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements.

#### **Have the Requirements for Approval of a Revision to the Operating Permit Program Been Met?**

Our review of the material submitted indicates the state has amended rules for the Title V program in accordance with the requirements of section 502 of the CAA and the Federal rule, 40 CFR part 70, and met the requirement for a program revision as established in 40 CFR 70.4(i).

#### **What Action Is EPA Taking?**

EPA is hereby approving amendments to Iowa rule, 567 IAC 22.108(3), effective August 15, 2001, as supplemented on November 7, 2001, as a revision to the Iowa Title V operating permit program.

#### **Administrative Requirements**

Under Executive Order 12866 (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. For

this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). 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.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

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 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing Title V operating permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 an operating permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of an operating permit program submission that otherwise satisfies the

provisions of the CAA. 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 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, Reporting and recordkeeping requirements.

Dated: March 5, 2002.

**William Rice,**

*Acting Regional Administrator, Region 7.*

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 under "Iowa" paragraph (d) to read as follows:

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

\* \* \* \* \*

Iowa

\* \* \* \* \*

(d) The Iowa Department of Natural Resources (IDNR) submitted amendments to Iowa Rule, 567 Iowa Administrative Code (IAC) 22.108(3), as a revision to the Iowa Title V operating permits program on August 31, 2001, effective August 15, 2001. The amendments incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements. The IDNR submitted a supplement regarding these amendments on November 7, 2001, clarifying IDNR's authority to establish periodic monitoring on a case-by-case basis. This revision to the Iowa program is effective April 15, 2002.

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[FR Doc. 02-6272 Filed 3-14-02; 8:45 am]

BILLING CODE 6560-50-P

#### DEPARTMENT OF TRANSPORTATION

##### Office of the Secretary

##### 49 CFR Part 1

[Docket No. OST-1999-6189]

#### Organization and Delegation of Powers and Duties, Update of Secretarial Delegation to the Administrator, Federal Motor Carrier Safety Administration

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Secretary of Transportation (OST) is updating the delegations of authority from the Secretary to the Administrator of the Federal Motor Carrier Safety Administration in response to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

Section 1012 of the USA PATRIOT ACT amends the United States Code by adding a new section relating to limitations on issuance of licenses to individuals who operate motor vehicles transporting hazardous materials in commerce. By this action, the Secretary delegates the authority to carry out this provision to the FMCSA Administrator.

**EFFECTIVE DATE:** This final rule is effective on March 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia A. Burke, Office of the Chief Counsel, MC-CC, (202) 366-0834, Federal Motor Carrier Safety Administration, U.S. Department of