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 revising the entry for Massachusetts to read as follows:

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

* * * * *

Massachusetts

(a) Department of Environmental Protection: submitted on April 28, 1995; interim approval effective on May 15, 1996; interim approval expires May 15, 1998.

(b) (Reserved).

* * * * *

[FR Doc. 96–15621 Filed 6–19–96; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 70

[FRL–5521–4]

RIN 2060–AF70

Operating Permits Program Interim Approval Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating revisions to the interim approval criteria within the regulations in part 70, chapter I, title 40, of the Code of Federal Regulations (CFR). Part 70 contains regulations requiring States to develop, and submit to EPA for approval, programs for issuing operating permits to major, and certain other, stationary sources of air pollution as required by title V of the Clean Air Act (Act). Two changes to the interim approval criteria were proposed on August 29, 1994 to address difficulties in program development that have occurred since promulgation of part 70. Today's action finalizes one of those changes; the other will be finalized in a subsequent action.

As a result of today's revision to part 70, certain State operating permit programs will become eligible for interim program approval. Without today's changes, these programs would not have been eligible for interim program approval under the part 70 regulations. Specifically, interim approval may now be granted for programs which do not provide for the incorporation of terms contained in permits issued under EPA-approved minor source preconstruction permit programs into corresponding part 70 permits.

To be eligible for this interim approval, such programs would have to show compelling reasons for the interim approval and meet certain other requirements regarding the content of part 70 permits that exclude these applicable preconstruction permit terms during the 2-year interim period. After 2 years, interim approval expires and the State must have revised its program to address the exclusion of these terms, and any other deficiencies, in order to receive full approval.

EFFECTIVE DATE: July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Ling (telephone number 919–541–4729), U. S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Mail Drop 12, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those State, local, or tribal governments who seek approval of their part 70 operating permit programs, but whose programs do not include minor preconstruction permit terms in their part 70 permits. Regulated categories include:

Category	Examples of regulated entities
State/Local/Tribal Government.	Governments who have developed operating permit programs that exclude minor NSR terms from title V permits and who seek EPA approval of such programs under the part 70 regulations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket

Supporting information used in developing the part 70 rules, including today's promulgated change, is contained in docket number A–93–50. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m. Monday through Friday, at EPA's Air Docket, Room M–1500, Waterside Mall, 401 M Street SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

I. Background and Purpose

A. Introduction

Title V of the Clean Air Act Amendments of 1990 (1990 Amendments), Public Law 101–549, requires EPA to promulgate regulations establishing the requirements for development and submittal of State operating permit programs and the minimum elements these programs must contain to be approvable. On July 21, 1992, EPA published regulations meeting these requirements in the Federal Register (57 FR 32250).

Title V and the part 70 regulations require States and local agencies to submit operating permit programs to EPA within 3 years of enactment of the 1990 Amendments, and require EPA to take action within 1 year of program submittal to approve or disapprove these programs. Section 502(g) of the Act allows EPA to grant interim approval to a program if it ''substantially meets'' the requirements of title V but is not fully approvable. Interim approval may be granted for a period of up to 2 years and may not be renewed. The interim approval provision allows permitting authorities time to correct the program deficiencies preventing full approval. The minimum elements that a program must contain to be eligible for interim approval are contained in § 70.4(d).

The EPA proposed two changes to the interim approval criteria on August 29, 1994 (59 FR 44571). The first change would allow interim approval for part 70 programs which allow permits to be revised through the minor permit modification procedure to reflect those changes at a facility which is subject to EPA-approved minor source preconstruction permit requirements, commonly referred to as ''minor new source review'' (minor NSR) changes. Because this proposal is linked to proposed changes to the permit revision system, which EPA is not yet ready to finalize, and because current EPA policy already allows for approval of programs which allow changes established through minor NSR to be addressed using minor permit modification procedures, EPA is not taking final action on this proposed change in today's rulemaking.

The second proposed change to the interim approval criteria addresses programs that do not incorporate terms and conditions into a source's part 70 permit which are established through an EPA-approved minor NSR program.

Title V and part 70 require a permit to contain provisions which assure compliance with all applicable requirements (section 502(b)(5)(A) of the Act, 40 CFR 70.6(a)). The definition of the term ''applicable requirement'' in part 70 includes requirements established through minor NSR permitting procedures (§ 70.2). The proposed change to part 70 would, for the period of interim approval, allow part 70 permits to be issued and revised without incorporating those terms and conditions that are applicable requirements solely because they are established through minor NSR. These minor NSR terms and conditions would still remain federally enforceable through the provisions of the minor NSR program. In today's notice, EPA is taking final action on this proposed rule change.

B. Summary of Proposed Changes Addressing Applicable Requirements

The August 29, 1994 proposal noted that, in order to be eligible for interim approval, a program must contain adequate authority to issue permits that assure compliance with all applicable requirements including all applicable requirements under title I of the Act [see § 70.4(d)(3)(ii) and § 70.4(c)(1)]. The proposal explained that EPA believes the term ''applicable requirements'' clearly includes all terms and conditions of minor NSR permits. Therefore, a part 70 program that would not provide for incorporating into permits those requirements established through the EPA-approved minor NSR program would be prohibited by § 70.4(d)(3)(ii) from receiving interim approval.

One State, Texas, argued that there are compelling reasons supporting its exclusion of minor NSR requirements as title V applicable requirements, and that its submitted part 70 program should thus be eligible for approval. Although EPA reads § 70.2 and § 70.6(a)(1) to unequivocally require minor NSR terms to be applicable requirements (meaning that the submitted Texas program could not obtain full approval), the Agency proposed that Texas' demonstration of compelling reasons warranted further consideration of the submitted program for interim approval on the basis that it substantially meets the requirements of title V. Texas' demonstration of compelling reasons included the following arguments: (1) Texas' existing minor NSR program is so stringent that the integration of all its minor NSR terms would be infeasible and unnecessary for environmental protection; (2) Texas has an exceptionally large number of part 70 sources which are candidates for minor NSR, making part 70 permitting difficult and time-consuming; and (3) Texas believes that its system of cross-referencing minor NSR permits in part 70 permits will serve essentially the same program purposes as inclusion of the minor NSR requirements themselves, rendering direct inclusion of these requirements unnecessary from Texas' viewpoint.

On the basis of this type of showing, EPA proposed to consider interim approval for programs facing significant minor NSR/part 70 integration difficulties. The proposal further provided that, for a program operating under this type of interim approval: (1) Each part 70 permit issued during the interim approval must (if applicable) state that applicable minor NSR requirements are not included; (2) each minor NSR permit containing requirements applicable to the source must be cross-referenced in the source's part 70 permit so that citizens may access and review those requirements; (3) excluded minor NSR requirements would not be eligible for the permit shield under § 70.6(f); and (4) upon conversion to full approval, all permits issued during the interim approval period that excluded minor NSR terms would have to be reopened to include these terms.

Although the exclusion of minor NSR means that important title V compliance measures (e.g., compliance certification, public review, etc.) will be deferred for 2 years for minor NSR terms, the proposed provisions would limit the scope and duration of the effects of this deferral, and would assure that the public could examine, in federally-enforceable NSR permits, any terms which are not subject to title V's compliance measures during the interim period. This helps strengthen the proposal's position that programs which exclude minor NSR terms could ''substantially meet'' the requirements of part 70 and receive interim approval. However, EPA reiterates that all compliance measures contained in title V must be applied to all applicable requirements, including minor NSR terms, before a part 70 program can receive full approval.

II. Discussion of Today's Action

A. Summary of Changes Since Proposal

In response to comments, EPA is making three minor rule changes to clarify the requirements discussed in the proposal preamble. These include: (1) Adding rule language clarifying that any excluded NSR permits must be cross-referenced in the applicable part 70 permit; (2) adding rule language clarifying that excluded NSR requirements would not be eligible for the permit shield under § 70.6(f); and (3) adding rule language clarifying that, upon conversion to full approval, permits issued during the interim period would have to be revised or reopened to include any excluded minor NSR terms. Regarding reopening, today's rule also provides for a streamlined reopening process for excluded minor NSR terms that does not require the full permit issuance process. The rule provisions are also being rearranged into separate paragraphs in the final rule for clarity. In addition to these rule clarifications, the EPA also reiterates in today's preamble its position that minor NSR is an applicable requirement for part 70 purposes. Additional discussion is also provided on the proposed ''compelling reasons'' demonstration requirement being promulgated today.

B. Significant Comments and Responses

The August 29, 1994 proposal concerning interim approval criteria was grouped with a larger proposal revising the part 70 permit revision system (published separately at 59 FR 44459). The EPA received a total of 246 comment letters on these two proposals, some of which addressed each action separately and some of which addressed both actions together. This section addresses only the major comments received on the proposed revision to the interim approval criteria regarding minor NSR as an applicable requirement. Discussion of additional issues raised by the commenters related to today's action is contained in the technical support document for this rule, which is included in the docket for today's rulemaking. Comments on other proposed changes to the interim approval criteria not addressed by today's rule change, including comments on other aspects of the August 1994 proposals (as well as the August 31, 1995 proposal which supplemented the August 1994 notice on permit revisions), will be addressed in a future rulemaking.

1. Minor NSR as an Applicable Requirement

Several commenters asserted that revisions to the interim approval criteria are unnecessary because minor NSR is not an ''applicable requirement'' under part 70. The EPA notes that it has the authority to promulgate this revision to the interim approval criteria regardless of the correctness of the assertion that minor NSR is not an applicable requirement. However, EPA also

disagrees with the commenters' assertion, and stands by the position and the rationale articulated in the proposal, that minor NSR is an applicable requirement. Key points of this rationale are reiterated below in response to comments received, and are discussed further in the technical support document found in the docket.

One commenter disagreed with EPA's reading of the part 70 definition of ''applicable requirement,'' noting that something is not necessarily an ''applicable requirement'' simply because it is a requirement of the Act. The EPA agrees with this broad statement, noting—for example—that requirements of title II are not ''applicable requirements.'' However, EPA sees no basis for concluding that minor NSR permits issued under a State implementation plan (SIP) approved program are not applicable requirements. Furthermore, as explained in the proposal preamble, EPA believes the part 70 rule is clear in defining ''applicable requirements'' to include minor NSR. A challenge to this point should have been raised in the context of the July 21, 1992 promulgation of part 70.

Another commenter argued more broadly that the intent of the Act is to regulate major sources while allowing States to regulate minor sources through minor NSR programs. The EPA disagrees. Section 110(a)(2)(c) of the Act and EPA's regulations at 51.161 clearly establish Federal requirements for preconstruction review of activities below the NSR major source applicability thresholds. The EPA further disagrees with this commenter's assertion that its argument is supported by EPA's proposed resolution of the ''title I modifications'' issue. A determination by EPA that ''title I modifications'' do not include minor NSR actions does not mean that minor NSR programs are optional under the Act.

A commenter also noted that many State minor NSR programs go beyond the Federal minimum, and that a detailed analysis would be necessary to determine the precise extent to which a minor NSR program is necessary to attain and maintain the national ambient air quality standards (NAAQS). The EPA disagrees that any such analysis is necessary or appropriate. A State that submitted a minor NSR program for approval into the SIP presumably did so because it believed that the submitted program was necessary to attain and maintain the NAAQS. The EPA believes this is the only reasonable presumption that can be made in retrospect.

Although EPA reiterates that minor NSR terms are applicable requirements, EPA also recognizes that certain terms found in existing NSR permits (including minor NSR permits) may be obsolete, extraneous, environmentally insignificant, or otherwise not required as part of the SIP or a federally-enforceable NSR program. Inclusion of these terms in a part 70 permit could present program implementation difficulties and is not needed to fulfill the purposes of the Act. Noting this, EPA issued a policy addressing incorporation of these permit terms into part 70 permits. This policy is described in ''White Paper for Streamlined Development of Part 70 Permit Applications, July 10, 1995'' (White Paper). The White Paper states that, although minor NSR permit terms are applicable requirements, the permitting authority may use a joint title V/NSR ''parallel process'' to make appropriate revisions to an NSR permit to exclude NSR terms which are obsolete, unrelated to attainment and maintenance of a NAAQS, extraneous, or otherwise environmentally insignificant. By revising the underlying NSR permit to delete, revise, or designate as State-only these unnecessary minor NSR permit terms, the permit authority has discretion to exclude these terms from the set of federally-enforceable minor NSR conditions, and thus from the definition of ''applicable requirement'' for part 70 purposes.

The EPA notes that programs which exclude minor NSR as an applicable requirement under today's approach to interim approval, and which seek to streamline minor NSR permits using a White Paper approach, would not need to have revised existing minor NSR permits in this way until conversion to full approval, because these programs will not include minor NSR terms in part 70 permits until that time. However, programs considering this type of parallel processing are encouraged to consult the White Paper and begin this permit revision process, so that the task of streamlining minor NSR permits does not conflict with other permit authority responsibilities at the time full approval is received.

2. Demonstration of ''Compelling Reasons''

The proposal allows EPA to grant interim approval to part 70 programs that do not include minor NSR as an applicable requirement upon a showing by the permitting authority of ''compelling reasons'' which support the interim approval. One commenter stated that the requirement for compelling reasons is unworkable and should be deleted, and that EPA does not provide guidance on what constitutes compelling reasons. The EPA disagrees that the compelling reasons requirement should be deleted, and does not believe that additional guidance on compelling reasons is necessary for reasons explained below.

The EPA believes it is important to include a requirement that a State demonstrate compelling reasons to grant interim approval if a part 70 program excludes minor NSR from the definition of ''applicable requirement.'' The EPA believes, in general, that an interim approval on this basis is undesirable because it delays the implementation of title V for a large number of Act requirements at a large number of sources, and is a significant departure from the part 70 regulations. The Agency believes that this type of departure should be made only for those programs that demonstrate a strong need for the interim exclusion of minor NSR. Therefore, the Agency is requiring that such programs demonstrate compelling reasons for granting the interim approval.

Two commenters also asserted that EPA has no basis under the Act to require States to show compelling reasons for granting interim approval; EPA disagrees. Section 502(g) of the Act gives EPA broad discretion as to when and how it grants interim approval. This discretion includes requiring that a State show compelling reasons before making significant departures from part 70. The commenters presented no basis, nor does EPA see any reason, to remove the ''compelling reasons'' requirement.

The ''compelling reasons'' demonstration should be based primarily on a showing that extraordinary difficulties would be encountered in incorporating minor NSR terms into initial title V permits. It is also appropriate to include in the demonstration any measures the State is taking in its interim part 70 program to support the implementation of the excluded minor NSR program. The EPA reserves its discretion to evaluate demonstrations of compelling reasons on a case-by-case basis, with consideration given to the degree of the minor NSR/title V integration difficulties and the extent to which the State part 70 program addresses minor NSR implementation in the interim. Because of the case-by-case nature of such decisions, EPA cannot provide prescriptive criteria for the compelling reasons demonstration.

The Texas demonstration of compelling reasons, described in the August 1994 proposal, is an example of

the type of demonstration that could be considered for interim approval under today's rule. Texas argued that: (1) Its minor NSR program is so stringent that integration of all minor NSR terms would be infeasible; (2) it has an exceptionally large number of part 70 sources which receive minor NSR; and (3) its part 70 program would cross-reference minor NSR permits in part 70 permits (i.e., identifies in each part 70 permit the applicable minor NSR permits, but does not incorporate by reference the requirements of minor NSR into the part 70 permit).

Although EPA does not believe that the existence of a stringent minor NSR program justifies exclusion of minor NSR from a title V program, the Agency acknowledges that a program such as Texas' does produce an extremely large number of minor NSR permits, because of both its inclusive applicability provisions and because of the large number of facilities statewide. Thus, integration of minor NSR permits into initial title V permits presents significant difficulty in Texas. Similarly, although EPA does not believe that simply cross-referencing minor NSR permits satisfies title V, EPA acknowledges that the cross-referencing requirement in Texas' part 70 program serves to provide additional notice in part 70 permits when minor NSR applies to a facility. Although this measure falls short of the permit content requirements of a fully-approvable title V program, EPA believes it is appropriate for a State to reference such measures in its compelling reasons demonstration. Therefore, because of the combination of integration difficulties and program measures, EPA would consider such a program for interim approval. The EPA notes that today's notice is not intended to present the Agency's position as to whether Texas' compelling reasons demonstration (together with the rest of its program) warrants interim approval under the revised criteria. Rather, today's rule simply provides for the possibility that such a program could be considered for interim approval in light of the fact that it excludes minor NSR terms from part 70 permits.

In addition to requiring a showing of compelling reasons, the proposal preamble noted that EPA will consider the following as factors against this type of interim approval: (1) Whether a program's exclusion of minor NSR terms will diminish the effectiveness of the State's minor NSR program during the interim period; and (2) whether the State has already submitted a part 70 program that included minor NSR as an applicable requirement. It is recommended that States considering excluding minor NSR as an applicable requirement carefully consider whether, in light of these factors, its reasons for the exclusion truly constitute a compelling need. Such States should also consider whether the time delays in program approval associated with necessary program changes and the development of a case-by-case analysis of compelling reasons are worth the interim relief that may be achieved through the temporary exclusion of minor NSR from title V permitting.

3. Incorporation of Minor NSR on Transition to Full Approval

The proposal preamble noted that a part 70 program which does not incorporate minor NSR as an applicable requirement must, upon conversion from interim to full approval, provide for the reopening of permits issued during the interim period in order to include the excluded minor NSR requirements in each part 70 permit. Three commenters stated that such a reopening would be unnecessary and impractical. The commenters were concerned about the timing and impact of the resource burden imposed on sources and on permitting authorities by the reopening process, which, in accordance with § 70.7(f)(2), must follow the same procedural requirements as permit issuance. They felt that reopening was an unnecessary procedural burden with little environmental benefit and believed that minor NSR terms could be included at renewal, rather than reopening, with little adverse impact.

While EPA is sensitive to resource concerns, the Agency does not agree that these concerns should result in exclusion of minor NSR terms from title V permits until renewal. The EPA, in proposing to allow this type of interim approval, did not contemplate that minor NSR applicable requirements could be excluded until renewal, which could be up to 5 years after full program approval. Furthermore, part of the rationale for granting interim approval is that the excluded minor NSR terms are subject to other safeguards in the part 70 regulations. One such safeguard is the reopening of permits when interim approval expires to incorporate excluded applicable requirements. Without such a safeguard, minor NSR terms would not be subject to key provisions of title V, such as annual compliance certification, recordkeeping and reporting, and other similar requirements, for up to 5 years.

The EPA does agree that, if reopenings to incorporate excluded minor NSR permits must follow the same procedural requirements as full permit issuance, the process of reopening each permit issued during the interim approval period could impose considerable administrative burden at a time when the permitting authority is still also processing initial permit applications. This burden is greatly mitigated in Texas where the earliest permits, and hence the ones requiring reopening, are for the simplest sources and source categories. The EPA believes that remaining concerns over the resource burden associated with reopenings will be reasonably addressed by the provisions discussed below.

The EPA reiterates that any permit issued during the interim period must, upon transition to full approval, assure compliance with the permit content requirements of title V (i.e., §§ 70.6 (a) and (c)) for all applicable requirements, including the previously excluded minor NSR terms. However, the Act does not specifically require a full reopening when interim approval expires as the only means to achieve this end. The EPA believes that excluded minor NSR applicable requirements may be brought on to the title V permit prior to or upon full program approval using procedures more streamlined than full reopening. This is because some of the excluded minor NSR requirements have already been subjected to some title V procedural requirements (e.g., public review) during issuance of the NSR permit. The EPA recognizes that under this approach, other excluded minor NSR terms will be incorporated into part 70 permits without an opportunity for public comment, EPA objection, or citizen petition until renewal. However, EPA believes that deferral of these title V requirements until renewal is appropriate for excluded minor NSR applicable requirements. A minor NSR permit that is newly issued during the permit term would be incorporated into the permit through procedures that are less than those required for permit issuance. The EPA believes it is reasonable to allow for equitable treatment of pre-existing minor NSR permits that were initially excluded from the permit in the same manner, particularly since the permit shield will not apply until the minor NSR permit undergoes full title V procedures at renewal.

The EPA is adding language at § 70.3(d)(3)(ii)(D) allowing this streamlined reopening approach for excluded minor NSR terms. The EPA notes that any such process should at least meet the part 70 permit revision requirements for changes subject to minor NSR. This would include any

minimum requirements for public notice and access to records contained in the part 70 regulations in effect at the time of program transition to full approval. The EPA is further allowing permitting authorities to dispense with the need to give each source a 30-day notice of its intent to revise the permit to incorporate previously-excluded minor NSR permits. The EPA believes this individual notice is unnecessary because sources, by virtue of this action and actions taken by the State to implement this approach, will have ample notice of the fact that permits excluding minor NSR permits will need to be reopened.

As an alternative to the streamlined reopening described above, EPA believes that an interim program that does not include minor NSR terms in title V permits can be designed in such a way that it provides in advance for the inclusion of minor NSR terms upon transition to full approval. This can be accomplished by providing that each part 70 permit issued during the interim period contains a condition that automatically incorporates, at the date of transition to full approval, the terms and conditions of any minor NSR permits referenced in the facility's title V permit. This would not simply be cross-referencing, but would be advance incorporation of the NSR requirements by reference, which would subject them to title V requirements such as the requirement for an annual compliance certification. This approach would provide in advance for a streamlined transition to full approval without any need for reopening.

The EPA believes that the allowance for more streamlined procedures for incorporating excluded applicable requirements, together with the advance incorporation approach described above, provide less burdensome alternatives to full reopening. Interim programs that exclude minor NSR are encouraged to adopt one, or a combination, of these streamlined approaches to assure that title V is met for excluded minor NSR terms prior to or upon conversion to full approval, thus avoiding the need for full reopening. However, EPA notes that, in the absence of any other assurance that §§ 70.6 (a) and (c) are met for any applicable requirements, including minor NSR terms, the reopening provisions under §§ 70.7 (f) and (g), including full issuance process, would apply if and when EPA grants full approval, as noted in the preamble to the proposal.

4. Cross-Referencing of Minor NSR Permits Under Interim Program

The preamble to the proposed revision provided that each part 70 permit issued by an interim program that does not include minor NSR as an applicable requirement must state that applicable minor NSR requirements are not included in the permit, and must cross-reference any excluded minor NSR permits so that citizens may access and review those permits. One commenter noted that, while the preamble asserts that such cross-referencing is required, the corresponding rule language is ambiguous with respect to this requirement. Another commenter felt that if EPA does require such cross-referencing, specific criteria regarding what constitutes adequate cross-referencing should also be provided.

The EPA agrees that there is a need to clarify the rule language regarding cross-referencing. Therefore, EPA is adding a sentence to the proposed rule language in § 70.4(d)(3)(ii) to clarify that a facility's part 70 permit must contain a list of all minor NSR permits that contain excluded applicable requirements for that facility. Most States have a numbering system for minor NSR permits, so a listing in the part 70 permit of the permit numbers for each minor NSR permit applicable to that facility would fulfill the cross-referencing requirement.

For similar reasons, EPA is adding language clarifying the proposal preamble discussion of the permit shield. The preamble stated that the permit shield would not apply to the excluded minor NSR terms. Rule language is being added to codify this requirement in parallel with the other requirements for the interim program.

III. Administrative Requirements

A. Docket

The docket for this regulatory action is number A–93–50. All the documents referenced in this preamble fall into one of two categories. They are either reference materials that are considered to be generally available to the public, or they are memoranda and reports prepared specifically for this rulemaking. Both types of documents can be found in docket number A–93–50.

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 program 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 rule 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 rule removes an obstruction to part 70 program approval for a small number of State programs, allowing them to implement their own part 70 programs. In the absence of today's rule, EPA would implement its part 71 program in such States, which, as noted in the Information Collection Request (ICR) for the part 71 rule, would be more burdensome in a given State than a part 70 program for both the sources and the applicable permitting authority. Thus, not only does the rule avoid new direct costs, it leads indirectly to a savings. As such, this action was exempted from OMB review.

C. Regulatory Flexibility Act Compliance

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the Federal Register, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). The EPA has established guidelines which require an RFA if the proposed rule will have any economic impact, however small, on any small entities that are subject to the rule, even though the Agency may not be legally required to develop such an analysis.

The original part 70 rule was determined to not have a significant and disproportionate adverse impact on small entities. Similarly, a regulatory flexibility screening analysis of the

impacts of the proposed part 70 revisions determined that the proposed revisions (a subset of which constitutes today's action) would likewise not have a significant and disproportionate adverse impact on small entities. Consequently, the Administrator certified that the part 70 regulations would not have a significant and disproportionate impact on small entities. Because today's rule does not substantially alter the part 70 regulations as they pertain to small entities, and does not necessitate changes to the part 70 RFA, these changes to part 70 will not have a significant and disproportionate impact on small entities, and a new RFA is not needed for this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

E. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0243. The ICR prepared for the part 70 rule is not affected by today's action 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. Today's rule, which simply provides for the interim approval of certain programs which would have otherwise not been eligible for such approval, does not alter the assumptions of the approved part 70 ICR used in determining the burden estimate. Furthermore, today's action does not impose any additional requirements which would add to the information collection requirements for sources or permitting authorities.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to:

Director, Regulatory Information Division, Office of Policy, Planning, and Evaluation (2136), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Include the ICR number in any correspondence.

F. 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 today's rule 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, today's 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.

List of Subjects in 40 CFR Part 70

Environmental protection, Air pollution control, Carbon monoxide, Fugitive emissions, Hydrocarbons, Lead, New source review, Nitrogen dioxide, Operating permits, Particulate matter, Prevention of significant deterioration, Volatile organic.

Dated: June 11, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 70 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. Section 70.4 is amended by revising paragraphs (d)(3) introductory text and (d)(3)(ii) to read as follows:

§ 70.4 State program submittals and transition.

* * * * *

(d) * * *

(3) The EPA may grant interim approval to any program if it meets each of the following minimum requirements and otherwise substantially meets the requirements of this part:

* * * * *

(ii) *Applicable requirements.*

(A) The program must provide for adequate authority to issue permits that assure compliance with the requirements of paragraph (c)(1) of this section for those major sources covered by the program.

(B) Notwithstanding paragraph (d)(3)(ii)(A) of this section, where a State or local permitting authority lacks adequate authority to issue or revise permits that assure compliance with applicable requirements established exclusively through an EPA-approved minor NSR program, EPA may grant interim approval to the program upon a showing by the permitting authority of compelling reasons which support the interim approval.

(C) Any part 70 permit issued during an interim approval granted under paragraph (d)(3)(ii)(B) of this section that does not incorporate minor NSR requirements shall:

(*1*) Note this fact in the permit;

(*2*) Indicate how citizens may obtain access to excluded minor NSR permits;

(*3*) Provide a cross reference, such as a listing of the permit number, for each minor NSR permit containing an excluded minor NSR term; and

(*4*) State that the minor NSR requirements which are excluded are not eligible for the permit shield under § 70.6(f).

(D) A program receiving interim approval for the reason specified in (d)(3)(ii)(B) of this section must, upon or before granting of full approval, institute proceedings to reopen part 70 permits to incorporate excluded minor NSR permits as terms of the part 70 permits, as required by § 70.7(f)(1)(iv). Such reopening need not follow full permit issuance procedures nor the notice requirement of § 70.7(f)(3), but may instead follow the permit revision procedure in effect under the State's

approved part 70 program for incorporation of minor NSR permits.

* * * * *

[FR Doc. 96–15617 Filed 6–19–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–314; RM–8396]

Radio Broadcasting Services; Cadiz and Oak Grove, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Chief, Policy and Rules Division, denied the petition for reconsideration filed by Southern Broadcasting Corporation of the Chief, Allocations Branch's Report and Order, 60 FR 52105, October 5, 1995, substituting Channel 293C3 for Channel 292A at Cadiz, reallotting Channel 293C3 from Cadiz to Oak Grove, Kentucky, and modifying Station WKDZ-FM's license accordingly. The Commission denied the petition because it failed to present new facts or arguments that were not considered in the Report and Order that would warrant a contrary decision. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Bruce Romano, Mass Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 93–314, adopted May 24, 1996 and released June 7, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc. (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–15671 Filed 6–19–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–118; Amendment 192–79]

RIN 2137–AB97

Excess Flow Valve—Performance Standards

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In the process of routine excavation activities, excavators often sever gas service lines causing loss of life, injury, or property damage by fire or explosion. Excess flow valves (EFVs) restrict the flow of gas by closing automatically when a line is severed, thus mitigating the consequences of service line failures. In this final rule, RSPA has developed standards for the performance of EFVs used to protect single-residence service lines. If an EFV is installed on such a line, it must meet these performance standards.

DATES: This final rule takes effect July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Mike Israni (202) 366–4571, regarding the subject matter of this final rule, or the Dockets Unit, (202) 366–4453, regarding copies of this final rule or other material in the docket that is referenced in this rule.

SUPPLEMENTARY INFORMATION:

Statutory Mandate

In 49 U.S.C. 60110 Congress directs the Department of Transportation to issue regulations prescribing the circumstances under which operators of natural gas distribution systems must install EFVs. If the Department determines that there are no circumstances under which EFVs should be installed, the Department is to report this determination, and the reasons for the decision, to Congress. RSPA, on behalf of the Department, has determined that there are no circumstances under which the Department should require the installation of EFVs, primarily because the costs far exceed the benefits of such installation. RSPA has sent the report of its reasons for this determination to Congress. The report to Congress (April 4, 1995) and the cost/benefit analysis of mandatory EFV installation are available in the docket. Costs and benefits are also discussed later in this document under ''Cost/Benefit Analysis.''

49 U.S.C. 60110 further requires the Department to develop standards for the performance of EFVs used to protect service lines in a natural gas distribution system. The development of these standards is the subject of this rulemaking.

The statute also requires the Department to issue a rule requiring operators to notify customers about EFV availability and to offer to install EFVs that meet the performance standards, if the customer pays for the installation. RSPA will initiate a separate notice of proposed rulemaking for customer notification.

The Problem

Despite efforts, such as damage prevention programs, to reduce the frequency of excavation-related service line incidents on natural gas distribution service lines, such incidents persist and continue to result in death, injury, fire, or explosion. During the period from March 1991 through February 1994, 30 incidents with consequences that might have been mitigated by an EFV were reported to RSPA. These incidents, mostly excavation-related, resulted in 2 fatalities, 16 injuries, and an estimated $3,249,595 in property damage. Incident history is explained in the November 1991 and January 1995 cost/benefit studies evaluating mandatory EFV installation. Because damage prevention measures are not foolproof, RSPA has sought to identify ways to mitigate the consequences of these incidents. The National Transportation Safety Board (NTSB) and others have proposed EFVs as a means of mitigation.

NTSB Recommendations

NTSB has recommended EFVs as a means of reducing or preventing injury or death from incidents resulting from service line breaks or ruptures. Since 1971, NTSB has issued seven recommendations regarding the use of EFVs in service lines. NTSB's recommendations are summarized and discussed in the Notice of Proposed Rulemaking on this rulemaking (58 FR 21524; April 21, 1993).

The Advance Notice of Proposed Rulemaking (ANPRM)

RSPA issued an ANPRM (55 FR 52188; December 20, 1990) seeking information on the desirability of requiring the installation of EFVs on gas distribution service lines to reduce the damage from service line ruptures. The ANPRM also contained a questionnaire to collect current operational data on the use of EFVs by natural gas distribution operators. The results of the