

Dated: November 7, 1995.

J. Davitt McAteer,

*Assistant Secretary for Mine Safety and Health.*

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Parts 206 and 260

#### Bidding Systems for Leases in the Outer Continental Shelf

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** Due to requests for additional time the Minerals Management Service (MMS) extends by 30 days the comment period for a notice of proposed rulemaking (NPR) that was published in the Federal Register on August 23, 1995. The NPR is concerned with an amendment to change the bidding systems for newly issued leases under the Outer Continental Shelf Lands Act. **DATES:** MMS will consider all comments we receive by November 22, 1995. We will begin reviewing comments at that time and may not fully consider comments we receive after November 22, 1995.

**ADDRESSES:** Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070-4817; Attention: Chief, Engineering and Standards Branch.

**FOR FURTHER INFORMATION CONTACT:** Dr. Marshall Rose, Chief Economic Evaluation Branch, telephone (703) 787-1636.

Dated: November 6, 1995.

Richard J. Glynn,

*Acting Associate Director for Offshore Minerals Management.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[PROO1; FRL-5331-1]

#### Clean Air Act Proposed Full Approval of Operating Permits Program: the Commonwealth of Puerto Rico

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

**ACTION:** Proposed full approval.

**SUMMARY:** The EPA proposes full approval of the operating permits program submitted by the Commonwealth of Puerto Rico for the purpose of complying with Federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources.

**DATES:** Comments on this proposed action must be received in writing by December 14, 1995.

**ADDRESSES:** Written comments should be addressed to Steven C. Riva, Chief, Permitting and Toxics Support Section, at the New York Region II Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed full approval as well as the Technical Support Document are available for inspection during normal business hours at the following locations:

EPA Region II, 290 Broadway, 21st Floor, New York, New York 10007-1866, Attention: Steven C. Riva.

EPA Region II, Caribbean Field Office, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, San Juan, Puerto Rico 00907-4127, Attention: Jose Ivan Guzman.

Puerto Rico Environmental Quality Board, Air Programs Area, Eurobank Building, 431 Ponce de Leon Avenue, Hato Rey, PR 00910, Attention: Francisco Claudio.

**FOR FURTHER INFORMATION CONTACT:** Christine Fazio, Permitting and Toxics Support Section, at the above EPA office in New York or at telephone number (212) 637-4015. Jose Ivan Guzman of the Caribbean Field Office can be reached at (809) 729-6951, extension 223.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Purpose

As required under title V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by

November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. 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 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

##### II. Proposed Action and Implications

###### A. Analysis of State Submission

###### 1. Support Materials

The Chairman of the Environmental Quality Board (EQB) submitted a part 70 permitting program for the Commonwealth of Puerto Rico with a letter requesting EPA's approval on November 15, 1993 and a supplemental package on March 22, 1994. The program contains a description of how the EQB intends to implement the program consistent with the requirements of the Act and 40 CFR part 70. The program includes supporting documentation such as evidence of the procedurally correct adoption of the permitting rule, permit application forms, and a sample permit form. On April 11, 1994 the Attorney General of Puerto Rico submitted a legal opinion stating that EQB has adequate legal authority to carry out the program. On September 29, 1995, EQB submitted a revised regulation which included minor changes to the regulation submitted on March 22, 1994. The EPA intends to develop an implementation agreement with Puerto Rico which will define EPA's and EQB's responsibilities and commitments for administering the program, although this proposed action does not depend on the implementation agreement.

###### 2. Regulations and Program Implementation

Puerto Rico's part 70 permitting regulation is contained in Part I, Rule 102; Part II, Rule 206; Part VI, Rules 601 through 610; and Appendices A through E of the Regulation For The Control Of Atmospheric Pollution (RCAP) dated September 1995. Puerto Rico's regulation meets the main requirements of Part 70 as described below:

a. applicability (40 CFR 70.2 and 70.3): Sources required to obtain a permit under Puerto Rico's regulation are defined as "Title V sources" and

include all major part 70 sources. The rule defers non-major sources until the Administrator completes a rulemaking to determine how the title V program should be structured for non-major sources and the appropriateness of any permanent exemptions. The regulation permanently exempts any source that would be required to obtain a permit solely because it is subject to Standards of Performance for New Residential Wood Heaters or the National Emission Standard for Hazardous Air Pollutants for Asbestos, Standards for Demolition and Renovation. (Rules 102 and 601 of the RCAP)

b. permit content (40 CFR 70.6): Rule 603 requires that each permit contain emission limitations and standards to ensure compliance with all applicable requirements. Permits may also contain certain operational flexibility requirements such as terms and conditions for reasonably anticipated operating scenarios (including worst-case operational scenarios) and for the trading of emissions increases and decreases (to the extent the applicable requirements provide for such trading) in the permitted facility. Such operational flexibility provisions are explained more fully in Rules 603 and 607 of the RCAP.

c. public participation (40 CFR 70.7): The public will be provided with notice of, and an opportunity to comment on, draft permits relating to initial permit issuance, permit renewals, and significant modifications (Rule 609 of the RCAP).

d. permit modifications (40 CFR 70.7): Sources may apply for expedited permit changes for minor permit modifications. Significant modifications must undergo all part 70 permit issuance procedures (Rule 606 of the RCAP).

e. EPA oversight (40 CFR 70.8): Each permit, renewal, and minor or significant modification is subject to EPA oversight and veto (Rule 609 of the RCAP).

f. insignificant activities (40 CFR 70.5): The lists of insignificant activities can be found at Rule 206 and Appendix B of the RCAP (the two lists are different). Insignificant activities which need not be described in the permit application include sources on the two lists provided no applicable requirements apply to the source and the source emits 2 tons per year or less of a criteria pollutant or 5 tons per year or less of any combination of criteria pollutants; and 2 tons per year or the de minimis rates for hazardous air pollutants listed in Appendix E (whichever is lower). For insignificant activities exempted because of size or production rate, a list of such

insignificant activities must be included in the permit application. In addition, any unit with allowable emission rates less than certain quantities identified in Item P of Appendix B (e.g., from 1 to 2 tpy depending on pollutant) can be listed on the permit application as an insignificant activity if no applicable requirements apply to the unit.

g. enforcement authority (40 CFR 70.11): Article 17 of Law No. 9 of June 18, 1970 as amended on November 12, 1993 ("Law No. 9") directly provides for enforcement and penalties for civil and criminal violations of permits and rules. Penalties will be assessed up to \$25,000 per day per violation.

h. complete application forms (40 CFR 70.5): Rule 602 defines what elements must be in an application in order for it to be complete. All information is included in EQB's permit application.

i. variance provisions: Part III, Rule 301 of the RCAP contains provisions for EQB to approve variances from the strict application of substantive requirements of the Puerto Rico regulation, except for NSPS and NESHAP requirements. Rule 301 also states that no variance will be approved by EQB unless it has been approved by EPA. Under Rule 302, EQB may provide for an emergency variance of up to 90 days under very special circumstances such as to avoid an imminent health threat. EPA regards Rules 301 and 302 as wholly external to the program submitted for approval under part 70. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

### 3. Permit Fee Demonstration

Puerto Rico's workload analysis and fee demonstration shows that the state will collect sufficient revenue to

implement the Title V program. Puerto Rico will collect permit fees beginning at \$25 adjusted by the Consumer Price Index (base year 1989) per ton of allowable emissions of regulated pollutants. However, the state-owned utility will be capped at a fee of \$1 million per year for its existing facilities and the state hospital is exempt from fees. Puerto Rico's fee demonstration and regulation (Rule 610 of the RCAP) state that Puerto Rico may raise fees if necessary in the future. Furthermore, Article 11 of Law No. 9 requires that sufficient fees be collected to cover the direct and indirect expenses necessary to develop, administer and enforce Puerto Rico's Title V program, including the Small Business Technical and Environmental Compliance Assistance Program as required by section 507 of the Act. Article 11 of Law No. 9 establishes a special account which is independent and separate from any other account in Puerto Rico and must be used only for the Air Quality Program.

### 4. Provisions Implementing Section 112 of the Act

a. authority for Section 112 Implementation: Puerto Rico has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Puerto Rico's enabling legislation (Article 12 of Law No. 9) and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this is sufficient to allow Puerto Rico to issue permits that assure compliance with all section 112 requirements. The Attorney General's legal opinion also certifies that EQB has authority to implement the air toxics program and to accept automatic delegation of future national emission standards for hazardous air pollutants. Rule 110(A)(2) of the Regulation for the Control of Atmospheric Pollution (RCAP) provides that NESHAPs when promulgated by the EPA Administrator will become effective as part of Puerto Rico's rules and regulations. Rule 604 of the RCAP provides for the following section 112 requirements:

i. case-by-case MACT determinations: In the event that no applicable emissions limitations have been established by the Administrator, EQB will make case-by-case Maximum Achievable Control Technology (MACT) determinations as required under sections 112 (j) and (g) of the Act.

ii. early reductions: Rule 604 authorizes EQB to issue permits with an alternate emission limit under the Act's section 112(i)(5) early reductions program.

iii. implementation of section 112(r): Rule 604 requires sources subject to section 112(r) of the Act to prepare and submit risk management plans. A source must submit an annual certification ensuring the proper implementation of the risk management plan.

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

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponing of section 112(g), Puerto Rico must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and the adoption of Puerto Rico rules implementing EPA's section 112(g) regulations.

The EPA is proposing to approve Puerto Rico's preconstruction permitting program found in Rule 203 of the RCAP under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. Furthermore, EQB has provided broad language in its regulation that will allow the implementation of 112(g) immediately after EPA establishes and adopts final guidelines (Rule 604 of the RCAP). EQB defines the de minimis levels under Appendix E based on the 112(g) draft rule but stipulates if the final 112(g) rule differs in any way, the federal de minimis levels prevail (Rule 102 of the RCAP—definition of de minimis).

c. Section 112(l): Requirements for approval specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as they apply to part 70 sources. Section 112(l)(5) requires that

the state's program contain adequate authorities, adequate resources for implementation, an expeditious compliance schedule, and adequate enforcement ability, which are also requirements under part 70. In a letter dated December 29, 1994, EQB requested delegation through 112(l) of all existing 112 standards and all future 112 standards for both part 70 and non-part 70 sources and infrastructure programs. In the letter, EQB demonstrated that they have sufficient legal authorities, adequate resources, the capability for automatic delegation of future standards, and adequate enforcement ability for implementation of section 112 of the Act for both part 70 sources and non-part 70 sources. Therefore, the EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 to Puerto Rico for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and section 112 infrastructure programs that are unchanged from Federal rules as promulgated.

Puerto Rico commits to appropriately implementing the existing and future requirements of sections 111, 112 and 129 of the Act, and all MACT standards promulgated in the future, in a timely manner.

#### *B. Options for Approval/Disapproval and Implications*

The EPA is proposing full approval of the operating permits program submitted to EPA by the Commonwealth of Puerto Rico on November 15, 1993 and supplemented on March 18, 1994, April 8, 1994, and September 29, 1995. Among other things, Puerto Rico has demonstrated that the program will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 and 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, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 to Puerto Rico for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and infrastructure programs under

section 112 that are unchanged from Federal rules as promulgated.

### III. Administrative Requirements

#### *A. Request for Public Comments*

The EPA is requesting comments on all aspects of this proposed full approval. Copies of the State's submittal and other information relied upon for the proposed full approval are contained in a docket maintained at the EPA Regional Offices located in New York and San Juan and at the EQB. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by December 14, 1995.

#### *B. Executive Order 12866*

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

#### *C. Regulatory Flexibility Act*

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

#### *D. Unfunded Mandates Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action promulgated today 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, Reporting and recordkeeping requirements.

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

Dated: October 30, 1995.

William J. Muszynski,

*Acting Regional Administrator.*

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