

contacts related to employment services where the seller or telemarketer requests or receives payment prior to providing the promised services, business ventures, investment opportunities, prize promotions, or credit-related programs.

§ 310.7 Actions by States and private persons.

Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.

§ 310.8 Federal preemption.

Nothing in this Rule shall be construed to preempt any State law that is not in direct conflict with any provision of this Rule.

§ 310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark,

Secretary.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-5155-2]

Hazardous Air Pollutants: Provisions Governing Constructed, Reconstructed or Modified Major Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interpretive notice.

SUMMARY: This notice announces the EPA's revised interpretation of the

Clean Air Act's (Act) requirements regarding the effective date of section 112(g) of the Act. The interpretation adopted here postpones the effective date of section 112(g) until after the EPA has promulgated a rule addressing that provision.

EFFECTIVE DATE: February 14, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Kaufman at (919) 541-0102, Information Transfer and Program Integration Division (MD-12), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Summary of EPA's Policy

The Administrator of the EPA is today announcing the EPA's interpretation of the Act requirements regarding the effective date of section 112(g) during the period prior to promulgation of a Federal rule addressing implementation of that section. This notice effects changes from the view embodied in the preamble to the proposed rulemaking under section 112(g), **Federal Register** notices of proposed and final approvals of operating permits programs under title V of the Act, and in guidance issued by the EPA's Office of Air Quality Planning and Standards (OAQPS).

For the reasons set forth in this notice, the EPA now interprets section 112(g) not to take effect before the EPA issues notice and comment guidance addressing implementation of that section. In the interim period before this guidance is promulgated, States may, as a matter of State law, implement a program for the review of section 112(g) modifications, constructions, or reconstructions. However, the section 112(g) requirement that major source modifications, constructions, or reconstructions meet the maximum achievable control technology (MACT)—as determined on a case-by-case basis where no Federal standard for a source category has been set—will not take effect as a matter of Federal law until the section 112(g) rule is promulgated.

II. Discussion

A. Requirements of Section 112(g). Previous Policy Position

After the effective date of a title V permit program in a State, section 112(g) prohibits any person from constructing or reconstructing a major source of hazardous air pollutants (HAP), or modifying a major HAP's source, without a determination from "the Administrator (or the State)" that MACT will be met. The determination must be

on a case-by-case basis by "the Administrator (or the State)" if no MACT standard has been issued. Section 112(g)(1)(B) also provides that the Administrator "shall, after notice and opportunity for comment and not later than [May 15, 1992] publish guidance with respect to implementation of this subsection." The guidance must address the relative hazard of HAP in a manner "sufficient to facilitate the offset showing" allowed in the definition of "modification."

The EPA proposed a rule implementing section 112(g) on April 1, 1994 (59 FR 15504). The EPA currently anticipates promulgation of this rule during the summer of 1995. In anticipation of the fact that many title V permit programs would be approved before the section 112(g) rule was promulgated, the OAQPS issued a guidance memorandum on June 28, 1994¹ to assist States in their implementation of section 112(g) during this transition period. The guidance states that section 112(g) takes effect upon approval of a title V program in a State regardless of whether the EPA's rule has been promulgated. The guidance also offers suggestions for how States may implement section 112(g) during the transition period.

To date, the EPA has approved several title V programs, the first of which was for the State of Washington on November 9, 1994 (59 FR 55813). EPA also has proposed approval of numerous other programs. In each of these notices, the Agency has restated its position that the requirements of section 112(g) would take effect in these States upon approval of the title V program, and has described its understanding of how section 112(g) would be implemented in that State during the transition period.

B. Reconsideration Based on Concerns Raised

States and the regulated community have voiced considerable concern with the impracticality of implementation of section 112(g) during the transition period.² These concerns have focused on the provisions for determining the applicability of section 112(g), and in particular on provisions addressing *de minimis* levels and offsets for modifications, as well as the definition of "major source" for constructions and

¹ Guidance for the Initial Implementation of Section 112(g), Memorandum from John S. Seitz to EPA Regional Air Division Directors, June 28, 1994.

² For State and regulated community comments submitted on the proposed section 112(g) rule, see Docket Number A-91-64 inserts IV-D-199, IV-D-213, IV-D-217, IV-D-219, IV-D-222, IV-D-229, IV-D-255, IV-D-295, IV-D-323, IV-D-333, IV-D-337, IV-D-PH217, IV-D-199, IV-D-213, IV-D-295, IV-D-PH221, and IV-D-PH222.