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## 40 C.F.R. § 70.4

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### State program submittals and transition.

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(a) *Date for submittal.* Not later than November 15, 1993, the Governor of each State shall submit to the Administrator for approval a proposed part 70 program, under State law or under an interstate compact, meeting the requirements of this part. If part 70 is subsequently revised such that the Administrator determines that it is necessary to require a change to an approved State program, the required revisions to the program shall be submitted within 12 months of the final changes to part 70 or within such other period as authorized by the Administrator.

(b) *Elements of the initial program submission.* Any State that seeks to administer a program under this part shall submit to the Administrator a letter of submittal from the Governor or his designee requesting EPA approval of the program and at least three copies of a program submission. The submission shall contain the following:

(1) A complete program description describing how the State intends to carry out its responsibilities under this part.

(2) The regulations that comprise the permitting program, reasonably available evidence of their procedurally correct adoption, (including any notice of public comment and any significant comments received on the proposed part 70 program as requested by the Administrator), and copies of all applicable State or local statutes and regulations including those governing State administrative procedures that either authorize the part 70 program or restrict its implementation. The State shall include with the regulations any criteria used to determine insignificant activities or emission levels for purposes of determining complete applications consistent with § 70.5(c) of this part.

(3) A legal opinion from the Attorney General for the State, or the attorney for those State, local, or interstate air pollution control agencies that have independent legal counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific states, administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State states and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as “independent legal counsel,” the attorney signing the statement required by this section shall have full authority to independently represent the State agency in court on all matters pertaining to the State program. The legal opinion shall also include a demonstration of adequate legal authority to carry out the requirements of this part, including authority to carry out each of the following:

(i) Issue permits and assure compliance with each applicable requirement and requirement of this part by all part 70 sources.

(ii) Incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into part 70

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permits consistent with § 70.6.

(iii) Issue permits for a fixed term of 5 years in the case of permits with acid rain provisions and issue all other permits for a period not to exceed 5 years, except for permits issued for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act.

(iv) Issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and review such permits at least every 5 years. No permit for a solid waste incineration unit may be issued by an agency, instrumentality or person that is also responsible, in whole or in part, for the design and construction or operation of the unit.

(v) Incorporate into permits all applicable requirements and requirements of this part.

(vi) Terminate, modify, or revoke and reissue permits for cause.

(vii) Enforce permits, permit fee requirements, and the requirement to obtain a permit, as specified in § 70.11.

(viii) Make available to the public any permit application, statement required by § 70.7(a)(5) (sometimes referred to as the 'statement of basis'), compliance plan, permit, and monitoring and compliance certification report pursuant to section 503(e) of the Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act. The contents of a part 70 permit itself shall not be entitled to protection under section 114(c) of the Act.

(ix) Not issue a permit if the Administrator timely objects to its issuance pursuant to § 70.8(c) of this part or, if the permit has not already been issued, to § 70.8(d) of this part.

(x) Provide an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public participation process provided pursuant to § 70.7(h) of this part, and any other person who could obtain judicial review of such actions under State laws.

(xi) Provide that, solely for the purposes of obtaining judicial review in State court for failure to take final action, final permit action shall include the failure of the permitting authority to take final action on an application for a permit, permit renewal, or permit revision within the time specified in the State program. If the State program allows sources to make changes subject to post hoc review [as set forth in §§ 70.7(e)(2) and (3) of this part], the permitting authority's failure to take final action within 90 days of receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements) must be subject to judicial review in State court.

(xii) Provide that the opportunity for judicial review described in paragraph (b)(3)(x) of this section shall be the exclusive means for obtaining judicial review of the terms and conditions of permits, and require that such petitions for judicial review must be filed no later than 90 days after the final permit action, or such shorter time as the State shall designate. Notwithstanding the preceding requirement, petitions for judicial review of final permit actions can be filed after the deadline designated by the State, only if they are based solely on grounds arising after the deadline for judicial review. Such petitions shall be filed no later than 90 days after the new grounds for review arise or such shorter time as the State shall designate. If the final permit action being challenged is the permitting authority's failure to take final action, a petition for judicial review may be filed any time before the permitting authority denies the permit or issues the final permit.

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