Written Comments: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on March 23, 1995.

ADDRESSES: *Public Hearings:* The public hearing will be held at the Executive Inn, One Executive Boulevard, Vincennes, Indiana.

Written Comments: Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol St., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660 NC, 1951 Constitution Avenue NW, Washington, DC 20240.

Comments may also be sent electronically through the INTERNET to: OSMRULES@OSMRE.GOV. Please note that this address is different from the address specified in the proposed rule (59 FR 53884).

FOR FURTHER INFORMATION CONTACT: Scott Boyce, Branch of Research and Technical Standards, Office of Surface Mining Reclamation and Enforcement, Room 640 NC, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–3938.

SUPPLEMENTARY INFORMATION: On October 26, 1994 (59 FR 53884), OSM published a proposed rule which would amend its regulations in response to a petition for rulemaking. The rulemaking would require that the regulatory authority provide to each person who was a party to an informal conference its written findings granting, requiring modification of, or denying a permit application. The rulemaking would also require both that an approved permit contain in its permit area only lands for which the applicant has established a right-to-enter and commence surface coal mining and reclamation operations, and that compliance with an approved permit be based on activities to be conduced solely upon such lands.

On December 23, 1994 (59 FR 66286), as a result of a commenter's request, the comment period was extended to February 27, 1995. OSM has received requests to hold a public hearing on the proposed rule. Therefore, in order to accommodate the public hearing, OSM will reopen the comment period. Comments will now be accepted until 5 p.m. local time on March 23, 1995.

Refer to **DATES** and **ADDRESSES** for the times, dates and locations for the hearing. The hearing will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony.

Any disabled individual who needs special accommodations to attend this public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: March 7, 1995.

Mary Josie Blanchard,

Acting Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 95–6027 Filed 3–7–95; 5:02 pm]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5170–2]

Approval of Delegation of Authority; National Emission Standards for Hazardous Air Pollutants; Coke Oven Batteries; Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to grant delegation of authority to the State of Utah to implement and enforce the National Emission Standards for Coke Oven Emissions. The Governor of Utah requested delegation from EPA Region VIII in a letter dated August 18, 1994. In the Final Rules Section of this **Federal Register**, EPA is approving the State of Utah's request for delegation as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. EPA's rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 10, 1995.

ADDRESSES: Written comments should be submitted to Patricia D. Hull, Director, Air, Radiation & Toxics Division, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 and concurrently to Russell A. Roberts, Director, Division of Air Quality, Department of Environmental Quality, 1950 West North Temple, Salt Lake City, Utah 84114–4820. Copies of State of Utah's submittal are available for public inspection during normal business hours at the above locations.

FOR FURTHER INFORMATION CONTACT: T. Scott Whitmore at (303) 293–1758.

SUPPLEMENTARY INFORMATION: See the information provided in the final action which is located in the Final Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Intergovernmental relations, Hazardous substances.

Authority: 42 U.S.C. 7412.

Dated: February 23, 1995.

Kerrigan Clough,

Acting Regional Administrator, Region VIII.

[FR Doc. 95–5979 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[OK001; AD-FRL–5170–3]

Clean Air Act Proposed Interim Approval Operating Permits Program; the State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes source category-limited interim approval of the operating permits program submitted by the Oklahoma Department of Environmental Quality (ODEQ) through the Governor of Oklahoma on January 12, 1994, for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, with the exception of sources on Indian country.

DATES: Comments on this proposed action must be received in writing by April 10, 1995.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the EPA Region 6 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed interim approval rule are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch

(6T–AN), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Oklahoma Department of Environmental Quality, 4545 North Lincoln Boulevard., Suite 250, Oklahoma City, Oklahoma 73105–3483.

FOR FURTHER INFORMATION CONTACT: Wm. Nicholas Stone, New Source Review Section (6T–AN), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7226.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), 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 the EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources, with the exception of sources on Indian country.

The Act requires that States develop and submit these programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one 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 40 CFR part 70, and where a State requests source category-limited interim approval, the EPA may grant the program interim approval for a period of up to two years. If the EPA has not fully approved a program by two years after the November 15, 1993, date or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If the EPA were to finalize this proposed source category-limited interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State of Oklahoma would be protected from sanctions, and the EPA would not be obligated to promulgate, administer, and enforce a Federal permits program for the State of Oklahoma. Permits issued under a program with interim approval have full standing with respect to part 70, and the State will permit sources based on the transition schedule submitted with the source category-limited approval request. This schedule may extend for no more than five years beyond the interim approval date.

Following final interim approval, if Oklahoma has failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, the EPA would start an 18-month clock for mandatory sanctions. If Oklahoma then failed to submit a corrective program that the EPA found complete before the expiration of that 18-month period, the EPA would apply sanctions as required by section 502(d)(2) of the Act, which would remain in effect until the EPA determined that the State of Oklahoma had corrected the deficiency by submitting a complete corrective program.

If, following final interim approval, the EPA were to disapprove Oklahoma's complete corrective program, the EPA would be required under section 502(d)(2) to apply sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Oklahoma had submitted a revised program and the EPA had determined that it corrected the deficiencies that prompted the disapproval.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if Oklahoma has not timely submitted a complete corrective program or the EPA has disapproved a submitted corrective program. Moreover, if the EPA has not granted full approval to Oklahoma's program by the expiration of an interim approval and that expiration occurs after November 15, 1995, the EPA must promulgate, administer, and enforce a Federal permits program for Oklahoma upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

Pursuant to section 502(d) of the Act, the Governor of each State is required to develop and submit to the Administrator a part 70 program under State or local law or under an interstate compact meeting the requirements of title V of the Act. Under the signature of Governor David Walters, ODEQ requested approval with full authority to administer the State part 70 program in all areas of the State of Oklahoma.

The Governor's letter makes no reference to Indian country and specifically requests full authority over the State of Oklahoma. Because the Oklahoma permitting authorities have not demonstrated, consistent with applicable principles of Indian law and Federal Indian policies, legal authority to regulate sources in Indian country under the Act, the proposed interim approval of the Oklahoma part 70 program will not extend to any lands within the exterior boundaries of Indian country. Though the State has made no demonstration of jurisdiction over Indian country, the State may at a later time make an adequate demonstration of authority. Title V sources located within the exterior boundaries of Indian country in the State of Oklahoma will be subject to the Federal operating permit program, to be promulgated at 40 CFR part 71, unless a tribe is delegated a part 70 program. Regulations for delegation of tribal programs are being developed pursuant to section 301(d) of the Act. Tribes may also have inherent sovereign authority to regulate air pollutants from sources on Indian country.

The Oklahoma submittal addresses the program description as required at 40 CFR 70.4(b)(1) by describing how ODEQ intends to carry out its responsibilities under the part 70 regulations. The program description is addressed in the following areas: (I) Complete Program Description, (II) State Permitting Regulations, Guidelines, Policies, and Procedures, (III) Attorney General's Opinion, (IV) Permitting Program Documentation, (V) Provisions for Implementing the Operating Permits Program, (VI) Permit Fee Demonstration, (VII) Compliance Tracking and Enforcement, and (VIII) Provisions Implementing the Requirement of Other Titles of the Act (40 CFR 70.4(b)(3) (i) and (v)). The program description has been deemed to be appropriate for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the Attorney General (or the attorney for the State air pollution control agency that has independent legal counsel, hereafter AG) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The State of Oklahoma submitted an AG's Opinion in section III of the ''Program Description'' and a Supplemental AG's Opinion on February 28, 1994, demonstrating adequate legal authority as required by Federal law and regulation. The Supplemental AG's Opinion addresses the delegation of authority for signature from the

Attorney General to the Chief Counsel for the Air Quality Division who has full authority to represent the State in all matters relating to the Department's environmental programs. This opinion with the supplement adequately addresses the thirteen provisions listed at 40 CFR 70.4(b)(3)(i)–(xiii).

The State statutes cited in the AG's Opinion authorize the imposition of criminal fines in the amount of $10,000 per violation as required by 40 CFR 70.11(a)(3)(ii) for knowing violations of applicable requirements, permit conditions, as well as fee and filing requirements. Further, these statutes authorize the fine amounts to be imposed on a per day per violation basis as required by 40 CFR 70.11(a)(3)(ii). The statute at Title 27A O.S. Supplement. 1993, Section 2–5–116, appears to establish a cap in the amount of $250,000 on criminal penalties. The State is requested to supplement the Attorney General's Opinion again to clarify that this limit will not impede the State or EPA from enforcing daily violations with a $10,000 per day per violation fine. This supplemental AG Opinion should be submitted to the EPA before the publication of the final interim approval notice.

40 CFR 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit forms and relevant guidance to assist in the State's implementation of its program. The State addresses this requirement in its program submittal under Attachment 39—''Instructions for Title V Part 70 Operating Permit Application and General Permit Application Completeness Checklist'', Attachment 40—''Permit Form'', Attachment 41—''Permit Reporting Forms'', and Attachment 42—''Inspection Protocol, Point Source Inspection Form.''

2. Regulations and Program Implementation

The State of Oklahoma has submitted the Oklahoma Air Quality Council Regulations (OAC) 252:100–8 ''Operating Permit Regulations'' and OAC 252:100–8–9 ''Permit Fee Requirements,'' for implementing the State's part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was submitted in the package on January 7, 1994, showing evidence of adoption which was sent to the EPA in the State's original submittal. Copies of all applicable State and local statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program.

The State submitted as Attachment 1, OAC 252–100–8 titled ''Operating Permits (Part 70)'' (Subchapter 8), as required at 40 CFR 70.4(b)(2). Subchapter 8 follows the rule at 40 CFR part 70 very closely. Supporting documentation of procedurally correct adoption and copies of all applicable State statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program. Subchapter 8 received written comments from May 7 through October 19, 1993, and public hearings were held July 13, August 17, September 14, and October 19, 1993. The response to comments was made by ODEQ on October 19, 1993. Sufficient evidence of their procedurally correct adoption was submitted and meets the requirements of 40 CFR 70.4(b)(2).

The following requirements, set out in the EPA's part 70 rule, are addressed in the State's submittal: (a) provisions to determine applicability (40 CFR 70.3(a)), OAC 252–100–8–3; (b) provisions to determine complete applications (40 CFR 70.5(a)(2)), OAC 252–100–8–5; (c) public participation (40 CFR 70.7(h)), OAC 252–100–8–7(i); (d) provisions for minor permit modifications (40 CFR 70.7(e)(2)), OAC 252–100–8–7(e); (e) provisions for permit content (40 CFR 70.6(a)), OAC 252–100–8–6; (f) provisions for operational flexibility (40 CFR 70.4(b)(12)), OAC 252–100–8–6(h); and (g) enforcement provisions (40 CFR 70.4(b)(5) and 70.4(b)(4)(ii)), OAC 252–100–8–6(b-c) and the AG Opinion.

Following is a discussion of certain specific provisions in the State's submission as they relate to requirements of 40 CFR part 70:

(a) Applicability criteria, including any criteria used to determine insignificant activities or emissions levels (40 CFR 70.4(b)(2) and 70.3(a)): Applicability criteria are listed at OAC 252:100–8–3 with ''applicable requirement'' defined at OAC 252:100–8–2. The regulations at OAC 252:100–8–2 defines a ''major source.'' The State included a paragraph (4) to this definition which does not allow aggregation of emission sources at oil and gas wells, compressor stations, and pump stations for criteria pollutants. Paragraph (4) is in conflict with the rule because oil and gas sources may not be aggregated to determine major source status for Hazardous Air Pollutants only. Therefore, as a condition for full approval, the regulations at OAC 252:100–8–2, ''major source,'' must be revised to delete paragraph (4).

Oklahoma's ''major source'' definition creates the possibility that sources that would otherwise be major under part 70 would not be major due to the non-aggregation provision for oil and gas facilities. Non-aggregation of oil and gas units is provided only for the emission of hazardous air pollutants in the Federal rule. 40 CFR 70.2 requires all sources located on contiguous or adjacent properties, under common control, and belonging to a single major industrial grouping to be considered as the same source. The Oklahoma permit regulations could cause certain part 70 major sources, as defined in 40 CFR 70.2, or portions of such sources, to be treated as separate sources. This could cause some part 70 sources to be exempted from coverage by part 70 permits which must ensure all part 70 requirements for these sources are met. The EPA considers Oklahoma's misinterpretation of the non-aggregation provision for criteria pollutants to allow an unknown number of oil and gas facilities to avoid title V of the Act. The EPA expects that any permits issued by the State will address all applicable requirements, as required by 40 CFR 70.7(a)(1)(iv).

The State of Oklahoma submitted under the signature of the Executive Director of the ODEQ, Mark Coleman, a request dated January 23, 1995, for the EPA to grant source category-limited interim approval allowing more time to permit these extra sources and correct the regulations. In the original submittal the Governor of Oklahoma delegated the authority to submit non-regulatory changes under the signature of the Executive Director of the ODEQ. Because the request for source category-limited interim approval requires a regulatory change, the EPA must receive a formal request under the Governor's signature before the EPA can publish final interim approval in the **Federal Register**. The request included a revised transition schedule that demonstrates the State will permit at least 60% of its sources and at least 80% of its emissions during the first three years. The request is consistent with the policy memo from John Seitz, Director of the Office of Air Quality Planning and Standards dated August 2, 1993. The EPA can grant source category-limited interim approval to States whose programs do not provide for permitting all required sources if the State makes a showing that two criteria were met: 1) that there were ''compelling reasons'' for the exclusions and 2) that all required sources will be permitted on a schedule that ''substantially meets'' the requirements of part 70. The EPA considers Oklahoma's misinterpretation of use of the non-aggregation provision

for criteria pollutants to be a compelling reason for granting this type of interim approval. Further, the revised transition plan demonstrates that all part 70 sources will be permitted on a schedule that substantially meets the requirements of part 70.

The EPA is therefore proposing to grant Oklahoma source category-limited interim approval. Source category-limited interim approval will allow Oklahoma to implement the revised transition schedule to permit all part 70 sources during the transition period after the permit regulations have been revised. As a condition of this interim approval, the State must revise the regulations at OAC 252:100–8–7(a)(5)(A) and OAC 252:100–8–5(b)(2) to reflect the new transition schedule for permitting existing sources consistent with the rule at 40 CFR part 70. For full part 70 approval, the ODEQ will be required to revise its permit regulations so no source or portion of a source which would be defined as a major under 40 CFR 70.2 will be exempt from part 70 requirements because the emissions of an oil or gas unit have not been aggregated. Additionally, the State must formally request source category-limited interim approval under the Governor's signature because this approval action requires the regulatory changes outlined above. This formal request under the Governor's signature must be received by the EPA before this approval action can be published as final in the **Federal Register**.

The regulations at OAC 252:100–8–3(e) address insignificant activities. Emissions of one pound per hour of criteria pollutants or emissions of toxic pollutants less than the de minimis listed at OAC 252:100–41–43(a)(5) are considered insignificant. Further, the State regulations consider increases in potential to emit at a facility to be insignificant if the increase is less than 10% of the permit limit or 10% of the facility's baseline potential to emit. This insignificant level is available to any permit action (modification or renewal) and must be identified in the application. Emissions of 1 lb/hr based on the source's potential to emit are reasonable. However, to consider a percentage change in the potential to emit or a permit limit as insignificant is not reasonable. As the regulations are currently written, a permitted source could exceed a permit limit by 10% without liability. Also, 10% of a high permit limit could mask a permit modification from preconstruction review. For these reasons, the language at OAC 252:100–8–3(e)(3) must be revised to delete the allowance of any percentage of the permit limit or change in the potential to emit as an insignificant emission level. Further, the language at OAC 252:100–8–3(e)(1) must be amended to base the 1 lb/hr insignificant emissions level on the source's potential to emit.

The ODEQ will maintain a list of insignificant activities that need not be quantified on the application as well as a list of activities the Department considers to be ''trivial.'' Trivial activities are not required to be identified on the application. The Federal rule at part 70 allows a list of insignificant activities and emission levels which need not be included in permit applications be submitted as part of a State's part 70 program, and approved by the Administrator. However, the list of insignificant activities and the list of trivial activities mentioned in the State regulations were not submitted as part of the part 70 program, and part 70 does not allow for the substitution of the State permitting authority's approval for the Administrator's approval, which is required by 40 CFR 70.5(c). Furthermore, 40 CFR 70.5(c) clarifies that if the insignificant activities are exempted because of size or production rate, a list of these insignificant activities must be included in the application. Therefore, for full part 70 approval, the regulations at OAC 252:100–8–3(e) must be revised to reflect the requirements at 40 CFR 70.5(c).

The State's insignificant emissions levels will allow for an emissions threshold that could allow significant emissions to avoid appearing on the application. As a condition of full approval, the State must amend the language at OAC 252:100–8–3(e) so that the insignificant emissions rate of 1 lb/hr for criteria pollutants will be based on potential to emit instead of actual emissions. Additionally, the language at OAC 252:100–8–3(e)(3) must be revised to delete the allowance of any percentage of the permit limit or change in the potential to emit as an insignificant emission level. An application may not omit information needed to determine the applicability of, or to impose any applicable requirement, or to evaluate the fee amount required. Further, any list of insignificant activities or trivial activities must be approved by the EPA prior to its use.

(b) Provisions to determine complete applications are listed at OAC 252:100–8–5(d) and 5(b)(8). Complete application forms, model permit forms, permit reporting forms, and instructions are located in Attachments 39, 40, 41, and 42. These application forms may be amended without rulemaking to facilitate changes required by new applicable requirements. These provisions meet the requirements of 40 CFR 70.5 (a)(2) and (c).

(c) Provisions for public participation are found at OAC 252:100–8–7(i) and review by the EPA and affected States at OAC 252:100–8–8. The State regulations provide for adequate public participation and notice to affected States for permit issuance, renewals, and reopenings. The regulations provide standing only for those who have provided written comments during public review. The State must clarify that judicial review is available to all affected parties for all final permit actions including minor modifications and administrative amendments. As a condition of full approval, the provision at OAC 252:100–8–7(j) must be clarified to assure that all final permit actions are subject to judicial review.

The regulations at OAC 252:100–8–7(i)(1)(E) and at OAC 252:100–8–7(j)(2)(A) provide standing for written comments only during public review. As a condition of full approval, these provisions in the regulations must be revised to delete the word ''written,'' thus providing standing for oral comments during the public participation process. With these required changes, the provisions meet the requirements of 40 CFR 70.7(h).

(d) The rule at 40 CFR 70.7(e)(2)(i) specifies criteria for minor permit modifications. These criteria are adequately incorporated in the State regulations at OAC 252:100–8–7(e)(1)(A). These provisions are more stringent than the rule at 40 CFR 70.7(e) because they include State-only requirements as well as federally enforceable requirements. The provisions at OAC 252:100–8–7(e) meet the requirements at 40 CFR 70.7(e).

The EPA has noted two deficiencies in the administrative amendments procedure at OAC 252:100–8–7(d). This procedure is designed to make simple changes to the permit that do not require public, affected State, or EPA review. The rule at 40 CFR 70.7(d)(1)(iii) allows administrative amendments to be used to require more frequent monitoring at the facility. The regulations at OAC 252:100–8–7(d)(1)(C) allow ''. . . more or less . . .'' frequent monitoring. Also, OAC 252:100–8–7(d)(1)(E) allows changes processed under Subchapter 7 using enhanced New Source Review (NSR) procedures to be incorporated into the operating permit under an administrative amendment.

The administrative amendment procedure cannot be used to make the

monitoring requirements less stringent. Therefore, as a condition for full approval, the State must revise the administrative amendment procedure to delete the words ''. . . or less . . .'' from OAC 252:100–8–7(d)(1)(C).

The regulations do not define or specify the NSR procedures mentioned and therefore require clarification. The rule at 40 CFR 70.7(d)(1)(v) requires that the procedures used for enhanced NSR are substantially equivalent to the requirements of 40 CFR 70.7 and 40 CFR 70.8 that would be applicable to the change if it were subject to review as a permit modification, and has compliance requirements substantially equivalent to those contained in 40 CFR 70.6. Subchapter 7 has not been submitted as a SIP revision and the EPA will reserve comment on Subchapter 7 until it is submitted. Until the EPA has completed its review of the State Implementation Plan (SIP) revision and has approved it, the EPA expects that the State will interpret the term ''enhanced'' in OAC 252:100–8–7(d)(1)(E) consistent with the EPA's definition of that term, so that changes processed under the State's NSR program will be eligible for incorporation into the title V permit through administrative amendment only if those changes have been processed consistent with the requirements of 40 CFR 70.7(d)(1)(v), as explained above. Interpreted in this way, the State's program is eligible for interim approval.

Therefore, as a condition for full approval, the State must revise the regulations at OAC 252:100–8–7(d)(1)(E) to define or specify ''Enhanced New Source Review procedures'' and to submit a SIP revision for Subchapter 7 that reflects these procedures.

(e) Provisions for permit content are found at OAC 252:100–8–6. The State regulations contain all of the provisions at 40 CFR 70.6. The language in the State regulations is often verbatim with the rule. Adequate provisions are made for permit duration, permit shield, general permits, temporary sources, and emergency situations. The regulations at OAC 252:100–8(a)(3)(C)(iii)(I) define ''prompt'' reporting of exceedances as 24 hours after the occurrence. The provisions at OAC 252:100–8–6(a) include the phrase ''To the extent practicable . . .'' This phrase indicates that the State has discretion in what constitutes an applicable requirement. In order to receive full approval, the State must remove the phrase ''to the extent practicable.'' Until this revision is made, the permits issued by the State shall meet the requirements of 40 CFR 70.6 and include all applicable requirements.

(f) Provisions for operational flexibility and alternative scenarios are listed at OAC 252:100–8–6(h). This section meets the requirements of 40 CFR 70.4(b)(12), 70.5(c)(7), and 70.6(a)(10).

(g) Provisions for compliance tracking and enforcement are described in Section VII of the submittal. The State commits to submit annual information concerning the State's enforcement activities in part A of this section. Attachment 42 contains an Inspection Protocol and Point Source Inspection Form. Attachment 48 is the latest Enforcement Memorandum of Agreement. Attachment 49 contains the Air Quality Program Enforcement Action Report. Attachment 50 contains a tracking list for Administrative Orders and Consent Orders. The AG Opinion discussed above outlines the State's authority to enforce all aspects of the program. These submission elements meet the requirements for compliance tracking and reporting at 40 CFR 70.4(b)(4)(ii) and (5). These submission elements meet the enforcement authority requirements at 40 CFR 70.4(b)(2), 70.4(b)(3)(vii), and 70.4(9).

The State of Oklahoma has the authority to issue a variance from requirements under Title 27A O.S. Supplement. 1993, Section 2–5–109. The EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the Act. 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, the 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

The regulations at OAC 252:100–8–9 specify an annual fee of $25 per ton per year based on actual or allowable emissions at the facility as reflected in the emission inventory. This fee is based on 1995 dollars for the first year and will be adjusted each year afterward to reflect the difference between the Consumer Price Index (CPI) for the previous year to the CPI for 1989. The original submittal from the State did not contain a detailed fee analysis. Instead, the regulations at OAC 252:100–8–9(d)(1)(B) specify that the ODEQ must complete a detailed workload analysis mandated by State law to be conducted by an independent consultant with a review of the fee and adjustment of the fee as necessary. The State submitted the workload analysis and fee demonstration to the EPA for review on November 7, 1994. The formal submission to the program was made in a letter dated January 23, 1995, from the Executive Director of the ODEQ to the EPA. The fee demonstration recommends a fee of $15.19 per ton in 1995 dollars and will be adjusted each year to the 1989 CPI as provided for in the regulations.

Though the fee reflected in the fee demonstration is less than the $25 per ton fee listed in the Act, the State has shown that it will provide sufficient funding based on the applicable requirements in effect at the time of the program submittal. Based on the anticipated emissions, the State expects the $15.19 per ton fee to generate over $4,250,000 the first year. These funds will adequately pay for the anticipated costs of the program as demonstrated in the detailed workload analysis.

Therefore, based on its review, the EPA proposes approval for the fee structure and workload analysis of the Oklahoma part 70 program. The EPA solicits comment on the fee during the comment period for this proposed approval action and will respond to any comments before taking final action. The EPA is recommending approval of the $15.19 per ton fee and deems the analysis and fee demonstration adequate in accordance with 40 CFR part 70.

4. Provisions Implementing the Requirements of Other Titles of the Act

The State of Oklahoma acknowledges that its request for approval of a part 70 program is also a request for approval of a program for delegation of unchanged section 112 standards under the authority of section 112(l) as they apply to part 70 sources. Upon receiving approval under section 112(l), the State may receive delegation of any new authority required by section 112 of the Act through the delegation process.

The State also has the option at any time to request, under section 112(l) of the Act, delegation of section 112 requirements in the form of State regulations which the State demonstrates are equivalent to the corresponding section 112 provisions promulgated by the EPA. At this time, the State plans to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 requirements into its regulations.

The radionuclide National Emission Standard for Hazardous Air Pollutants (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclides is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Section 112(g) of the Act requires that, after the effective date of a permits program under title V, no person may construct, reconstruct or modify any major source of hazardous air pollutants unless the State determines that the maximum achievable control technology (MACT) emission limitation under section 112(g) will be met. Such determination must be made on a case-by-case basis where no applicable limitations have been established by the Administrator. During the period from the title V effective date to the date the State has taken appropriate action to implement the final section 112(g) rule (either adoption of the unchanged Federal rule or approval of an existing State rule under 112(l)), Oklahoma intends to implement section 112(g) of the Act through the State's preconstruction process.

The State of Oklahoma commits to appropriately implementing and enforcing 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.

The regulations at OAC 252:100–8–6(i) provide for the permitting of acid rain sources. The EPA commented on these regulations on October 1, 1993, and recommended that the State incorporate by reference the Federal acid rain permit requirements. The State has agreed to change OAC 252:100–8–6(i) to incorporate by reference the acid rain permit requirements and has drafted this revision as an emergency rule. The State must submit this regulatory revision for incorporation by reference of the acid rain permitting rules before this approval action can be published as final in the **Federal Register**.

5. Enforcement Provisions

The State describes compliance tracking and enforcement under Section VII of the submittal. Oklahoma commits to submit annual information concerning the State's enforcement activities in part A of this section. As required at 40 CFR 70.4(b)(4)(ii) and 70.4(b)(5), the Enforcement Memorandum of Understanding, signed by the State and the EPA on July 22, 1993, appears in the submittal as Attachment 48. Attachment 42 contains an Inspection Protocol and Point Source Inspection Form. Attachment 49 contains the Air Quality Program Enforcement Action Report. Attachment 50 contains a tracking list for Administrative Orders and Consent Orders. The AG Opinion discussed above outlines the State's authority to enforce all aspects of the program. This statement of authority is required at 40 CFR 70.4(b)(3)(vii).

The compliance tracking and enforcement information in the submittal serves to describe the current processes in place to track air permits and conduct enforcement actions. These elements meet the requirements for compliance tracking and reporting at 40 CFR 70.4(b) (4)(ii) and (5). Further, these elements meet the enforcement authority requirements at 40 CFR 70.4(b)(2), 70.4(b)(3)(vii), and 70.4(9).

6. Technical Support Document

The results of this review will be shown in a document entitled ''Technical Support Document,'' which will be available in the docket at the locations noted above. The technical support documentation shows that all operating permits program requirements of 40 CFR part 70 and relevant guidance were met by the submittal with the exception of those requirements described below.

7. Summary

The State of Oklahoma submitted to the EPA, under a cover letter from the Governor, the State's operating permits program on January 7, 1994. The submittal has adequately addressed all sixteen elements required for full approval as discussed in part 70 with the exception of the issues described in section B below. The State of Oklahoma addressed appropriately all requirements necessary to receive source category-limited interim approval of the State operating permits program pursuant to title V of the Act, 1990 Amendments and 40 CFR part 70. The EPA is proposing source category-limited interim approval for the part 70 program submittal for the State of Oklahoma.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant source category-limited interim approval to the operating permits program submitted by the State of Oklahoma on January 7, 1994. Interim approvals under section 502(g) of the Act do not create any new requirements, but simply approve requirements that the State is already imposing.

If promulgated, the State must make the following changes to receive full approval:

(1) Criminal Penalty Cap

As discussed in section A.1 above, the State must provide a supplemental Attorney General's Opinion to clarify the implementation of the criminal penalty statute in such a way that preserves the integrity of the Act. This supplement must be submitted to the EPA before final action on this proposal is taken.

(2) Definition of ''Major Source''

As discussed in section A.2.a above, the State must revise OAC 252:100–8–2, ''major source'' by deleting paragraph (4). This revision will make the definition consistent with the rule at part 70. Also, the State must revise the regulations to reflect the transition schedule proposed for source category-limited interim approval.

(3) Revision of Insignificant Activities

As discussed in section A.2.a above, the State must amend the language at OAC 252:100–8–3(e) so that the insignificant emissions rate of 1 lb/hr for criteria pollutants will be based on potential to emit instead of actual emissions. Further, the language at OAC 252:100–8–3(e)(3) must be revised to delete the allowance of any percentage of a permit limit or change in the potential to emit as an insignificant emission level. Also, an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required. Further, any list of insignificant activities or trivial activities must be approved by the EPA prior to its use, as required at 40 CFR 70.5(c).

(4) Revision of Permit Content

The regulations at OAC 252:100–8–6(a) must be revised to remove the phrase ''To the extent practicable. . .'' Until this revision is made, the permits issued by the State shall meet the requirements of 40 CFR 70.6 and include all applicable requirements.

(5) Revision to Provide Standing

As discussed in section A.2.c above, the State must revise OAC 252:100–8–7(i)(1)(E) and OAC 252:100–8–7(j)(2)(A) to delete the word ''written'' so that oral comments have standing with judicial review of the permitting process. Also, the State must clarify OAC 252:100–8–7(j) so that judicial review is available to all affected parties for all final permit actions including minor modifications and administrative amendments.

(6) Administrative Amendment Procedure

As discussed in section A.2.d above, the State must revise OAC 252:100–8–7(d)(1)(C) to delete the words, ''. . . or less . . .''. Further, the provisions at OAC 252:100–8–7(d)(1)(E) must be clarified to require enhanced NSR procedures that are substantially equivalent to the requirements of 40 CFR 70.7 and 40 CFR 70.8 for a change subject to review as a permit modification and compliance requirements substantially equivalent to those contained in 40 CFR 70.6. The State must submit a SIP revision for Subchapter 7 that incorporates enhanced NSR procedures that meet the requirements listed at 40 CFR 70.7 and 40 CFR 70.8 for a change subject to review as a permit modification, and has compliance requirements substantially equivalent to those contained in 40 CFR 70.6.

(7) Review of the Fee

As discussed in section A.3 above, the EPA has reviewed the workload analysis and fee demonstration submitted November 7, 1994, and is recommending approval of the proposed fee of $15.19 per ton. The EPA will consider comments made during the comment period for this approval action and will reserve final action on the fee for the final interim approval notice.

(8) Acid Rain Incorporation by Reference

As discussed in section A.4 above, the State must revise OAC 252:100–8 to incorporate the acid rain requirements and submit this revision to the EPA before final action on this proposal is taken.

Evidence of these regulatory revisions and their procedurally correct adoption must be submitted to the EPA within 18 months of the EPA's approval of the Oklahoma part 70 program. This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State is protected from sanctions for failure to have a program, and the EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to 40 CFR part 70, and the State will permit sources based on the transition schedule submitted with the source category-limited approval request. This schedule may extend for no more than five years beyond the interim approval date.

If the interim approval is converted to a disapproval, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose a new Federal requirement.

The scope of Oklahoma's part 70 program that the EPA proposes to approve in this notice would apply to all part 70 sources (as defined in the approved program) within the State of Oklahoma, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, *e.g.*, 59 FR 55813, 55815–18 (November 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the Act; *see also* 59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as promulgated by the 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 part 63.

III. Proposed Rulemaking Action

In this action, the EPA is proposing source category-limited interim approval of the part 70 program submitted by the State of Oklahoma. The program was submitted by the State to the EPA for the purpose of complying with Federal requirements found at the 1990 Amendments, title V and at part 70, which mandates that States develop, and submit to the EPA, programs for issuing operating permits to all major stationary sources and certain other sources, with the exception of Indian country. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

The EPA has reviewed this submittal of the Oklahoma part 70 program and is proposing source category-limited interim approval. Certain defects in the State's regulations preclude the EPA from granting full approval of the State's part 70 program at this time. The EPA is proposing to grant interim approval, subject to the State obtaining the needed regulatory revisions within 18 months after the Administrator's approval of the Oklahoma title V program pursuant to 40 CFR 70.4.

IV. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed rule. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the 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 rulemaking process; and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by April 10, 1995.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities, (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial

number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Part 70 program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal part 70 program approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning part 70 programs on such grounds, (Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. section 7410(a)(2)).

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Checklist, Environmental protection, Intergovernmental relations, Memorandum of understanding, Operating permits, Options for approval/disapproval and implications, Permit fee demonstration.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 22, 1995.

William B. Hathaway,

Acting Regional Administrator (6M).

[FR Doc. 95–5981 Filed 3–9–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 761

[OPPTS–660019B; FRL–4938–5]

Disposal of Polychlorinated Biphenyls (PCBs); Notice of Informal Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Informal Hearing.

SUMMARY: On December 6, 1994, EPA's Office of Pollution Prevention and Toxics published a proposed rule [59 FR 62788] to amend its rules under the Toxic Substances Control Act (TSCA) for polychlorinated biphenyls (PCBs). Changes proposed by EPA would affect the disposal, marking, storage, use, reporting and recordkeeping requirements for PCBs. In that notice, EPA said it would conduct one or more informal public hearings in the Washington, DC, area on the proposal, to be held after the closure of the written comment period on April 6, 1995. This notice announces the time and location of that hearing.

DATES: The hearing will take place on Tuesday, May 2, 1995, from 9:00 a.m. to 5:00 p.m. If necessary, the hearing will be extended to 9:30 p.m., and it may also be continued the following day, Wednesday, May 3, 1995, beginning at 9:00 a.m. Written requests to participate in the hearing must be received on or before April 6, 1995.

ADDRESSES: The hearing will be held at the Holiday Inn of Arlington at Ballston, 4610 North Fairfax Drive, Arlington, Virginia 22203, telephone (703) 243–9800. Three copies of the request to participate in the informal hearing, identified with the docket number OPPTS–660019B must be submitted to: OPPT Document Control Officer, Attn: TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Rm. G–99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. See SUPPLEMENTARY INFORMATION for the type of information that must be included in the request and who may participate. Statements must be limited to 15 minutes. Requests for a waiver to participate in the informal hearing by those organizations that did not file main comments must be sent to EPA Headquarters Hearing Clerk, Mail Code 7404, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, FAX: (202) 554–5603 (document requests only).

SUPPLEMENTARY INFORMATION: The procedures for rulemaking under section 6 of the Toxic Substances Control Act (TSCA) are identified in 40 CFR part 750, subpart A. The following summarizes the procedures and logistics associated with this informal hearing pursuant to 40 CFR part 750. Participants and/or commenters are advised to see 40 CFR part 750 for greater detail. Each person or organization desiring to participate in the informal hearing shall file a written request to participate with the OPPT Document Control Officer (see ADDRESSES above). The request shall be received on or before April 6, 1995. The request shall include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required (not to exceed 15 minutes); and (4) if the request comes from an organization, a nonbinding list of the persons to take part in the presentation. An organization that has not filed main comments on the rulemaking will not be allowed to participate in the hearing, unless a waiver of this requirement is granted by the Record and Hearing Clerk (see ADDRESSES above) or the organization is appearing at the request of EPA or under subpoena (40 CFR 750.6(a)).

A panel of EPA employees shall preside at the hearing, and one panel member will chair the proceedings. The panel may question any individual or group participating in the hearing on any subject relating to the rulemaking. Cross-examination will normally not be permitted at this stage. However, persons in the hearing audience may submit questions in writing for the hearing panel to ask the participants, and the hearing panel may, at their discretion, ask these questions (40 CFR 750.7(a) and (b)). See 40 CFR 750.7(c) for the rule governing the submission of additional material by the hearing participants.

After the close of the hearing, any participant in the hearing may submit a written request for cross-examination. The request shall be received by EPA no later than 1 week after a full transcript of the hearing becomes available (to determine when the transcript is available, interested persons may contact the Environmental Assistance Division (see FOR FURTHER INFORMATION CONTACT above)). See 40 CFR 750.8 for a description of the information that shall be included in such a request.

Interested persons may file reply comments. Reply comments shall be received no later than 2 weeks after the close of all informal hearings, including any hearing to allow cross-examination. Reply comments shall be restricted to comments on: (1) other comments; (2) material in the hearing record; and (3) material which was not and could not reasonably have been available to the commenting party a sufficient time before main comments were due on April 6, 1995. (40 CFR 750.4(a) and (b)). Extensions of time for filing reply comments may be granted pursuant to 40 CFR 750.4(c). Reply comments and a transcript of the hearing will be placed in the Nonconfidential Information Center as part of the rulemaking record for the proposed rule (docket number OPPTS–660019B). A full list of these materials is available for inspection and copying in the TSCA Nonconfidential Information Center, Rm. B607, Northeast Mall, 401 M St., SW.,