emissions budget(s) may be used to determine conformity during the first 90 days after its submission if EPA agrees that the budget(s) are adequate for conformity purposes.

(b) *Disapprovals.* (1) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO and DOT, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.

(2) Notwithstanding paragraph (b)(1) of this section, if EPA disapproves the submitted control strategy implementation plan revision but makes a protective finding, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.

(c) *Failure to submit and incompleteness.* For areas where EPA notifies the State, MPO, and DOT of the State's failure to submit or submission of an incomplete control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the Clean Air Act, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

(d) *Federal implementation plans.* When EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

* * * * *

(g) *Nonattainment areas which are not required to demonstrate reasonable further progress and attainment.* If an area listed in § 93.136 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and (e) of this section apply. Because the areas listed in § 93.136 are not required to demonstrate reasonable further progress and attainment the provisions of paragraphs (b) and (c) of this section do not apply to these areas at any time.

* * * * *

§§ 51.452, 93.130 [Amended]

11. The identical text of §§ 51.452 and 93.130 is amended by redesignating paragraph (b)(5) as paragraph (a)(6); and in paragraph (c)(1) by revising the references, ''paragraph (a)'' to read ''paragraph (b)'' in two places.

[FR Doc. 95–21405 Filed 8–28–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 70

[AD-FRL–5287–8]

Title V Clean Air Act Proposed Interim Approval of Operating Permits Program; West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: EPA is proposing interim approval of the operating permits program submitted by West Virginia. This program was submitted by West Virginia for the purpose of complying with federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources. The rationale for proposing interim approval is set forth in this notice; additional information is available at the address indicated below. This action is being taken in accordance with the provisions of the Clean Air Act.

DATES: Comments on this proposed action must be received in writing by September 28, 1995.

ADDRESSES: Comments should be addressed to Jennifer M. Abramson (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of West Virginia's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Jennifer M. Abramson (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–2923.

SUPPLEMENTARY INFORMATION:

I. Background

As required under Title V of the Clean Air Act (CAA) 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 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 and require states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources. Due to pending litigation over several aspects of the Part 70 rule which was promulgated on July 21, 1992, Part 70 is in the process of being revised. When the final revisions to Part 70 are promulgated, the requirements of the revised Part 70 will define EPA's criteria for the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits program submittals. Until the date which the revisions to Part 70 are promulgated, the currently effective July 21, 1992 version of Part 70 shall be used as the basis for EPA review.

The CAA 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. EPA's program review occurs pursuant to section 502 of the CAA and the July 21, 1992 version of Part 70, which together outline the currently applicable 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, EPA must establish and implement a federal operating permits program.

Following final interim approval, if West Virginia fails to submit a complete corrective program for full approval by 6 months before the interim approval

period expires, EPA would start an 18-month clock for mandatory sanctions. If West Virginia then failed to submit a complete corrective program before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the CAA. Such a sanction would remain in effect until EPA determined that West Virginia had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of West Virginia, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that West Virginia had come into compliance. In any case, if, six months after application of the first sanction, West Virginia still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA disapproved West Virginia's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date West Virginia had submitted a revised program and EPA had determined that this program corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of West Virginia, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that West Virginia had come into compliance. In all cases, if, six months after EPA applied the first sanction, West Virginia had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if West Virginia has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to West Virginia's program by the expiration of the interim approval period, EPA must promulgate, administer and enforce a federal operating permits program for West Virginia upon the date the interim approval period expires.

On November 12, 1993, West Virginia submitted an operating permits program for review by EPA. The submittal was supplemented by additional materials on August 26, 1994 and September 29, 1994, and was found to be administratively complete pursuant to 40 CFR 70.4(e)(1). The submittal includes the following components: Transmittal letter; description of West Virginia's Title V operating permits program; permitting regulations and rule adoption documentation; attorney general's legal opinion; permitting program documentation, procedures, guidelines, or policies for implementing the operating permits program; permit fee demonstration and program resource/organizational information; and compliance tracking and enforcement description.

II. Summary and Analysis of the State's Submittal

The analysis contained in this notice focuses on the major portions of West Virginia's operating permits program submittal: regulations and program implementation, variances, fees, and provisions implementing the requirements of Titles III and IV of the CAA. Specifically, this notice addresses the deficiencies in West Virginia's submittal which will need to be corrected to fully meet the requirements of the July 21, 1992 version of Part 70. These deficiencies as well as other issues related to West Virginia's operating permits program are discussed in detail in the Technical Support Document (TSD). The full program submittal and the TSD are available for review as part of the public docket. The docket may be viewed during regular business hours at the EPA Region III office listed in the **ADDRESSES** section of this notice.

A. Regulations and Program Implementation

West Virginia's operating permits program is primarily defined by regulations adopted as Series 30 of Title 45, Legislative Rules of the Air Pollution Control Commission, or 45CSR30—Requirements for Operating Permits. The following analysis of West Virginia's operating permits regulations corresponds directly with the format and structure of the July 21, 1992 version of Part 70.

During the review of West Virginia's 45CSR30, EPA identified several instances in which regulatory provisions contain vague language, misreferences and/or typographical errors. The provisions in which these errors occur are identified in the TSD and must be interpreted as if written correctly to fully meet the requirements of Part 70.

Section 70.2 Definitions. West Virginia's regulations substantially meet the requirements of 40 CFR 70.2 for definitions. However, the section 2.18 definition of ''Emissions unit'' does not include activities or parts of activities which emit or potentially emit pollutants listed under section 112(b) of the CAA. West Virginia must revise the section 2.18 definition of ''Emissions unit'' to specifically include activities or parts of activities which emit or potentially emit pollutants listed under section 112(b) of the CAA in order to fully meet the requirements of 40 CFR 70.2.

Section 70.3 Applicability. West Virginia's regulations fully meet the requirements of 40 CFR 70.3 for applicability. The section 2.26 definition of ''Major source'' allows for research and development (R&D) facilities to be treated as separate sources from other stationary sources which are part of the same industrial grouping, are located on contiguous or adjacent property, and are under common control. The term ''Research and development facility'' is defined in section 2.37 to preclude activities which contribute to the product produced for sale or exchange for commercial profit.

EPA stated in the preamble to the final part 70 rule that, ''in many cases States will have the flexibility to treat an R&D facility * * * as though it were a separate source, and [the R&D facility] would then be required to have a title V permit only if the R&D facility itself would be a major source'' (57 FR 32264 and 32269, July 21, 1992). Read consistently with the ''major source'' definition in the rule, this statement means that separate source treatment would occur only in situations where the collocated R&D portion of a source has its own two-digit SIC code and is not a support facility. Accordingly, EPA had until recently considered separate treatment of R&D facilities to be grounds for interim approval.

As explained in the supplemental proposal to revise Part 70 which EPA expects to publish soon, EPA believes that R&D should be treated as having its own industrial grouping for purposes of the title I and section 302(j) elements of the major source definition.

Separate treatment will not exempt R&D facilities in all cases. Some R&D activities may still be subject to permitting because they are either individually major or a support facility making significant contributions to the product of a collocated major facility. The support facility test dictates that, even where there are two or more industrial groupings at a commonly owned facility, these groupings should be considered together if the output of one is more than 50 per cent devoted to support of another.

Although West Virginia's program does not specifically reference the

support facility test, EPA expects that such a test will be applied in making major source applicability determinations as established under the new source review program and continued under title V. Major source applicability determinations made without the support facility test would not fully meet the requirements of 40 CFR 70.3.

Section 70.5 Permit Applications. West Virginia's regulations substantially meet the requirements of 40 CFR 70.5 for permit applications. However, in section 3.2.d, West Virginia lists several types of ''insignificant activities'' which need only to be identified, rather than described, in permit applications. Several of the activities listed in section 3.2.d are not intrinsically ''insignificant'' and could potentially prevent the Chief from having sufficient emissions information to impose all applicable requirements in accordance with Part 70.

The following section 3.2.d activities must be clarified to ensure that emissions from such units will not interfere with the imposition of all applicable requirements:

3.2.d.D ''Indoor or outdoor kerosene heaters'';
3.2.d.E ''Space heaters operating by direct heat transfer'';

Section 3.2.d.K (''Portable generators'') must be bounded to include size or production rate cutoffs, or other qualifiers, to ensure that emissions from these units will not interfere with the imposition of all applicable requirements.

Additionally, unless and until the Administrator determines that Title VI requirements need not be contained in Title V permits, West Virginia must also modify section 3.2.d.C (''Comfort air conditioning * * *'') as necessary to ensure that the Chief will have sufficient information to incorporate Title VI requirements into Title V permits.

Section 3.2.d.M of West Virginia's rule authorizes the Chief to determine activities or emissions units to be insignificant in addition to those listed in section 3.2.d. For the same reasons stated above, the Chief's discretion to consider additional activities to be insignificant must be bounded. Bounding of the Chief's discretion is necessary since, as section 3.2.d.M is presently structured, EPA will not be given the opportunity to review these activities or emissions units prior to them being listed in a source's application form. Section 70.5(c) requires that insignificant activities be approved by EPA as part of a State's approved program. This allows EPA to determine whether such insignificant activities are likely to interfere with the State's ability to assure compliance with applicable requirements through permits.

In the absence of a specific list of insignificant activities, a limitation on size or production rate may serve the same purpose. EPA views size or production rate cutoffs in the range of 1–2 tons per year for criteria pollutant emissions and the lesser of 1000 pounds per year or section 112(g) de minimis levels for hazardous air pollutant emissions to be an acceptable range for individual insignificant activities. However, EPA may approve different levels that West Virginia demonstrates will not interfere with the determination or imposition or applicable requirements.

Notwithstanding the Chief's authority to consider additional activities as insignificant on an application by application basis, West Virginia must ensure that, consistent with the requirements of section 70.5(c), the insignificant activities list approved as part of the West Virginia program will not be modified without prior EPA approval. West Virginia must also clarify that potential emissions from all insignificant activities or emissions units, whether included in section 3.2.d or determined by the Chief on an application by application basis, will be included in determining whether a source is a major source.

Notwithstanding the 45CSR30 provisions for insignificant activities, sections 4.1.b and 4.3 specifically require sources to provide all information necessary to evaluate the permit application and to determine the applicability of, or to impose, any applicable requirement.

Sections 70.4 and 70.6 Permit Content. West Virginia's regulations substantially meet the requirements of 40 CFR 70.4 and 40 CFR 70.6 for permit content. The following changes must be made in order to fully meet the requirements of 40 CFR 70.4 and 40 CFR 70.6:

1. For clarity and consistency with Part 70 and section 5.1, section 3.3.a must be revised to clarify that permits issued to major sources will include all applicable requirements that apply to the source, including those applicable requirements which may be later found to be applicable to one or more ''insignificant activities''.

2. Section 5.1.j.D. provides that permit provisions for emissions trading ''May include categories of VOC's which in the Chief's discretion can be substituted for one another in a production process.'' This provision is incorrectly placed in section 5.1.j., emissions trading, and should, instead be included in section 5.1.i., alternative operating scenarios. West Virginia must revise sections 5.1. i. and j. to clarify that permit provisions for emissions trading may not include categories of VOC's which in the Chief's discretion can be substituted for one another in a production process.

3. Section 5.3.e.A. must be revised to ensure that permits will contain provisions requiring compliance certifications to be submitted at least annually or such more frequent periods as specified by an applicable requirement or by the permitting authority.

4. Section 5.5 must be revised to clarify that for temporary sources that do not obtain a new preconstruction permit prior to each change in location, the operating permits shall include a requirement that the owner operator notify the Chief at least ten (10) days in advance of each change in location.

Section 70.7 Permit Issuance, Renewal, Reopenings, and Revisions. West Virginia's regulations substantially meet the requirements of 40 CFR 70.7 for permit issuance, renewal, reopenings, and revisions. EPA's concern over the ambiguity in section 6.4.a.E as to the procedural and compliance requirements necessary to administratively amend preconstruction permits into Title V permits was addressed by an October 11, 1994 supplemental Attorney General's opinion. In relevant part, the opinion states:

> Under 45CSR30.6.4.a.E, West Virginia's Title V administrative permit amendment procedure will be used to incorporate only those pre-construction permits issued under EPA-approved programs which have met procedural requirements substantially equivalent to the requirements of sections 6 and 7 of 45CSR30 that would be applicable to the change if it were subject to review as a permit modification, and which have also met compliance requirements substantially equivalent to those contained in section 5.

EPA's approval of this portion of West Virginia's program is based in part on the Attorney General's interpretation stated above. As such, EPA expects West Virginia to implement section 6.4.a.E consistent with the Attorney General's interpretation to fully meet the requirements of 40 CFR 70, § 70.7(d)(1)(v). Notwithstanding, the following changes must be made in order to fully meet the requirements of 40 CFR 70.7:

1. West Virginia must modify section 4.1 to require sources which become subject to the permitting program after

the effective date to submit permit applications within 12 months. During the interim, West Virginia must require sources which become subject to the permitting program after the effective date to submit permit applications within 12 months.

2. Section 6.5.a.A.(c) allows sources to make changes below established ''de minimis'' levels without having to undergo any type of permit modification. The July 21, 1992 version of Part 70 does not provide ''de minimis'' levels for source changes below which no permit modification is required. Accordingly, section 6.5.a.A.(c) must be removed. It should be noted that in most cases sources making changes below the thresholds established in section 6.5.a.A.(c) will be able to make such changes pursuant to the ''off-permit'' provisions of section 5.9. Additional flexibility for these types of changes may be provided in the Part 70 revisions process.

3. Section 6.8.a.A.(a)(B) must be revised to clarify that public notice will be given for all scheduled public hearings, not just those public hearings which have been scheduled at the request of an interested person.

4. West Virginia must revise section 6.8.a.C. to clarify that for all permit modification proceedings, except those modifications qualifying for minor permit modifications or fast-track modifications under the Acid Rain Program, public notice will be given by publication in a newspaper of general circulation in the area where the source is located (or in a state publication designed to give general public notice), and to persons on a mailing list developed by the permitting authority including those who request in writing to be on the list.

Section 70.11 Enforcement Authority. West Virginia's regulations and code provisions substantially meet the requirements of 40 CFR 70.11 for enforcement authority. However, W.Va. Code section 22–5–6(b)(1) impermissibly limits criminal penalties for knowing misrepresentations of material fact to a total of $25,000 without regard to the continuing nature of the misrepresentation. West Virginia must modify W.Va. Code section 22–5–6(b)(1) to provide for a maximum criminal penalty of not less than $10,000 per day per violation for knowing misrepresentations of material fact.

B. Variances

Unless parts of federally approved, promulgated and/or delegated applicable requirements, EPA regards the sections 5.7.D. and 6.9.c.D. references to variance provisions as wholly external to the program submitted for approval under Part 70, and consequently is proposing to take no action on such provisions. EPA has no authority to approve provisions of West Virginia law, such as the variance provisions referred to in this section, which are inconsistent with the CAA. 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 procedures allowed by Part 70. EPA reserves the right to enforce the terms of the Part 70 permit where the permitting authority purports to grant relief from the duty to comply with a Part 70 permit in a manner inconsistent with Part 70 procedures.

C. Permit Fee Demonstration

West Virginia's fee schedule is substantially less than the annual $25 + (1989 Base year) CPI per ton ''presumptive minimum'' established in section 502 of the Clean Air Act. Although West Virginia's fee demonstration/workload analysis reveals that the existing annual fee level, $18 + (1993 Base Year) CPI per ton, may generate adequate revenues to fund the direct and indirect projected program costs during the first four years of implementation, EPA is concerned about the flexibility of the fee structure in its ability to respond to resource needs in the future.

West Virginia's program provides that the Chief of West Virginia's Office of Air Quality (WVOAQ) shall, on or before October 1 of each fiscal year, prepare an accounting report to the Air Pollution Control Commission (APCC) of all Title V fees received from the previous fiscal year and the manner in which they were used, together with projected expenditures for the upcoming year. Accordingly, on or before May 1 of each year, the APCC shall determine whether to adjust the annual $18 + (1993 Base Year) CPI per ton fee amount. However, the APCC's ability to adjust fees is only authorized up to $2 per ton and is not cumulative, regardless of the amount needed.

EPA recognizes that many of the required permitting activities such as case-by-case MACT determinations are difficult to reasonably estimate in terms of cost and that revenues may be impacted by circumstances such as acid rain Phase II ''active'' substitution units which become temporarily exempt from the payment of emissions-based permit fees. In order to prevent permitting delays due to lack of resources and to maintain the quality of the 45CSR30 permitting program, West Virginia should provide the APCC with the authority to adjust permitting fees to a level at least equivalent to the ''presumptive minimum'' for a particular calendar year. As a result, the APCC will have greater flexibility in responding to resource needs without having to wait for legislative approval. The annual WVOAQ accounting of all Title V fees received and the manner used, will serve to ensure that revenues from Title V fees are expended solely to cover reasonable direct and indirect Title V costs, as required by 45CSR30, section 1.1.

All 45CSR30 fees collected by West Virginia will be deposited in a separate special account in the State treasury designated as the ''Air Pollution Control Fund''. Although fees collected pursuant to 45CSR22, Air Quality Management Fee Program, are also deposited in this account, an account tracking system will distinguish between revenues and expenditures attributable to 45CSR22 versus 45CSR30. In this way, West Virginia will be able to ensure that fees, penalties and interest collected for operating permits shall be expended solely to cover costs required to administer the operating permits program, as required by W. VA Code section 16–20–5(a)(18), and 45CSR30.1.1. Although the Chief's ability to spend the money collected from 45CSR30 fees is contingent on legislative appropriation, W. Va. Code section 16–20–5(a)(18) and 45CSR30.1.1 require fees to be sufficient to cover ''all reasonable direct and indirect costs required to administer the operating permits program''. As with other fee generating programs in the West Virginia, the legislature has the authority to transfer excess 45CSR30 monies into other accounts.

D. Provisions Implementing the Requirements of Title III

Implementing Title III Standards through Title V Permits. Under 45CSR30 (Title 45, Series 30, Legislative Rules, Air Pollution Control Commission, Requirements for Operating Permits) and West Virginia Code, section 16–20–5 (Air Pollution Control Law of West Virginia), West Virginia has demonstrated in its Title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements; however, West Virginia has also indicated that additional regulatory authority may be necessary to carry out specific CAA section 112 activities. West Virginia has therefore supplemented its broad legal authority with a commitment ''to adopt and submit all regulations required to

implement the provisions of section 112 of the Clean Air Act necessary under the Title V operating permit program.'' This commitment is stated in the transmittal letter of the November 12, 1993 operating permits program submittal. EPA has determined that this commitment, in conjunction with West Virginia's broad statutory authority, adequately assures compliance with all the CAA's section 112 requirements. EPA regards this commitment as an acknowledgement by West Virginia of its obligation to obtain further legal authority as needed to issue permits that assure compliance with the CAA's section 112 applicable requirements. This commitment does not substitute for compliance with Part 70 requirements that must be met at the time of program approval.

EPA is interpreting the above legal authority and commitment to mean that West Virginia is able to carry out all of the CAA's section 112 activities. For further rationale on this interpretation, please refer to the TSD accompanying this rulemaking which is located in the public docket and the April 13, 1993 guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, USEPA.

Implementation of 112(g) Upon Program Approval. EPA is proposing to approve West Virginia's 45CSR30 operating permits program, 45CSR13 and 45CSR14 preconstruction permit programs, and authority under W. Va Code section 22–5–4(a)(5) to issue administrative orders for the purpose of implementing section 112(g) during the transition period between federal promulgation of a section 112(g) rule and West Virginia's adoption of 112(g) implementing regulations. EPA had until recently interpreted the CAA to require sources to comply with section 112(g) beginning on the date of approval of the Title V program regardless of whether EPA had completed its section 112(g) rulemaking. EPA has since revised this interpretation of the CAA as described in a February 14, 1995 **Federal Register** notice (see 60 FR 8333). The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The rationale for the revised interpretation is set forth in detail in the February 14, 1995 interpretive notice.

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 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 postponement of section 112(g), West Virginia must be able to implement section 112(g) during the transition period between promulgation of the federal section 112(g) rule and adoption of West Virginia's implementing regulations.

EPA believes that, although West Virginia currently lacks a program designed specifically to implement section 112(g), West Virginia's 45CSR30 operating permits program, and 45CSR13 and 45CSR14 preconstruction permit programs will serve as adequate implementation vehicles during a transition period because they will allow West Virginia to select control measures that would meet MACT on a case-by-case basis, as defined in section 112, and incorporate these measures into federally enforceable source-specific permits. Section 112(g) requirements for case-by-case MACT determinations are governed by the provisions of the 45CSR30 operating permits program, sections 1.1, 2.6, 2.25, 4.1.a.B., and 12.2–12.4. In those situations when the Title V process cannot insure the MACT determination is made before the construction, reconstruction or modification takes place, West Virginia will use its preconstruction permitting procedures of 45CSR13 and 45CSR14 to the extent applicable to the source. Moreover, for those sources for which the Title V process is not suitable or for which preconstruction permits are not applicable, West Virginia will issue an administrative order pursuant to the authority of W. Va. Code section 22–5–4(a)(5) and 45CSR30.12 to apply the case-by-case MACT standard.

This proposed approval clarifies that West Virginia's 45CSR30 operating permits program, 45CSR13 and 45CSR14 preconstruction permit programs, and authority under W. Va. Code section 22–5–4(a)(5) to issue administrative orders are available as mechanisms to implement section 112(g) during the transition period between EPA's promulgation and West Virginia's adoption of section 112(g) rules. EPA is proposing to limit the duration of this approval to an outer limit of 18 months following promulgation by EPA of the section 112(g) rule. Comment is solicited on whether 18 months is an appropriate period taking into consideration West Virginia's procedures for adoption of regulations.

However, since this proposed approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted.

Although section 112(l) generally provides the authority for approval of state air toxics programs, Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V. If West Virginia does not wish to implement section 112(g) through the proposed mechanisms discussed above and can demonstrate that an alternative means of implementing section 112(g) exists during the transition period, EPA may, in the final action approving West Virginia's Part 70 program, approve the alternative instead.

Program for Straight Delegation of Section 112 Standards. 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 standards promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the state programs contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of West Virginia's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. For EPA-promulgated rules which are applicable to sources in West Virginia, West Virginia intends to request delegation after adopting the rules at the State level, probably by incorporating the federal rules by reference. The details of this delegation mechanism will be established prior to delegating any section 112 standards under West Virginia's approved section 112(l) program for straight delegation. This program applies to both existing and future standards but is limited to sources covered by the Part 70 program.

E. Title IV Provisions/Commitments

As part of the November 12, 1994 program submittal, West Virginia committed to submit all missing portions of the Title IV acid rain program necessary to the Title V operating permits program by January 1, 1995. On December 15, 1994, West Virginia submitted an emergency rule to EPA which incorporates EPA's Part 72

rule by reference. On June 23, 1995, West Virginia submitted an identical permanent legislative rule to EPA, 45CSR33—''Acid Rain Provisions and Permits'', which supersedes the emergency rule submitted on December 15, 1994, and associated permit application forms. In the June 23, 1995 transmittal letter, West Virginia acknowledged that some of the provisions of 45CSR33 contain errors whereby the EPA Administrator's authorities are incorrectly granted to the Director of the Division of Environmental Protection and where conflicts between 45CSR33 and other state rules are addressed in a manner inconsistent with the approach in Part 72. West Virginia committed to seek amendments to fix these errors during the 1996 legislative session and to interpret 45CSR33 consistent with the requirements of Part 72 until the regulatory changes to 45CSR33 are adopted.

III. Request for Public Comments

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in this federal rulemaking action by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

Propsed Action

EPA is proposing to grant interim approval to the operating permits program submitted by West Virginia on November 12, 1993. The scope of West Virginia's Part 70 program applies to all Part 70 sources (as defined in the program) within West Virginia. In order to fully meet the requirements of the July 21, 1992 version of Part 70, West Virginia must make the following changes:

1. Revise the section 2.18 definition of ''Emissions unit'' to specifically include activities or parts of activities which emit or potentially emit pollutants listed under section 112(b) of the CAA.

2. Revise relevant portions of section 3.2.d as described above in this notice so as to ensure that permit applications will contain sufficient information needed to determine the applicability of, or to impose, all applicable requirements. West Virginia must also ensure that the insignificant activities list approved as part of the State's program will not be modified without prior EPA approval. Moreover, West Virginia must clarify that potential emissions from all insignificant activities or emissions units, whether included in section 3.2.d. or determined by the Chief on an application by application basis, will be included in determining whether a source is a major source.

3. Revise section 3.3.a to clarify that permits issued to major sources will include all applicable requirements that apply to the source, including those applicable requirements which may be later found to be applicable to one or more ''insignificant activities''.

5. Remove section 5.1.j.D. from section 5.1.j.

6. Revise section 5.3.e.A. to ensure that permits will contain provisions requiring compliance certifications to be submitted at least annually or such more frequent periods as specified by an applicable requirement or by the permitting authority.

7. Revise section 5.5 to clarify that for temporary sources that do not obtain a new preconstruction permit prior to each change in location, the operating permits shall include a requirement that the owner operator notify the Chief at least ten (10) days in advance of each change in location.

8. Modify section 4.1 so to require sources which become subject to the permitting program after the effective date to submit permit applications within 12 months.

9. Remove section 6.5.a.A.(c).

10. Revise section 6.8.a.A.(a).(B) to clarify that public notice will be given for all scheduled public hearings, not just those public hearings which have been scheduled at the request of an interested person.

11. Revise section 6.8.a.C. to clarify that for all permit modification proceedings, except those modifications qualifying for minor permit modifications or fast-track modifications under the Acid Rain Program, public notice will be given by publication in a newspaper of general circulation in the area where the source is located (or in a state publication designed to give general public notice), and to persons on a mailing list developed by the permitting authority including those who request in writing to be on the list.

12. Modify W. Va. Code § 22–5–6(b)(1) to provide for a maximum criminal penalty of not less than § 10,000 per day per violation for knowing misrepresentations of material fact.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, West Virginia is protected from sanctions for failure to have a fully approved Title V, Part 70 program, and EPA is not obligated to promulgate a federal permits program in West Virginia. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass the CAA's section 112(l)(5) requirements for approval of a program for delegation of section 112 standards applicable to Part 70 sources as promulgated by EPA. 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, EPA is also proposing under section 112(l)(5) and 40 CFR 63.91 to grant approval of West Virginia'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 Office of Management and Budget has exempted this action from Executive Order 12866 review.

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.

EPA has determined that this proposed interim approval action 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 to propose interim approval of West Virginia's operating permits program pursuant to Title V of the CAA and 40 CFR Part 70 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: August 18, 1995.

W. Michael McCabe,

Regional Administrator.

[FR Doc. 95–21406 Filed 8–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[NC–95–01; FRL–5288–2]

Clean Air Act Proposed Interim Approval of Operating Permit Program; North Carolina, Western North Carolina Mecklenburg County, Forsyth County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: EPA proposes interim approval of the operating permit programs submitted by the State of North Carolina Department of Health, Environment and Natural Resources (DEHNR), Western North Carolina Regional Air Pollution Control Agency (WNCRAPCA), Forsyth County Department of Environmental Affairs (FCDEA), and Mecklenburg County Department of Environmental Protection (MCDEP) for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by September 28, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of the DEHNR, WNCRAPCA, FCDEA, and MCDEP submittals and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 347–3555, Ext. 4153.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

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

The Act requires states to develop and submit these programs to EPA by November 15, 1993, and EPA to approve or disapprove each program within one year after receiving the submittal. If the State's submission is materially changed during the one-year review period, 40 CFR Part 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials. EPA received the DEHNR, WNCRAPCA, FCDEA, and MCDEP's title V operating permit program submittals on November 12, 1993. The State provided EPA with additional materials in supplemental submittals dated December 17, 1993, February 28, 1994, May 31, 1994, and August 9, 1995. Because these supplements materially changed the State's title V program submittal, EPA has extended the review period and will work expeditiously to promulgate a final decision on the State's program.

EPA reviews state operating permit programs pursuant to section 502 of the Act and 40 CFR part 70, 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 two years. If EPA has not granted full or interim approval to a whole program by November 15, 1995, it must establish and implement a Federal operating permit program for that state.

B. Federal Oversight and Sanctions

If EPA grants interim approval to the DEHNR, WNCRAPCA, FCDEA, and MCDEP programs, the interim approval 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 North Carolina, WNCRAPCA, FCDEA, and MCDEP would not be subject to sanctions, and EPA would not be obligated to promulgate, administer, and enforce a Federal permit program for the State. Permits issued under a program with interim approval are fully effective with respect to part 70, and the 12-month time period for submittal of permit applications by sources subject to part 70 requirements begins upon the effective date of final interim approval, as does the three-year time period for processing the initial permit applications.

Following the granting of final interim approval, if the DEHNR, WNCRAPCA, FCDEA, or MCDEP failed to submit complete corrective programs for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the DEHNR, WNCRAPCA, FCDEA, or MCDEP then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that DEHNR, WNCRAPCA, FCDEA, or MCDEP had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of DEHNR, WNCRAPCA, FCDEA, or MCDEP, both sanctions under section 179(b) would apply after the expiration of the 18-month period and would extend until the Administrator determined that these programs had come into compliance. In any case, if, six months after application of the first sanction, DEHNR, WNCRAPCA, FCDEA, or MCDEP still had not submitted a corrective program that EPA found complete, the second sanction would be applied.

If, following final interim approval, EPA were to disapprove any of the North Carolina State or local program complete corrective programs, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the DEHNR, WNCRAPCA, FCDEA, or MCDEP had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the North Carolina State or local agencies, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the North Carolina State or local agencies had come into compliance. In all cases, if six months after EPA applied the first sanction, the North Carolina State or local agencies had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.