enable NRC to take necessary action if it determines that an Agreement State program is inadequate or incompatible?

(5) Do these four actions, in addition to other actions taken by NRC combine to provide an ample margin of safety to protect public health?

EPA is not requesting further comments on the nature of current radionuclide emissions by facilities subject to subpart I, or any other issue not expressly addressed by this notice or the NRC proposals and policies on which it is based. EPA does not expect to respond to any specific comments which are outside the scope of this notice.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Radionuclides, Radon, Reporting and recordkeeping requirements, Uranium, Vinyl Chloride.

Dated: September 8, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–24111 Filed 9–27–95; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 70

[AD–FRL–5305–4]

Clean Air Act Final Full Approval of Operating Permits Programs in Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is promulgating full approval of the operating permits programs submitted by the Oregon Department of Environmental Quality (ODEQ) and Lane Regional Air Pollution Authority (LRAPA) for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. In the final rules section of this Federal Register, EPA is approving the ODEQ and LRAPA Operating Permits Programs as a direct final rule without prior proposal because the Agency views this as a noncontroversial rule revision and anticipates no adverse comments. A detailed 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 If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule.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 notice.

DATES: Comments on this proposed rule must be received in writing by October 30, 1995.

ADDRESSES: Written comments should be addressed to David C. Bray, (AT–082), Air Compliance and Permitting Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24-hours before the visiting day.

Copies of Oregon's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: David C. Bray, U.S. Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, (206) 553–4253.

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

Dated: September 19, 1995.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 95–24035 Filed 9–27–95; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 70

[AD–FRL–5300–3]

Clean Air Act Proposed Interim Approval Of Operating Permits Program; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action and proposed notice of correction.

SUMMARY: EPA is reproposing interim approval of one element of the State of Washington's title V air operating permits program. On November 9, 1994, EPA granted interim approval to Washington's operating permits program. 59 FR 55813 (November 9, 1994). One of the basis for granting Washington's program interim rather than full approval was that EPA determined that Washington's exemption for ''insignificant emission units'' exceeded the exemption authorized for such units under the Clean Air Act. A coalition of industries filed a petition for review of EPA's decision to condition full approval on changes to Washington's treatment of insignificant emission units. Upon EPA's request for a voluntary remand, the Court remanded this interim approval issue to EPA for reconsideration. EPA continues to believe that Washington has impermissibly expanded the exemption for insignificant emission units, but for somewhat different reasons, and therefore again proposes to condition full approval of the Washington operating permits program on changes to Washington's treatment of insignificant emission units.

EPA also proposes to approve a change to the jurisdiction of the Benton County Clean Air Authority.

Finally, EPA is proposing to correct the date for expiration of the interim approval and the due date of the required submission addressing the interim approval issues.

DATES: Comments on this proposed action must be received in writing by October 30, 1995.

ADDRESSES: Written comments should be addressed to: David C. Bray, Permits Program Manager, U.S. Environmental Protection Agency, Region 10, Air and Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's submittal and other information supporting this proposed action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, Air & Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Permits Program Manager, Air and Radiation Branch (AT–082), U.S. Environmental Protection Agency, Region 10, Seattle, Washington, (206) 553–4253.

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 EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Previous Action on Washington's Program

Washington submitted its operating permits program to EPA in November 1993. In August 1994, EPA proposed to grant interim approval to Washington's program and proposed to condition full approval on, among other things, revisions to Washington's regulations pertaining to the treatment of insignificant emission units (IEUs). See 59 FR 42552, 42557–42558 (August 18, 1994). In proposing that Washington be required to revise its IEU regulations as a condition of full approval, EPA stated:

> Under 40 CFR 70.5(c), EPA may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, no activity for which there is an applicable requirement may be defined as insignificant.

59 FR 42558. Several parties commented that Washington's IEU rules met the requirements of title V and part 70 and should therefore not be a basis for interim approval. These commenters disagreed with EPA's statement that no unit for which there is an applicable requirement could be defined as ''insignificant.'' The commenters further stated that such an interpretation would prevent Washington and most other States from granting any relief for insignificant emission units, which they argued is inconsistent with the intent of part 70, because it would subject all emissions, regardless of size and environmental impact to all part 70 requirements, including periodic monitoring, reporting, recordkeeping and compliance certification.

After reviewing the comments, EPA determined that Washington's IEU rules did in fact exceed the exemption authorized under part 70 for IEUs and therefore conditioned full approval of Washington's program on certain specified changes to Washington's IEU rules and changes to four other aspects of Washington's operating permits program. In responding to these comments in the final interim approval action, EPA stated:

> EPA maintains, however, that Title V and the Part 70 rules preclude the exemption of emission units as ''insignificant'' when such units are subject to an applicable requirement. Section 504(a) of the Act requires that ''each permit issued under this title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with *applicable requirements of the Act, including the requirements of the applicable implementation plan.*'' (emphasis added). Section 70.6(a)(1) provides that each permit shall include ''emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance''. Furthermore, § 70.6(c)(1) requires that each permit shall contain ''compliance, certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' The fact that an emission unit may emit only small quantities of pollutants does not provide a basis to exempt it from the fundamental statutory requirement that the permit specifically include, and ensure compliance with, all applicable requirements.

59 FR 55814. EPA therefore required Washington, as a condition of full approval, to:

> (5) Revise WAC 173–401–530(2) to define an emission unit as insignificant only if it is subject to no federally enforceable applicable requirement and delete the last sentence in WAC 173–401–200(16) (''These units and activities are exempt from permit program requirements except as provided in WAC 173–401–530.'').

59 FR 55818. On January 9, 1995, the Washington States Petroleum Association, Northwest Pulp & Paper Association, Aluminum Company of America, Columbia Aluminum Corporation, Intalco Aluminum Corporation, Kaiser Aluminum & Chemical Corporation and Vanalco Inc. (collectively, ''Petitioners'') filed a petition with the United States Court of Appeals for the Ninth Circuit seeking review of the conditions in EPA's final interim approval of Washington's operating permits program. *Western States Petroleum Association, et al* v. *EPA, et al,* No. 95–70034 (9th Cir., Jan. 6, 1995). In their petition and subsequent brief, Petitioners claimed that EPA had exceeded its authority in requiring Washington to revise its IEU rules as a condition of full approval and that this condition was arbitrary, capricious, an abuse of discretion and not otherwise in accordance with the law. Petitioners' brief clarified that Petitioners were challenging only EPA's requirement that Washington revise its IEU rules to obtain full approval and did not challenge any of the four other conditions for full approval. The State of Washington filed a brief as intervenor in the matter.

In reviewing the issue, EPA determined Petitioners and the State of Washington had raised a substantial question concerning EPA's interpretation of the IEU provisions of part 70 and the specific regulatory revisions EPA had ordered the State to make to its IEU rules as a condition of full approval. EPA therefore moved the Court on May 23, 1995, to vacate and remand to EPA those portions of EPA's final interim approval of Washington's operating permits program concerning IEUs, specifically, Condition 5 of EPA's conditions for full approval of Washington's operating permits program as described in the November 9, 1994 Federal Register. 59 FR 55818. The Court granted EPA's motion on July 7, 1995, thereby vacating Condition 5 of EPA's conditions for full approval of the Washington program and remanding Condition 5 to EPA for reconsideration and amended decision.

Following the Court's order, EPA has again reviewed the part 70 regulations and Washington IEU provisions. EPA now believes that it was overly broad in stating that title V and part 70 preclude the designation of emission units as ''insignificant'' if such units are subject to a federally-enforceable applicable requirement and in requiring Washington to change its regulations to allow the designation of an emission unit as insignificant only if it is not subject to a federally-enforceable applicable requirement. As discussed below, EPA believes there are circumstances in which an emission unit or activity can be defined as ''insignificant'' under a State operating permits program, even if it is subject to an applicable requirement. However, a title V application must still contain information needed to determine the applicability of or to impose any applicable requirement or any required fee and a title V permit must still meet the requirements of § 70.6 for all emission units, including IEUs, subject

to applicable requirements. EPA therefore continues to believe that the Washington IEU provisions extend the exemption for IEUs beyond the limited exemption authorized by part 70. Accordingly, EPA is again proposing that full approval of the Washington operating permits program be conditioned on changes to Washington's treatment of IEUs.

II. Discussion

A. Proposed Interim Approval of Washington IEU Regulations

1. Part 70 Requirements for Insignificant Emission Units

EPA's regulations for operating permits programs authorize States to establish provisions for IEUs. Specifically, 40 CFR 70.5(c) states:

> The Administrator may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. 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 under the schedule approved pursuant to § 70.9 of this part.

In addition, § 70.5(c)(3)(i) states:

> A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this paragraph (c) of this section. The permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to § 70.9(b) of this part.

Although both of these provisions authorize a State permitting program to grant certain relief for IEUs in its permit application, both provisions also require that the source submit sufficient information for the permitting authority to be able to verify the requirements applicable to the source and to collect appropriate permit fees. Where information about an IEU is necessary to determine the applicability of, or to impose in the permit, an applicable requirement, then the permit application must contain sufficient information to make that determination. Similarly, if the approved fee schedule imposes fees based on all emissions from a source, including emissions from IEUs, and requires the fee amount to be determined in the permit application, then the application must include emissions information for IEUs.

In addition, a title V permit must contain all requirements applicable to the source, including those requirements applicable to IEUs. Section 504(a) of the Act requires that ''each permit issued under this title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with *applicable requirements of (the Act), including the requirements of the applicable implementation plan*.'' (emphasis added). Section 70.6(a)(1) provides that each permit shall include ''emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.'' Furthermore, § 70.6(c)(1) requires that each permit shall contain ''compliance, certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' The fact that an emission unit may emit only small quantities of pollutants does not provide a basis for exempting it from the fundamental statutory requirement that the permit specifically include, and ensure compliance with, all applicable requirements.

As such, EPA interprets part 70 as allowing States to substantially reduce the burden of information required in permit applications for IEUs, but requiring that sufficient information still be provided in the application to determine the applicability of, and to impose in the permit, all applicable requirements that apply to IEUs. EPA also interprets part 70 as requiring a title V permit to contain all applicable requirements for all emission units, even for IEUs.

This means that some of the information required by §§ 70.5(c)(3) through (9) (Standard application form and required information) may need to be included in the permit application for IEUs in order for the permitting authority to draft an adequate operating permit. As an example, where an IEU is not in compliance with an applicable requirement at the time of permit issuance, the permit application would need to contain a compliance plan, including a compliance schedule, for achieving compliance with the applicable requirement. As another example, if a source has some IEUs within a category that are subject to an applicable requirement and some within that same category that are not subject to that applicable requirement because the applicability criteria for the applicable requirement are different from the applicability criteria for IEUs, the permit application would generally be required to include sufficient information on the IEUs for the permitting authority to determine which units are subject to the applicable requirement and to include that applicable requirement in the permit for the subject IEUs. EPA believes that part 70 would also authorize EPA to approve a State program that requires a permit application to simply list the applicable requirements that apply to IEUs generally, rather than requiring the permit application to explicitly identify which IEUs are subject to which applicable requirements. The State would then issue a permit imposing the applicable requirements in the permit, but not specifically identifying which IEUs are subject to those applicable requirements. In such a case, however, EPA believes that 40 CFR 70.6(f) would not authorize the State to grant a permit shield to IEUs because there would have been no determination in the permitting process that certain IEUs were or were not subject to certain applicable requirements.

2. Washington Requirements for Insignificant Emission Units

a. Definition of ''insignificant activities'' and ''insignificant emission units'' under the Washington program. WAC 173–401–200(16) defines an ''insignificant activity'' or an ''insignificant emission unit'' as any activity or emission unit located at a title V source which qualifies as insignificant under the criteria listed in WAC 173–401–530. Section 173–401–530(1) authorizes activities and emission units to be considered insignificant if (a) actual emissions of all regulated pollutants from the unit or activity are less than the emission thresholds established in WAC 173–401–530(4); (b) the activity or emission unit is listed in WAC 173–401–532 as ''categorically exempt''; (c) the activity or emission unit is listed in WAC 173–401–533 and is considered insignificant based on size or production rate; or (d) the activity or emission unit generates only fugitive emissions, which are subject to no applicable requirement other than generally applicable requirements of the Washington state implementation plan (SIP).

Although WAC 173–401–200(16) and WAC 173–401–530 meet the requirements of part 70 for designating

IEUs,[1] the Washington program contains unacceptably broad exemptions from permit program requirements. WAC 173–401–200(16) provides that activities and units deemed insignificant under WAC 173–401–530 are exempt from Washington's permit program requirements, except as provided in WAC 173–401–530. As discussed in more detail below, WAC 173–401–530 does not include all of the requirements of part 70 which are necessary to comply with the provisions of § 70.5 regarding permit applications and § 70.6 regarding permit content for those IEUs which are subject to applicable requirements. It also appears to exempt IEUs in determining whether a source is even subject to Washington's operating permits program. WAC 173–401–532 and 173–401–533 also state that IEUs are ''exempt from this chapter [WAC 173–401].'' [1a]

WAC 173–401–530(2)(a) does limit the exemption of WAC 173–401–200(16) by providing that no activity or emission unit subject to a federally enforceable applicable requirement (other than generally applicable requirements of the Washington SIP) shall qualify as insignificant. Nonetheless, EPA believes that the Washington program impermissibly exempts from many of the permit content requirements, certain permit application requirements, and possibly even applicability determinations those IEUs that are subject to federally enforceable generally applicable requirements of the Washington SIP, but no other federally enforceable applicable requirements. Thus, although the Washington regulations comply with part 70 regarding the designation of IEUs, they do not comply with the requirements for the treatment of IEUs.

b. Permit content. As stated above, WAC 173–401–200(16) exempts IEUs from Washington's ''permit program requirements except as provided in WAC 173–401–530.'' IEUs are therefore exempt from all of the permit content requirements in WAC 173–401–600 through 650.[2] In addition, WAC 173–401–530(2)(c) specifically (and redundantly) exempts IEUs from the testing, monitoring, reporting and recordkeeping requirements of WAC 173–401–615 and WAC 173–401–630(1) except where generally applicable requirements of the Washington SIP specifically impose such requirements, and WAC 173–401–530(2)(d) specifically (and again redundantly) exempts IEUs from the compliance certification requirements of WAC 173–401–630(5). Finally, WAC 173–401–532 and -533, which contain the lists of IEUs, specifically state that IEUs are ''exempt from this chapter (WAC 173–401).'' In place of those requirements, WAC 173–401–530(2)(b) simply requires the permit application to list and the permit to contain all generally applicable requirements that apply to IEUs.

Nothing in part 70 authorizes a State to omit from a title V permit applicable requirements or the elements of a title V permit specified in section 40 CFR 70.6. Although the Washington regulations ensure that all applicable requirements will be included in a title V permit, WAC 173–401–200(16) exempts IEUs from all of the required title V permit elements except for the generally applicable requirements of the Washington SIP. In other words, a title V permit would not be required to contain any elements required by § 70.6 for IEUs other than the generally applicable requirements themselves. Thus, a title V permit in Washington would not be required to include ''gapfilling'' testing, monitoring, recordkeeping and reporting requirements for IEUs, as required by 40 CFR 70.6(a)(3)(i), (ii) and (iii); compliance certification, testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the generally applicable requirements for subject IEUs, as required by 40 CFR 70.6(c)(1); compliance certification for IEUs, as required by 40 CFR 70.6(c)(5); and, for IEUs not in compliance, a compliance schedule and progress reports, as required by 40 CFR 70.6(c)(3) and (4).

For example, where a source had an IEU that was subject only to a generally applicable requirement in the Washington SIP, the title V permit would be required to contain only those permit provisions required by §§ 70.6(a)(1), 70.6(a)(3)(i)(A), 70.6(a)(3)(ii) and 70.6(a)(3)(iii) that are generally applicable requirements themselves. Washington would not be required to ''gapfill'' any testing or monitoring requirements for IEUs subject to applicable requirements which did not contain their own testing or monitoring methods, as required by § 70.6(a)(3)(i)(B). Washington would also not be required to include in permits compliance and compliance certification requirements for IEUs subject to applicable requirements, as required by § 70.6(c)(1) and (5). For these reasons, EPA believes that the Washington provisions for IEUs do not fully meet the requirements of § 70.6 with respect to the treatment of IEUs subject to applicable requirements.

c. Permit applications. The Washington program meets the requirements of 40 CFR 70.5 (Permit Applications), including the requirement of § 70.5(c) that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement or evaluate any required fee, with respect to all emissions units except for IEUs. *See* WAC 173–401–500 (Permit application), –510 (Permit application forms), and –520 (Certification). The definition of ''insignificant activity'' and ''insignificant emission unit'' in WAC 173–401–200(16), however, exempts IEUs from all of these requirements, except those contained in WAC 173–401–530. Furthermore, WAC 173–401–532(1) exempts categorically exempt units and activities from permit applications entirely and WAC 173–401–533(1) exempts emission units and activities deemed insignificant based on size or production rate from all permit application requirements except a requirement to include a list of such units and activities in the permit application. In place of the permit application requirements that apply to all other emission units at title V sources in Washington, WAC 173–401–530(2)(b) simply requires that the permit application list all generally applicable requirements that apply to insignificant emission units or activities at the source and, as stated above, WAC 173–401–530(1) requires that the permit application contain a list of IEUs which

[1] It is important to distinguish EPA's concept of ''insignificant activities and emission levels'' as envisioned in section 70.5(c) and Washington's definition of ''insignificant activity'' and ''insignificant emission unit'' in WAC 173–401–200(16) and WAC 173–401–530. Section 70.5(c) allows State programs to include a list of ''insignificant activities'' and ''insignificant emission levels'' which are based solely on classification by source category and/or emission rates. The Washington definition utilizes a similar approach but further restricts ''insignificant activities'' and ''insignificant emission units'' to those activities and units that are subject only to generally applicable requirements of the Washington SIP and no any other federally enforceable applicable requirements.

[1a] For purposes of this action, ''IEU'' refers to activities and emissions units that are defined as insignificant under WAC 173–401–200(16) and 173 401–530, when used in discussing the Washington program, and refers to the generic concept under part 70, when used in discussing the requirements of part 70.

[2] These include WAC 173–401–600 (Permit content); 173–401–610 (Permit duration); WAC 173–401–615 (Monitoring and related recordkeeping and reporting requirements); WAC 173–401–620 (Standard terms and conditions); WAC 173–401–625 (Federally enforceable requirements); 173–401–630 (Compliance requirements); 173–401–635 (Temporary sources); 173–401–640 (Permit shield); 173–401–645 (Emergency provision); 173–401–650 (Operational flexibility).

are so designated based on size or production rate.

As discussed in Section II.A.1 above, EPA believes that part 70 would authorize a State to require an applicant to simply list the applicable requirements that apply to IEUs, rather than requiring the applicant to specifically indicate which IEUs are subject to which applicable requirements, provided the permit shield does not extend to IEUs. In this respect, EPA believes that this aspect of Washington's approach to IEU's is acceptable because WAC 173–401–530(3) specifically states that the permit shield does not extend to IEUs designated under the Washington rules. The Washington regulations fail to satisfy the requirements of part 70 with respect to permit application requirements in several other respects, however. For example, the Washington program exempts sources from the requirement of 40 CFR 70.5(a)(2) and (d) that a responsible official certify the truth, accuracy and completeness of the provisions in the permit application that relate to IEUs. In addition, WAC 173–401–500(7), which contains criteria for determining when an application is complete, appears to contain an impermissible exemption for IEUs. That section defines an application as complete when it contains, among other things, ''the required information for each emission unit (other than insignificant emission units) at the facility.'' WAC 173–401–500(7)(a). This provision appears to define an application as complete even if it fails to include the information required by WAC 173–401–510(1) and (2)(c)(i) that would be necessary to determine the applicability of, or to impose, any applicable requirement or fee for IEUs. It would also define a permit application as complete even if it failed to include the information regarding IEUs required by WAC 173–401–530.

Although Washington does not appear to have intended to exclude IEUs from all of the requirements of WAC 173–401–501, –510, and –520, EPA believes that this is the clear effect of the exclusions contained in WAC 173–401–200(16) and 173–401–500(7)(a). EPA therefore believes that the provisions for permit applications in the Washington operating permits regulations do not fully meet the requirements of § 70.5 with respect to IEUs.[3]

d. Applicability determinations. Because WAC 173–401–530 does not specifically require emissions from IEUs to be included in applicability determinations, the exemption contained in the definition of IEU could be interpreted to allow emissions from IEUs to be excluded from the determination of whether a source is a major source under WAC 173–401–200(17) and (32) and thus subject to Washington's operating permits program in the first instance. In other words, the requirement to include emissions from IEUs in determining whether a source is a major source is a permit program requirement from which IEUs appear to be exempted under WAC 173–401–200(16). Nothing in title V or part 70 suggests that emissions from IEUs can be ignored in determining whether a source is a title V source. *See* 40 CFR 70.2 (Definition of ''major source''; 40 CFR 70.3 (Applicability). Although EPA does not believe that Washington intended that emissions from IEUs be excluded in applicability determinations, EPA is concerned that Washington's IEU regulations could be interpreted to have that effect.

3. Implementation Concerns

During the public comment period on EPA's initial interim approval of the Washington program, commenters expressed concern that permit applications would have to describe emissions from all units and responsible officials would be required to conduct extensive due diligence efforts in order to certify the compliance of emission units that emit very small quantities of pollutants. These parties argued that this was an unreasonable regulatory burden that would result in excessive paperwork and would likely decrease the ability of permitting agencies to effectively enforce title V permits. The Petitioners and the State echoed these concerns in their challenge of EPA's interim approval action before the Ninth Circuit Court of Appeals.

Such program implementation concerns should be reduced now that EPA has clarified that emission units subject to applicable requirements may be defined as ''insignificant,'' provided that the application contains sufficient information to determine the applicability of, and to impose in the permit, all applicable requirements and fees that apply to IEUs and that the permit contains all applicable requirements for all emission units, even IEUs. In addition, part 70 allows States flexibility in tailoring the quality of information required in the permit application and the rigor of compliance requirements in the permit to the type of emission unit and applicable requirement in question. *See White Paper for Streamlined Development of Part 70 Permit Applications*, from Lydia Wegman, Deputy Director of EPA's Office of Air Quality Planning and Standards, to EPA Regional Air Directors (July 10, 1995). For example, the requirement to include in a permit application information necessary to determine the applicability of an applicable requirement does not necessarily require an applicant to describe or quantify emissions of regulated pollutants. Units subject to an applicable requirement can be identified as a class along with the applicable requirement (e.g. valves and flanges subject to a leak detection and repair requirement). Furthermore, the requirement to include in a permit compliance certification, testing, monitoring, reporting, and recordkeeping *sufficient to assure compliance* with the terms and conditions of the permit does not require the permit to impose the same level of rigor with respect to small emission units that do not require extensive testing or monitoring in order to determine compliance with the applicable requirements as it does with respect to large emission units.

The State of Oregon, which received interim approval of its operating permit program effective January 3, 1995,[4] 59 FR 61820 (Dec. 2, 1994) has already issued several final title V operating permits. The Oregon program provides an example of how a State can meet the requirements of part 70 for IEUs and still successfully implement an operating permit program. The Oregon program defines certain activities as ''insignificant,'' based either on the amount of emissions or the activity itself. *See* OAR 340–28–110(5), (15), and (50). The program requires that a permit application contain a list of all categorically insignificant activities and an estimate of all emissions of regulated air pollutants from those activities which are designated insignificant because of nonexempt insignificant mixture usage or aggregate insignificant emissions. *See* OAR 340–28–2120(3)(e). The Oregon program, however, prohibits the omission of information needed to determine the applicability of, or to impose, an applicable requirement, or to evaluate a required

[3] In this regard, EPA believes its proposed interim approval of Washington's IEU provisions is consistent with EPA action in other title V program approvals. For example, in requiring Illinois to revise its IEU provisions as a condition of full approval, EPA stated that the Illinois program would impermissibly allow a permit application to omit information needed to determine the applicability of, or to impose, applicable requirements on IEUs. *See* 60 FR 12478 (March 7, 1995).

[4] Oregon's insignificant emissions unit provisions received full approval.

fee, *see* OAR 340–28–2120(3), and does not allow the exemption of IEUs from the permit content requirements of Oregon's program, *see* OAR 340–28–2130.

Permits issued by the State of Oregon have included generally applicable requirements contained in the Oregon State Implementation Plan (A final title V permit that has been issued by Oregon is in the docket). Permits contain provisions requiring sources to monitor IEUs subject to applicable requirements, for example, by estimating emissions once every five years and conducting semi-annual compliance inspections of IEUs, the results of which are recorded in a company log. Permits also contain a chart of test methods and procedures for determining compliance with generally applicable requirements. In short, by using standard permit terms to address compliance certification, testing, monitoring, recordkeeping and reporting requirements for common generally applicable requirements that apply to IEUs, the State of Oregon appears to have minimized the burden of ensuring that a permit meets the requirements of § 70.6.

4. Proposed Interim Approval

In summary, EPA continues to believe that the Washington program does not fully meet the requirements of title V and part 70 with respect to IEUs. Specifically, Washington's definition of ''insignificant activity'' and ''insignificant emission unit'' in WAC 173–401–200(16) exempts such activities and units from all of the permit program requirements of WAC 173–401 except those requirements contained in WAC 173–401–530. WAC 173–401–530, however, does not ensure that all of the necessary provisions of §§ 70.5 and 70.6 are met for those IEUs which are subject to applicable requirements and does not ensure that emissions from IEUs must be included in determining whether a source is even subject to Washington's operating permits program.

EPA does not believe, however, that the deficiencies in the Washington program with respect to IEUs warrant disapproval of the Washington program. Section 502(g) of the Act and 40 CFR 70.4(d) authorize EPA to grant interim approval to a State operating permits program if the program substantially meets the requirements of part 70, but does not qualify for full approval. Although § 70.4(d)(3)(ii) requires a program to have adequate authority to issue permits that assure compliance with all of the requirements of title V and part 70 in order to receive interim approval, EPA believes that the deficiencies in Washington's program with respect to IEUs are sufficiently narrow to qualify for interim approval. Specifically, WAC 173–401–530(2)(a) limits the exemption for IEUs to just those emission units and activities that are subject to no other federally enforceable applicable requirements than generally applicable requirements of the Washington SIP. Emission units or activities, regardless of size, emission rate, or category, which are subject to any other federally enforceable requirement do not qualify as IEUs and as such, do not qualify for the exemption from the permit application and permit content requirements provided by WAC 173–401–200(16) and WAC 173–401–530. Only IEUs subject solely to the generally applicable requirements of the SIP are exempted under the Washington program from many of the requirements for permit applications and permit content, and those exemptions would be limited to just those generally applicable requirements. As such, the Washington program meets the requirements of part 70 for most emission units and activities and EPA therefore proposes to grant interim approval to the Washington operating permits programs with respect to the IEU provisions.

B. Jurisdiction of the Benton County Clean Air Authority

On April 12, 1995, the Director of the State of Washington Department of Ecology submitted a revision to the State of Washington title V operating permits program, specifically, a change in the jurisdiction of the Benton-Franklin Counties Clean Air Authority. The submittal explained that on January 1, 1995 the Benton-Franklin Counties Clean Air Authority became the Benton County Clean Air Authority, returning jurisdiction for title V permitting and enforcement over sources in Franklin County to the Washington Department of Ecology as a matter of State law.

EPA has reviewed this revision to the Washington title V operating permits program and does not believe that the proposed change in the permitting authority for title V sources in Franklin County impacts the approvability of the operating permits programs submitted by the Benton County Clean Air Authority program or the Washington Department of Ecology. Therefore, EPA proposes to approve this revision to the Washington title V operating permits program.

C. Correction to Interim Approval Expiration Dates

EPA granted interim approval to the Washington title V operating permits program on November 9, 1994, which action became effective on December 9, 1994. *See* 59 FR 55813. Section 502(g) of the Act provides that an interim approval shall expire on a date set by the Administrator not later than 2 years after such approval. The Federal Register notice stated, however, that the interim approval of the Washington program would expire on November 9, 1996, which is 2 years from the date of publication of the notice, and not, as EPA intended, 2 years from the effective date of the notice, or December 9, 1996. The notice also set May 9, 1996 as the submittal date for a corrective program, which is only 17 months after the effective date of the interim approval, rather than June 9, 1996, which is 18 months after the effective date. EPA is therefore by this notice proposing to correct the dates in 40 CFR part 70, Appendix A for expiration of the interim approval of the Washington State title V operating permits program from November 9, 1996 to December 9, 1996, and proposing to correct the date by which the State must submit a corrective program from May 9, 1996 to June 9, 1996.

III. Proposed Action and Implications

A. Proposed Action

EPA is proposing to require that the State of Washington change its regulations addressing IEUs to conform to the requirements of part 70 as a condition of full approval of the operating permits program submitted by the State of Washington on November 16, 1993. If promulgated, the State must make the following revisions to its IEU provisions to receive full approval:

(5) Revise WAC 173–401–200(16) (Definition of ''insignificant activity'' and ''insignificant emission unit''), WAC 173–401–500 (Permit applications), WAC 173–401–510 (Permit application form), WAC 173–401–530 (Insignificant emission units), WAC 173–401–532 (Categorically exempt insignificant emission units) and WAC 173–401–533 (Units and activities defined as insignificant on the basis of size or production rate) to ensure that emissions from IEUs are not exempted from applicability determinations; that permit applications contain a list of all IEUs which are exempted because of size or production rate; that permit applications contain all information needed to determine the applicability of or to impose any applicable requirement or required fee; and that permits contain all applicable requirements and meet all permit content requirements of 40 CFR 70.6 for all emission units, even for IEUs.

This proposed requirement replaces Condition 5 under the heading ''Ecology'' in Section II.B. of EPA's November 9, 1994, Federal Register notice granting final interim approval of

the Washington operating permits program. See 59 FR 55818. Note that this proposal in no way affects the changes necessary to address all other interim approval issues identified in the November 9, 1994 Federal Register notice. In other words, as a condition of full approval, Washington must also correct the four other deficiencies in its program identified in the November 9, 1994, notice and the other Washington permitting authorities must correct all deficiencies in their respective programs identified in the November 9, 1994, notice. *See* 59 FR 55818–55819.

EPA is also proposing to approve as a program revision the transfer of title V permitting and enforcement authority for sources in Franklin County to the Washington Department of Ecology.

Finally, EPA is proposing to correct the expiration dates in Appendix A for the interim approval of the Washington State and local operating permits programs as well as the date by which the State is required to submit a corrective program.

B. Effective Date of Interim Approval

If EPA were to finalize this proposed interim approval, it will not change the time period for the initial interim approval, which is December 9, 1996. During this ongoing interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate, administer and enforce a Federal permits program for the State of Washington. Permits issued under the Washington program have full standing with respect to part 70. In addition, the 1-year deadline for submittal of permit applications by subject sources and the 3-year time period for processing the initial permit applications began upon the effective date of interim approval, which in this case was December 9, 1994.

If the State of Washington were to fail to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval (by June 9, 1996) EPA would start an 18-month clock for mandatory sanctions. If the State of Washington were then to fail 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 Act, which would remain in effect until EPA determined that the State of Washington had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator were to find a lack of good faith on the part of the State of Washington both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State of Washington had come into compliance. In any case, if, 6 months after application of the first sanction, the State of Washington still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following expiration of final interim approval, EPA were to disapprove the State of Washington'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 the State of Washington 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 State of Washington both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State of Washington had come into compliance. In all cases, if, 6 months after EPA applied the first sanction, the State of Washington 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 a State 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 a State program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for that State upon expiration of interim approval.

IV. Administrative Requirements

A. Request for Public Comments

EPA is requesting comments on two issues addressed in this notice, specifically, (1) conditioning full approval of the Washington operating permits program on changes to Washington's regulations addressing insignificant emission units; and (2) approving a change to the jurisdiction of the Benton County Clean Air Authority. All other aspects of EPA's interim approval of Washington's operating permits program, as discussed in 59 FR 42552, including all other conditions on full approval of Washington's operating permit programs, remain unchanged by this proposal and are not open for public comment. Correction of the expiration date of the final interim approval of Washington's operating permits program and the date by which Washington must submit a corrective program are being made as an administrative correction and is not open for public comment.

Copies of the State's submittal and other information relied upon for this proposed action and notice 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, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

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

(2) to serve as the record in case of judicial review.

The EPA will consider any comments received by October 30, 1995.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

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 proposed action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

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

EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more

to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 14, 1995.

Chuck Clarke,

Regional Administrator.

Part 70, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Part 70 is proposed to be amended by revising the Washington paragraph of Appendix A to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Washington

(a) Department of Ecology (Ecology): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(b) Energy Facility Site Evaluation Council (EFSEC): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(c) Benton County Clean Air Authority (BCCAA): submitted on November 1, 1993 and amended on September 29, 1994 and April 12, 1995; effective on December 9, 1994; interim approval expires December 9, 1996.

(d) Northwest Air Pollution Authority (NWAPA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(e) Olympic Air Pollution Control Authority (OAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(f) Puget Sound Air Pollution Control Agency (PSAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(g) Southwest Air Pollution Control Authority (SWAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(h) Spokane County Air Pollution Control Authority (SCAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires December 9, 1996.

(i) Yakima County Clean Air Authority (YCCAA): submitted on November 1, 1993 and amended on September 29, 1994; effective on December 9, 1994; interim approval expires December 9, 1996.

* * * * *

[FR Doc. 95–23967 Filed 9–27–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD47

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Juglans jamaicensis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to determine *Juglans jamaicensis* (nogal or West Indian walnut) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Nogal is known from the islands of Hispaniola, Cuba and Puerto Rico. In Puerto Rico, this large tree is known from only 14 individuals at one locality in Adjuntas. The area is located near the Monte Guilarte Commonwealth Forest but is in private ownership and threatened by land-clearing for agriculture and rural development. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Juglans jamaicensis*.

DATES: Comments from all interested parties must be received by November 27, 1995. Public hearing requests must be received by November 13, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, during normal business hours at this office, and at the Service's Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. William C. Hunter at the Southeast Regional Office address (404/679–7130).

SUPPLEMENTARY INFORMATION:

Background

Juglans jamaicensis (nogal or West Indian walnut) was first described as *J. jamaicensis* by DeCandolle from a description and illustration of leaves, staminate catkin and fruit by Descourtilz which had been published under the name of *Juglans fraxinifolia*. DeCandolle mistakenly believed that the tree Descourtilz had illustrated originated in Jamaica, when in reality no walnut tree has ever been located in Jamaica. Synonyms which have been applied to the species include *Juglans fraxinifolia* Descourtilz, *J. cinerea* of Bello, *J. insularis* Griseb., *J. portoricensis* Dode, and *J. domingensis* (Proctor 1992).

Juglans jamaicensis is known from Cuba, Hispaniola and Puerto Rico but little information is currently available on its status in the first two countries (Liogier and Martorell 1982). It has been described by the Center for Plant Conservation (1992) as ''not common'' and by Proctor (1992) as becoming increasingly rare on these two islands.

Nogal was first collected from Puerto Rico by Augustin Stahl around 1865. This collection was from an area between Peñuelas and Adjuntas at an elevation of approximately 700 meters (2,297 feet). The species was subsequently collected by the German botanist Paul Sintenis in 1886 from somewhere near Adjuntas (Saltillo) and again in 1887 near Utuado (Santa Rosa). An additional collection was made by Bartolomé Barcela in 1915 from an area near Adjuntas (Little *et al.* 1974, Proctor 1992). Little *et al.* (1974) stated that the species might possibly be extinct.

Juglans jamaicensis was not reported again until 1974 when it was rediscovered by Roy O. Woodbury from the upper north slopes (an elevation of 1070 meters (3,510 feet)) of Cerro La Silla de Calderón, an area located near the southwest corner of the municipality of Adjuntas. A survey of these trees was made in 1992 by Salvador Alemañy of the U.S. Forest Service. Fourteen individuals were documented during this survey, the largest of which was more than 20 meters (66 feet) in height. The species has been reported from montane forests at elevations between 700 and 1,000 meters (2,297 and 3,281 feet) (Proctor 1992).

Juglans jamaicensis is a large tree which may reach up to 25 meters (82 feet) in height. Twigs, buds, and leaf-axes have minute rusty hairs. The leaves are alternate and compound and consist of 16 to 20 mostly paired, nearly stalkless leaflets. Leaflets are 5.5 to 9