specifically designed to implement section 112(g). This approval is limited to the implementation of the 112(g) rule and is effective only during any transition time between the effective date of the 112(g) rule and the adoption of specific rules by Alabama to implement section 112(g). To provide the State and Locals adequate time to adopt regulations consistent with federal requirements, this approval is granted with a duration of 18 months following promulgation by EPA of section 112(g) regulations.

3. Program for Delegation of Section 112 Standards as Promulgated

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 as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is approving under section 112(l)(5) and 40 CFR 63.91, the State's program for receiving delegation of section 112 standards and programs that are unchanged from Federal rules as promulgated. In addition, EPA is delegating all existing standards and programs under 40 CFR Parts 61 and 63. This program for delegation applies to part 70 and non-part 70 sources.[1]

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including 17 public comments received and reviewed by EPA on the proposal, are contained in docket number AL–95–01 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 final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

The 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.

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 of the Unfunded Mandates Act requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated 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: November 8, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is 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. Appendix A to part 70 is amended by adding the entry for Alabama in alphabetical order to read as follows:

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

* * * * *

Alabama

(a) Alabama Department of Environmental Management: submitted on December 15, 1993, and supplemented on March 3, 1994; March 18, 1994; June 5, 1995; July 14, 1995; and August 28, 1995; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

(b) City of Huntsville Department of Natural Resources and Environmental Management: submitted on November 15, 1993, and supplemented on July 20, 1995; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

(c) Jefferson County Department of Health: submitted on December 14, 1993, and supplemented on July 14, 1995; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

* * * * *

[FR Doc. 95–28212 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–P

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

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40 CFR Part 70

[AD–FRL–5332–5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permits program submitted by West Virginia for the purpose of complying with federal requirements for an approvable program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: December 15, 1995.

ADDRESSES: Copies of West Virginia's submittal and other supporting information used in developing the final 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

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (CAA), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that states seeking to administer a Title V operating permits program develop and submit a program 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 of an operating permits program submittal. 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 November 15, 1995, or by the expiration of the interim approval period, it must establish and implement a federal program.

On August 29, 1995, EPA proposed interim approval of the operating permits program for West Virginia. (See 60 FR 44799). EPA compiled a technical support document (TSD) associated with the proposal which contains a detailed analysis of West Virginia's operating permits program. In this document EPA is taking final action to promulgate interim approval of the operating permits program for West Virginia.

II. Analysis of State Submission

On November 12, 1993, West Virginia submitted an operating permits program to satisfy the requirements of the CAA and 40 CFR Part 70 and was found to be administratively complete pursuant to 40 CFR 70.4(e)(1). The submittal was supplemented by additional materials on August 26 and September 29, 1994. EPA reviewed the program against the criteria for approval in section 502 of the CAA and the Part 70 regulations. EPA determined, as fully described in the notice of proposed interim approval of the state's operating permits program (see 60 FR 44799 (August 29, 1995)) and the TSD for this action, that West Virginia's operating permits program substantially meets the requirements of the CAA and Part 70.

III. Response to Public Comments

EPA received several comments from industry representatives during the public comment period. Additional comments were submitted after the expiration of the public comment period. These comments and EPA's responses are grouped into eight (8) categories. All comments are contained in the docket at the address noted in the **ADDRESSES** section above.

1. ''Insignificant Activities''

Comment: The authority of the Chief of West Virginia's Office of Air Quality (WVOAQ) to make additions to the insignificant activity list should not be limited as proposed by EPA. EPA should indicate to the WVOAQ that it is appropriate to recognize ''trivial sources'', described in EPA's July 10, 1995 ''White Paper for Streamlined Development of Part 70 Permit Applications'' (herein after the ''White Paper''), as being exempt from Part 70 permit applications.

EPA Response: Section 70.5(c) specifically requires activities and emissions levels to be considered as ''insignificant'' to be approved by EPA as part of a state's operating permits program. EPA's criteria for approving activities and emissions levels as ''insignificant'' derive from the requirement that permit applications include all information necessary to determine the applicability of, or to impose, any applicable requirement, and to evaluate fees.

Section 3.2.d.M of West Virginia's rule authorizes the Chief to determine activities or emissions units to be insignificant beyond those approved as part of West Virginia's operating permits program. The Chief's discretion is not limited to any specific categories of activities or emission levels. As discussed in the proposed notice, this broad provision is not approvable because EPA has no way to evaluate such activities against the criteria discussed above. Furthermore, this provision allows new exemptions from permit requirements to be granted without prior EPA approval, an approach which is inconsistent with the requirements of section 70.5(c).

EPA recognizes the desire and need for state permitting authorities to have the flexibility to determine additional activities other than those listed and approved as part of a state's operating permits program to be insignificant. For this reason, EPA has proposed to allow the Chief to determine on a permit-by-permit basis and within bounds approved by EPA as part of West Virginia's program additional activities to be considered as insignificant. EPA believes that this approach will provide the needed flexibility in a manner which is consistent with the requirements of section 70.5(c). West Virginia also has the option to submit to EPA for approval additional insignificant activities or emissions levels which are to apply to all permittees.

As discussed in the ''White Paper'', EPA believes that, in addition to the insignificant activity provisions of section 70.5(c), section 70.5 allows permitting authorities to recognize certain activities as being clearly trivial (i.e., emissions units and activities which do not in any way implicate applicable requirements) and that such trivial activities can be omitted from the permit application even if not included on a list of insignificant activities approved in a state's Part 70 program. Permitting authorities may, on a case-by-case basis and without EPA approval, exempt additional activities which are clearly trivial. However, additional exemptions, to the extent that the activities they cover are not clearly trivial, still need to be approved by EPA before being added to state lists of insignificant activities.

While section 70.5 has been interpreted to allow flexibility for the determination of trivial activities, EPA will defer to West Virginia to determine whether similar flexibility exists under its own permit application provisions. EPA believes that it is appropriate to have such determinations made in the first instance at the state level as the decision of whether any particular item should be on a state's trivial list may depend on state-specific factors, such as whether the activity is subject to state-only requirements or specific requirements of the SIP.

2. Emissions Trading/Volatile Organic Compounds (VOCs)

Comment: EPA should not prohibit the Chief's discretion in establishing permit provisions which allow emissions trading of categories of VOCs. There is no reason why emissions trading of this type should be considered as an alternative operating scenario when allowed by applicable requirements. EPA's position severely restricts the Chief's ability to administer permits and reduces operational flexibility for business and industry.

EPA Response: West Virginia 45CSR30, section 5.1.j.D. provides that permit provisions for emissions trading ''[m]ay include categories of VOCs

which in the Chief's discretion can be substituted for one another in a production process.'' EPA's primary concern with this provision is that, as written, it is not clear how substituting categories of VOCs in a production process could be considered to be emissions trading.

According to the public record of the adoption of West Virginia's operating permits regulations, this provision was added to clarify that West Virginia's alternative operating scenario provisions should not be limited to changes in the hours of production or process configuration, but should also encompass the use of different chemicals to make slight changes in the production process if consistent with applicable requirements. In response to a request for clarification of this provision, a supplemental Attorney General's opinion submitted to EPA by West Virginia on September 29, 1994 acknowledged that section 5.1.j.D. was misplaced and instead belonged in section 5.1.i.D.

EPA recognizes that Part 70 allows permits to contain provisions, if the permit applicant requests them, for emissions trading in accordance with applicable requirements. In no way is EPA attempting to limit this authority or reduce operational flexibility for business and industry by prohibiting categories of VOCs from being traded under authorized emissions trading provisions.

3. Section 112(g) Implementation

Comment: The immediate implementation of section 112(g) following promulgation of EPA's regulations is not workable. An appropriate amount of time must be provided to develop state regulations. An appropriate time limit for West Virginia to adopt section 112(g) rules is 24 months.

EPA response: As discussed in the proposed rulemaking, EPA had until recently interpreted the CAA to require sources to comply with section 112(g) beginning on the date of approval of the state's operating permits program regardless of whether EPA had completed its section 112(g) rulemaking. EPA's current interpretation of the CAA postpones the requirement for sources to comply with section 112(g) until after the time EPA has promulgated a rule addressing that provision (see 60 FR 8333).

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. This decision, however, will be made in the context of the final 112(g) rulemaking. Consequently, EPA will not respond to the comment related to the effective date of section 112(g) in this document.

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. West Virginia will be required to adopt state rules in a time frame consistent with the requirements of the federal section 112(g) rule. To the extent that the federal section 112(g) rule does not establish a timeframe for the adoption of state rules, West Virginia will be allowed up to 24 months to implement its ''transition mechanisms'' in place of state 112(g) regulations. EPA believes twenty-four (24) months to be an appropriate timeframe since West Virginia's rulemaking procedures require regulations to be approved by the state legislature prior to adoption.

4. Fees

Comment: West Virginia's fee structure is adequate to maintain the quality of the program. No additional flexibility to adjust permitting fees is required.

EPA Response: EPA is not requiring West Virginia to adjust its fee structure in any way. EPA's fee discussion in the proposed notice merely mentioned that by having additional flexibility to adjust fee levels, West Virginia would be in a better position to respond to resource needs without having to wait for legislative approval.

5. Effective Date

Comment: West Virginia's electronic permit application forms have not been completed and are not available to the regulated community. Therefore, West Virginia has not fulfilled the requirements of 70.4(b)(4)(i) for permit application forms. The interim approval should be provided with an effective date of April 1, 1996 so that West Virginia will have ample time to complete the electronic forms.

EPA Response: West Virginia's electronic permit application forms are completed and available to the regulated community. These forms were submitted to EPA on October 18, 1995 to replace the hard copy permit application forms submitted on November 12, 1993 as part of the original operating permits program to satisfy the requirements of section 70.4(b)(4)(i). No postponement of the effective date is warranted.

6. ''De Minimis'' Changes

Comment A: EPA's requirement for removal of section 6.5.a.A.(c) is not mandated under Part 70 in light of the other ''gatekeeper'' provisions of section 6.5 which serve to prevent Title I modifications or constructions from being exempt from permit modification procedures.

EPA Response: EPA agrees that the ''gatekeeper'' provisions of section 6.5.a.A. do serve to prevent Title I modifications or constructions from being exempt from permit modification procedures. However, section 6.5.a.A.(c) allows changes which are below certain ''de minimis'' emissions levels which would otherwise be required to be processed as minor permit modifications to be completely exempt from such procedures. While Part 70 may allow certain of these changes to instead be processed ''off-permit'', sources making ''off-permit'' changes must provide contemporaneous written notice of the change to the permitting authority and to EPA. As written, section 6.5.a.A.(c) does not require any reporting requirements for changes defined to be ''de minimis''.

Comment B: Section 6.5.a.A.(c) should not be removed as described by EPA. This section, authorizing certain ''de minimis'' changes to occur without a permit modification is consistent with the provisions of the ''White Paper''.

EPA Response: EPA disagrees. The ''White Paper'' clarifies EPA's expectations for permit application information only. These clarifications were necessary to streamline and simplify the development of Part 70 permit applications and did not address the topic of permit revisions. Part 70 does not provide ''de minimis'' levels for source changes below which no permit modification is required.

7. Definition of ''Emissions Unit''/112(b) Pollutants

Comment: EPA considers West Virginia's section 2.18 definition of the term ''Emissions unit'' to be deficient since it does not expressly include activities or parts of activities which emit or potentially emit pollutants listed under section 112(b) of the Clean Air Act in addition to pollutants considered to be ''regulated air pollutants''. As a practical matter, are there any pollutants listed under section 112(b) of the CAA that are not now ''regulated air pollutants''?

EPA Response: The population of regulated air pollutants (RAPs), as described in an April 26, 1993 guidance document entitled ''Definition of Regulated Air Pollutant for Purposes of

Title V'', is composed of the following categories of pollutants: (1) Nitrogen oxides (NO_X) and volatile organic compounds (VOCs); (2) any pollutants for which an ambient air quality standard has been promulgated; (3) any pollutant that is subject to a new source performance standard under section 111 of the CAA; (4) any Class I or Class II ozone-depleting substance specified under Title VI of the CAA; and (5) any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the CAA.

While it is true that section 112(b) pollutants are ''regulated air pollutants'' if they fall under any one of the five (5) categories of pollutants listed above, EPA has not determined that each of the 189 pollutants listed under section 112(b) of the CAA are ''regulated air pollutants'' at this time. Such a determination would entail an analysis of each of the 189 pollutants listed in section 112(b) of the CAA with respect to the five categories of RAPs, an effort which EPA has not undertaken to date. If a determination is made that all of the section 112(b) pollutants are RAPs then the scope of pollutants defined under West Virginia's definition of ''Emissions unit'' would be broad enough to fully meet the section 70.2 definition of ''Emissions unit''. Until such a determination is made, West Virginia must define the term ''Emissions unit'' to specifically include pollutants listed under section 112(b) of the CAA consistent with the section 70.2 definition. West Virginia may chose to submit such a determination instead of modifying its definition of ''Emissions unit'' to satisfy the condition for interim approval.

8. Criminal Penalties for Knowing Misrepresentations of Fact

Comment: In its proposed interim approval of West Virginia's Title V operating permit Program, EPA requires West Virginia to modify W. Va. Code § 22–5–6(b)(1) of the enabling statute for the program to provide for a maximum criminal penalty of not less than $10,000 per day per violation for knowing misrepresentations of fact. One commenter questions whether the knowing misrepresentation of material fact is truly amenable to the ''continuing violation'' position EPA has taken in 40 CFR 70.11(a)(3)(iii). The commenter does not further articulate an argument on this point, but goes on to note that, while Section 502(b)(5)(E) of the CAA, as amended, 42 U.S.C. 7661a(b)(5)(E), provides that state operating permit programs include the authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, the same subsection, ''vests discretion with the States to establish 'appropriate criminal penalties' in their respective Title V programs.'' Finally, the commenter argues that, in light of the recent decision in *U.S.* v. *Telluride Company,* 884 F. Supp. 404 (D. Colorado, May 2, 1995), EPA's ''efforts to apply the 'continuing violation' theory to this particular type of violation seems misdirected. Just as in the *Telluride* case, where the discharge of fill materials into wetlands was held not to be a 'continuing violation,' the misrepresentation of material fact on an application or other report is a discrete action which a reviewing court will most certainly find not to be continuing in nature.''

EPA Response: EPA's clear requirement at 40 CFR 70.11(a)(3)(iii) that state operating permit programs include the authority to recover criminal penalties in an amount of not less than $10,000 per day per violation against any person who knowingly makes any false material statement, representation or certification in any forms, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method, is grounded in legitimate concerns that the environmental risks engendered by such conduct continue until the false information is corrected. In fact, in many circumstances, as where a required monitoring device is tampered with, it is impossible to obtain correct information after the fact, and in any such circumstance, continuing environmental contamination can go uncorrected where required information is falsified. The ''continuing violation'' theory at 40 CFR 70.11(a)(3)(iii) is consistent with EPA's position elsewhere in the CAA and under other statutes.

The commenter is misguided in its view that the statutory language at Section 502(b)(5)(E) which provides that state operating permit programs must include, ''appropriate criminal penalties,'' amounts to a Congressional grant of discretion to the states to determine what constitutes appropriate criminal penalties. There is nothing to suggest that Congress viewed the matter in this way, and it is counter-intuitive to assume that Congress, while concerned enough about civil violations to require maximum civil penalties to be assessed at at least $10,000 per day per violation, at the same time felt it would be appropriate for states to set significantly less stringent penalties for criminal behavior, which is what West Virginia has done here. In fact, as is the normal course, EPA was charged with interpreting Section 502, and did so with the promulgation of 40 CFR part 70. In doing so, EPA made the clear determination that appropriate criminal penalties include, at a minimum, those penalties specified at 40 CFR 70.11(a)(3)(iii). This proposed action on the West Virginia operating permit program is consistent with that interpretation.

Finally, notwithstanding the view of the U.S. District Court for the District of Colorado on the continuing nature of discharges to wetlands under the Clean Water Act, the *Telluride* decision has not warranted a reversal of EPA's position under Section 502 of the Clean Air Act, as set forth above, on the continuing nature of knowingly false material statements, representations or certifications in forms, notices or reports required by a permit, or the knowing tampering to render inaccurate any required monitoring device or method.

In addition to the eight (8) categories of comments discussed above, one general comment raised with respect to several of the proposed interim approval issues questions why such program deficiencies warrant interim approval status. Although this same comment was submitted with respect to several of the proposed interim approval issues, EPA will respond to this comment generally in this notice.

The Part 70 regulations define the minimum elements required by the CAA for approval of state operating permit programs. Section 70.4(d) authorizes EPA to grant interim approval in situations where a state's program substantially meets the requirements of Part 70, but is not fully approvable. In reviewing West Virginia's operating permit regulations, the impact of seemingly ''small'' deficiencies such as vague or awkward language, misplaced, misreferenced or mislabeled provisions, and omissions prevents EPA from being able to determine that the requirements of Part 70 are fully met. EPA identified such deficiencies as ''interim approval issues'' which West Virginia must revise, modify or otherwise clarify to fully meet Part 70's requirements. To the extent that EPA's concerns can be satisfied through other mechanisms, regulatory revisions may not be necessary. Specific responses to each comment submitted can be found in a response to comments document located in the public docket at the address noted in the **ADDRESSES** section above.

Final Action

EPA is promulgating interim approval of the operating permits program submitted by West Virginia on November 12, 1993, and supplemented on August 26 and September 29, 1994. West Virginia must make the following changes to the operating permits program to fully meet the requirements of the July 21, 1992 version of Part 70. (See 60 FR 44799):

1. Clarify that the section 2.18 definition of ''Emissions unit'' includes activities or parts of activities which emit or potentially emit pollutants listed under section 112(b) of the CAA.

2. Clarify in section 3.2.d 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. Clarify in section 3.3.a 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''.

4. Either remove the section 5.1.j.D. provision for VOC category substitution or clarify how it will be implemented within the context of emissions trading.

5. Clarify in section 5.3.e.A. 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.

6. Clarify in section 5.5 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.

7. Clarify in section 4.1 that sources which become subject to the permitting program after the effective date are required to submit permit applications within 12 months.

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

9. Clarify in section 6.8.a.A.(a).(B) 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.

10. Clarify in section 6.8.a.C. 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.

11. Clarify W. Va. Code section 22–5–6(b)(1) as necessary to provide for a maximum criminal penalty in an amount of not less than § 10,000 per day per violation against any person who knowingly makes any false material statement, representation or certification in any forms, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method.

West Virginia must also seek amendments to fix errors in 45CSR33—''Acid Rain Provisions and Permits'' and, until such regulatory changes are adopted, interpret 45CSR33 consistent with the requirements of part 72 in accordance with commitments made in a June 23, 1995 letter to EPA.

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

This interim approval, which may not be renewed, extends until December 15, 1997. During this interim approval period, West Virginia is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating 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 the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If West Virginia fails to submit a complete corrective program for full approval by June 16, 1997, EPA will start an 18-month clock for mandatory sanctions. If West Virginia then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the West Virginia has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of West Virginia, both sanctions under section 179(b) will 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 has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves West Virginia's complete corrective program, EPA will 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 has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of West Virginia, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that West Virginia has come into compliance. In all cases, if, six months after EPA applies the first sanction, West Virginia has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

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

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 as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, EPA is also promulgating 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 federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

Additionally, EPA is promulgating approval of West Virginia's 45CSR30 operating permits program, 45CSR13 and 45CSR14 preconstruction permit programs, and authority under W. Va Code § 22–5–4(a)(5) to issue administrative orders, under the authority of Title V and Part 70 for the purpose of implementing section 112(g) if necessary during the transition period between promulgation of the federal section 112(g) rule and adoption of state rules to implement EPA's section 112(g) regulations. However, since this approval is for the purpose of providing a mechanism to implement section 112(g) during the transition period, the approval of these mechanisms for this purpose 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. Unless the federal section 112(g) rule establishes a specific timeframe for the adoption of state rules, the duration of this approval is limited to 24 months following promulgation by EPA of section 112(g) regulations, to provide West Virginia with adequate time to adopt regulations consistent with federal requirements.

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 final 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, promulgating interim approval of West Virginia's operating permits program, 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: November 8, 1995.

Stanley L. Laskowski,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is 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. Appendix A to part 70 is amended by adding the entry for West Virginia in alphabetical order to read as follows:

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

* * * * *

West Virginia

(a) Department of Commerce, Labor and Environmental Resources: submitted on November 12, 1993, and supplemented by the Division of Environmental Protection on August 26 and September 29, 1994; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

(b) (Reserved)

* * * * *

[FR Doc. 95–28211 Filed 11–14–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[NC–95–01; FRL–5332–2]

Clean Air Act Final Interim Approval Of Operating Permits Program; State of North Carolina, Western North Carolina, Forsyth County, and Mecklenburg County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permit program submitted by the State of North Carolina Department of Health (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 for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: December 15, 1995.

ADDRESSES: Copies of the North Carolina State and local agency submittals and the other supporting information used in developing the final 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, Georgia 30365. Interested persons wanting to examine these documents, contained in EPA docket number NC–95–01, should make an appointment at least 24 hours before the visiting day.

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

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (the Act) and the implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the State or local agency submittals are changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following