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

2. Section 63.420 is amended by adding paragraph (j) to read as follows:

§ 63.420 Applicability.

* * * * *

(j) *Rules Stayed for Reconsideration.* Notwithstanding any other provision of this subpart, the December 14, 1995 compliance date for existing facilities in § 63.424(e) and § 63.428(a), (i)(1), and (j)(1) of this subpart is stayed from December 8, 1995, to March 7, 1996.

[FR Doc. 95–29992 Filed 12–7–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 70

[AD–FRL–5343–3]

Clean Air Act Final Interim Approval of Operating Permits Program; Washington

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final interim approval and notice of correction.

SUMMARY: EPA is repromulgating final 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 bases 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 and therefore again conditions full approval of the Washington operating permits program on changes to Washington's treatment of insignificant emission units.

EPA is also approving a change to the jurisdiction of the Benton County Clean Air Authority.

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

EFFECTIVE DATE: January 8, 1996.

ADDRESSES: Copies of Washington's submittal and other supporting information used in developing this action are available for inspection during normal business hours at the address indicated.

FOR FURTHER INFORMATION CONTACT: Elizabeth Waddell, 1200 Sixth Avenue, Seattle, Washington 98101.

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 November 1994, EPA granted interim approval to Washington's program and conditioned full approval on, among other things, revisions to Washington's regulations pertaining to the treatment of insignificant emission units (IEUs).[1] *See* 59 FR 55813 (November 9, 1994). On January 9, 1995, the Western 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 that the 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. The Court granted EPA's motion on July 7, 1995.

Following the Court's order, EPA again reviewed the part 70 regulations and Washington's IEU provisions and, on September 28, 1995, again proposed interim approval of the State's program (60 FR 50166). EPA explained in the proposal that EPA continued to believe that Washington's IEU provisions did not comport with the requirements of part 70 with respect to permit content because the State's regulations expressly excluded IEUs subject to generally applicable requirements of the Washington State Implementation Plan (SIP) from all the requirements of 40 CFR 70.6, except for the requirement to include in the permit all applicable requirements. EPA also expressed its concern that the State's definition of

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

IEU excluded, perhaps unintentionally, IEUs from certain permit application requirements that apply to IEUs and possibly from even title V applicability determinations.

During the public comment period on the September 1995 proposal, EPA received comments from the Petitioners, the State of Washington, Department of Ecology (''State'' or ''Ecology''), and the Boeing Corporation, an aerospace manufacturing concern with major operations in Washington State (collectively, the ''commenters''). The commenters addressed only EPA's proposed interim approval of the Washington IEU program. No comments were received regarding the change in jurisdiction of Benton County Clean Air Authority or the correction of the expiration date for interim approval.

EPA has carefully reviewed the comments and continues to believe that the Washington IEU program must be revised as a condition of full approval. As discussed in more detail below, EPA grants deference to the State's interpretation of its IEU regulations, and is therefore satisfied, based on the State's interpretation, that the State's IEU regulations meet the requirements of part 70 with respect to permit applications and title V applicability. The problems with the permit content requirements of section 70.6 which EPA addressed in the September 1995 proposal, however, arise not from a difference of opinion as to the interpretation of Washington's regulations, but instead from a difference of opinion as to the plain meaning and intent of the part 70 regulations themselves. EPA continues to believe that part 70 does not exempt IEUs subject to applicable requirements from the testing, monitoring, recordkeeping, reporting, compliance, and compliance certification requirements of 40 CFR 70.6(a)(1), (a)(3) and (c). Because Washington's title V program expressly excludes IEUs subject to generally applicable requirements from these requirements of section 70.6, EPA continues to believe that the Washington IEU regulations do not qualify for full approval.

II. Final Action and Implications

A. Response to Comments

As discussed above, the comments addressed only EPA's proposed interim approval of Washington's IEU regulations.

1. Permit Content

As the State of Washington and Petitioners concede, the Washington program expressly exempts IEUs subject to generally applicable requirements from the testing, monitoring, recordkeeping, reporting, compliance, and compliance certification requirements of section 70.6.[2] *See* WAC 173–401–200(16), 173–401–530(2)(c) and 173–401–530(2)(d). Instead, for IEUs subject to generally applicable requirements of the Washington SIP, the Washington program requires only that the permit contain the generally applicable requirements that apply to such IEUs. WAC 173–401–530(2)(b). The commenters argue that the language and intent of the part 70 regulations allow such an exemption from the permit content requirements of section 70.6 for IEUs. EPA disagrees.

The commenters acknowledge that there is no reference in 40 CFR 70.6 to IEUs. They argue, however, that this fact ''in no way undermines the authority granted to states in section 70.5 to exempt insignificant emission units from permit program requirements.'' Section 70.5, however, does not exempt IEUs from ''permit program requirements'' in general, but instead exempts IEUs only from certain permit application requirements. There is *nothing* in the language of section 70.5 or elsewhere in the part 70 regulations to support the commenters' argument that, because a State may exempt IEUs from certain permit application requirements in section 70.5, a State may also exempt IEUs from certain permit content requirements in section 70.6.

The commenters' reliance on EPA's inherent power to exempt emission units with *de minimis* emissions from certain permit content requirements is also misplaced. EPA did indeed rely on *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1980), to exempt IEUs from certain permit application requirements in section 70.5. *See* 57 FR 32250, 32273 (July 21, 1992). Whether EPA could have relied on this same authority to exempt IEUs from certain permit content requirements in section 70.6, however, is irrelevant at this point. As stated above, nothing in the language of the part 70 regulations themselves or in the preamble to the proposed or final part 70 regulations supports the commenters' argument that the limited exemption in certain permit application requirements in section 70.5 also extends to the permit content requirements of section 70.6. The commenters' concern appears to be with the part 70 regulations themselves, that is, the failure of the part 70 regulations to exempt IEUs subject to applicable requirements from certain permit content requirements of section 70.6. The time for raising such an issue has long since past.

Unable to point to any language in the part 70 regulations supporting their interpretation, the commenters rely on ''logic.'' The commenters first argue that ''it is entirely illogical for EPA to specifically exempt these IEUs from the application and then attempt to regulate these same IEUs in the final permit.'' The commenters go on to state that EPA's decision undermines the broad purpose of part 70's IEU program exemption. The commenters appear to misunderstand the purpose and scope of the part 70 program for insignificant emissions units and activities. In promulgating section 70.5(c), EPA crafted a limited exemption regarding the *information* required in part 70 permit applications. Notwithstanding this general exemption from certain permit application requirements, section 70.5(c) requires that an application ''may not omit information needed to determine the applicability of, or to impose, any applicable requirement.'' This means that when information is needed in an application to determine whether substantive requirements apply to an IEU, even this limited exemption to the permit application requirements provided in section 70.5 falls away.

In a similar vein is the comment that not allowing IEU's to be exempted from permit content requirements ''essentially obliterates the exemption.'' EPA disagrees. An emission unit that is not exempted from the application must be addressed in accordance with section 70.5(c)(3), which among other things requires a physical description of the emissions points, information about the emissions, raw materials and production rate, and any air pollution control equipment. EPA therefore sees no basis for the argument that extension of the IEU exemption to the permit content requirements of section 70.6 is necessary in order to give meaning to the IEU exemption.

The commenters also argue that ''If insignificant emission units are not entirely exempted from the monitoring, recordkeeping, reporting and certification requirements of a permit, both sources and permitting agencies will be forced to expend substantial

[2] This includes the requirement 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).

resources without compensating environmental benefit.'' As an initial matter, EPA again points out that this concern challenges the part 70 regulations themselves and should have been raised following final promulgation of the part 70 regulations. Such concerns are untimely when raised in the context of EPA's action on Washington's title V program. In any event, EPA disagrees that applying the testing monitoring, recordkeeping, reporting, and compliance certification requirements of section 70.6 to IEUs with applicable requirements will be unduly burdensome or result in no compensating environmental benefit.

The commenters imply that requiring the provisions of section 70.6 to be met with respect to IEUs subject to applicable requirements will result in unnecessary paperwork. As EPA discussed in its September 1995 proposal on this action, part 70 allows States flexibility in tailoring the amount and 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* 60 FR 50170; *See also 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). The requirement to include in a permit testing, monitoring, recordkeeping, reporting, and compliance certification *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 emission units that do not require extensive testing or monitoring in order to assure compliance with the applicable requirements as it does with respect to emission units that do require extensive testing or monitoring because of their potential to violate emission limitations or other requirements under normal operating conditions. As provided for in 40 CFR 70.6(a)(3)(B), recordkeeping may be used to provide reliable data that are representative of the source's compliance with the permit. For example, records showing the use of natural gas as the fuel for combustion sources would, in most cases, provide reliable data for a certification of compliance with sulfur dioxide emission limits.

The burden of ensuring that a permit meets the requirements of section 70.6 can also be significantly minimized by using standard permit terms to address testing, monitoring, recordkeeping, reporting, compliance and compliance certification requirements for common generally applicable requirements that apply to IEUs. Permits could, for example, contain a chart summarizing the monitoring, recordkeeping, and reporting requirements that would form the basis for compliance certifications for the generally applicable requirements for IEUs.

In the September 1995 proposal on this action, EPA pointed to the Oregon operating permits program as an example of a program that had effectively implemented the requirements of section 70.6 for IEUs. The Oregon program received interim approval effective January 3, 1995, (59 FR 61820 (December 2, 1994)),[3] one month after Washington's program first received final interim approval. Since that time, Oregon permitting authorities have received complete title V permit applications from over 86 sources, have issued 12 final title V permits and have submitted to EPA an additional 5 proposed title V permits. As discussed in the September 1995 proposal on this action, Oregon has used standard permit terms in its title V permits to address generally applicable requirements for IEUs as well as the associated testing, monitoring, recordkeeping, reporting, compliance, and compliance certification requirements for such IEUs. *See* 60 FR 50170–50171. Based on EPA's review of public comments on the 5 proposed and 12 final permits issued to date, Oregon sources have not objected to the permit terms relating to IEUs.

EPA is committed to issuing additional guidance to aid State and local permitting authorities in drafting permits which comply with the permit content requirements of section 70.6. EPA intends to issue such guidance with respect to IEUs with applicable requirements within the next several months. This guidance will address such things as streamlining the permit by using general conditions which apply to categories of IEUs; appropriate monitoring, recordkeeping and reporting requirements for IEUs; and the appropriate level of information (i.e., reasonable inquiry) upon which compliance certifications would be based.

One commenter on the Washington title V program has stated, without any substantiation, that ''a comparison of title V applications for similar sources in the two states reveals that Oregon applications were several times larger than those prepared in Washington, with the difference attributable to emissions units making up one or two percent of the source's total emissions.'' Although EPA has to date received only 16 permit applications from title V sources in Washington, a comparison of five Washington title V applications to Oregon title V applications for sources with the same SIC codes does not substantiate the commenter's claim. Although the Oregon permit applications that EPA reviewed were generally one-and-one-half times larger than their Washington counterparts, two of the five Washington applications contained more pages addressing IEUs and facility-wide applicable requirements than did their Oregon counterparts and one had the same number of pages. More importantly, none of these 10 permit applications for Washington and Oregon contained any significant number of pages addressing IEUs. The IEU-related portions of the Oregon applications ranged from 5 to 25 pages and the IEU-related portions of the Washington applications ranged from 3 to 19 pages. As indicated by the sample Oregon permit which was included in the docket for the proposal on this action, and the accompanying application for the permit which EPA has added to the docket, only 8 of the 165 pages of the permit application are devoted to IEUs, which includes three pages of checklists for categorically exempt IEUs, one page of brief descriptions/equations addressing aggregate insignificant IEUs, two pages listing facility-wide applicable requirements, and two pages listing compliance methods for the facility-wide applicable requirements. Note as well that not even two of the 27 pages of the Oregon permit for this source are devoted to IEUs. Any difference in the size of Oregon and Washington title V permit applications appears to be attributable to the difference in the forms required to be submitted for emission units other than IEUs and other differences in the Oregon and Washington air programs, such as the unique plant site emissions limit (PSEL) provisions of Oregon's rules. In short, Oregon permitting authorities and sources do not appear to be awash in the avalanche of paperwork for IEUs predicted by the commenters.

EPA also vigorously disagrees that requiring permits to address the testing, monitoring, reporting, recordkeeping, compliance, and compliance certification requirements of section 70.6 for IEUs will have little or no environmental benefit. For example, the Washington IEU program lists ''vents

[3] Oregon's IEU provisions received full approval when EPA granted the Oregon title V program final interim approval, *see* 59 FR 61820 (December 2, 1994), and the entire Oregon title V program has now received final full approval. *See* 60 FR 50106 (September 28, 1995).

from rooms, buildings and enclosures that contain permitted emissions units or activities from which local ventilation, controls and separate exhaust are provided'' as ''categorically exempt'' IEUs if they are subject to no applicable requirements other than the generally applicable requirements of the Washington SIP. WAC 173–401–532(9) and 173–401–530(2)(a). EPA has received a title V application from one Washington facility which lists ''furnace building roof monitor and other vents, doorways'' as collectively emitting 922 tons of particulate per year. The application also indicates that these emission points are subject only to the generally applicable opacity limit (WAC 173–400–040(1)), grain loading standard (WAC 173–400–060), and sulfur dioxide standard (WAC 173–400–040(6)) in the Washington SIP. Based on the description provided in the application, EPA believes that these emission units would qualify as IEUs under WAC 173–401–532(9) and 173–401–530(2)(a). The application indicates that these emissions units are not in compliance with the State's opacity limit. Washington's current regulations would require that the title V permit for this source contain the generally applicable requirements that apply to these IEUs, but would exempt them from any other requirements of section 70.6, including the requirement to submit an annual compliance certification. The environmental benefit of requiring the title V permit for such a source to include an appropriate level of testing, monitoring, recordkeeping, and reporting, and to require annual certification of the compliance status of these IEUs, should be obvious. Requiring IEUs to be addressed in the permit puts the burden on sources to ensure that they are in compliance with the applicable requirements, rather than on permitting authorities to document that such sources are out of compliance. This shift in responsibility for ensuring compliance is one of the major objectives of the title V program.

The commenters final comment on the permit content issue is that, in finding that Washington's IEU regulations fail to meet the permit content requirements of section 70.6, EPA is holding the Washington program to a different standard than the agency has applied to other States. The commenters can point to no instance, however, in which EPA has given approval to an IEU program which expressly exempts IEUs from some or all permit content requirements, as does the Washington program. Instead, the commenters' argument appears to be that EPA has approved State programs that exempt or require only the summary listing of IEUs in permit applications and that, ''Because the [IEU] units are not listed in the permit application there is a clear inference to sources, and the tacit understanding by the permitting agencies that IEUs are not included in the operating permit.'' This is not the case.

EPA has approved State title V programs that exempt or allow sources to omit IEUs from or merely list IEUs in the permit application, but only if the States have shown to EPA's satisfaction that their programs meet the two minimum requirements of section 70.5(c) for the treatment of IEUs in permit applications. First, insignificant activities which are exempt because of size or production rate must be listed in the permit application. Second, the permit application may not omit information needed to determine the applicability of, or to impose, any applicable requirement or any required fee.[4] EPA also required the State of Washington to satisfy these requirements as a condition of full approval of its IEU provisions and, as discussed below, EPA now finds that Washington has satisfied these requirements for permit applications.

But, contrary to the commenters' assertion, EPA has also required, as a condition for full approval of a State's IEU program, that the State ensure that permits issued for such sources comply with the requirements of section 70.6 with respect to all IEUs subject to applicable requirements. EPA disagrees with the inference drawn by the commenters, namely, that other State programs might be interpreted to exempt IEU's from permit content requirements because the State programs have provided sources relief from certain permit application requirements. Such an inference is not reasonable or appropriate given the fact that there is no language in the State program regulations cited by the commenters which contain or suggest an exemption from the permit content requirements and given the fact that the federal regulation under which the State programs have been approved does not allow for this result. Indeed, for obvious reasons, EPA's approval of these programs has been based on the assumption that State program regulations will be interpreted in the same way that EPA has interpreted part 70. That is, where the State program does not specifically exempt IEU's from permit content requirements, EPA has assumed that no such exemption will be inferred. Where EPA has been concerned that a State program could be interpreted to provide an exemption from permit content requirements for IEUs subject to applicable requirements, EPA has clarified its expectation in the Federal Register notice acting on such programs that the permitting authorities must ensure that all permits issued ''assure compliance with all applicable requirements at the time of permit issuance.'' *See* 60 FR 32603, 32608 (June 23, 1995); 60 FR 44799, 44801 (August 29, 1995). If, during implementation of such programs, permits are issued which do not comply with the requirements of section 70.6 with respect to IEUs subject to applicable requirements, EPA would consider this grounds for objecting to individual permits, 40 CFR 70.8(c)(1), as well as grounds for withdrawing approval of such State programs, 40 CFR 70.10(c)(1)(ii)(B).

In summary, the commenters can point to no instance in which EPA has approved a State program which expressly exempts IEUs with applicable requirements from the permit content requirements of section 70.6. Moreover, the commenters can point to no action on the part of EPA which has expressly or implicitly condoned a tacit exemption from the permit content requirements for such IEUs. EPA's decision to grant interim rather than full approval to the Washington IEU regulations for failing to comply with the requirements of section 70.6 is fully consistent with EPA's actions on other State IEU programs.

2. Permit Application Requirements

The commenters also objected to EPA's proposed finding that the Washington regulations fail to meet the requirements of section 70.5 for permit applications with respect to IEUs. The basis of EPA's position was that WAC 173–401–200(16) appears to specifically exempt activities and units deemed insignificant under WAC 173–401–530 from all of Washington's permit program requirements, except as provided in WAC 173–401–530. WAC 173–401–530, however, does not include all of the requirements of section 70.5 which a State must meet with respect to IEUs, most importantly, the requirement of section 70.5(c) that a permit application may not omit information needed to determine the applicability or to impose any

[4] The Wisconsin program does not specifically contain this requirement. As EPA clarified in its technical support document supporting EPA's approval of the Wisconsin program, however, because the State very narrowly defined IEUs and required that all IEUs be listed in the application, the Wisconsin program met the requirements of section 70.5(c).

applicable requirement or to evaluate any required fee (the ''applicable requirements gatekeeper'').[5] WAC 173–401–530 also does not incorporate the requirement that all applications be certified as to truth, accuracy and completeness, which is contained in WAC 173–401–500(7)(c) and 173–401–520. Another problem noted by EPA was the fact that WAC 173–401–500(7) could be interpreted as allowing a permit application to be deemed complete even if the source had not provided the information in the permit application required by Washington's regulations for IEUs.

The commenters, including the State of Washington, responded that EPA was taking an overly broad interpretation of the exclusion contained in WAC 173–401–200(16), thereby giving other provisions of Washington's IEU regulations no effect. Upon further review and based on the State's interpretation of its regulations, EPA finds that the Washington IEU provisions meet the requirements of section 70.5(c).

The definition of IEU at WAC 173–401–200(16) does appear to exclude IEUs from all requirements except those contained in WAC 173–401–530. Certain other requirements of Washington's regulations for title V permit applications, however, specifically refer to IEUs. Importantly, WAC 173–401–510, which sets forth the permit application requirements for all sources in Washington, specifically refers to IEUs by stating:

> Information as described below for each emissions unit at a chapter 401 source other than insignificant emissions units shall be included in the application. However, an application may not omit information need to determine the applicability of, or to impose, any applicable requirement or to evaluate the fee amount required under the permitting authority's schedule.

WAC 173–401–510(1). The State has argued that this provision would be nullified if WAC 173–401–200(16) was interpreted to exempt IEUs from those provisions outside of WAC 173–401–530 that specifically refer to IEUs, such as 173–401–510(1). The State has assured EPA that this was not its intent. Instead, the State has stated that the ''applicable requirements gatekeeper'' of WAC 173–401–510(1) was specifically included to limit the statements in WAC 173–401–200(16) and 173–401–510(1) that IEUs are not subject to the permit program requirements, including the application requirements, except as provided by WAC 173–401–530.

In response to the EPA's concern with respect to the requirement to certify the truth, accuracy and completeness of the permit application, the commenters state that ''Statements in a Washington operating permit application, including those regarding IEUs made in accordance with WAC 173–401–530, are plainly subject to the certification requirements of WAC 173–401–500(7)(c).'' The State further argues that the State's standard permit application form requires certification of all information in the application and that if a source attempted to limit its certification with respect to IEUs, the State would view the application incomplete.

In response to EPA's concern that the criteria for determining completeness in WAC 173–401–500(7) could be interpreted to allow an application to be deemed complete even if it omits all required information on IEUs, the commenters again point out that the specific provisions in WAC 173–401–510(1) and –500(4) require an application to include necessary information regarding IEUs to be complete and that interpreting WAC 173–401–200(16) to vitiate those provisions would render the specific references to IEUs in WAC 173–401–500 and 173–401–510 meaningless.

Although EPA believes the interrelationship among the various provisions in Washington's regulations for IEUs is far from clear, EPA is willing to grant deference to the State's interpretation of its own rules. Accordingly, EPA now finds that Washington's program fully meets the requirements of 40 CFR 70.5 regarding permit applications. Because the State will need to revise its title V rules to get full title V approval, EPA strongly encourages the State to revise its IEU provisions to clarify the relationship among WAC 173–401–200(16), 173–401–500, 173–401–510, 173–401–520 and 173–401–530. EPA will also pay close attention during program implementation to permit applications and proposed permits to ensure that the Washington rules are implemented consistently with the State's assertions.

3. Applicability Determinations

A final concern raised by EPA was that State law could be interpreted so as to exclude emissions from IEUs in the calculation of a source's potential to emit for purposes of determining whether the source was a major source and thereby subject to Washington's title V program in the first instance. Again, EPA's concern hinged on the extent of the exemption in WAC 173–401–200(16). The commenters responded by pointing out that the definition of ''insignificant activity'' or ''insignificant emission unit'' requires the unit or activity to be ''located at a chapter 401 source'' before it can qualify as insignificant and thus be exempted from certain permit program requirements. The commenters argue that this requires that a source first be determined to be a major source before any emission unit can be deemed insignificant, thus requiring all emissions, including emissions from IEUs, to be considered when determining if a source is a major source.

Again, EPA is willing to grant deference to the State's interpretation of its own rules and finds that this provision complies with the requirements of 40 CFR Part 70. EPA will also pay close attention to applicability determinations during program implementation to ensure that the Washington rules are implemented consistently with the State's assertions.

B. Interim Approval Action

EPA is promulgating interim approval of Washington's regulations addressing IEUs. Ecology must make the following revisions to its IEU provisions as a condition of full approval:

> (5) Revise WAC 173–401–200(16) (Definition of ''insignificant activity'' and ''insignificant emissions unit''); 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 based on size or production rate) to ensure 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 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 action 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

[5] Although, in the September 1995 proposal on this action, EPA did not specifically discuss the applicable requirements gatekeeper as one of the examples where the Washington program fails to satisfy the requirements of part 70 with respect to permit applications, the opening sentence of the discussion in the proposal on permit applications clearly expressed EPA's concern that the exemption in WAC 173–401–200(16) appeared to extend to the gatekeeper itself, which is contained in WAC 173–401–510(1). *See* 60 FR 50169.

deficiencies in their respective programs identified in the November 9, 1994, notice. *See* 59 FR 55818–55819.

EPA is also approving 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 correcting the dates in 40 CFR Part 70, Appendix A for expiration of the interim approval of the Washington State and local operating permits programs from November 9, 1996, to December 9, 1996, and is correcting the date by which the State is required to submit a corrective program from May 9, 1996, to June 9, 1996.

C. Effective Date of Interim Approval

This action does 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 or 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 permit's program for that State upon expiration of interim approval.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for this action 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 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

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.

Authority: 42 U.S.C. sections 7401–7671q.

Final Interim Approval of the part 70 operating permits program for the Washington Department of Ecology, the Washington Energy Facility Site Evaluation Council, the Benton County Clean Air Authority, the Northwest Air Pollution Authority, the Olympic Air Pollution Control Authority, the Puget Sound Air Pollution Control Agency, the Spokane County Air Pollution Control Authority, the Southwest Air Pollution Control Authority, and the Yakima County Clean Air Authority.

Dated: November 15, 1995.

Chuck Clarke,

Regional Administrator.

PART 70—[AMENDED]

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

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

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

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

Appendix A—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. 95–29994 Filed 12–7–95; 8:45 am]

BILLING CODE 6560–50–P