

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted on October 4, 1995 and October 12, 1995, by the Commonwealth of Virginia and the State of Maryland and the District of Columbia, respectively, for the purpose of approving a maintenance plan and a request to redesignate the Metropolitan Washington area; including the Counties of Alexandria and Arlington, Virginia; Prince Georges and Montgomery Counties in Maryland, and the District of Columbia (the "Washington Carbon Monoxide (CO) nonattainment area") from nonattainment to attainment for CO. In the Final Rules section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP 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 If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule.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 action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by February 29, 1996.

**ADDRESSES:** Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Avenue, SE., Washington, DC 20020; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

**FOR FURTHER INFORMATION CONTACT:** Kelly A. Sheckler, (215) 597-6863.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action, titled, Approval and Promulgation of Implementation Plans;

Designation of Areas for Air Quality Planning Purposes; Redesignation of the Washington Metropolitan Carbon Monoxide Area to Attainment and Approval of the Area's Maintenance Plan and Emission Inventory; Commonwealth of Virginia, States of Maryland and the District of Columbia, which is located in the Rules and Regulations Section of this Federal Register.

Authority: 42 U.S.C. 7401-7671q.

Dated: October 23, 1995.

Stanley Laskowski,

*Acting Regional Administrator, Region III.*

[FR Doc. 96-1591 Filed 1-29-96; 8:45 am]

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#### 40 CFR Part 70

[NJ001; FRL-5403-8]

#### Clean Air Act Proposed Interim Approval of Operating Permit Program; New Jersey

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed interim approval.

**SUMMARY:** EPA proposes source category-limited interim approval of the operating permit program submitted by the State of New Jersey for the purpose of complying with federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

**DATES:** Comments on this proposed action must be received in writing by February 29, 1996.

**ADDRESSES:** Written comments on this action should be addressed to Steven C. Riva, Chief, Permitting/Toxics Supports Section, Air Compliance Branch, at the EPA Region 2 office listed below. Copies of New Jersey's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 2, 290 Broadway, 21st Floor, New York, NY 10007-1866.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suilin Chan, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 21st Floor, New York, NY 10007-1866, (212) 637-4019.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Purpose

##### A. Introduction

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

The Act requires states to develop and submit these programs to EPA by November 15, 1993, and EPA to approve or disapprove such program within one year after receiving the complete submittal. If the State's submission is materially 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 receipt of the additional materials. EPA reviews state operating permit programs pursuant to section 502 of the Act and 40 CFR Part 70, which together outline the criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to two years. Additionally, where a state can demonstrate to the satisfaction of EPA that reasons exist to justify granting a source category-limited interim approval, EPA may so exercise its authority. A program with a source category-limited interim approval is one that substantially meets the requirements of Part 70 and that applies to at least 60% of all affected sources which account for 80% of the total emissions within the state. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a federal operating permit program for that state.

EPA received New Jersey's title V operating permit program submittal initially on November 19, 1993. However, EPA found that submittal to be incomplete. In a February 4, 1994 letter to the New Jersey Department of Environmental Protection (NJDEP), EPA informed New Jersey of the incompleteness determination and listed the deficiencies that must be corrected. EPA received New Jersey's

August 10th, 1995, revised program submittal on August 21, 1995 which EPA determined to be complete on September 5, 1995.

### B. Federal Oversight and Sanctions

Following the granting of final interim approval, if New Jersey failed to submit a complete corrected program for full approval by the date six months before expiration of the interim approval or if EPA disapproved New Jersey's corrected program submittal, EPA would start an 18-month clock for mandatory sanctions in either situation. If and when the 18 months expire and New Jersey fails to submit a complete corrected program to address the deficiencies identified in the interim approval or identified in the disapproval, whichever the case may be, EPA would be required to apply one of the sanctions in section 179(b) of the Act. In either case, the sanction would remain in effect until EPA determines that New Jersey had corrected the deficiencies that triggered the mandatory sanctions clock. If six months after application of the first sanction, New Jersey still had not submitted the requisite complete program, a second sanction would be applied. Moreover, if the Administrator found a lack of good faith on the Part of New Jersey, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determines that New Jersey had come into compliance.

In addition, discretionary sanctions may be applied where warranted any time after an interim approval expires and a state has failed to submit a timely and complete corrected program or EPA has disapproved a corrected program. Moreover, if a state does not have in place an approved full program by the expiration date of its interim approval or an approved program by the time the federal operating permit program, to be codified at 40 CFR Part 71, is promulgated, EPA is mandated to administer and enforce the federal program for that state.

### II. Proposed Action and Implications

EPA has concluded that the operating permit program submitted by New Jersey substantially meets the requirements of title V and Part 70. Based upon EPA's review of New Jersey's request for source category-limited interim approval and the substantiation submitted thereto and of New Jersey's operating permit program in its entirety, EPA proposes to grant source category-limited interim approval to the New Jersey program. For detailed information on the analysis of the State's submission, please refer to

the Technical Support Document (TSD) contained in the docket at the address noted above.

### A. Analysis of State Submission

#### 1. Support Materials

Pursuant to section 502(d) of the Act, each state must develop and submit to the Administrator an operating permit program under state or local law or under an interstate compact meeting the requirements of title V of the Act. On November 19, 1993, EPA received the title V operating permit program submitted by the State of New Jersey and supplemental information submitted on August 10, 1995, and August 28, 1995. The New Jersey Department of Environmental Protection (NJDEP) requested, under the signature of the New Jersey Governor's designee, Commissioner Robert C. Shinn Jr. of the NJDEP, a source category-limited interim approval of New Jersey's operating permit program with full authority to administer the program in all areas of the State of New Jersey.

The following documents which were submitted by the State of New Jersey in support of its request for a source category-limited interim approval have been reviewed by EPA and have been found to substantially meet the Part 70 requirements.

1. Pursuant to 40 CFR § 70.4(b)(1), a complete program description is presented under Chapter 3 of Volume I providing detailed discussions on how the state intends to carry out its title V responsibilities.

2. Pursuant to 40 CFR § 70.4(b)(2), the regulations that comprise the permitting program is submitted under *Appendix A* of Volume II and copies of all applicable state or local statutes and regulations are included in *Appendix C* of Volume II.

3. Pursuant to 40 CFR § 70.4(b)(3), a legal opinion from the State Attorney General is presented in *Appendix B* of Volume II. New Jersey has demonstrated that the NJDEP has adequate authority to carry out all aspects of New Jersey's operating permit program.

4. Pursuant to 40 CFR § 70.4(b)(4), copies of the permit application forms and relevant guidance that will assist in the State's implementation of the operating permit program are presented in *Appendices F and G* of Volume II. No permit form has been submitted by New Jersey since each permit will be issued with conditions specific to the source's operation. The contents of an operating permit is listed in N.J.A.C. 7:27-22.16.

5. Pursuant to 40 CFR § 70.4(b)(5), a complete description of the State's compliance tracking and enforcement program is presented in Chapter 6 of

Volume I. This document describes how New Jersey will use its data management system (AIMS) to track and report enforcement activities. It also reaffirms New Jersey's commitment to continue to follow air enforcement strategies stipulated in previous enforcement agreements it has entered with the EPA.

6. Pursuant to 40 CFR § 70.4(b)(6) and § 70.4(b)(8), a description of the state permit procedures and a statement on adequate personnel and funding is presented in Chapter 4 of Volume I. This chapter describes how the permit application reviews will be coordinated with the other offices with NJDEP and what the duties of the agency personnel will be for implementing the program.

7. Pursuant to 40 CFR § 70.4(b)(7), a fee demonstration and a workload analysis are presented in *Appendices D and E* of Volume II. New Jersey adopted the presumptive minimum fee of \$25 per ton of pollutant per year (adjusted by the Consumer Price Index based on the 1989 value) and is presumed to have adequate funding for the development and implementation of its operating permit program.

8. Pursuant to 40 CFR § 70.4(b)(9), New Jersey committed to provide quarterly reports on enforcement activities via its data management system as discussed in Chapter 5 of Volume I.

9. Pursuant to 40 CFR § 70.4(b)(11), a transition plan is presented in Chapter 2 of Volume I describing the application submittal schedule and the permitting timeframe for the initial permits. Also discussed in this chapter is New Jersey's rationale for requesting source category-limited interim approval. New Jersey has demonstrated in this chapter that its operating permit program will meet the 60/80 percent tests which require that the interim program applies to at least 60% of the total number of Part 70-affected sources in New Jersey and that these sources account for at least 80% of the total emissions.

### 2. Regulations and Program Implementation

The State of New Jersey adopted regulations in Subchapter 22 of Chapter 27 of the New Jersey Administrative Code (N.J.A.C. 7:27-22) for the implementation of the requirements of 40 CFR Part 70. This rule, which was initially adopted on October 3, 1994, was re-proposed with changes and adopted in August 10, 1995. There is sufficient evidence such as responses to comments showing that the rule adoptions were procedurally correct as required by 40 CFR § 70.4(b)(2). The New Jersey operating permit rule which

contains the lists of exempt activities, insignificant operations, and two tables of excluded emissions are included in *Appendix A* of Volume II. The other applicable state statutes and regulations are included in *Appendix C* of Volume II. Based on EPA's review, none of the applicable state statutes or regulations restricts implementation of the New Jersey operating permit program. New Jersey's rule meets the main requirements of Part 70 as described below:

a. Applicability (40 CFR § 70.2 and § 70.3):

(1) New Jersey's rule requires facilities with the potential-to-emit of any pollutants at major source threshold levels to obtain operating permits. Facilities subject to requirements that are not listed in N.J.A.C. 7:27-22.2(a) will not be subject to the New Jersey operating permit program (i.e., non-major sources subject to § 111 or § 112 of the Act (NSPS or NESHAP)). New Jersey has elected to defer these non-major sources until EPA completes rulemaking with respect to future applicability. This is consistent with 40 CFR § 70.3(b)(1). However, 40 CFR § 70.3(b)(2) states that non-major sources subject to standards promulgated after July 21, 1992 are required to obtain an operating permit unless the standard itself contains specific language that would exempt them from Part 70 requirements. EPA interprets this Part 70 provision to mean that if the standard were promulgated without the exemption clause, a Part 70 exemption for non-major sources is assumed not to exist and all sources covered under that standard are required to obtain an operating permit. Although New Jersey's rule in N.J.A.C. 7:27-22.2(b) alludes to an EPA rulemaking as the triggering factor for title V applicability to non-major sources, it does provide NJDEP with the necessary regulatory authority to permit under Part 70 those non-major sources that are not exempt from post-1992 standards based on its reference to 40 CFR § 70.3(b)(2). Therefore, EPA does not find this to be a problem for granting interim approval. In addition, section 22.5(i) of New Jersey's rule provides the mechanism under which non-major sources would be required to submit an application. To ensure that national consistency is maintained in the implementation of 40 CFR § 70.3(b)(2), EPA will require New Jersey to submit a commitment in the corrected program asserting that New Jersey will require non-major sources subject to section 111 and 112 standards promulgated after July 21, 1992 to apply for an operating permit as required by the Administrator.

Applications from these sources should be submitted in accordance with the schedule specified in the standard and/or rulemaking. This commitment must be submitted in order to receive full program approval.

(2) New Jersey's rule excludes activities such as office equipment, water storage tanks, and other minimally emitting facilities from the operating permit application. The entire list of exempt activities is included in the definition section of the New Jersey rule (N.J.A.C. 7:27-22.1). Since these facilities either do not emit any air pollutants or are not part of a source's production process, EPA finds it appropriate to exclude them from the operating permit application. EPA believes exclusion of the listed activities from the application is highly unlikely to interfere with determining applicability of or imposing any applicable requirements. In addition, N.J.A.C. 7:27-22.6(f)(5) requires that permit applications contain all information needed to determine the applicability of or to impose any applicable requirement. Therefore, EPA proposes to approve the list of exempt activity as defined in N.J.A.C. 7:27-22.1 from New Jersey's operating permit program. This list may be expanded with prior EPA input and approval during the state rulemaking process for the rule revision consistent with 40 CFR § 70.4(i).

(3) Consistent with the Part 70 regulations, New Jersey's rule requires inclusion of fugitive emissions only if the source belongs to one of the 27 source categories listed in 40 CFR § 70.2.

(4) New Jersey's rule at N.J.A.C. 7:27-22.2 did not include the "support facility test" as an additional criterion for separating the R & D facility from the primary source operation. EPA does not find this to be an issue for program approval since New Jersey's R&D definition requires that the R&D facility not be "engaged in the manufacture of products for commercial sale, except in a de minimis manner". However, it is EPA's understanding of New Jersey's intention that if the R&D facility is not connected to the manufacturing process except in a de minimis capacity that the R&D facility would not be a support facility to the manufacturing process. Thus, if the R&D facility is contributing to the manufacturing process in a material, rather than de minimis capacity, it would be a support facility to the manufacturing process. Under the support facility test, co-located and commonly owned sources would be considered one source (and therefore their emissions aggregated) if the output

of one is more than 50 percent devoted to support the other.

(5) New Jersey's rule at N.J.A.C. 7:27-22.2(d) allows sources with equipment that can be operated in both R&D and manufacturing modes to segregate emissions attributable to the R&D operation from the source's potential to emit when determining whether the source is major. In many cases, the segregation could result in separating a facility into a minor facility and a R&D facility which would render the source as a whole not subject to Part 70. In order for the entire facility to be excluded from the Part 70 requirements, federally enforceable permit conditions must be obtained by the source. As in other synthetic minor situations, New Jersey plans to use its SIP-approved new source review preconstruction permit program to provide the federally enforceable permit limitations necessary to cap source emissions at below the title V major source threshold levels. New Jersey provided a supplement to the August 10, 1995 title V operating permit program which describes in detail how these sources will be capped out of the New Jersey operating permit program. Based upon EPA's review, the mechanism to be used by New Jersey to limit emissions from such "dual equipment" is federally and practicably enforceable and is sufficient to prevent Part 70 circumvention.

The "dual equipment" type sources are subject to federally enforceable NSR requirements if the source (and its associated process units) meets the criteria set out in the NSR regulations of New Jersey's rule (N.J.A.C. 7:27-8). Most of these types of sources become subject to New Jersey's NSR requirements because they process more than 50 pounds per hour of all materials combined with the exclusion of air and water. The permit issued to such sources is called a "Dual Permit" which consists of two sections, one specific to the R&D operation and the other to the manufacturing operation. The permit also contains common emission caps for each pollutant with recordkeeping requirements to monitor when the emission limits will be reached. When the emission limits are reached, the source is required to cease operation of all equipment or process covered under the permit or apply for a permit revision to raise the emission limits, at which time additional requirements such as installation of the state-of-the-art controls may be required. Although it has the legal authority to do so, NJDEP has not issued a dual permit that covers the entire facility. It is EPA's belief that in situations where the facility has the flexibility to change operation at will,

facility-wide emission caps or summation of individual permits at a source is essential to prevent circumvention of the Part 70 regulations.

b. Permit Application (40 CFR § 70.5):

(1) Consistent with EPA's policy as discussed in the July 10th, 1995 "White Paper for Streamlined Development of Part 70 Permit Applications", New Jersey's rule streamlines the application requirements for emitting activities that meet the definition of insignificant source operations. Such emitting activities or units are not required to be listed individually on the application; they may be listed by source type. On the application, an estimate of the total emissions from all of the insignificant source operations shall be listed for each criteria pollutant with the applicable requirements which generally apply to them. The list of insignificant source operations which EPA hereby approves is defined in N.J.A.C. 7:27-22.1. This list may be changed with prior EPA input and approval during the state rulemaking process for the rule revision consistent with 40 CFR § 70.4(i).

(2) New Jersey's rule also provides for some streamlining for significant source operations that have extremely small emissions. For emitting activities or units that meet the definition of significant source operations and have emission rates that are less than those listed in Tables A and B of *Appendix I* of New Jersey's operating permit rule, their emissions are only required to be listed as "de minimis". The emissions levels listed under these tables are so small that EPA does not have any objections to requiring a listing of these emission units without their specific emission rates.

c. Permit Content (40 CFR § 70.6):

(1) Part 70 requires prompt reporting of deviations from the permit requirements. 40 CFR § 70.6(a)(3)(iii)(B) requires the permitting authority to define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations. The State of New Jersey has defined "prompt" in its regulations at N.J.A.C. 7:27-22.19 in the manner discussed below. Immediate reporting on the NJDEP hotline is required if the air contaminants are released in a quantity or concentration which poses a potential threat to public health, welfare or the environment. Where the air contaminants are released in a quantity

or concentration which poses no potential threat to public health, welfare, or the environment but the permittee intends to assert an affirmative defense for the deviation, the instance must be reported within 2 days. Deviations that were discovered during source emissions testing must be reported in 30 days as part of the testing report. Other reporting obligations required by the permit including deviations recorded by the emissions monitors are to be submitted semi-annually. EPA finds New Jersey's definition of "prompt" reporting of deviations as delineated above to be inadequate. In order for EPA to consider this definition adequate for protecting public health and safety, New Jersey must add a provision requiring reporting of deviations within 10 days where the air contaminants are released in a quantity or concentration that pose no potential threat to public health, welfare, or the environment and the permittee does not intend to assert affirmative defense for the deviation.

(2) Alternative operating scenarios may be made part of the initial permit or added via a significant modification, a minor modification or a 7-day notice change. Sources that are allowed to operate under different scenarios are required to operate within the range or limit specified for each operating parameter in the approved operating scenario. The New Jersey rule (N.J.A.C. 7:27-22.27(a)(2)) allows the addition of new alternative operating scenarios to an existing operating permit via a 7-day notice change provided the emission limit for the source operation included in the scenario does not exceed the maximum allowable emission limits in the existing permit. Another provision in N.J.A.C. 7:27-22.22(b)(5) disallows Title I modifications from being incorporated into the existing permit via the 7-day notice procedure. These two provisions in effect assure that a new NSR permit could not be added to the existing permit through the 7-day notice procedure by calling it an alternative operating scenario bypassing the minor or significant permit modification procedures. In addition, N.J.A.C. 7:27-22.26(b) rules out the possibility that a source might try to incorporate a MACT standard into the existing permit via a 7-day notice change by calling it an alternative operating scenario. Based on EPA's review of the New Jersey rule, the alternative operating scenario provisions are consistent with 40 CFR § 70.6(a)(9).

(3) New Jersey's Act permits an affirmative defense for start-ups, shut-downs, equipment maintenance and malfunctions. New Jersey's legislation

(N.J.S.A. 26:2C-19.1 and 19.2) allows such a defense and sections 22.3(nn) and 22.16(l) of the rule discuss when it can be used. The Part 70 regulations allows an affirmative defense in emergency situations only and do not extend this defense to start-ups, shut-downs, equipment maintenance or malfunctions per se. Because start-up, shut-down, and malfunction events will not always qualify as an "emergency," as defined in part 70, NJ's rule and legislation are inconsistent with 40 CFR § 70.6(g). EPA finds this to be an impediment to full program approval. In addition, both NJ's legislation and rule are also inconsistent with 40 CFR § 70.6(g) because they do not limit the application of the affirmative defense to technology-based emission limits. 40 CFR § 70.6(g) provides that the emergency affirmative defense is only applicable to technology-based emission limits and not health-based emission limits. Therefore, EPA has determined that the NJ legislation as stated in N.J.S.A. 26:2C-19.1 and 19.2 and/or the NJ rule provisions on affirmative defenses as stated in N.J.A.C. 7:27-22.3(nn) and 22.16(l) must be revised to clarify its law to conform with 40 CFR § 70.6(g).

d. Public Participation (40 CFR § 70.7): Consistent with the Part 70 regulations, the public will be provided with notice of, and an opportunity to comment on, draft permits related to initial permit issuance, permit renewals, and significant modifications (N.J.A.C. 7:27-22.11).

e. Permit Modification (40 CFR 70.7):

(1) New Jersey's rule provides the following mechanism for modifying an operating permit: administrative amendments, changes to insignificant source operations (these are similar to Part 70's off-permit changes), 7-day notice changes, minor modifications, and significant modifications. Each of these procedures requires a different level of review/processing time to complete. Public review is required for significant modifications but is discretionary for minor modifications. No public review is afforded within the other types of permit modification procedures. The criteria for determining the proper procedure for a modification are addressed in the specific sections of the New Jersey rule for each type of modification (N.J.A.C. 7:27-22.20, 22.21, 22.22, 22.23, and 22.24). These procedures are consistent with the requirements of 40 CFR 70.7 and the provisions of 40 CFR 70.4(b)(12) and 40 CFR 70.4(b)(14).

(2) Under New Jersey's administrative amendment procedure (N.J.A.C. 7:27-22.20(b)(7)), provisions of a

preconstruction permit may be incorporated into the operating permit if the preconstruction permit was issued through public participation requirements substantially equivalent to those for operating permits as stipulated in N.J.A.C. 7:27-22.11 (public comment) and 22.12 (EPA comment). As written, New Jersey's rule is inconsistent with 40 CFR § 70.7(d)(1)(v). Instead of requiring the preconstruction permit to have gone through procedures of N.J.A.C. 7:27-22.11 and 22.12, it only requires the permit to have undergone procedures that are "substantially equivalent." This might allow New Jersey to decide what "substantially equivalent" means on a case by case basis. This discretion is not contemplated by 40 CFR § 70.7(d)(1)(v). In fact, it expressly contravenes the language of that section, which says that the preconstruction review "program" can be substantially equivalent. In other words, incorporation by administrative amendment can occur even if the procedures of the NSR program do not match part 70 exactly, if they are nevertheless approved by EPA as being substantially equivalent. Therefore, in order to receive full program approval, New Jersey must either:

i. Specify in § 7:27-22.20(b)(7) the procedures under which preconstruction permits must have been issued (§§ 70.7 and .8) and permit content (§ 70.6) requirements the permit must meet in order to be eligible for incorporation by administrative amendment, or

ii. Codify those procedural and permit content requirements into the preconstruction review regulations and obtain EPA's approval of those regulations.

(3) One characteristic of New Jersey's minor and significant modification procedures, which is not prohibited or required by the Part 70 regulations, is the integration of the preconstruction permit review process with the operating permit review. For significant modifications, draft permits covering respectively, the preconstruction and operating permit requirements will be issued for public review at the same time. At the conclusion of the public comment period, the final preconstruction approval will be issued to the applicant and the proposed operating permit will be submitted to EPA for a 45-day review. For minor modifications, public review is not required but the EPA and affected states will have 45 days to object to the proposed minor modification. If no objection is received, New Jersey will issue the preconstruction approval and the revised portion of the operating permit in final.

f. EPA oversight (40 CFR § 70.8): Each permit, renewal, and minor or significant modification is subject to EPA review/veto prior to issuance. New Jersey's rule states that if NJDEP fails to revise a permit based on an EPA objection or if EPA objects (in response to a public petition) to the proposed permit after final permit issuance, EPA would take action to issue the revised permit or re-issue the permits under federal operating permit regulations to be promulgated at 40 CFR Part 71. In these situations, before EPA takes any action pursuant to the Part 71 regulations, NJDEP must take action to withdraw approval of the operating permit upon receipt of EPA's veto. EPA will then revise and re-issue such permits in accordance with 40 CFR Part 71.

g. Enforcement authority (40 CFR § 70.11): New Jersey's Air Pollution Control Act provides NJDEP with adequate enforcement authority and penalties for civil and criminal violations of permits and rules. Penalties may be assessed in the maximum amount of \$10,000 per day per violation. This also covers violations associated with the applicant's failure to pay the required fees.

h. Initial application submittal and issuance (40 CFR § 70.4(b)(11) (i) and (ii): While 40 CFR 70 requires all applications to be submitted within the first 12 months after state program approval, New Jersey has divided its subject sources into seven groups in an effort to maintain a smooth phase-in at the beginning of a new program. With an interim program approval, New Jersey is required to receive, during the first year, applications from 60% of the sources subject to the interim program. Permits for these sources will be issued one-third (of the 60%) each year during the first three years of program approval. The remaining 40% of the subject sources will submit applications during the first year of full program approval. The permits for these source will be issued one-third (of the 40%) each year during the initial three years after full approval. Based on Table 2-3 of page 2-8 of Chapter 2, New Jersey would have received four "waves" of applications from subject sources by November 15, 1996. This would cover 57.2 percent of all sources as opposed to 60%. To ensure that the 60% is met, New Jersey encouraged early submission of applications in February 1995 (6 months prior to program submittal). Also, since New Jersey's interim approval will not take place until at least February 1996, two months into the fifth waves of application submittal, it is certain that New Jersey

would have received 60% of all applications by February 1997. As such, EPA does not consider this to be an issue for program approval.

### 3. Permit Fee Demonstration

New Jersey's title V fee program consists of four types of fees which includes an emissions based fee, an initial application fee, permit modification fee, and a surcharge for rebuilding the infrastructure of its Air Programs. New Jersey has adopted the presumptive minimum of \$25 per ton per year (to be adjusted by the consumer price index annually) as its emissions based fee.

It should be noted, however that the actual appropriation for the New Jersey program has been limited by the fee legislation to \$9.51 million dollars per year from the collected fees. EPA acknowledges that the program costs and fee revenue figures submitted in New Jersey's fee demonstration are only projections based on New Jersey's current experience with similar permitting programs. A more accurate assessment of the actual program costs will not be possible until the state has had the opportunity to implement the program. Therefore, EPA is requiring New Jersey to re-submit a more refined fee demonstration that assures sufficient funding for the operating permit program prior to EPA granting full approval. Should the revised fee demonstration show that the \$9.51 million dollar funding level is insufficient, New Jersey must correct the deficiency prior to submitting the corrected program. New Jersey is aware of the need to revisit the fee demonstration and has committed to re-evaluate the fee program during the interim approval period and take all necessary steps to ensure sufficient funding for the operating permit program.

With respect to New Jersey's intention to use fees collected in excess of \$9.51 million in reengineering NJDEP's Air Program, EPA does not find that to be a problem for interim approval for two reasons. First of all, based on the restricted use of the "Air Surcharge Reengineering Fund" as stipulated in New Jersey's legislation, the "excess title V fees are not used for activities that are totally unrelated to title V. EPA has thoroughly reviewed the activities listed in the legislation that are earmarked for the "Air Surcharge Reengineering Fund" and found them to be related to the development and maintenance of the infrastructure for implementing New Jersey's operating permit program. The costs associated with those activities are indirect costs to

the title V program. Therefore, EPA finds it acceptable for New Jersey to use "excess" title V fees to fund those activities. In addition, this is consistent with guidance issued by EPA on August 4, 1993 and July 21, 1994, which stated that "Title V does not limit a jurisdiction's discretion to collect fees pursuant to independent state authority beyond the minimum amount required by Title V". These guidance documents clearly allow a state to charge fees in excess of that which are needed to run the operating permit program.

EPA also notes that New Jersey requires fee payments from all title V affected sources including title IV Phase I units. There is one Phase I unit in the State of New Jersey. The Part 70 regulation (40 CFR § 70.9(b)(4)) states that "during the years 1995 through 1999 inclusive, no fee for purposes of title V shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act". This Part 70 provision, however, does not restrict the state from collecting title V fees from Phase I units based on emissions that occurred prior to January 1, 1995 or after December 31, 1999. It also does not restrict a state from collecting non-title V related emissions based fee or non-emission based title V related fees from these units. Therefore, in this notice, EPA is proposing to grant interim approval to New Jersey's fee program. New Jersey may assess fees from any title IV Phase I units provided these fees are not used for purposes of title V.

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

##### a. Authority for Section 112 Implementation

New Jersey has demonstrated in its program submittal adequate legal authority to implement and enforce all section 112 requirements through its title V operating permit program. The implementing rule which is found in N.J.A.C. 7:27-22 includes section 112 requirements in the definition of applicable federal requirements with which all subject sources must comply. New Jersey has sufficient legislative and regulatory authorities to issue permits that assure compliance with the following section 112 requirements:

i. Early reductions: N.J.A.C. 7:27-22.34 authorizes New Jersey to allow sources that achieved sufficient early reductions of hazardous air pollutants (HAP) emissions to delay compliance with the MACT or GACT standard for six years from the original compliance date if all of the conditions of the operating permit are met and the reductions are

maintained throughout the six-year period.

ii. Case-by-case MACT determinations: In the event that no applicable emissions limitations have been established by the Administrator, N.J.A.C. 7:27-22.26 allows New Jersey to make case-by-case MACT determinations as required under section 112 (g) and (j) of the Act.

iii. Implementation of section 112(r): N.J.A.C. 7:27-22.9 requires applicants submitting an initial operating permit application to include in its proposed compliance plan a statement certifying that the permittee will ensure the compliance of the facility with the accidental release provisions at 42 U.S.C. 7412(r). Annual certification of compliance with each applicable requirement that pertains to the facility is required under N.J.A.C. 7:27-22.19.

##### b. Implementation of Section 112(g) Upon Program Approval

Case-by-case MACT determinations: In the event that no applicable emissions limitations for the hazardous air pollutants have been established by the Administrator, NJDEP will make case-by case Maximum Achievable Control Technology (MACT) determinations as required under Sections 112(j) and (g) of the Act. The EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of 112(g) applicability. The notice postpones the effective date of 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The Section 112(g) interpretive notice explains that EPA is still considering whether the effective date of Section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final Section 112(g) rulemaking. NJDEP has provided broad language in its regulation that will allow the implementation of 112(g) immediately after EPA promulgates its rule. The permitting mechanism to be used by the state of New Jersey to implement these requirements during the period before EPA promulgates the final federal rule and after New Jersey's title V program becomes effective is the State's preconstruction process (as stated in N.J.A.C. 7:27-22.33). In the event that EPA's final rulemaking under § 112(g) requires changes in New Jersey's operating permit rule/program to assure compliance with federal requirements, New Jersey has

committed to making all necessary changes in a timely manner.

In this notice, EPA proposes to approve New Jersey's preconstruction review program found in N.J.S.A.26:2C-1 et. seq. under the authority of title V and Part 70 solely for the purpose of implementing section 112(g) of the Act. However, this approval does not have any effect on previous actions taken by EPA on the New Jersey preconstruction review program found in N.J.S.A.26:2C-1 et. seq. Also, this approval 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. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the State to adopt regulations consistent with the federal requirements.

##### c. Program for Delegation of Section 112 Standards as Promulgated

Section 112(l): Requirements for approval specified in 40 CFR § 70.4(b), encompass Section 112(l)(5) approval requirements for delegation of Section 112 standards as they apply to Part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, an expeditious compliance schedule, and adequate enforcement ability, which are also requirements under Part 70. In a letter dated November 15, 1995, from William O'Sullivan, Administrator of the Air Quality Permitting Program of the NJDEP requested delegation through 112(l) of all existing 112 standards for Part 70 sources and infrastructure programs. With respect to future section 112 standards, NJDEP intends to review every standard within 45 days of receiving notice from EPA and determine whether to accept the delegation of a standard on a case-by-case basis. In this letter, NJDEP demonstrated that it has sufficient legal authorities, adequate resources, capability for automatic delegation of future standards, and adequate enforcement ability for implementation of Section 112 of the Act for Part 70 sources. Therefore, the EPA is proposing to grant approval under Section 112(l)(5) and 40 CFR Part 63.91 to New Jersey for its program mechanism for receiving delegation of all existing and future 112(d) standards for Part 70 sources.

##### d. Commitment To Implement Title IV of the Act

As stated in N.J.A.C. 7:27-22.29, the state of New Jersey has already adopted

and incorporated by reference the provisions of 40 CFR Part 72, and any subsequent amendments thereto, for purposes of implementing an acid rain program that meets the requirements of title IV of the Act. It further stated that if provisions or requirements of 40 CFR Part 72 conflict with or are not included in New Jersey's rule that the Part 72 provision and requirements shall apply and take precedence.

#### B. Proposed Actions

EPA proposes source category-limited interim approval of the operating permit program initially submitted by the state of New Jersey on November 15, 1993, and revised on August 10, 1995. Under this approval, New Jersey may collect fees from any title IV Phase I facilities, provided that these are not used to meet the presumptive title V fee level for the interim program.

In accordance with 40 CFR § 70.4(b), this approval encompasses EPA's approval under section 112(l)(5) and 40 CFR § 63.91 to the state of New Jersey for its program mechanism for receiving delegation of all existing and future section 112(d) standards for all Part 70 sources. In order to receive full program approval, the State of New Jersey must submit a corrected program that addresses the following deficiencies six months before expiration of the interim approval:

##### 1. Deferral of Non-Major Sources

As a condition for full program approval, New Jersey must submit a commitment in the corrected program asserting that New Jersey will require non-major sources subject to § 111 or § 112 standards promulgated after July 21, 1992 to apply for an operating permit under New Jersey's full program unless EPA exempts such sources in future rulemaking or promulgation of future requirements. Applications from these sources should be submitted in accordance with the schedule found under N.J.A.C. 7:27-22.5(i).

##### 2. Definition of Prompt Reporting of Deviations

In order to receive full program approval, the reporting requirement in N.J.A.C. 7:27-22.19 must be revised to ensure adequate protection of public health and safety. New Jersey must add a provision requiring reporting of deviations within 10 days if the air contaminants are released in a quantity or concentration that poses no potential threat to public health, welfare, or the environment and the permittee does not intend to assert an affirmative defense for the deviation.

##### 3. Affirmative Defense

In order to receive full program approval, the New Jersey legislation as stated in N.J.S.A. 26:2C-19.1 and 19.2 and/or the New Jersey rule provisions on affirmative defenses as stated in N.J.A.C. 7:27-22.3(nn) and 22.16(l) must be revised to clarify its law to conform with 40 CFR § 70.6(g).

##### 4. Administrative Amendments

In order to receive full program approval, New Jersey must revise its operating permit rule to ensure that the administrative amendment procedure is properly used for incorporating preconstruction permits into the operating permit. Specifically, New Jersey must either:

i. Specify in § 7:27-22.20(b)(7) the procedures under which preconstruction permits must have been issued (§§ 70.7 and .8) and permit content (§ 70.6) requirements the permit must meet in order to be eligible for incorporation by administrative amendment, or

ii. Codify those procedural and permit content requirements into the preconstruction review regulations and obtain EPA's approval of those regulations. The following changes must be made to N.J.A.C. 7:27-22.20(b)(7)(i) and (ii):

##### 5. Permit Fees

In order to receive full program approval, New Jersey must submit a revised fee demonstration showing that \$9.51 million is adequate to administer the operating permit program during the initial four years of full program implementation. Should the cap of \$9.51 million fall short of the actual program costs, New Jersey must take all necessary actions (including legislative changes) to correct the problem prior to submitting the corrected program.

##### C. Options for Approval/Disapproval and Implications

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, New Jersey is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a federal operating permit program in the State. Permits issued under a program with interim approval have full standing with respect to Part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of New Jersey's Part 70 program that EPA proposes to grant

interim approval in this notice would apply to all Part 70 sources as listed in New Jersey's operating permit rule (N.J.A.C. 7:27-22.5) and transition plan.

As discussed above in section II.A.4.c., EPA also proposes to grant approval under section 112(l)(5) and 40 CFR 63.91 to New Jersey's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. In addition, EPA proposes to delegate existing standards under 40 CFR Parts 61 and 63.

#### III. Administrative Requirements

##### A. Request for Public Comments

EPA requests comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in docket number NJ-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 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. EPA will consider any comments received by February 29, 1996.

##### 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 permit 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 Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), 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 proposed 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.

Authority: 42 U.S.C. 7401-7671q.

Dated: December 18, 1996.

Jeanne M. Fox,

*Regional Administrator.*

[FR Doc. 96-1712 Filed 1-29-96; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 81

[Region II Docket No.147; NJ24-1-7249b, FRL-5404-9]

#### **Air Quality Designations: Deletion of TSP Designations From New Jersey, New York, Puerto Rico and Virgin Islands**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to delete from the State-by-State lists contained in 40 CFR part 81 the attainment status designations, including designations of attainment, unclassifiable and nonattainment, affected by the original national ambient air quality standards (NAAQS) for particulate matter measured as total suspended particulate (TSP). In accordance with section 107(d)(3)(B) of the Clean Air Act, the Administrator has determined that the selected area designations for TSP are no longer necessary for implementing the requirements for prevention of significant deterioration (PSD) of air quality for particulate matter since EPA has adopted equivalent PSD increments for particulate matter with an

aerodynamic diameter less than 10 microns (PM<sub>10</sub>), which became effective on June 3, 1994. In the Final Rules Section of this Federal Register, the EPA is deleting the TSP area designations for New Jersey, New York, Puerto Rico, and Virgin Islands, as identified therein, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If the 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.

The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Comments must be received on or before February 29, 1996.

**ADDRESSES:** All comments should be addressed to: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007-1866

Copies of the documents relevant to this action are available for inspection during normal business hours at the following address:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 20th Floor, New York, New York 10007-1866

**FOR FURTHER INFORMATION CONTACT:** Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 20th Floor, New York, New York 10278, (212) 637-4249.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: December 18, 1996.

Jeanne M. Fox,

*Regional Administrator.*

[FR Doc. 96-1587 Filed 1-29-96; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Parts 260 through 265, and 270

[FRL-5468-8]

#### **Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Redefinition of On-Site**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Extension of Public Comment Period for Proposed Rule.

**SUMMARY:** EPA is today extending the public comment period on its proposed military munitions rule (60 FR 56468, November 8, 1995) to February 2, 1996.

**DATES:** Written comments on these proposed rules will be accepted until 4 pm, February 2, 1996.

**ADDRESSES:** Written comments [one original and two copies] should be addressed to: EPA RCRA Docket #F-95-MMP-FFFFF, Mail Code 5305W, 401 M Street SW, Washington, DC 20460. Comments also may be submitted electronically by sending electronic mail (e-mail) through the Internet system to: RCRA-Docket@epamail.epa.gov. All electronic comments must be submitted as an ascii file avoiding the use of special characters and any form of encryption. The comments should be identified with the above docket number.

The official action for this record will be kept in paper form. Accordingly, EPA will convert all documents received electronically into printed paper form as they are received and will place the paper copies in the official record, which will also include all comments submitted directly in writing. The official record is the paper record kept in the RCRA Docket. (Comments submitted on paper will not be transferred to electronic format. These comments may be viewed only in the RCRA Docket as described here.)

Public comments and the supporting information used for this rule are available for public inspection and copying in the RCRA Information Center (RIC) located in Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling 703-603-9230.

**FOR FURTHER INFORMATION CONTACT:** The RCRA Hotline between 9 am - 6 pm EST, toll-free, at 800-424-9346; 703-412-9810 from Government phones or if in the Wash, DC local calling area; or 800-553-7672 for the hearing impaired; or Ken Shuster, U.S. EPA (5303W), Washington, DC 20460, 703-308-8759.

#### **SUPPLEMENTARY INFORMATION:**

##### I. Legal Authority

These regulations are proposed under authority of sections 2002, 3001-3007 (including 3004(y)), 3010, 7003, and 7004 of the Solid Waste Disposal Act of 1965, as amended, including amendments by RCRA and the FFCA