§ 1210.5 Certification requirements.

(a) Until a State has been determined to be in compliance with the requirements of 23 U.S.C. 161, to avoid the withholding of funds in any fiscal year, beginning with FY 1999, the State shall certify to the Secretary of Transportation, before the last day of the previous fiscal year, that it meets the requirements of 23 U.S.C. 161, and this part.

(b) The certification shall contain:

(1) A copy of the State zero tolerance law, regulation, or binding policy directive implementing or interpreting such law or regulation, that conforms to 23 U.S.C. 161 and § 1210.4(c) of this part; and

(2) A statement by an appropriate State official, that the State has enacted and is enforcing a conforming zero tolerance law. The certifying statement shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a zero tolerance law that conforms to the requirements of 23 U.S.C. 161 and 23 CFR 1210.4(c).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications it receives to appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 161, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's zero tolerance legislation changes.

§ 1210.6 Period of availability of withheld funds.

(a) Funds withheld under § 1210.4 from apportionment to any State on or before September 30, 2000, will remain available for apportionment until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(b) Funds withheld under § 1210.4 from apportionment to any State after September 30, 2000 will not be available for apportionment to the State.

§ 1210.7 Apportionment of withheld funds after compliance.

Funds withheld to a State from apportionment under § 1210.4, which remain available for apportionment under § 1210.5(a), will be made available to the State if it conforms to the requirements of §§ 1210.4 and 1210.5 before the last day of the period of availability as defined in § 1210.6(a).

§ 1210.8 Period of availability of subsequently apportioned funds.

Funds apportioned pursuant to § 1210.7 will remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are apportioned.

§ 1210.9 Effect of noncompliance.

If a State has not met the requirements of 23 U.S.C. 161 and this part at the end of the period for which funds withheld under § 1210.4 are available for apportionment to a State under § 1210.6, then such funds shall lapse.

§ 1210.10 Procedures affecting States in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 161 and this part, based on NHTSA's and FHWA's preliminary review of its law, will be advised of the funds expected to be withheld under § 1210.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with 23 U.S.C. 161 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance.

Documentation shall be submitted to the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 161 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1210.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on: February 29, 1996.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 96–5133 Filed 3–6–96; 8:45 am]

BILLING CODE 4910–59–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[PA65–1; AD–FRL–5436–7]

Clean Air Act Proposed Full Approval of the Operating Permits Program; Approval of Construction Permit and Plan Approval Programs Under Section 112(l); Proposed Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable State Plan Approval and Operating Permits Under Section 110; Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval of Title V Operating Permit Program and proposed approval of State Operating Permit and Plan Approval Programs.

SUMMARY: The EPA proposes full approval, under Title V of the Clean Air Act (the Act), of the Operating Permits Program submitted by the Commonwealth of Pennsylvania for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA is also proposing to approve Pennsylvania's Operating Permit and Plan Approval Programs pursuant to Section 110 of the Act for the purpose of creating Federally enforceable operating permit and plan approval conditions for sources of criteria air pollutants. In order to extend the federal enforceability of State operating permits and plan approvals to include hazardous air pollutants (HAPs), EPA is also proposing approval of Pennsylvania's plan approval and operating permits program regulations pursuant to Section 112 of the Act. Today's action also proposes approval of Pennsylvania's mechanism for receiving straight delegation of Section 112 standards.

DATES: Comments on this proposed action must be received in writing by April 8, 1996.

ADDRESSES: Comments should be addressed to the contact indicated below. Copies of the State's submittal and other supporting information used in developing these proposed approvals are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Michael H. Markowski, 3AT23, U.S.

Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 597–3023.

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. The 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.

On June 28, 1989 (54 FR 27274) EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of federally enforceable state operating permits. Permits issued pursuant to an operating permit program meeting these criteria and approved into the SIP are considered federally enforceable. EPA has encouraged States to consider developing such programs in conjunction with Title V operating permit programs for the purpose of creating federally enforceable limits on a source's potential to emit. This mechanism would enable sources to reduce their potential to emit of criteria pollutants to below the Title V applicability thresholds and avoid being subject to Title V. (See the guidance document entitled, ''Limitation of Potential to Emit with Respect to Title V Applicability Thresholds,'' dated September 18, 1992, from John Calcagni, Director of EPA's Air Quality Management Division).

Also as part of this action, EPA is proposing to approve Pennsylvania's plan approval (i.e., construction permit) and operating permit programs pursuant to Section 112(l) of the Clean Air Act for the purpose of allowing the State to issue plan approvals and operating permits which limit source's potential to emit hazardous air pollutants (HAPs). Section 112(l) of the Clean Air Act provides the underlying authority for controlling emissions of HAPs. Therefore, in order to extend federal enforceability of the State's operating permit and plan approval programs to include HAPs, EPA today proposes to approve Pennsylvania's plan approval and operating permit program submittals pursuant to Section 112(l) of the Act.

II. Proposed Action and Implications

A. Analysis of State Submission

EPA has concluded that the operating permit program submitted by Pennsylvania meets the requirements of Title V and is proposing to grant full approval to the program. For more detailed information on the analysis of the State's submission, please refer to the technical support document (TSD) included in the docket at the address noted above.

1. Title V Support Materials

On November 15, 1993, the Commonwealth of Pennsylvania submitted an operating permits program for review by EPA. The submittal was found to be administratively incomplete pursuant to 40 CFR 70.4(e)(1) on January 18, 1994. Additional materials were submitted on May 18, 1995. Based on additional information received in the May 18, 1995 submittal, EPA found the submittal to be administratively and technically complete on May 31, 1995. The Commonwealth submitted supplemental information on November 28, 1995. The submittal includes a letter from the Secretary of the Department of Environmental Resources, as the designee of the Governor of the Commonwealth of Pennsylvania, requesting approval of the Commonwealth's Title V program, a legal opinion from the State Attorney General stating that the laws of the Commonwealth provide adequate legal authority to carry out all aspects of the program, and a description of how the Commonwealth intends to implement the program. The submittal additionally contains evidence of proper adoption of the program regulations, a permit fee demonstration, a description of the State's Title V program, and a proposed draft of an implementation agreement (IA) to be negotiated between EPA and the Commonwealth of Pennsylvania.

2. Title V Operating Permit Program Regulations and Program Implementation

The Commonwealth of Pennsylvania's Title V regulations were adopted and became effective on November 26, 1994. They include 25 Pa. Code Chapter 127, Subchapters F and G, as well as the definitions provided in 25 Pa. Code Chapter 121.1. EPA has determined that these regulations ''fully meet'' the requirements of 40 CFR Part 70, Sections 70.2 and 70.3 with respect to applicability; parts 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; part 70.5 with respect to complete application forms and criteria which define insignificant activities; part 70.7 with respect to public participation and minor permit modifications; and part 70.11 with respect to requirements for enforcement authority. The TSD contains a detailed analysis of Pennsylvania's program and describes the manner in which the State's program meets all the operating permit program requirements of 40 CFR Part 70. However, several issues were identified by EPA during its review of Pennsylvania's Title V operating permit program which warrant a more detailed discussion and analysis. These issues are outlined below.

a. Absence of Part 70 Emergency Defense Provisions—Pennsylvania has incorporated by reference New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and Maximum Available Control Technology (MACT) technology-based emissions limitations/standards in 25 Pa. Code 122.1, 124.1, and 127.35, respectively. Where these technology-based standards incorporate an emergency defense, that emergency defense becomes part of Pennsylvania law by reference. Pennsylvania's program does not provide for any other emergency defense, and does not specifically provide for a Part 70 emergency defense. While it is true that a specific Part 70 emergency defense is lacking, EPA clarified, in its August 31, 1995, supplemental Part 70 notice, that ''the Part 70 rule does not require the States to adopt the emergency defense. A State may include such a defense in its Part 70 program to the extent it finds appropriate, although it may not adopt an emergency defense less stringent than that set forth at 40 CFR 70.6(g).'' 60 FR 45530, 45559. Thus, since State

adoption of emergency defense provisions under Part 70 is discretionary, Pennsylvania's failure to include such a defense in its Part 70 program is not inconsistent with 70.6(g).

b. Origin of and Authority for Permit Terms and Conditions—40 CFR 70.6(a)(1)(I) requires that each Title V permit, as issued by the permitting authority, specify and reference the origin of and authority for each permit term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based. These requirements for permit content related to specification of the origin and authority for permit terms and conditions in Title V permits have been met by the Pennsylvania program primarily through the language of Section IV.B.16(a)(1) of the Commonwealth's Title V program description and through relevant provisions of an Implementation Agreement (IA) that has been negotiated between EPA and PADEP (the rulemaking docket includes an IA that was signed by PADEP on January 31, 1996, and by EPA on February 15, 1996).

Section IV.B.16(a)(1) of the PADEP's Title V program description provides that Title V permit applications shall require sources to identify all applicable requirements, including citations to the origin of and authority for each requirement. EPA regards this language, along with the Title V permit application form itself and the relevant provisions of an IA that has been negotiated between EPA and PADEP, as sufficient assurance that Pennsylvania's Title V operating permits will include citation to the origin of and authority for each permit term and condition.

c. 45 Day EPA Review Prior to Permit Issuance—Under § 127.522(f) of the Commonwealth's regulations, EPA is afforded a 45 day period to review proposed permits for conformity with Clean Air Act and Part 70 requirements. Section § 127.522(f) further specifies that EPA may veto a permit within this review period.

It is noted that § 127.522 does not ensure that EPA will have an opportunity for a 45 day period of pre-issuance review of permits that are revised as a result of the public and affected State's comments. It appears that pursuant to § 127.521(d) and (e) and § 127.522(f), the 30 day public comment period may commence at the same time as EPA's 45 day review period. Thus, it is possible that Pennsylvania could modify and issue the proposed permit on the basis of public (or affected State) comments.

However, § 127.522(f) does provide that the final permit shall be provided to EPA ''upon issuance if material substantive changes are made to the proposed permit.'' If EPA objects within 45 days of final permit issuance, ''the permit will be revoked.'' Both Section IV.B.17(h) of the program description and § 127.522(f) state that if EPA objects to the issuance of the final revised permit within 45 days, the permit will be revoked. EPA concludes from the regulatory language and program description that post-issuance revocation will be straightforward and automatic, in the event that EPA objects (within 45 days of receipt of the revised permit) to permit conditions that result from public or affected state comments.

Provisions defining ''material substantive changes'' are included in the IA that has been negotiated between EPA and PADEP. The IA will help to clarify the criteria to be used by Pennsylvania in determining which final permits must be provided to EPA for post-issuance review. Moreover, the IA will confirm that post-issuance permit revocation is indeed automatic for revised permits issued by Pennsylvania but objected to by EPA within 45 days of issuance.

EPA believes that the provisions in the regulation and the IA regarding EPA review of permits that are revised on the basis of public and affected state comments are adequate to protect EPA's oversight function.

d. Insignificant Activities—Under Part 70, EPA may approve as part of a State program a list of insignificant activities and emission levels which need not be included in permit applications. Pennsylvania has not requested EPA approval of such a list of insignificant activities or emission levels.

e. Proposed Exemption from Title V for R&D Facilities—Under 25 Pa. Code § 127.502(c) of the Commonwealth's Title V operating permit program regulations, Research and Development (R&D) facilities located at a Title V facility are not required to be included as part of the Title V facility. However, for the purpose of determining Title V applicability, emissions from R&D facilities are aggregated with the rest of the facility's emissions. R&D facilities are defined in 25 Pa. Code § 121.1 as a stationary source whose purpose is to conduct research and development of products and processes, or basic research ''for education or the general advancement of technology and knowledge'' under the ''close supervision of technically trained personnel.'' R&D facilities may not engage in the manufacture of products for commercial sale or internal manufacturing use ''except in deminimus amounts on an infrequent basis.'' The emissions from the R&D facility must be less than the Title V threshold.

EPA interprets the Commonwealth's regulations as providing an exemption from Title V requirements for co-located R&D facilities. The current Part 70 rule does not provide any specific exemption from Title V for co-located R&D facilities. However, EPA's August 31, 1995 (60 FR 45530) and August 29, 1994 supplemental Part 70 notices and the preamble to the original Part 70 rule do provide for the separate treatment of co-located R&D activities under Title V. In the August 1995 notice, EPA proposed to revise the Part 70 definition of ''major source'' so that R&D activities could be considered separately for the purpose of determining whether a source is major. EPA further stated in that notice that it believes it appropriate to continue to implement the current Part 70 rule to allow for the separate treatment of co-located R&D activities. Thus, EPA believes that co-located R&D facilities may be treated separately for purposes of determining Title V applicability, and determining whether the Title V facility and the co-located R&D facility are major sources.

Pursuant to the August 1995 notice, emissions from R&D activities need not be aggregated with those of co-located stationary sources unless the R&D activities contribute to the product produced or service rendered by the co-located sources in a more than deminimus manner. As a result of this approach, nonmajor R&D facilities are exempted from Title V. The separate treatment of co-located R&D facilities, as provided for in EPA's August 1995 notice, exempts non-major R&D facilities from Title V since only major sources are required to obtain a Title V permit at this time. Under the EPA's August 1995 proposal, research and development activities would be required to have a Title V permit only if the R&D facility itself were a major source.

The § 121.1 definition of ''Research and Development Facility'' provided in the Commonwealth's regulations is reserved exclusively for those research and development activities ''with emissions less than the emissions thresholds for a Title V facility.'' Thus, by definition, only non-major research and development activities qualify as ''R&D facilities'' under the Pennsylvania regulations. Section 127.502(c) of the Commonwealth's regulations further requires that emissions from a co-located R&D facility be included when evaluating Title V applicability. In its

August 1995 supplemental Part 70 notice, however, EPA proposed to exempt non-major R&D facilities not only from Title V applicability but also from the need to aggregate emissions from the R&D facility with emissions from the Title V facility for the purpose of determining whether a major source is present. Therefore, the Pennsylvania Title V operating permit program is at least as stringent in this regard than is required by EPA for program approval.

f. Acid Rain Requirements- Section 6.5 of Pennsylvania's Air Pollution Control Act (''APCA''), 35 P.S. § 4006.5, and 25 Pa. Code § 127.531 contain special operating permit provisions related to Title IV of the Clean Air Act, the legislation's ''acid rain'' section. In pertinent part, APCA Section 6.5 authorizes DEP to develop an acid rain permit program; incorporates the definitions of sections 402 and 501 of the Clean Air Act; establishes a schedule for permit application and compliance plan submission; and establishes certain permit requirements for permits concerning sulfur dioxide emissions and allowances.

25 Pa. Code § 127.531 sets out an appropriate schedule for submission of acid rain permits and compliance plans (§ 127.531(b)); provides that the permit application and compliance plan is binding and enforceable until permit issuance (§ 127.531(c)); requires the source to comply with permit conditions ''no later than the date required by the Clean Air Act or regulations thereunder'' (§ 127.531(d)); allows permit revisions any time after submission of the application and compliance plan (§ 127.531(e)); prohibits emissions in excess of allowances or applicable emission limitations, premature use of allowances, or contravention of any permit term (§ 127.531 (f) and (g)); and requires compliance with accounting procedures for allowances promulgated under Title IV (§ 127.531(g)(3)).

It is noted that Pennsylvania has not directly incorporated by reference EPA's Title IV regulations found at 40 CFR Part 72, and has not adopted EPA's model rules. However, several regulatory provisions require that Pennsylvania's Title V program be operated in accordance with the requirements of Title IV and its implementing regulations. Section 127.531(a) provides that the acid rain provisions of that section ''shall be interpreted in a manner consistent with the Clean Air Act and the regulations thereunder.'' Section 127.531(b) requires that affected sources submit a permit application and compliance plan ''that meets the requirements of * * * the Clean Air Act and the regulations thereunder.'' Further, the § 121.1 definition of ''applicable requirements'' for Title V sources includes standards or other requirements ''of the acid rain program under Title IV of the Clean Air Act * * * or the regulations thereunder.''

The statute and regulations cited above support the Pennsylvania Attorney General's opinion that ''Commonwealth law is consistent with, and cannot be used to modify, the Acid Rain requirements of 40 CFR Part 72.'' Attorney General Opinion at 8–9.

For additional assurance that Pennsylvania's operating permit program will operate in compliance with applicable acid rain requirements, the Commonwealth has agreed to accept delegation of the applicable provisions of 40 C.F.R. Parts 70, 72, and 78 for the purpose of implementing the Title IV requirements of its operating permit program. PADEP shall apply these provisions for purposes of incorporating Acid Rain program requirements into each affected source's operating permit; identifying designated representatives; establishing permit application deadlines; issuing, denying, modifying, reopening, and renewing permits; establishing compliance plans; processing permit appeals; and issuing written exemptions under 40 C.F.R. §§ 72.7 and 72.8. This commitment is contained in the IA that has been negotiated between EPA and PADEP.

Furthermore, at EPA's request, Pennsylvania's Title V program description has been revised to clarify that the Commonwealth will implement its acid rain program in accordance with applicable provisions of 40 C.F.R. Parts 70, 72, and 78; and that PADEP will perform completeness and substantive reviews of acid rain permit applications, and that acid rain permits will be issued in accordance with EPA's acid rain permit writer's guidance. The revised program description also states Pennsylvania will initiate appropriate enforcement activities to compel compliance with permit conditions.

3. Title V Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its Title V operating permits program. Each Title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from Title V sources meet or exceed $25 per ton of emission per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum'' [Section 70.9(b)(2)(I)].

Pennsylvania has opted to make a presumptive minimum fee demonstration. Pennsylvania's existing fee schedule, under Section 127.705 of the Commonwealth's regulations, requires Title V facilities to pay an annual Title V emission fee of $37 per ton for each ton of a regulated pollutant actually emitted from the facility. This amount exceeds the $25 per ton presumptive minimum. Section 127.705 also includes a provision that ties the amount of the fee to the Consumer Price Index (CPI) as required by 40 CFR 70.9(b)(2)(iv). The $37 per ton amount was derived by dividing the total annual estimated Title V operating permit program cost by the total annual number of billable tons of emissions. Pennsylvania used actual operating hours and production rates, and considered in-place control equipment and the types of materials processed, stored, or combusted in calculating the total actual billable tons figure. EPA has determined that these fees will result in collection and retention of revenues sufficient to cover the Title V operating permit program costs.

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

a. Section 112—Pennsylvania has demonstrated in its Program submittal adequate legal authority to implement and enforce all section 112 requirements through the Title V permit. This legal authority is contained in Pennsylvania's enabling legislation (the Air Pollution Control Act, ''APCA'') and in regulatory provisions defining ''applicable requirements'' and ''Title V facility'' and mandating that permits must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Pennsylvania to issue permits that assure compliance with all section 112 requirements, and to carry out all section 112 activities, including those required under section 112(g). For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum entitled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

b. Program for Straight Delegation of Section 112 Standards—The requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a

program for delegation of the provisions of 40 CFR part 63, Subpart A, and section 112 standards promulgated by EPA as they apply to part 70 sources, as well as non-part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Because Pennsylvania has historically accepted delegation of Section 112 standards through automatic delegation, EPA proposes to approve the delegation of Section 112 standards and requirements through automatic delegation. The details of this delegation mechanism have been set forth in an Implementation Agreement (IA) between Pennsylvania and EPA. This approval applies to both existing and future standards but is limited to sources covered by the Part 70 operating permit program.

c. Limiting HAP Emissions Through FESOP and Plan Approval Programs—As part of this action EPA proposes to approve, pursuant to Section 112(l) of the Clean Air Act, the Commonwealth's request for authority to regulate HAPs through the issuance of federally enforceable State operating permits and plan approvals. As explained more fully in the Technical Support Document accompanying this proposed rulemaking, EPA proposes to approve and incorporate into the SIP Pennsylvania's operating permit and plan approval (i.e., construction permit) programs codified in Subchapters F and B, respectively, of the PADEP's air quality regulations. This would grant the PADEP authority to issue plan approvals and operating permits which limit potential to emit of criteria pollutants. However, as part of this action, EPA also proposes to approve both State programs under Section 112(l) of the Act for the purpose of extending Pennsylvania's authority to create federally enforceable limits to include HAPs in addition to criteria pollutants. Please refer to the Technical Support Document for a thorough analysis of Pennsylvania's operating permit and plan approval programs in accordance with applicable federal approval criteria.

d. Program for Implementing Title IV of the Act—Pennsylvania's program contains adequate authority to issue permits which reflect the requirements of Title IV of the Act, and Pennsylvania commits to adopt the rules and requirements promulgated by EPA to implement an acid rain program through the Title V permit.

B. Proposed Action

1. Title V Operating Permits Program

EPA is proposing full approval of the operating permits program submitted to EPA by the Commonwealth of Pennsylvania on May 18, 1995. Among other things, Pennsylvania has demonstrated that the program will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70. The scope of the Pennsylvania program that EPA proposes to approve in this notice would apply to all Title V facilities (as defined in the approved program) within the Commonwealth of Pennsylvania, except for those areas where a separate local agency Title V operating permits program has been approved by EPA.

EPA also proposes approval of Pennsylvania's Plan Approval and Operating Permit Programs, found in Subchapters B and F, respectively, of Chapter 127 of the State's regulations, under section 112(l) of the Act for the purpose of creating Federally enforceable permit conditions for sources of hazardous air pollutants (HAPs) listed pursuant to Section 112(b) of the Act.

2. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass Section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. Because Pennsylvania has historically accepted delegation of Section 112 standards through automatic delegation, EPA proposes to approve the delegation of Section 112 standards and requirements through automatic delegation. The details of this delegation mechanism are set forth in an Implementation Agreement (IA) that has been negotiated between Pennsylvania and EPA. This approval applies to both existing and future standards but is limited to sources covered by the Part 70 operating permit program.

III. Proposed Approval of State Operating Permit and Plan Approval Programs Under Section 110 of the Act

A. Background

As part of the May 18, 1995 submittal, PADEP submitted to EPA for review and approval a revision to its State Implementation Plan (SIP) designed to create federally enforceable limits on a source's potential to emit. The revision consists of regulations establishing a State operating permit program and a plan approval program, codified in Subchapters F and B, respectively, of the Commonwealth's air quality regulations. Pennsylvania refers to construction permits as ''plan approvals.'' The proposed SIP revision generally strengthens the Pennsylvania SIP by establishing a comprehensive operating permit and plan approval program and by making the operating permit program regulations consistent with the Title V operating permit regulations codified in Chapter 127, Subchapter G of the Commonwealth's regulations.

Limiting a source's potential to emit to below major source thresholds through the use of federally enforceable terms and conditions in a State operating permit or plan approval exempts such a source from Title V permitting requirements. State operating permit programs which have been incorporated into the SIP renders operating permits issued pursuant to such a program as federally enforceable, and the program itself is referred to as a federally enforceable State operating permit program, or ''FESOP'' program. This FESOP mechanism will allow sources to reduce their potential to emit to below the Title V applicability thresholds and avoid being subject to Title V. Similarly, construction permit (i.e., plan approval) programs which have been incorporated into the SIP renders construction permits, or, in Pennsylvania's case, plan approvals, issued pursuant to such a program as federally enforceable.

Pennsylvania's FESOP and plan approval program regulations were adopted and became effective on November 26, 1994. The operating permit program regulations are codified under Chapter 127, Subchapter F of the Commonwealth's air quality regulations, and the plan approval program regulations are codified under Chapter 127, Subchapter B of the Commonwealth's air quality regulations.

EPA found the SIP submittal complete on May 31, 1995.

EPA's review of this submittal indicates that the operating permit and plan approval programs both meet applicable federal criteria for approval. Accordingly, EPA is today proposing to approve the Pennsylvania SIP revision for the plan approval and operating permit programs, which was submitted on May 18, 1995.

B. Federal Criteria for Approval of Pennsylvania's FESOP and Plan Approval Programs Pursuant to Section 110 of the Act

The five criteria for approving a State operating permit program into a SIP were set forth in the June 28, 1989 Federal Register document (54 FR 27282). Permits issued under an approved program are federally enforceable and may be used to limit the potential to emit of sources of criteria pollutants. Pennsylvania's FESOP provisions of Subchapter F, Chapter 127 meet the June 28, 1989 criteria by ensuring that the limits will be permanent, quantifiable, and practically enforceable and by providing adequate notice and comment to both EPA and the public. Please refer to the Technical Support Document for a thorough analysis of the June 28, 1989 criteria as applied to Pennsylvania's FESOP program.

EPA is proposing to approve pursuant to Section 110 of the Act and the approval criteria specified in the June 28, 1989 Federal Register document the following regulations that were submitted to make permits issued pursuant to the Commonwealth's FESOP program federally enforceable and to make the program consistent with it's Title V operating permit program: Subchapter F, Chapter 127, Sections 127.401 through 127.464, inclusive.

As described above, Pennsylvania also submitted on May 18, 1995 for EPA approval revisions to its existing new source review (NSR) construction permit (i.e., plan approval) program. Pennsylvania's new source review construction permit is called a ''plan approval.'' The Commonwealth's plan approval program has been part of its SIP for many years and meets the requirements in Section 110(a)(2)(C) of the Act which requires all SIPs to provide for the regulation of the modification and construction of any stationary source within the areas covered by the plan implementation as necessary to assure that national ambient air quality standards (NAAQS) are achieved. Pennsylvania's plan approval regulations referenced above were originally approved by EPA into the SIP on May 31, 1972 (37 FR 10842) for the purpose of meeting the Section 110(a)(2)(C) requirement.

In order to make its program consistent with the Clean Air Act Amendments of 1990, Pennsylvania had previously submitted, on February 10, 1994, its new source review (NSR) construction permit program to EPA for review and approval. EPA is reviewing this program submittal and will take the appropriate approval/disapproval action at a later date. As part of this action, Pennsylvania is making changes to its public hearing and administrative procedures in order to achieve consistency of such procedures throughout all of its permitting programs. EPA has reviewed these proposed changes to Pennsylvania's plan approval program and has determined that they meet all applicable federal requirements for approval.

C. Proposed Approval of Pennsylvania's Plan Approval and FESOP Programs Under Section 112(1)

On May 18, 1995, PADEP requested approval of Pennsylvania's FESOP and plan approval programs under Section 112 of the Act for the purpose of creating federally enforceable limitations on the potential to emit of HAPs. As described above, the Commonwealth's plan approval program regulations were initially approved by EPA and incorporated into the Pennsylvania SIP on May 31, 1972. EPA is today proposing to approve and incorporate into the SIP Pennsylvania's operating permit and plan approval program regulations submitted May 18, 1995.

EPA approval of the Commonwealth's plan approval and FESOP programs under Section 112(l) of the Act is necessary to extend Pennsylvania's existing authority under Section 110 of the Act to include authority to create federally enforceable limits on the potential to emit HAPs. EPA's previous rulemaking actions on the various Pennsylvania permit programs for incorporation into the SIP provides a mechanism only for controlling criteria air pollutants which does not extend to HAPs. Only Section 112 of the Act provides the underlying authority for States to limit potential to emit of HAPs in federally enforceable State operating permits and construction permits. This necessitates EPA approval of Pennsylvania's operating permit and plan approval programs pursuant to Section 112(l) of the Act.

The criteria used by EPA for the original SIP approval of Pennsylvania's plan approval program are located in 40 CFR 51.160–164. EPA believes that the PADEP's existing plan approval program meets the requirements of 40 CFR 51.160 through 51.164.

EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 Federal Register notice referenced above, are also appropriate for evaluating and approving the programs under Section 112(l). The June 28, 1989 notice does not address HAPs because it was written prior to the 1990 amendments to Section 112 of the Act. Hence, the following five criteria are applicable to FESOP approvals under Section 112(l): (1) the program must be submitted to and approved by EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989 criteria shall be deemed not federally enforceable; (3) the program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP or enforceable under the SIP or any other Section 112 or other Clean Air Act standard or requirement; (4) permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) permits issued under the program must be subject to public participation. Please refer to the TSD for a thorough analysis of how Pennsylvania's operating permits program satisfies each of the five approval criteria. Since the State's operating permits program meets the five program approval criteria for both criteria and hazardous air pollutants, the Pennsylvania program may be used to limit the potential to emit of both criteria and hazardous air pollutants.

In addition to meeting the criteria discussed above, Pennsylvania's plan approval and operating permits programs for limiting potential to emit of HAPs must meet the statutory criteria for approval under Section 112(l)(5) of the Act. This section allows EPA to approve a program only if it: (1) contains adequate authority to assure compliance with any Section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with Section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting the potential to emit of HAPs through amendments to Subpart E of 40 CFR part 63, the regulations promulgated to implement section 112(l) of the Act.

(See 58 Fed. Reg. 62262, November 26, 1993). The EPA currently anticipates that these criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989 notice, with the addition that the State's authority must extend to HAPs instead of or in addition to VOC's and PM_{10}. The EPA currently anticipates that FESOP programs that are approved pursuant to Section 112(l) prior to the planned Subpart E revisions will have had to meet these criteria, and hence will not be subject to any further approval action.

The EPA believes it has the authority under section 112(l) to approve programs to limit potential to emit of HAPs directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires the EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, the EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). The EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in ''maximum achievable control technology'' (MACT) emission standards under section 112 and for submittal of Title V permit applications, the EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. The EPA is therefore proposing approval of Pennsylvania's FESOP and plan approval programs now so that Pennsylvania may begin to issue federally enforceable operating permits and plan approvals limiting potential to emit as soon as possible. This will allow Pennsylvania to immediately begin exempting sources from Title V requirements where this is possible and appropriate.

The EPA proposes approval of Pennsylvania's FESOP and plan approval programs pursuant to Section 112(l) of the Act because the programs meet applicable approval criteria specified in the June 28, 1989 Federal Register document and in Section 112(l)(5) of the Act. Regarding the statutory criteria of Section 112(l)(5) of the Act referred to above, the EPA believes Pennsylvania's FESOP and plan approval programs contain adequate authority to assure compliance with Section 112 requirements since neither program provides for waiving any Section 112 requirement(s). Sources would still be required to meet Section 112 requirements applicable to non-major sources. Regarding adequate resources, Pennsylvania has included in its FESOP and plan approval programs provisions for collecting fees from sources making application for either a plan approval, an operating permit, or both. Furthermore, EPA believes that Pennsylvania's FESOP and plan approval programs provide for an expeditious schedule for assuring compliance because they allow a source to establish a voluntary limit on potential to emit and avoid being subject to a federal Clean Air Act requirement applicable on a particular date. Nothing in Pennsylvania's plan approval or operating permit programs would allow a source to avoid or delay compliance with a federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. Finally, Pennsylvania's FESOP and plan approval programs are consistent with the objectives of the Section 112 program because their purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under Section 112. The EPA believes that this purpose is consistent with the overall intent of Section 112.

IV. Administrative Requirements

A. Request for Public Comments

The EPA is soliciting public comments on all aspects of this proposed full approval. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice. These comments will be considered before taking final action. Copies of the State's submittal and other information relied upon for the proposed Title V and section 112(l) approvals and the approval of Pennsylvania's SIP revision pertaining to its plan approval and FESOP programs 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 these proposed approvals. The principal purposes of the docket are:

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

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by April 8, 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 sections 502, 110 and 112 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, the creation of Federally enforceable permit conditions for sources of hazardous air pollutants listed pursuant to section 112(b) of the Act, and plan approval and FESOP requirements that the State is already imposing. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic,

and environmental factors and in relation to relevant statutory and regulatory requirements.

D. Unfunded Mandates

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 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.

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.

This action proposing approval of Pennsylvania's Title V program has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 23, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, EPA Region III.

[FR Doc. 96–5415 Filed 3–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 89, 90, and 91

[FRL–5437–7]

RIN 2060–AE54

Control of Air Pollution; Supplementary Notice of Proposed Rulemaking for New Gasoline Spark-Ignition Marine Engines; Exemptions for Non-Road Compression-Ignition Engines at or Above 37 Kilowatts and New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplementary Notice of Proposed Rule; Notice of Data Availability.

SUMMARY: Regarding gasoline marine engines, EPA has data available for public review regarding relative engine use by age of engine.

DATES: The comment period will remain open until March 8, 1996 for purposes of taking comment on the issues raised regarding marine gasoline engine relative use by engine age. Please direct all correspondence to the address specified below.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) for EPA consideration by addressing them as follows: EPA Air Docket (LE–131), Attention: Docket Number A–92–28, room M–1500, 401 M Street, S.W., Washington, D.C. 20460.

Materials relevant to this rulemaking are contained in this docket and may be reviewed at this location from 8:00 a.m. until 5:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: Deanne R. North, Office of Mobile Sources, Engine Programs and Compliance Division, (313) 668–4283.

SUPPLEMENTARY INFORMATION:

I. Notice of Data Availability

The State of Wisconsin performed a survey of the 1995 summer season to obtain better information on relative use of spark-ignition gasoline marine engines by age. This Wisconsin data is available now in the Air Docket A–92–28 and on EPA's Technology Transfer Network/Bulletin Board System as described below. EPA may consider the survey results when deciding how to finalize the marine spark-ignition gasoline engine rule with respect to the relative use by age function.

The Agency proposed in the Supplemental Notice of Proposed Rulemaking (SNPRM) (61 FR 4600, February 7, 1996) to include a statistical function in the credit calculation formula in § 91.207 of the regulations proposed for 40 CFR Part 91, representing relative usage of engines by engine age and power output. EPA will accept comment on the Wisconsin data and the proposals in the SNPRM through March 8, 1996.

II. Obtaining Information on this Rulemaking

The SNPRM preamble, proposed regulatory language, and supporting data are available to the public through several sources. Electronic copies (on 3.5'' diskettes) of the proposed regulatory language may be obtained free of charge by visiting, writing, or calling the Environmental Protection Agency, Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4288. Refer to Docket A–92–28. A copy is also available for inspection in the docket (see **ADDRESSES**).

The SNPRM preamble, proposed regulatory language, and some supporting information are also available electronically on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. The service is free of charge, except for the cost of the phone call. Users are able to access and download TTN files on their first call using a personal computer and modem per the following information.

TTN BBS: 919–541–5742 (1200–14400 bps, no parity, 8 data bits, 1 stop bit) Voice Helpline: 919–541–5384 Also accessible via Internet: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8:00 AM to 12:00 Noon ET.

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking & Reporting
<6> Non-Road
<1> File area #1. Non-Road Marine Engines

At this point, the system will list all available files in the chosen category in chronological order with brief descriptions. To download a file, select a transfer protocol that is supported by the terminal software on your own computer, then set your own software to receive the file using that same protocol.