ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI64–01–7148b; FRL–5416–9]

Approval and Promulgation of State Implementation Plan; Wisconsin; Clean Fuel Fleet Program

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) is proposing to approve a revision to the Wisconsin State Implementation Plan (SIP) for the purpose of establishing a Clean-Fuel Fleet Program. Wisconsin submitted the SIP revision request to satisfy a federal mandate, found in the Clean Air Act, requiring certain states to establish Clean-Fuel Fleet Programs. This revision establishes and requires the implementation of a Clean-Fuel Fleet Program in the Milwaukee ozone nonattainment area.

DATES: Comments on this proposed action must be received by April 10, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AP–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this Federal Register. Copies of the request and the USEPA's analysis are available for inspection at the following address: (Please telephone Brad Beeson at (312) 353–4779 before visiting the Region 5 office.) EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: 42 U.S. C. 7401–7671q.

Dated: January 17, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–5736 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MO–30–1–7152b; FRL–5424–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant conditional approval of the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of fulfilling the requirements set forth in the EPA's General Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 CFR 51.852 and 93.151. In the final rules section of the Federal Register, the EPA is granting conditional approval the state's SIP revision 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 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 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 on this proposed rule must be received in writing by April 10, 1996.

ADDRESSES: Comments may be mailed to Lisa V. Haugen, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the Federal Register.

Dated: February 6, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 96–5734 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OH89–1–7254b; FRL–5434–8]

Approval and Promulgation of Implementation Plan; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Ohio State Implementation Plan (SIP) for the general conformity rules. The general conformity SIP revisions enable the State of Ohio to implement and enforce the Federal general conformity requirements in the nonattainment and maintenance areas at the State or local level in accordance with regulations on Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

DATES: Comments on this proposed action must be received by April 10, 1996.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the request and the USEPA's analysis are available for inspection at the following address: (Please telephone Patricia Morris at (312) 353–8656 before visiting the Region 5 office.) USEPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 12, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–5738 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[TN–96–01; TN-MEMP–96–01; FRL–5439–2]

Clean Air Act Proposed Interim Approval of Title V Operating Permit Programs; State of Tennessee and Memphis-Shelby County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: EPA proposes interim approval of the operating permit programs submitted by the Tennessee Department of Environment and Conservation and by the Memphis-Shelby County Health Department for the purpose of complying with Federal requirements which mandate that authorized permitting authorities 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 April 10, 1996.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of the State of Tennessee and Memphis-Shelby County submittals, and other supporting information used in developing this proposed interim approval, are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365. Interested persons wanting to examine these documents, contained in the EPA dockets numbered TN–96–01 and TN-MEMP–96–01, should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Kim Gates, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 347–3555, Ext. 4146.

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 operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state and local operating permit programs. These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V and part 70 require that authorized permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires permitting authorities to develop and submit these programs to EPA by November 15, 1993, and EPA to approve or disapprove each program within one year after receiving the submittal. If the program 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 received the State of Tennessee's title V operating permit program submittal on November 10, 1994. The State supplemented the original program submittal with additional materials on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, and February 13, 1996. Because the August 8, 1995 supplement materially changed the State's title V program submittal, EPA extended the one-year review period. EPA received Memphis-Shelby County's title V program submittal on June 26, 1995. Supplemental materials dated August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, and February 14, 1996 were submitted by the County to complete the title V program submittal.

EPA reviews title V operating permit programs pursuant to section 502 of the Act and 40 CFR part 70, which together outline the criteria for approval and 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. If EPA has not fully approved a program by November 15, 1995, or by the end of the interim program approval period, it must establish and implement a Federal operating permit program for that state or local agency.

B. Federal Oversight and Sanctions

If EPA grants interim approval to the State of Tennessee and Memphis-Shelby County programs, the interim approvals will extend for two years following the effective date of the final interim approvals, and cannot be renewed. During the interim approval period, the State and the County will not be subject to sanctions and EPA will not be obligated to promulgate, administer, and enforce a Federal operating permit program for the State or the County. Permits issued under a program with interim approval are fully effective with respect to part 70. The 12-month time period for submittal of permit applications by sources subject to part 70 requirements and the three-year time period for processing the initial permit applications begin upon the effective date of final interim approval.

Following the granting of final interim approval, if the State of Tennessee or Memphis-Shelby County fail to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA will start an 18-month clock for mandatory sanctions. If the State or the County then fail to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA is required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State or the County has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State of Tennessee or Memphis-Shelby County, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the State or the County has come into compliance. In any case, if, six months after application of the first sanction, the State or the County still has not submitted a corrective program that EPA determines to be complete, a second sanction will be required.

If, following final interim approval, EPA disapproves the State of Tennessee's or Memphis-Shelby County's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State or the County has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State or the County, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the State or the County has come into compliance. In all cases, if six months after EPA applies the first sanction, the State of Tennessee or Memphis-Shelby County has not submitted a revised program that EPA determines to have corrected the deficiencies that prompted disapproval, a second sanction will be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a state or local agency has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a state or local program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer, and enforce a Federal operating permit program for that state or local agency upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State and County Submittals

EPA has concluded that the operating permit programs submitted by the State of Tennessee and Memphis-Shelby County substantially meet the requirements of title V and part 70, and proposes to interimly approve the programs. For detailed information on the analyses of the State and County submittals, please refer to the Technical

Support Documents (TSDs) contained in the dockets at the address noted above. The TSDs describe the manner in which the programs satisfy the operating permit program requirements of part 70.

1. Support Materials

Pursuant to section 502(d) of the Act, each permitting authority must develop and submit to the Administrator an operating permit program under state or local law or under an interstate compact that meets the requirements of title V of the Act. On November 10, 1994, EPA received the title V operating permit program submitted by the Tennessee Department of Environment and Conservation. The State requested, under the signature of the Tennessee Governor's designee, approval of its operating permit program with full authority to administer the program in ninety-one of the State's ninety-five counties. Four of the State's counties (Shelby, Davidson, Hamilton, and Knox) are regulated by local air pollution control agencies operating under certificates of exemption issued pursuant to Tennessee Code Annotated (T.C.A.) Section 68–201–115. The State's jurisdiction also does not extend to sources of air pollution over which an Indian Tribe has jurisdiction. The State of Tennessee supplemented its initial title V program submittal on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, and February 13, 1996.

On June 26, 1995, EPA received the Memphis-Shelby County title V operating permit program submittal. The State requested, under the signature of the Tennessee Governor's designee, approval of the County's program on behalf of the Memphis-Shelby County Health Department. The Memphis-Shelby County Health Department has authority to administer the operating permit program in all areas of Shelby County, Tennessee, including the incorporated municipalities of Arlington, Bartlett, Collierville, Germantown, Lakeland, Memphis, and Millington. The County's jurisdiction does not extend to sources of air pollution over which an Indian Tribe has jurisdiction. The County supplemented its initial program on August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, and February 14, 1996.

The State of Tennessee and Memphis-Shelby County submittals address, in the Workload Analyses contained therein, the requirement of 40 CFR 70.4(b)(1) by describing how the State and County intend to carry out their responsibilities under part 70. EPA has deemed the program descriptions to be sufficient for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), each permitting authority is required to submit a legal opinion from the Attorney General (or the attorney for the air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of the title V operating permit program. The State of Tennessee submitted an Attorney General's Opinion demonstrating adequate legal authority as required by Federal law and regulation. The Memphis-Shelby County submittal contains an Opinion Letter by the County Attorney. This letter, with the supplements dated August 24, 1995 and January 29, 1995, adequately demonstrate the required legal authority.

The program submittals also contain supporting documentation, such as evidence of the procedurally correct adoption of the permitting rules, permit application forms, and copies of the enforcement agreements with EPA. The State's submittal was determined by EPA to be administratively complete on January 24, 1995. The County's submittal was determined to be administratively complete on September 5, 1995.

2. Program Implementation

The State of Tennessee developed Paragraph 1200–3–9–.02(11), entitled ''Major Stationary Source Operating Permits'', of the Tennessee Air Pollution Control Regulations to implement the substantive requirements of part 70. The State also developed Rule 1200–3–10–.04 entitled ''Enhanced and Periodic Monitoring for Title V Sources'' and Chapter 1200–3–30 entitled ''Control of Acidic Precipitation'' to implement other title V requirements. These rules, and several other rules and statutes providing for administrative actions and the assessment of fees, were submitted by the State with sufficient evidence of procedurally correct adoption as required by 40 CFR 70.4(b)(2).

The County's operating permit program is implemented and enforced through the Shelby County Air Pollution Control Code, which was amended on April 24, 1995 to incorporate by reference in entirety the State's Paragraph 1200–3–9–.02(11) entitled ''Major Stationary Source Operating Permits'', Rule 1200–3–10–.04 entitled ''Enhanced and Periodic Monitoring for Title V Sources'', and Chapter 1200–3–30 entitled ''Control of Acidic Precipitation''.[1] These regulations, and several other rules and statutes providing for administrative actions and the assessment of fees, were submitted by Memphis-Shelby County with sufficient evidence of procedurally correct adoption as required by 40 CFR 70.4(b)(2).

3. Regulations

a. Applicability. The State of Tennessee and Memphis-Shelby County title V program submittals, in Subparagraphs 1200–3–9–.02(11) (b) and (c), substantially meet the requirements of 40 CFR 70.2 and 70.3 with regards to applicability.

The State of Tennessee and Memphis-Shelby County title V programs provide for the treatment of research and development (R&D) facilities as sources that are separate from other stationary sources that are located on contiguous and adjacent properties and that are under common control. Neither program, however, requires a ''support facility test'' (see 60 FR 45556, August 31, 1995) before R&D is treated as a separate source when it is co-located with an industrial activity. EPA does not consider the lack of the support facility test as an issue for program approval because the definition of ''Research and Development Facility'' found in Subparagraph 1200–3–9–.02(11)(b)24. requires that the facility not be ''engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner''. Therefore, it is EPA's understanding that if co-located R&D facilities contribute to industrial activities in material rather than de minimis capacities, the State and the County will consider them as support facilities and thus not separable. This interpretation is consistent with the support facility test, which treats co-located and commonly owned sources as one source (with aggregated emissions) if the output of one source is more than 50 percent devoted to the support of the other source.

The State of Tennessee and Memphis-Shelby County programs, in Subparagraph 1200–3–9–.02(11)(b)14.(iv), provide that ''* * * all activities claimed by an applicant to be

[1] The current Memphis-Shelby County codifications make reference to the entire Tennessee Chapter 1200–3–9, which was adopted and incorporated by reference into Section 16–77 of the City's code and into Section 3–5 of the County's code. In addition, Tennessee Chapter 1200–3–10 was adopted into Sections 16–85 and 3–7, and Tennessee Chapter 1200–3–30 was adopted into Sections 16–91.2 and 3–36. Since the City and the County have not yet codified subsections, all references in this notice will be to applicable parts of Tennessee regulations.

research and development at the contiguous or adjacent property shall have their emissions aggregated as a single source for the purposes of determining whether or not the research and development activities constitute a major source.'' It is EPA's understanding that the term ''activities'' in this provision is intended to address the R&D activities at the R&D facility, as referenced in the preceding sentence of Subparagraph 1200–3–9–.02(11)(b)14.(iv) and defined in Subparagraph 1200–3–9–.02(11)(b)24., and is not intended to apply to any activities occurring within a stationary source that is not considered to be a R&D facility. Given this understanding, EPA does not consider this provision to be a title V program approval issue for the State or the County.

Neither the State or the County addressed 40 CFR 70.3(b)(3), which allows exempted sources to apply for a permit, in their program submittals. Justification of this omission of a part 70 provision is requested from the State and the County as a condition of full program approval.

b. Permit Applications. The State of Tennessee and Memphis-Shelby County title V programs, in Subparagraph 1200–3–9–.02(11)(d) and in the permit application forms, substantially meet the requirements of 40 CFR 70.5 for complete permit application forms. However, the regulatory provisions in both programs do not specifically require the permit applications to contain the information described in 40 CFR 70.5(c), including the compliance certification requirements of 40 CFR 70.5(c)(9).

The State's and County's application forms, which were submitted for approval as part of both title V programs, do require all the information referred to in 40 CFR 70.5(c), including a certification of compliance status with respect to all applicable requirements. EPA is concerned in particular that the compliance certification be a binding, regulatory requirement upon the source. The State asserts that, because its regulations require sources to provide the information specified in the application form, and because the application form submitted for approval as part of the State's title V program requires a compliance certification, the compliance certification is a regulatory requirement that is binding upon the source. EPA finds this explanation plausible, but seeks confirmation in the form of a legal opinion from the State.

Therefore, as a condition of full approval for both programs, EPA is requesting that the State and the County clarify in supplemental legal opinions that their permitting regulations require a source submitting an application for a title V permit to certify its compliance status with regards to all applicable requirements. Alternatively, the State and the County could revise their regulations to directly incorporate this requirement.

In addition, because neither the State nor the County have regulatory provisions for permit applications to contain the information described in 40 CFR 70.5(c), EPA is reminding the State and the County that any revisions to their forms must be submitted as title V program revisions for EPA review and approval pursuant to 40 CFR 70.4(i).

c. Insignificant Activities. Pursuant to part 70, a permitting authority must request and EPA may approve as part of that program, a list of insignificant activities and emission levels which need not be included in the permit applications. Although part 70 does not define appropriate emission levels for insignificant activities, 40 CFR 70.4(b)(2) requires permitting authorities to include in their title V program submittals any criteria used to determine insignificant activities or emission levels. Based on the information provided in the submittal, EPA determines whether the insignificant emission levels for the particular program under review are approvable.

For other title V program submittals, EPA has accepted ''generic'' (that is, not keyed to a specific type of activity) emission thresholds of no more than five tons per year for regulated air pollutants and 1000 pounds per year for hazardous air pollutants (HAPs) as insignificant. EPA believes that these levels are sufficiently below applicability thresholds for many applicable requirements to ensure, in combination with appropriate ''gatekeepers'', that units potentially subject to applicable requirements are included in permit applications. In addition to insignificant activity lists or threshold levels with appropriate emissions limitations, a State's program must provide, as required in 40 CFR 70.5(c), that an application may not omit information needed to determine the applicability of and to impose applicable requirements, and to collect fees. If a state or local agency's permitting regulations include this ''gatekeeper'' language, and the insignificant activities list and generic threshold levels are reasonable (that is, if they are not on their face likely to interfere with the determination and imposition of applicable requirements), then EPA will approve the insignificant activities provisions.

The initial State of Tennessee and Memphis-Shelby County title V program submittals contained the version of Rule 1200–3–9–.04 entitled ''Exemptions'' that became state-effective on November 21, 1993. Rule 1200–3–9–.04 identifies over 50 different insignificant activities and emission units that are exempt from permitting requirements. Because Rule 1200–3–9–.04 purports to exempt the listed activities from ''permitting'', rather than from description in the permit application, it is broader than the exemption contemplated by 40 CFR 70.5(c).

Activities and emission units deemed ''insignificant'' for purposes of title V permitting are not exemptions from the obligation to consider all emissions from the source in determining whether the source is major, nor are they exemptions from the requirement to comply with the permit content provisions of 40 CFR 70.6 for all applicable requirements. Rather, provisions for insignificant activities and emission units allow sources subject to title V to avoid description of EPA-approved insignificant activities in the application, or to include only limited information in the application (as in the case of activities deemed insignificant based on size or production rate). Therefore, the exemption from ''permitting'' requirements contained in Rule 1200–3–9–.04 must be removed as a condition of full approval for both programs.

Moreover, neither the State nor the County submitted information regarding the estimated levels of emissions from the activities and units listed in Rule 1200–3–9–.04, nor has a demonstration been made that these activities are not likely to be subject to applicable requirements or to have emissions that affect major source status. EPA has examined the list of excluded activities and believes that exclusion of these items would unduly hamper a reviewer's ability to verify whether the source has correctly identified all applicable requirements in its application.

Therefore, as a condition of full approval for both programs, the State and the County must provide a demonstration that adequately quantifies the potential emissions (based on maximum capacity or on specified size/operational limitations) from each of the activities and emission units listed in Paragraphs 1200–3–9–.04 (1) and (4) sufficient to allow EPA to determine that exclusion of the activities and units from permit applications will not interfere with the determination and imposition of applicable requirements. In the

alternative, the State and the County could specifically limit the emissions from each listed activity and emissions unit to the recommended 5 tpy for regulated air pollutants and 1000 pounds per year for HAPs. In addition, Rule 1200–3–9–.04 must be revised to include ''gatekeeper'' language consistent with that in 40 CFR 70.5(c), as discussed above, and to remove any language implying that insignificant activities may be excluded from major source applicability determinations.

On August 8, 1995, the State of Tennessee supplemented Rule 1200–3–9–.04 in its title V program with Paragraph 1200–3–9–.04(5) entitled ''Major Source Operating Permits Insignificant Emission Units'', which became state-effective on August 26, 1995. Memphis-Shelby County has not yet formally supplemented its title V program with Paragraph 1200–3–9–.04(5), but the County is in the process of amending its code to include this paragraph. The County has informed EPA that it will supplement its title V program with Paragraph 1200–3–9–.04(5) when the amended code is local-effective.

Paragraph 1200–3–9–.04(5) contains two lists of insignificant emission units and activities. The list in Subparagraph 1200–3–9–.04(5)(f) includes more than 120 emission units and activities that are categorically exempt from permitting requirements and allowed to be omitted from the permit application. The list in Subparagraph 1200–3–9–.04(5)(g) contains more than 23 emission units and activities that are defined as insignificant based on size or production rate. The units and activities in the second list are required to be included in the permit application.

Based on EPA's review of Paragraph 1200–3–9–.04(5), a number of the activities and emission units contained in the two lists either directly or potentially conflict with applicable requirements as defined in part 70, or are so vaguely or broadly articulated that EPA cannot determine whether a conflict or potential conflict exists. Obvious conflicts that were noted by EPA are discussed in the aforementioned TSDs. However, EPA could not adequately evaluate the two lists because neither the State or the County submitted information quantifying the potential emissions from the listed activities and units, or the criteria that were used to determine the insignificant activities and emission units. And, because the rule purports to exclude activities and emission units listed in Subparagraph 1200–3–9–.04(5)(f) from permitting requirements, EPA has the same concerns as discussed above with regards to the initially submitted Rule 1200–3–9–.04, namely that the rule would authorize excluding insignificant activities from major source applicability determinations or from other requirements of part 70 for units that are listed as insignificant but that are in fact subject to applicable requirements.

Therefore, as conditions of full approval for both programs, the State and the County must complete the following:

(1) Provide a demonstration that adequately quantifies the potential emissions (based on maximum capacity or on specified size/operational limitations) from each of the activities and emission units listed in Subparagraphs 1200–3–9–.04(5) (f) and (g) sufficient to allow EPA to determine that exclusion of the activities and units from permit applications will not interfere with the determination and imposition of applicable requirements. In the alternative, the State and County could specifically limit the emissions from each listed activity and emissions unit to the recommended 5 tpy for regulated air pollutants and 1000 pounds per year for HAPs.

(2) Address the conflicts with applicable requirements that are discussed in the TSDs.

(3) Remove the exemption from permitting requirements contained in Subparagraph 1200–3–9–.04(5)(f) to ensure that the insignificant activities provisions are not broader than that allowed under 40 CFR 70.5(c), and include ''gatekeeper'' language consistent with that in 40 CFR 70.5(c).

In addition to the exemption from permitting in Subparagraph 1200–3–9–.04(5)(f), the provisions of Subparagraph 1200–3–9–.04(5)(c)3. exempt sources subject to generally applicable SIP requirements from the monitoring, recordkeeping, reporting, and certification requirements of 40 CFR 70.6 (a)(3) and (c). However, part 70 does not exempt insignificant activities and emission units subject to applicable requirements from the permit content requirements of 40 CFR 70.6. That is to say, although insignificant activities may be omitted from description in the permit application, nothing in part 70 allows the permitting authority to issue permits that exempt the source from compliance certification or (as appropriate) monitoring, recordkeeping, and reporting required under 40 CFR 70.6 for all emissions units subject to applicable requirements. Part 70 does, however, allow permitting authorities the flexibility to tailor the amount and quality of information required in the permit application, and the rigor of compliance requirements contained in the permit, to the type of emission unit and applicable requirement in question.

EPA has discussed this issue previously in the interim approval notices on the State of Washington's title V program (see 60 FR 50166 (September 28, 1995) and 60 FR 62992 (December 8, 1995)). This issue is also addressed in the July 10, 1995 guidance memorandum entitled ''White Paper for Streamlined Development of Part 70 Permit Applications'' from Lydia Wegman, Deputy Director of EPA's Office of Air Quality Planning and Standards, to the EPA Regional Air Directors. EPA is committed to issuing additional guidance to aid state and local permitting authorities in drafting permits which comply with the permit content requirements of 40 CFR 70.6 for insignificant activities, and intends to issue such guidance in the very near future.

Therefore, as a condition of full approval for both programs, Subparagraph 1200–3–9–.04(5)(c)3. must be revised to eliminate the exemption from the monitoring, recordkeeping, reporting, and certification requirements of 40 CFR 70.6 (a)(3) and (c) for sources subject to generally applicable SIP requirements.

In addition, Subparagraph 1200–3–9–.04(5)(h) exempts increases in regulated air pollutant emissions from permit amendment and modification procedures. Because this provision conflicts with the requirements of 40 CFR 70.7, it must be revised to be consistent with the part 70 criteria for administrative permit amendments and permit modifications as a condition of full approval for both programs.

d. Permit Content. The State of Tennessee and Memphis-Shelby County title V programs, in Subparagraphs 1200–3–9–.02(11) (a) and (e), substantially meet the requirements of 40 CFR 70.4 and 70.6 for permit content, including operational flexibility and off-permit changes. However, Subparagraph 1200–3–9–.02(11)(b) entitled ''Definitions'' contains the following restriction:

> ''All references in this paragraph to the Federal Act or to federal regulations or requirements shall be to (i) that Act and those regulations and requirements as in effect on December 15, 1993, and (ii) any other federal regulations or requirements to the extent that they are adopted and are effective as Rules of the State of Tennessee.

This restriction applies to all Federal requirements referenced in Paragraph 1200–3–9–.02(11), including the definition of ''Applicable requirement'' in Subparagraph 1200–3–9–.02(11)(b). The State's and County's definition of

''Applicable requirement'' is, therefore, not equivalent to the part 70 definition because it restricts the domain of applicable requirements to those in effect before a certain date. As a result, neither program ensures that issued permits will address all applicable requirements in accordance with 40 CFR 70.6(a). Subparagraph 1200–3–9–.02(11)(b) must be revised for consistency with part 70 as a condition of full approval for both programs.

The State and County program submittals, in Subparagraph 1200–3–9–.02(11)(e)4., provide for the issuance of general permits. However, this provision allows a source to operate without an appropriate title V permit and not be subject to enforcement action. Subparagraph 1200–3–9–.02(11)(e)4. initially indicates that a source shall be subject to enforcement action if it operates under a general permit but is later found not to qualify for a general permit. However, the next sentence states that if the source is required to have an individual permit, the permit shield will apply until the individual permit becomes effective, which relieves the source from liability. Because this provision conflicts with 40 CFR 70.6(d)(1), it must be changed as a condition of full approval of the State and County programs.

Part 70 requires prompt reporting of deviations from the permit requirements. Section 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. Although the permit program regulations should define ''prompt'' for purposes of administrative efficiency and clarity, an acceptable alternative is to define ''prompt'' in each individual permit. EPA believes that ''prompt'' should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). 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 Tennessee and Memphis-Shelby County have not defined ''prompt'' in their title V programs with respect to the reporting of deviations. Instead, Subparagraph 1200–3–9–.02(11)(e)1.(iii)(III)II. references the provisions of Rule 1200–3–20–.03 to define ''prompt reporting''. Rule 1200–3–20–.03 specifies that in the event of a malfunction, a source shall notify the State and the County by telephone within 24 hours of the malfunction. The notification must contain a statement giving all pertinent facts, including the estimated duration of the malfunction. Chapter 1200–3–20, which contains Rule 1200–3–20–.03, was included in the State's title V program submittal, but not in the County's submittal. The County clarified, in a letter dated February 7, 1996, that the prompt reporting provision of Rule 1200–3–20–.03 is effective in all of the County's jurisdictions.

Subparagraph 1200–3–9-.02(11)(e)1.(iii)(III)II. also references Chapter 1200–3–20 to define deviations from permit conditions, such as upset, malfunction, or emergency conditions. However, Paragraph 1200–3–20-.06(5) identifies a number of different exceedances that will not be considered by the State as violations. This provision conflicts with part 70, which requires that any emissions not permitted at a source be in violation of permit terms and conditions. Specifically, 40 CFR 70.6(g) classifies excess emissions due to emergency situations as a violation of an existing permit, and allows the State to provide an affirmative defense in certain circumstances.

If a regulation such as Chapter 1200–3–20 is approved into the SIP, it becomes a part of an applicable requirement and therefore may function with respect to that requirement or requirements of which it is a part. This would be true even after the applicable requirement is incorporated into the permit. However, the version of Chapter 1200–3–20 contained in the State's title V program submittal is not approved into the Tennessee SIP. More importantly, from the standpoint of part 70, Chapter 1200–3–20 is on its face limited to SIP requirements. It would, therefore, affect the definition of violations for any applicable requirement incorporated into the permit, including those that the State has no authority to change, such as Federal standards. To remedy this inconsistency with part 70, and as a condition of full program approval, the State must revise Chapter 1200–3–20 to clarify that it applies only with respect to requirements in the SIP. Furthermore, the revised rule must be submitted to EPA for approval into the Tennessee SIP.

The State of Tennessee and Memphis-Shelby County have the authority to issue variances from the requirements imposed by State and County law. The State has discretion, pursuant to T.C.A. Section 68–201–118, to grant relief from compliance with State statutes and rules. The County has discretion, pursuant to Section 3–10 of the Shelby County Code, to grant relief from compliance with County statutes and rules. EPA regards these provisions as wholly external to the programs submitted for approval under part 70, and consequently proposes to take no action on these provisions of State and County law.

EPA has no authority to approve provisions of state and local law, such as the variance provisions referred to above, that are inconsistent with title V. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable title V operating permit, except where such relief is granted through the procedures allowed by part 70. A title V permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A title V permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This interpretation is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

The State of Tennessee and Memphis-Shelby County title V program submittals contain provisions for the issuance of Federally enforceable state and local minor source operating permits to limit an air pollution source's potential to emit. Limiting a source's potential to emit through Federally enforceable minor source operating permits can affect the applicability of Federal regulations to a source, including the regulations governing title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants, and Federal air toxics requirements mandated under section 112 of the CAA.

EPA promulgated the criteria for Federal enforceability of minor source

operating permits in the Federal Register on June 28, 1989 (see 54 FR 22274). One of the criteria is EPA's approval of the minor source operating permit program into the State Implementation Plan (SIP). Both the State of Tennessee and Memphis-Shelby County have submitted the provisions for issuing Federal enforceable minor source operating permits as SIP revisions. Therefore, EPA is not taking action in this notice on the ''opt out'' provisions contained in Paragraph 1200–3–9-.02(11)(1) as part of either the State or the County title V program.

Both program submittals contain Paragraph 1200–3–9-.02(4) entitled ''Permits for Non-Complying Sources'', which is an approved SIP rule that does not address any part 70 requirements. Moreover, the version of the rule included in the submittals contains revisions that have not yet been submitted for incorporation in either the State of Tennessee's or Memphis-Shelby County's SIP. EPA has provided comments to the State on the revised version of the rule, but the comments have not yet been addressed by the State. EPA is, therefore, not taking action on Paragraph 1200–3–9-.02(4) as part of either the State or the County title V program.

e. Permit Processing and Review. The State of Tennessee and Memphis-Shelby County title V programs, in Subparagraph 1200–3–9-.02(11)(f) and (g), substantially meet the permit processing and review requirements of 40 CFR 70.7 (including minor permit modifications and public participation) and 70.8. However, the State's and County's permit reopenings provisions for HAP sources are not consistent with part 70 requirements.

According to Subparagraph 1200–3–31-.04(1)(a), the State and the County will call applications for permit revisions when EPA promulgates new maximum achievable control technology (MACT) standards. Sources will have 360 days to submit applications, and the permitting authority shall issue the permit revision within 18 months of the date the application is deemed complete. This provision conflicts with 40 CFR 70.7(f)(1)(i), which requires completion of permit reopenings not later than 18 months after promulgation of a new applicable requirement in cases of permits with remaining terms of three or more years. As a result, Subparagraph 1200–3–31-.04(1)(a) must be revised for consistency with part 70 requirements as a condition of full approval for both programs.

f. Enforcement Authority. The State of Tennessee and Memphis-Shelby County title V programs, in T.C.A. Sections 68–201–101 et seq., address the requirements of 40 CFR 70.11 with respect to enforcement authority.

4. Permit Fee Demonstration

Section 502(b)(3) of the Act requires each permitting authority to collect fees sufficient to cover all reasonable direct and indirect costs necessary for the development and administration of its title V operating permit 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 emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum''.

Both the State of Tennessee and Memphis-Shelby County have elected to assess title V operating permit fees below the Federal presumptive minimum fee amount, and both program submittals contained Workload Analyses satisfying the 40 CFR 70.9(b)(5) requirement for detailed fee demonstrations. The fee demonstrations showed that the fees collected will adequately cover the anticipated costs of the State and the County operating permit programs for the years 1995 through 1999.

The specified activities that constitute the State's program are consistent with 40 CFR 70.9(b)(1), but the County's fee provisions allow use of the operating permit fees for any purpose rather than solely for the funding of title V program activities in accordance with 40 CFR 70.9(a). Moreover, the County's program does not specify that the fees used to cover the direct and indirect costs of the operating permit program will be collected only from part 70 sources, as required by 40 CFR 70.9(a). Memphis-Shelby County, therefore, must revise its fee provisions to be consistent with the part 70 requirements as a condition of full program approval.

5. Provisions Implementing Requirements of Other Titles of the Act

a. Authority for Section 112 Implementation. In the title V program submittals, the State of Tennessee and Memphis-Shelby County demonstrate adequate legal authority to implement and enforce all section 112 requirements through title V permits. This legal authority is contained in T.C.A. Sections 68–201–101 et seq., and in Subparagraphs 1200–3–9–.02(11)(b)5. and 1200–3–9–.02(11)(c)(iii) of the Tennessee Air Pollution Control Regulations. EPA has determined that this legal authority is sufficient to allow the State and the County to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that the State of Tennessee and Memphis-Shelby County are able to carry out all section 112 activities with respect to part 70 and non-part 70 sources. For further rationale on this interpretation, please refer to the aforementioned TSDs.

Both program submittals contain Chapter 1200–3–32 entitled ''Prevention of Accidental Releases'', which was promulgated by the State and adopted by the County to implement the provisions of section 112(r) of the Act. However, EPA has not yet promulgated a Federal rule to implement the provisions of section 112(r), so the State and County rules may not be equivalent to the final Federal rule. Therefore, EPA is not taking action in this notice on Chapter 1200–3–32 as part of either the State or the County title V program.

b. Implementation of Section 112(g) During Transition Period EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines the Agency's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice explains that EPA is 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 permitting authorities 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. A detailed discussion of the rationale for the revised interpretation is included in the February 14, 1995 notice.

Unless and until EPA provides for an additional postponement of the section 112(g) effective date, the State of Tennessee and Memphis-Shelby County must have Federally enforceable mechanisms for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State and County regulations. Both program submittals contain Chapter 1200–3–31 entitled ''Case by Case Determinations of Hazardous Air Pollutant Control Requirements'', which will serve as an adequate implementation vehicle during the transition period. Chapter 1200–3–31 became state-effective on September 18, 1994, and the County adopted and

incorporated it by reference on April 24, 1995.

However, Chapter 1200–3–31 contains several discrepancies with respect to the provisions of section 112(g) of the Act. As a condition of full program approval, the State and the County must correct the following discrepancies in order to use this chapter to implement section 112(g) during the transition period between promulgation of the Federal section 112(g) rule and the adoption of equivalent State and County regulations:

(1) The definition of ''modification'' in Paragraph 1200–3–31–.02(10) conflicts with the section 112(g) definition regarding offsets. The State/County definition indicates that increased emissions of one HAP may be offset by an equal or greater decrease of another HAP that is deemed by the permitting authority to be equal to or more hazardous. However, according to section 112(g)(1)(A), the offset must be by a HAP which is deemed to be more hazardous, and the determination must be based on guidance issued by the Administrator under section 112(g)(1)(B).

(2) According to Subparagraph 1200–3–31–.05(1), the State and the County shall only make case-by-case determinations for new sources in a source category scheduled for action under sections 112(e)(1) and (3). However, section 112(g) applies to all major sources of HAPs, regardless of whether or not they have been included in a scheduled source category.

c. Program for Delegation of Section 112 Standards as Promulgated. The requirements for title V program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of an operating permit program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that operating permit programs contain adequate authorities, adequate resources for implementation, and expeditious compliance schedules, which are also requirements under part 70. Therefore, EPA also proposes to approve, under section 112(l)(5) and 40 CFR 63.91, the State of Tennessee and Memphis-Shelby County programs for receiving delegation of section 112 standards and programs that are unchanged from the Federal rules as promulgated. In addition, EPA proposes to delegate to the State and the County all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[2]

The State of Tennessee has informed EPA that it intends to accept the delegation of section 112 standards under part 61 on a case-by-case basis and the delegation of section 112 standards under part 63 on an automatic basis. The details of the State's use of these delegation mechanisms are set forth in letters dated November 4, 1994, January 30, 1996, and February 13, 1996.

Memphis-Shelby County has informed EPA that it too intends to accept delegation of section 112 standards under part 61 on a case-by-case basis and the delegation of section 112 standards under part 63 on an automatic basis. The details of the County's use of these delegation mechanisms are set forth in letters dated June 14, 1995, February 7, 1996, and February 14, 1996.

d. Title IV Acid Rain Program Requirements. The State of Tennessee promulgated Chapter 1200–3–30 to implement the Phase II acid rain permitting requirements of 40 CFR part 72. This chapter became state-effective on September 13, 1994, and has been determined by EPA to be acceptable for the purposes of administering an acid rain program. Memphis-Shelby County adopted and incorporated the State's Chapter 1200–3–30 by reference on April 24, 1995. The County's acid rain program has also been determined by EPA to be acceptable for the purposes of administering an acid rain program.

B. Proposed Actions

EPA proposes interim approval of the title V operating permit program submitted by the Tennessee Department of Environment and Conservation on November 10, 1994, and as supplemented on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, and February 13, 1996. EPA also proposes interim approval of the title V program submitted by the Memphis-Shelby County Health Department on June 26, 1995, and as supplemented on August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, and February 14, 1996. If this interim approval is finalized, the changes identified below must be made for full approval of the State and County programs.

1. Opt-in Provision for Exempted Sources

Neither the State or the County program addressed 40 CFR 70.3(b)(3), which allows exempted sources to apply for a permit. Justification of the omission of this part 70 provision is requested from the State and the County.

2. Certification of Compliance With Applicable Requirements

Neither the State or the County program contains regulatory provisions that require sources to certify compliance with all applicable requirements. EPA is, therefore, requesting the State and the County to clarify in supplemental legal opinions that their permitting regulations require a source submitting an application for a title V permit to certify its compliance status with regards to all applicable requirements. In the alternative, the State and the County could revise their regulations to directly incorporate this requirement.

3. Insignificant Activities

As discussed above in section II.A.3.c., the State and the County must complete the following:

a. Remove the exemptions from permitting requirements contained in Paragraphs 1200–3–9–.04(1) and (4), and in Subparagraph 1200–3–9–.04(5)(f), and include ''gatekeeper'' language consistent with that in 40 CFR 70.5(c).

b. Revise Subparagraph 1200–3–9–.04(5)(c)3. to eliminate the exemption from the monitoring, recordkeeping, reporting, and certification requirements of 40 CFR 70.6(a)(3) and (c) for sources subject to generally applicable SIP requirements.

c. Provide a demonstration that adequately quantifies the potential emissions (based on maximum capacity or on specified size/operational limitations) from each of the activities and emission units listed in Paragraphs 1200–3–9–.04(1) and (4), and Subparagraphs 1200–3–9–.04(5)(f) and (g), sufficient to allow EPA to determine that exclusion of the activities and units from permit applications will not interfere with the determination and imposition of applicable requirements. In the alternative, the State and the County could specifically limit the emissions from each listed activity and

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

emissions unit to the recommended 5 tpy for regulated air pollutants and 1000 pounds per year for HAPs.

d. Address EPA's concerns, as discussed in the TSDs, about potential conflicts of certain activities and emission units listed in Paragraph 1200–3–9-.04(5) with applicable requirements.

e. Revise Subparagraph 1200–3–9-.04(5)(h) to be consistent with the criteria in 40 CFR 70.7 for administrative permit amendments and permit modifications.

4. Applicable Federal Requirements

Subparagraph 1200–3–9-.02(11)(b) in the State and County programs restricts the domain of Federal requirements referenced in Paragraph 1200–3–9-.02(11) to those in effect on December 15, 1993. As a result, neither program ensures that issued permits will address all applicable requirements in accordance with 40 CFR 70.6(a). Subparagraph 1200–3–9-.02(11)(b) must therefore be revised for consistency with part 70.

5. General Permits

Subparagraph 1200–3–9-.02(11)(e)4. in both programs provides for the issuance of general permits. However, this provision allows a source to operate without an appropriate title V permit and not be subject to enforcement action. This provision must be revised for consistency with the requirements of 40 CFR 70.6(d)(1).

6. Excess Emissions Due to Malfunction, Startup, and Shutdown

The State must revise Chapter 1200–3–20 to make clear that it applies only with respect to the requirements in the Tennessee SIP, and the revised rule must be submitted to EPA for approval in the SIP.

7. Permit Reopenings

Subparagraph 1200–3–31-.04(1)(a) must be revised in both programs for consistency with the permit reopening requirements in 40 CFR 70.7(f)(1)(i), which requires completion of permit reopenings not later than 18 months after promulgation of a new applicable requirement in cases of permits with remaining permit terms of three or more years.

8. Use of Title V Fees

Memphis-Shelby County's fee provisions allow for use of operating permit fees for any purpose rather than solely for the funding of title V program activities, as required by 40 CFR 70.9(a). Moreover, the County's program does not specify that the fees used to cover the direct and indirect costs of the operating permit program will be collected only from part 70 sources, as required by 40 CFR 70.9(a). Memphis-Shelby County, therefore, must revise its fee provisions to be consistent with the part 70 requirements.

9. Implementation of Section 112(g) During Transition Period

Both the State and the County title V program submittals contain Chapter 1200–3–31 entitled ''Case by Case Determinations of Hazardous Air Pollutant Control Requirements''. As discussed above in section II.A.4.b., the discrepancies between Chapter 1200–3–31 and Federal requirements must be addressed for EPA to approve this mechanism of implementing section 112(g) during the transition period between Federal 112(g) rule promulgation and adoption of appropriate State and County rules.

In addition, as discussed above in section II.A.4.c., EPA proposes approval under section 112(l)(5) and 40 CFR 63.91 to the State of Tennessee and Memphis-Shelby County programs for receiving delegation of section 112 standards and programs that are unchanged from Federal rules as promulgated. EPA also proposes to delegate existing standards and programs under 40 CFR parts 61 and 63 for both part 70 sources and non-part 70 sources.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State of Tennessee and Memphis-Shelby County are protected from sanctions for failure to have programs, and EPA is not obligated to promulgate Federal operating permit programs in the State or the County. Permits issued under a program with interim approval are fully effective with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three-year time period for processing the initial permit applications.

The scope of the State of Tennessee and Memphis-Shelby County title V programs that EPA proposes to interimly approve in this notice applies to all part 70 sources (as defined in the approved program) within the ninety-one counties under the State's jurisdiction and in Shelby County, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See,* e.g., 59 FR 55813, 55815–18 (November 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

III. Administrative Requirements

A. Request for Public Comments

EPA requests comments on all aspects of this proposed interim approval. Copies of the State of Tennessee and Memphis-Shelby County title V program submittals, and other information relied upon for the proposed interim approval, are contained in the dockets numbered TN–96–01 and TN-MEMP–96–01, which are maintained at the EPA Region 4 office. These dockets are organized and complete files of all the information submitted to, or otherwise considered by, EPA in the development of this notice. 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 April 10, 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 Reform Act of 1995

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 interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to 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, Environmental protection, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 26, 1996.

Phyllis P. Harris,

Acting Regional Administrator.

[FR Doc. 96–5720 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 381

[Docket No. R–165]

RIN 2133–AB25

Cargo Preference—U.S.-Flag Vessels; Available U.S.-Flag Commercial Vessels

AGENCY: Maritime Administration, Transportation.

ACTION: Proposed rule.

SUMMARY: This amendment to the cargo preference regulations of the Maritime Administration (MARAD) would provide that during the five year period beginning with the 1996 Great Lakes shipping season when the St. Lawrence Seaway is in use, MARAD will consider the legal requirement for the carriage of bulk agricultural commodity preference cargoes on privately-owned ''available'' U.S.-flag commercial vessels to have been satisfied where the cargo is initially loaded at a Great Lakes port on one or more U.S.-flag or foreign-flag vessels, transferred to a U.S.-flag commercial vessel at a Canadian transshipment point outside the St. Lawrence Seaway, and carried on that U.S.-flag vessel to a foreign destination. This provision would allow U.S. Great Lakes ports to compete for certain bulk agricultural commodity preference cargoes under agricultural assistance programs administered by the U.S. Department of Agriculture (USDA) and the U.S. Agency for International Development (USAID). MARAD issued substantially identical rules in 1994 and 1995 related to the Great Lakes Shipping season for each of those years, respectively. This rule would extend the provision for an additional five years, after which the Agency would assess the merits of making the rule permanent.

DATES: Comments must be received on or before April 10, 1996.

ADDRESSES: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7210, Department of Transportation, 400 7th Street S.W., Washington, D.C. 20590. To expedite review of comments, MARAD requests, but does not require submission of an additional ten (10) copies. All comments will be made available for inspection during normal business hours at the above address. Commenters wishing MARAD to acknowledge receipt of comments should enclose a self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: John E. Graykowski, Deputy Maritime Administrator for Inland Waterways and Great Lakes, Maritime Administration, Washington, DC, 20590, Telephone (202) 366–1718.

SUPPLEMENTARY INFORMATION: United States law at sections 901(b) and 901b, Merchant Marine Act, 1936, as amended (the ''Act''), 46 App. U.S.C. 1241(b) and 1241f, requires that at least 75 percent of certain agricultural product cargoes ''impelled'' by Federal programs (preference cargoes), and transported by sea, be carried on privately-owned United States-flag commercial vessels, to the extent that such vessels ''are available at fair and reasonable rates.'' The Secretary of Transportation wishes to administer that program so that all ports and port ranges, including U.S. Great Lakes ports, may participate in the carriage of preference cargoes under five programs administered by the United States Department of Agriculture (USDA) and United States Agency for International Development (USAID), pursuant to Titles I, II and III of the Agricultural Trade Development and Assistance Act of 1954, as amended, P.L. 480 (7 U.S.C. 1701–1727), the Agricultural Act of 1949, as amended (7 U.S.C. 2791(c)) and the Food for Progress Act of 1985, as amended (7 U.S.C. 1736).

Prior Rulemaking

On August 8, 1994, MARAD published a final rule on this subject in the Federal Register (59 FR 40261). That rule stated that it was intended to allow U.S. Great Lakes ports to participate with ports in other U.S. port ranges in the carriage of bulk agricultural commodity preference cargoes. Dramatic changes in shipping conditions have occurred since 1960, including the disappearance of any all-U.S.-flag commercial ocean-going bulk cargo service to foreign countries from U.S. Great Lakes ports. The static configuration of the St. Lawrence Seaway system and the evolving greater size of commercial vessels contributed to the disappearance of any all-U.S.-flag service.

No bulk grain preference cargo has moved on U.S.-flag vessels out of the Great Lakes since 1989, with the exception of one trial shipment in 1993. Under the Food Security Act of 1985, Public Law 99–198, codified at 46 App. U.S.C. 1241f(c)(2), a certain minimum amount of Government-impelled cargo was required to be allocated to Great Lakes ports during the Great Lakes shipping seasons of 1986, 1987, 1988 and 1989. That ''set-aside'' expired in 1989, and was not renewed by the Congress. The disappearance of Government-impelled agricultural cargo flowing from the Great Lakes coincided with the expiration of the Great Lakes ''set aside.''

At the time of the opening of the 1994 Great Lakes shipping season on April 5, 1994, the Great Lakes did not have any all-U.S.-flag ocean freight capability for carriage of bulk preference cargo. In contrast, the total export nationwide by non-liner vessels of USDA and USAID agricultural assistance program cargoes subject to cargo preference in the 1994–1995 cargo preference year (the latest program year for which figures are available) amounted to 6.2 million metric tons, of which 4.9 million (78 percent) was transported on U.S.-flag vessels.

Extension of Trial Period

MARAD initially issued that rule for the purpose of allowing Great Lakes ports the opportunity to compete for agricultural commodity preference cargoes for only the 1994 Great Lakes shipping season cargoes, and to assess the results. As predicted by numerous commenters, the timing of the final rule, which was not published until August 18, 1994, did not allow for a true trial period since it actually extended for less than one-half of the 1994 Great Lakes Shipping season. Because of the long