non-reservation areas over which the tribe has jurisdiction. The EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. The EPA's authority to issue permits in Indian country was challenged in *Michigan* v. *EPA*, (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. The EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

List of Subjects in Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 27, 2001.

Thomas V. Skinner,

Regional Administrator, Region V.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by revising the entry for Wisconsin to read as follows:

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

* * * * *

Wisconsin

(a)(1) Department of Natural Resources: Submitted on January 27, 1994; interim approval effective on April 5, 1995; interim approval expires December 1, 2001.

(2) Department of Natural Resources: Interim approval corrections submitted on March 28, 2001, September 5, 2001, and September 17, 2001; submittals adequately address the conditions of the interim approval which expires on December 1, 2001. Based on these corrections, Wisconsin is hereby granted final full approval effective on November 30, 2001.

(b) [Reserved]

* * * * *

[FR Doc. 01–29964 Filed 12–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[DC–T5–2001–01a; FRL–7112–3]

Clean Air Act Full Approval of Operating Permit Program; District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; final full approval.

SUMMARY: EPA is taking final action to grant full approval of the District of Columbia's (the District's) operating permit program. The District's operating permit program was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required each State to develop, and submit to EPA, a program for issuing operating permits to all major stationary sources and to certain other sources within the State's jurisdiction. The EPA granted final interim approval of the District of Columbia's operating permit program on August 7, 1995. The District amended its operating permit program to address deficiencies identified in the interim approval action and this final rule approves those amendments. The EPA proposed full approval of the District of Columbia's operating permit program in the **Federal Register** on October 16, 2001. This final rulemaking action summarizes the adverse comments submitted on the October 16, 2001 proposal, provides EPA's responses, and promulgates final full approval of the District of Columbia's operating permit program.

DATES: This rule is effective on November 30, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Paresh R. Pandya, Permits and Technical Assessment Branch at (215) 814–2167 or by e-mail at *pandya.perry@epa.gov.*

SUPPLEMENTARY INFORMATION: On May 21, 2001, August 30, 2001, and September 26, 2001, the District of Columbia submitted amendments to its operating permit program. These amendments are the subject of this document and this section provides additional information on the amendments by addressing the following questions:

What is the District's operating permit program?
Why is EPA taking this action?
What were the concerns raised by the commenters?
What action is being taken by EPA?
What is the effective date of EPA's full approval of the District's operating permit program?
What is the scope of EPA's full approval?

What Is the District's Operating Permit Program?

The Clean Air Act (CAA or the Act) Amendments of 1990 required all States (including the District) to develop operating permit programs that meet certain federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in the EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of ''major'' sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM10); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

Why Is EPA Taking This Action?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40

CFR part 70, EPA granted interim approval contingent upon the State revising its program to correct the deficiencies. Because the District's operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval of the District's program in a rulemaking published on August 7, 1995 (60 FR 40101). The interim approval notice described the conditions that had to be met in order for the District's operating permit program to receive full approval. On May 21, 2001,August 30, 2001, and September 26, 2001, the District of Columbia submitted amendments to its operating permit program to EPA to address its outstanding interim approval deficiencies.

The District fulfilled the conditions of the interim approval and EPA published a direct final rule on October 16, 2001 (66 FR 52538) granting full approval of the District of Columbia's operating permit program. However, in a letter dated November 15, 2001, EarthJustice submitted adverse comments on behalf of the District of Columbia Chapter of the Sierra Club in response to the companion proposal notice that was also published on October 16, 2001 (66 FR 52561). The October 16, 2001 direct final rule has, therefore, been withdrawn.

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice. That notice was published in the **Federal Register** on December 11, 2000 (65 FR 77376).

The EarthJustice Legal Defense Fund commented on what they believe to be deficiencies with respect to the District of Columbia's title V program. As stated in the **Federal Register** notice published on October 16, 2001 (66 FR 52538) proposing to fully approve the District of Columbia's operating permit program, EPA takes no action on those comments in this final rule. Rather, EPA expects to respond by December 14, 2001 to timely public comments on programs that have obtained interim approval. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter, in writing, to explain our reasons for not making a finding of deficiency. In addition, we will publish a notice of availability in the **Federal Register** notifying the public that we have responded, in writing, to these comments and how the public may obtain a copy of our response. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight. Furthermore, in the future, EPA may issue an additional NOD if we or a citizen identifies other deficiencies.

What Were the Concerns Raised by the Commenters?

As previously stated, EPA received one comment letter during the public comment period. EarthJustice provided comments on behalf of the District of Columbia Chapter of the Sierra Club in a letter dated November 15, 2001. In its November 15, 2001 letter, EarthJustice incorporated, by reference, prior comments it had provided to EPA pursuant to other actions taken by the Agency regarding the District of Columbia's operating permit program. Those comments incorporated a letter dated March 12, 2001commenting in response to the **Federal Register** notice published by EPA on December 11, 2000 (65 FR 77376). A copy of this letter is included in the docket of this final rulemaking maintained at the EPA Region III office. The following summarizes the comments raised in EarthJustice's November 15, 2001 letter and provides EPA's responses.

Comment: The commenter indicates that EPA cannot grant full approval of the District of Columbia title V operating permit program unless the program fully complies with all requirements of title V and EPA's implementing rules, and without first requiring the District to address all alleged deficiencies identified by EarthJustice in its prior comment letters.

Response: EPA is aware that comments have been made regarding alleged deficiencies other than those listed in the District of Columbia's August 7, 1995 final interim approval (60 FR 40101) and March 21, 1995 proposed interim approval (60 FR 14921). EPA agrees that these allegations must be addressed through appropriate actions by both the District and EPA. For the reasons discussed below, however, we disagree that newly alleged or other identified deficiencies prohibit EPA from granting full approval of the District of Columbia's operating permit program at this time.

In 1990, Congress amended the Act, 42 U.S.C. subsections 7401 to 7671q, by adding title V, 42 U.S.C. subsections 7661 to 7661f, which requires certain air pollutant emitting facilities, including "major source[s]" and "affected source[s]," to obtain and comply with operating permits. *See* 42 U.S.C. subsection 7661a(a). Title V is intended to be administered by local, state or interstate air pollution control agencies, through permitting programs that have been approved by EPA. *See* 42 U.S.C. subsection 7661a(a). EPA is charged with overseeing the State's efforts to implement an approved program, including reviewing proposed permits and objecting to improper permits. *See* 42 U.S.C. subsections 7661a(i) and 7661d(b). Accordingly, title V of the CAA provides a framework for the development, submission and approval of State operating permit programs. Following the development and submission of a State program, the Act provides two different approval options that EPA may utilize in acting on State submittals. *See* 42 U.S.C. subsection 7661a(d) and (g). Pursuant to section 502(d), EPA "may approve a program to the extent that the program meets the requirements of the Act * * *" EPA may act on such program submittals by approving or disapproving, in whole or in part, the State program. An alternative option for acting on State programs is provided by the interim approval provision of section 502(g). This section states: "If a program * * * substantially meets the requirements of this title, but is not fully approvable, the Administrator may by rule grant the program interim approval." This provision provides EPA with the authority to act on State programs that substantially, but do not fully, meet the requirements of title V and part 70. Only those program submittals that meet the requirements of eleven key program areas are eligible to receive interim approval. *See* 40 CFR subsection 70.4(d)(3)(i)–(xi). Finally, section 502(g) directs EPA to "specify the changes that must be made before the program can receive full approval." 42 U.S.C. subsection 7661a(g); 40 CFR subsection 70.4(e)(3). This explicit directive encompasses another, implicit one: Once a State corrects the specified deficiencies then it will be eligible for full program approval. EPA believes this is so even if deficiencies have been identified sometime after final interim approval, either because the deficiencies arose after EPA granted interim approval or, if the deficiencies existed at that time, EPA failed to identify them as

such in proposing to grant interim approval.

Thus, an apparent tension exists between these two statutory provisions. Standing alone, section 502(d) appears to prevent EPA from granting a State operating permit program full approval until the State has corrected all deficiencies in its program no matter how insignificant, and without consideration as to when such deficiency was identified. Alternatively, section 502(g) appears to require that EPA grant a State program full approval if the State has corrected those issues that the EPA identified in the final interim approval. The central question, therefore, is whether the District of Columbia, by virtue of correcting the deficiencies identified in the final interim approval, is eligible at this time for full approval, or whether the District must also correct any newly alleged or recently identified deficiencies as a prerequisite to receiving full program approval.

According to settled principles of statutory construction, statutory provisions should be interpreted so that they are consistent with one another. *See Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 870 (D.C. Cir. 1979). Where an agency encounters inconsistent statutory provisions, it must give maximum possible effect to all of the provisions, while remaining within the bounds of its statutory authority. *Id.* at 870–71. Whenever possible, the agency's interpretation should not render any of the provisions null or void. *Id.* Courts have recognized that agencies are often delegated the responsibility to interpret ambiguous statutory terms in such a fashion. *See* Chevron U.S.A, Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 845 (1984). Harmonious construction is not always possible, however, and furthermore should not be sought if it requires distorting the language in a fashion never envisioned by Congress. *Citizens to Save Spencer County*, 600 F.2d at 870.

In this situation, in order to give effect to the principles embodied in title V of the CAA that major stationary sources of air pollution be required to have an operating permit that conforms to certain statutory and regulatory requirements, and that operating permit programs be administered and enforced by State permitting authorities, the appropriate and more cohesive reading of the statute recognizes EPA's authority to grant the District full approval in this situation while working simultaneously with the District, in its oversight capacity, on any additional problems that have been or may be identified. To conclude otherwise would disrupt the current administration of the State program and cause further delay in the District of Columbia's ability to issue operating permits to major stationary sources. A smooth transition from interim approval to full approval is in the best interest of the public and the regulated community and best reconciles the statutory directives of title V of the CAA.

Furthermore, requiring the District to fix all of the deficiencies that have been alleged or formally identified in the past year in order to receive full approval runs counter to the established regulatory process that is already in place to deal with newly identified program deficiencies. Section 502(i)(4) of the Act and 40 CFR subsections 70.4(i) and 70.10 provides EPA with the authority to issue NODs whenever EPA makes a determination that a permitting authority is not adequately administering or enforcing an approved part 70 program, or that the State's permit program is inadequate in any other way. Consistent with these provisions, any NOD issued by EPA will specify a reasonable time-frame for the permitting authority to correct the identified deficiency. The interim approval status of the District of Columbia's title V operating permit program expires on December 1, 2001. This deadline would not provide adequate time for the District to correct any newly identified issues prior to the expiration of interim approval. Allowing the District of Columbia's program to expire because of issues alleged as recently as March 2001 and November 2001 will cause disruption and further delay in the issuance of permits to major stationary sources in the District. As explained previously, we do not believe that title V of the Act requires such a result. Rather, the appropriate mechanism for dealing with additional deficiencies that are identified sometime after a program received interim approval but prior to being granted full approval is the notice of program deficiency or administration deficiency as discussed herein. It should be noted that notices of deficiency (NODs) may also be issued by EPA after a program has been granted full approval. Following the defined process for the identification of deficiencies and the issuance of NODs will provide the District of Columbia an adequate amount of time after such findings to implement any necessary changes without unduly disrupting the entire State operating permit program. As a result, addressing any newly identified problems separately from the full approval process will not cause these issues to go unaddressed. To the contrary, if EPA determines that any of the alleged deficiencies in the District of Columbia's program are well-founded, it will issue a NOD and place the District on notice that it must promptly correct the non-interim approval deficiencies within a specified time period or face CAA sanctions and withdrawal of program approval. At this time, EPA is still evaluating some of the deficiencies alleged by the commenter and others and will, in the very near future, respond to those allegations in a separate action. The comments EPA received from EarthJustice on March 12, 2001 will be considered when taking that separate action. EPA may issue NODs for any other deficiencies identified through EPA's oversight of the District's operating permits program at any time.

Therefore, EPA disagrees with the commenter that EPA must consider all alleged deficiencies prior to granting full approval of the District of Columbia's operating permit program. The proper administrative procedures have been followed to allow interested parties an opportunity to identify any concerns they may have with the various aspects of the District's title V operating permit program. EPA will address those concerns in the context of the relevant rulemaking or administrative actions, including this final rule granting full approval of the District of Columbia's operating permit program; the proposed rulemaking action approving any revisions to the District of Columbia's program; and as part of the process of responding to public comments pursuant to the December 11, 2000 notice (65 FR 77376).

Comment: The commenter indicates that EPA cannot grant full approval of the District of Columbia's title V operating permit program because the program excludes changes reviewed under minor new source review from the definition of Title I modifications.

Response: EPA, in its proposed interim approval, indicated that a revision of the 20 DCMR 399.1 Definition of Title I Modification or modification under any provision of Title I of the Act to include changes reviewed under minor new source review would be required only if EPA established such a change in definition through rulemaking. Because EPA has yet to revise the definition of a ''Title I modification'' to include changes subject to minor new source review, the District's current regulations remain consistent with 40 CFR part 70. Although EPA believes that the better

interpretation of ''Title I modifications'' is to include changes reviewed under a minor source preconstruction review program, EPA does not believe it is appropriate to require the District to change the definition until EPA completes its rulemaking on this provision.

Should EPA revise this definition in the future, the District will be required to revise its regulations as appropriate. As stated in EPA's proposed interim approval (March 21, 1995, 60 FR 14921), EPA did not identify the District's definition of ''Title I modification or modification under any provision of Title I of the Act'' as necessary grounds for either interim approval or disapproval. Accordingly, EPA has not identified the District's definition of this term to be a program deficiency.

Comment: The commenter stated that the District of Columbia's regulation 20 DCMR 302.4(e)(1) only required that a request for coverage under a general permit ''provide any additional information the general permit specifies.''

Response: The quoted provision is only a portion of 20 DCMR 302.4(e)(1). Section 302.4(e)(1) also provides, among other things, that ''a request for coverage under a general permit shall provide information sufficient to demonstrate that the source is in compliance with the general permit.'' Title 20 DCMR 302.4(e), read in its entirety, satisfies 40 CFR 70.6(d)(2) requiring that the request for coverage under a general permit include all information necessary to assure compliance with the general permit. 20 DCMR 302.4(e) therefore corrects the interim approval deficiency.

Comment: The commenter asserts that although the District revised 20 DCMR 303.3(a) regarding the applicability of public participation and EPA review to the entire draft renewal permit (including those portions which are incorporated by reference), the revised provision does not require that public participation and EPA and affected state review will extend to anything other than the provisions being revised.

Response: 20 DCMR 303.3(a) clearly states that ''applications for permit renewal shall be subject to the *same procedural requirements*, including those for public participation, affected State comment, and Administrator's review, *that apply to initial permit issuance* under section 303.1.'' Section 303.3(a) further provides that an application for permit renewal may address only those portions of the permit that require revision, supplementing, or deletion, *incorporating the remaining permit terms by reference from the previous permit.* Because the ''remaining permit terms'' are to be incorporated by reference, they become a part of the permit renewal which is subject to the same procedural requirements that apply to initial permit issuance. Therefore, public participation and EPA and affected State review will apply to the entire renewal permit, including those portions which are incorporated by reference. This is consistent with 40 CFR 70.7(c)(1)(i).

Comment: The commenter indicates that the District's addition of 20 DCMR 303.5(d)(1)(E) is inadequate to correct the significant permit modification interim approval deficiency. 20 DCMR 303.5(d)(1)(E) requires that significant modification procedures shall be used for applications requesting permit modifications that do not qualify as administrative permit amendments under 303.4(a) or minor permit modifications under 303.5(b). The commenter states that 303.5(d)(1)(A), (B), (C), (D) and (E) are not listed in the alternative, and therefore permittees may argue that significant modification procedures are required only where all of the conditions in 303.5(d)(1)(A) through (E) are met.

Response: EPA interprets 20 DCMR 303.5(d)(1)(A), (B), (C), (D) and (E) as independent provisions such that if any one of the requirements in those provisions are met, the significant permit modification procedures would have to be followed. EPA similarly interprets the minor permit modification procedures provisions in the Federal regulation at 40 CFR 70.7(e)(2)(i)(A). EPA reads 40 CFR 70.7(e)(2)(i)(A)(1), (2), (3), (4), (5) and (6) as independent provisions even though the word ''and'' appears between 70.7(e)(2)(i)(A)(5) and (6). Therefore, EPA believes that the District of Columbia has corrected the interim approval issue relating to significant permit modification procedures.

Comment: The commenter indicates that the District's changes to its public notice requirements are deficient as the District had already issued all 35 title V permits within its jurisdiction. The commenter also asserts that the District's revised public notice rule is still deficient because it does not require notice ''by other means if necessary to assure adequate notice to the affected public.''

Response: During the permit issuance process, adequate procedures for public notice were followed by the District, including offering an opportunity for public comment and a hearing on the draft permits. Notice was given in the District of Columbia Register, and public hearings were held on each draft title V permit. There is no outstanding action on any of the issued title V permits. Although the District did not have the requirement to provide for sending notice to persons on a mailing list (including those people who request in writing to be on the list), this has been corrected with the revision of the public participation procedures of 20 DCMR subsection 303.10(a). During the process of issuing the 35 title V permits within the District, no one from the public requested to be on a mailing list. The revisions to 20 DCMR subsection 303.10(a) require notice of all future title V permit renewals and significant permit modifications to be sent to those individuals who are now on the District's mailing list. Moreover, the District has added information to its website, located at www.environ.state.dc.us which provides members of the public with an opportunity to have their name added to the District's title V permitting mailing list. Through these actions, the District has adequately addressed the deficiency identified in EPA's proposed interim approval.

With regard to the comment that the District's revised public notice rule is still deficient because it does not require notice ''by other means if necessary to assure adequate notice to the affected public'', the District, in fact, does provide notice by other means as it has established online information on dates of public hearings, title V permits, contact phone numbers, etc. Furthermore, the District of Columbia made amendments to its regulations to address interim approval issues identified by EPA. In the proposed and final actions granting interim approval of the District of Columbia's program (March 21, 1995, 60 FR 14921 and August 7, 1995, 60 FR 40101, respectively), EPA fulfilled its obligation under section 502(g) of the CAA by specifying the changes the District of Columbia must make to its program in order to receive full approval. 42 U.S.C. subsection 7661a(g); 40 CFR subsection 70.4(e)(3). EPA directed the District to amend 20 DCMR 303.10(a) to require that notice be sent to persons on a mailing list (including those people who request in writing to be on the list). As instructed by EPA, the District amended 20 DCMR 303.10(a) to include this requirement. Therefore, the District has met its statutory obligation under section 502(g) of the CAA to make changes to its operating permit program as specified by EPA and, consequently, its program may now receive full approval.

EPA did not identify any concerns with respect to requiring that the

District also modify 20 DCMR 303.10(a) to include a requirement for notice ''by other means if necessary to assure adequate notice to the affected public''. Therefore, in its November 15, 2001 comment letter, EarthJustice is expressing a concern with the District's public notice rule that was not identified by EPA or any other interested party prior to EPA's interim approval in 1995. As discussed previously, the District's receipt of full approval of its operating permit program is contingent upon it successfully correcting its regulations as directed by EPA in the March 21, 1995 and August 7, 1995 notices granting interim approval and not the correction of all deficiencies alleged or identified after interim approval was granted. Because the scope of today's action is limited to the District's correction of its interim approval deficiencies, this comment is not germane and EPA does not address it here.

EPA, however, will carefully consider EarthJustice's concerns regarding the impact of 20 DCMR 303.10(a) on the District's operating permit program and determine whether or not a NOD is warranted. Any such NOD will be issued in an action separate from this full approval.

Comment: The commenter indicates that the District's regulations provide for use of the incorrect value for the Consumer Price Index (CPI) in 20 DCMR 305.2(b) to calculate annual permit fees.

Response: In fact, this is not the case. As stated in 20 DCMR 305.2(a) ''The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all urban consumers published by the Department of Labor, as of the close of the twelve (12) month period ending on August 31st of each calendar year.'' Then 20 DCMR 305.2(b) goes on to say ''The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used. The Consumer Price Index for all urban consumers for the month of August 1989 is one hundred twenty-four and six tenths (124.6).'' The statements made in these regulations are correct. The commenter's assertion that ''Section 305.2(b) continues to show 124.6 as the *base year index* for calculating fee increases' is incorrect. Although, 305.2(b) states that the August 1989 CPI is 124.6, this provision requires that the calendar year 1989 CPI shall be used as the base year index. As required by 20 DCMR 305.2(a), the District adjusts the annual fee based on the CPI-Urban Index that represents the 12-month average from September through August of the previous year. The District uses the same presumptive minimum fee that is computed by EPA each year. The commenter's remarks may have been relevant several years ago, however, it is highly improbable that a permittee would go back 12 years to adjust the CPI, when in practice, each title V source in the District is provided the updated adjusted annual fee calculation each year by the District's Air Quality Division. With this clarification, the District of Columbia's program is consistent with 40 CFR 70.9(b)(2)(iv).

Comment: The commenter states that the District of Columbia's Corporation Counsel did not cite to legislative authority that the Mayor can create a right of action in court and that the power to confer judicial jurisdiction and create judicial causes of action is traditionally reserved to the legislature (here either the Counsel or Congress).

Response: In the interim approval, EPA had requested that Corporation Counsel revise its opinion to reference existing provisions in District of Columbia law which satisfy the requirements of 40 CFR 70.11(a)(1) and (2), or establish authorities to restrain or enjoin immediately permit violators presenting substantial endangerment, and to seek injunctive relief for program and permit violations without the need for prior revocation of the permit. The District satisfied this requirement by citing to numerous provisions to establish such authority under its regulations. The District's legislative authority for these actions already existed in section 4(b) of the District of Columbia's Air Pollution Control Act enacted by Congress on July 30, 1968 (P.L. 90–440) which provides that ''[f]or the purpose of carrying out his duties under this act, the Commissioner [now the Mayor] may * * * (2) issue such orders as may be necessary to enforce the regulations prescribed by the Counsel under this Act and enforce such orders by all appropriate administrative and judicial proceedings, including injunctive relief; (3) hold hearings relating to the administration of this Act;* * * and (6) take any other actions which may be necessary to carry out his duties under this Act''. After Congress granted the District limited home rule by enacting the District of Columbia Home Rule Act on December 24, 1973 (Pub. L. 93–198), the enactments of Congress remained in force until amended by the Council. The Council of the District of Columbia subsequently re-enacted the same provision in D.C. Law 5–165, effective March 15, 1985, among other things, to amend it to reflect that the Mayor now serves as the chief executive officer. This authority is sufficient to meet the requirements of 70.11(a)(1) and (2).

Comment: The commenter states that criminal offenses and fines can only be set by the legislature and that Corporation Counsel has not cited any legislative authority for seeking criminal fines for violations of the District's operating permit program. The commenter also references Corporation Counsel's statement that 20 DCMR section 105.2 does not provide the Mayor with authority for criminal enforcement of the Air Pollution Control Act to support a proposition that the District lacks the criminal authority.

Response: The District, in Corporation Counsel's amended opinion, cited numerous provisions to establish such authority under the District's regulations. In addition, the authority to seek criminal fines already existed in D.C. Law 5–165, section 3, which enacted the first 9 chapters of Title 20 of the District of Columbia Municipal Regulations as the Air Quality subtitle. The provisions in sections 105.1 and 105.2 (subsequently renumbered 105.5) establish criminal penalties for air quality violations. Section 105.1 of D.C. Law 5–165 provides, in pertinent part, that each person who fails to comply with any of the provisions of this subtitle shall be punished by a fine not to exceed ten thousand dollars or imprisonment not to exceed ninety days, or both. Section 105.5 of D.C. Law 5–165 provides, in pertinent part, that each day of violation shall constitute a separate offence and the penalties described shall be applicable to each separate offense.

EPA believes that the commenter incorrectly concludes that Corporation Counsel's statement that 20 DCMR Section 105.2 does not provide the Mayor with authority for criminal enforcement of the Air Pollution Control Act is supportive of its (the commenter's) proposition that the District lacks the criminal authority. Corporation Counsel was noting that 105.2 is the incorrect provision to reference for the criminal authority and that Sections 105.1 and 105.5 are the correct provisions that established such authority. The District of Columbia has resolved the interim approval issue regarding criminal enforcement.

Comment: The commenter states that the District has not:

(a) Demonstrated that title V fees are adequate to cover compliance and enforcement activities;

(b) Shown how they will monitor and track source compliance;

(c) Committed to submission of annual enforcement reports;

(d) Reviewed self-monitoring reports; and

(e) Shown how it will follow up on violations.

Response: With regard to (a), the District has documented to EPA that time spent on title V activities by clerical staff, engineers and supervisors (in both the Engineering & Planning Branch (EPB) and the Compliance & Enforcement Branch (CEB)) are being tracked and accounted for appropriately as title V fees. In addition, the District's title V account shows a surplus, which demonstrates that title V fees are more than adequate to cover compliance and enforcement activities. Section IV of the District's original title V program submittal (dated January 13, 1994), states that "District law provides authority for the Administrator of the Environmental Regulation Administration to assess and collect annual permit fees (or the equivalent amount of fees over some other period of time) from sources within the District which are subject to the requirements of title V of the CAA and 40 CFR part 70, in an amount sufficient to cover all reasonable direct and indirect costs required to develop, administer, and enforce the District's title V program." The District authority's is provided in 20 DCMR Sections 302.1(h) and 305.

With regard to (b), the District has committed to monitor and track source compliance through the "Air Quality Inspection/Compliance Monitoring Plan" which it has submitted to EPA. The most recent plan submitted to EPA is dated October 1, 2001. The plan identifies inspection objectives and targets title V air pollution sources for inspection, and sets out criteria for determining which minor sources within the District will be inspected.

With regard to (c), the submission of annual enforcement reports, the commenter asserts that the requirement is not satisfied merely by submission of information to the Aerometric Information Retrieval System/AIRS Facility Subsystem (AIRS/AFS). In addition to AIRS/AFS, the District submits enforcement reports to EPA on a semi-annual and annual basis. These reports were submitted in April 2001 and October 2001. The report entitled, "Compliance and Enforcement Activities and Accomplishments—Year End 2001 Report" contains information on High Priority Violators, as well as the dates that inspections were conducted at all title V sources in the District. In addition, the District participates in quarterly enforcement program reviews with EPA.

With regard to (d), the review of self-monitoring reports, in the "Air Quality Inspection/Compliance Monitoring Plan", the District has committed to review title V self certifications, semi-annual monitoring and periodic monitoring reports, and any other reports required by the permit.

In response to item (e), in a section of the "Air Quality Inspection/Compliance Monitoring Plan" entitled "Compliance Monitoring Evaluation—Section 5.3," the District demonstrates how it will follow-up on violations. That section of the plan describes three compliance categories used by the District. This is taken from EPA's Clean Air Act Stationary Source Compliance Monitoring Strategy. In addition, another report entitled "Compliance and Enforcement Activities and Accomplishments—Year End 2001 Report" contains information on new "High Priority Violators".

The commenter's statement that the "above-referenced requirements are not satisfied merely by citing existing EPA/DC agreements under other programs." is incorrect. Title 40 CFR 70.4(b)(5) provides that the submission should contain "a complete description of the State's compliance tracking and enforcement program *or reference to any agreement the State has with EPA that provides this information."* Therefore, the above plans and reports are sufficient to demonstrate that compliance and enforcement activities are being properly tracked and reported to EPA.

What Action Is Being Taken by EPA?

Based upon our analysis of the comments received, EPA has determined that the concerns raised regarding the interim approval deficiencies do not constitute deficiencies in the District of Columbia's operating permit program. The District has satisfactorily addressed the 29 program deficiencies identified by EPA in its final interim approval of the District's operating permit program on August 7, 1995. The operating permit program amendments submitted by the District of Columbia on May 21, 2001, August 30, 2001, and September 26, 2001, considered together with that portion of the District of Columbia's operating permit program that was earlier approved on an interim basis, fully satisfies the minimum requirements of 40 CFR part 70 and the Clean Air Act.

Therefore, EPA is granting final full approval of the District of Columbia's title V operating permit program.

What Is the Effective Date of EPA's Full Approval of the District of Columbia Title V Operating Permit Program?

EPA is using the good cause exception under the Administrative Procedure Act (APA) to make the full approval of the District of Columbia's program effective on November 30, 2001. In relevant part, the APA provides that publication of "a substantive rule shall be made not less than 30 days before its effective date, except—* * * (3) as otherwise provided by the agency for good cause found and published with the rule" (5 U.S.C. 553(d)(3)). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. EPA's interim approval of the District of Columbia's prior program expires on December 1, 2001. In the absence of this full approval of the District of Columbia's amended program taking effect on November 30, 2001, the Federal program under 40 CFR part 71 would automatically take effect in the District of Columbia and would remain in place until the effective date of the fully-approved state program. EPA believes it is in the public interest for sources, the public and the District of Columbia to avoid any gap in coverage of the State program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because the District of Columbia has been administering the title V permit program for six years under an interim approval.

What Is the Scope of EPA's Full Approval?

In its program submission, the District of Columbia did not assert jurisdiction over Indian country. To date, no tribal government in the District of Columbia has applied to EPA for approval to administer a title V program in Indian country within the District of Columbia. EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may be approved by EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. EPA's part 71 regulations govern the issuance of Federal operating permits in Indian country. EPA's authority to issue permits in Indian country was

challenged in *Michigan* v. *EPA*, (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective on November 30, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action granting final full approval of the District of Columbia's title V operating permit program may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 28, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

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

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by adding paragraph (b) to the entry for the District of Columbia to read as follows:

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

* * * * *

District of Columbia

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(b) The District of Columbia Department of Health submitted operating permit program amendments on May 21, 2001, August 30, 2001, and September 26, 2001. The rule amendments contained in the May 21, 2001, August 30, 2001, and September 26, 2001 submittals adequately addressed the conditions of the interim approval effective on September 6, 1995. The District of Columbia is hereby granted final full approval effective on November 30, 2001.

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