(4) Then south along State Highway 9 approximately 44 miles to its intersection with an unnamed secondary road (referred to in the petition as Burn Road) at the town of Arlington, T31N/R5E;

(5) Then south, southeast along Burn Road approximately 11 miles to its intersection with State Highway 92, T30N/R6E;

(6) Then south along State Highway 92 approximately 3 miles to its intersection with an unnamed light duty road (referred to in the petition as Machias Hartford Road), T29N/R6E;

(7) Then south along Machias Hartford Road approximately 4 miles to its intersection with an unnamed secondary road (referred to in the petition as Lake Roesiger Road), on the U.S.G.S. map ''Wenatchee,'' T29N/R7E;

(8) Then east along Lake Roesiger Road approximately 3.5 miles to its intersection with an unnamed secondary road (referred to in the petition as Woods Creek Road), T29N/R7E;

(9) Then south along Woods Creek Road approximately 10.5 miles to its intersection with U.S. Highway 2 in the town of Monroe, T27N/R7E;

(10) Then west along U.S. Highway 2 approximately ½ mile to its intersection with State Highway 203, T27N/R6E;

(11) Then south along State Highway 203 approximately 24 miles to its intersection with an unnamed secondary road (referred to in the petition as Preston-Fall City Road), at the town of Fall City, T24N/R7E;

(12) Then southwest along Preston-Fall City Road approximately 4 miles to its intersection with Interstate Highway 90 at the town of Preston, T24N/R7E;

(13) Then east along Interstate Highway 90 approximately 3 miles to its intersection with State Highway 18, T23N/R7E;

(14) Then southwest along State Highway 18 approximately 7 miles to its intersection with an unnamed secondary road (referred to in the petition as 276th Avenue SE), T23N/R6E;

(15) Then south along 276th Avenue SE approximately 5 miles to its intersection with State Highway 516 at the town of Georgetown, T22N/R6E;

(16) Then west along State Highway 516 approximately 2 miles to its intersection with State Highway 169 at the town of Summit on the U.S.G.S. map, ''Seattle,'' (shown in greater detail on the U.S.G.S. map, ''Auburn''), T22N/R6E;

(17) Then south along State Highway 169 approximately 11.5 miles to its intersection with State Highway 410 at the town of Enumclaw on the U.S.G.S. map, ''Wenatchee,'' (shown in greater detail on the U.S.G.S. map, ''Enumclaw''), T20N/R6E;

(18) Then southwest approximately 5 miles along State Highway 410 until its intersection with State Highway 165 on the U.S.G.S. map, ''Seattle,'' (shown in greater detail on the U.S.G.S. map, ''Buckley''), T19N/R6E;

(19) Then southwest on State Highway 165 until its intersection with State Highway 162 at the town of Cascade Junction on the U.S.G.S. map, ''Seattle'' (shown in greater detail on the U.S.G.S. Map, ''Buckley''), T19N/R6E;

(20) Then southwest along State Highway 162 approximately 8 miles to its intersection with an unnamed secondary road (referred to in the petition as Orville Road E.), T19N/R5E;

(21) Then south along Orville Road E., approximately 8 miles to its intersection with the CMSTP&P railroad at the town of Kapowsin, on the U.S.G.S. map, ''Hoquiam,'' T17N/R5E;

(22) Then south along the CMSTP&P railroad approximately 17 miles to where it crosses the Pierce County line at the town of Elbe, T15N/R5E;

(23) Then west along the Pierce County line approximately 1 mile to the eastern tip of Thurston County, T15N/R5E;

(24) Then west along the Thurston County line approximately 38 miles to where it crosses Interstate Highway 5, T15N/R2W;

(25) Then north along Interstate Highway 5 approximately 18 miles to its intersection with U.S. Highway 101 at the town of Tumwater on the U.S.G.S. map ''Seattle,'' T18N/R2W;

(26) Then northwest along U.S. Highway 101 approximately 18 miles to its intersection with State Highway 3 at the town of Shelton, T20N/R3W;

(27) Then northeast along State Highway 3 approximately 24 miles to where it crosses the Kitsap County line, T23N/R1W;

(28) Then north along the Kitsap County line approximately 3 miles to the point where it turns west, T23N/R1W;

(29) Then west along the Kitsap County line approximately 11 miles to the point where it turns north, T23N/R3W;

(30) Then continuing west across Hood Canal approximately 1 mile to join with U.S. Highway 101 just south of the mouth of an unnamed creek (referred to in the petition as Jorsted Creek), T23N/R3W;

(31) Then north along U.S. Highway 101 approximately 40 miles to the point where it turns west at the town of Gardiner on the U.S.G.S. map ''Victoria,'' T30N/R2W;

(32) Then west along U.S. Highway 101 approximately 32 miles to where it crosses the Elwha River, T30N/R7W;

(33) Then north along the Elwha River approximately 6 miles to its mouth, T31N/R7W;

(34) Then continuing north across the Strait of Juan de Fuca approximately 5 miles to the Clallam County line, T32N/R7W;

(35) Then northeast along the Clallam County line approximately 14 miles to the southwestern tip of San Juan County, T32N/R4W;

(36) Then northeast along the San Juan County line approximately 51 miles to the northern tip of San Juan County, T38N/R3W;

(37) Then northwest along the Whatcom County line approximately 19 miles to the western tip of Whatcom County, T41N/R5W;

(38) Then east along the Whatcom County line approximately 58 miles to the beginning.

Signed: May 3, 1995.

Daniel R. Black,

Acting Director.

[FR Doc. 95–12410 Filed 5–19–95; 8:45 am]

BILLING CODE 4810–31–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IN001; FRL–5209–6]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by Indiana for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by June 21, 1995. Comments should be addressed to the contact indicated below.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please

contact Sam Portanova at (312) 886–3189 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under Title V of the Clean Air Act (''the Act'') as amended (1990), EPA has promulgated regulations which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. 40 CFR 70.4(e)(2), however, allows the Administrator to extend the review period of a State's submittal if the State's submission is materially altered during the 1-year review period. This additional review period may not extend beyond 1 year following receipt of the revised submission.

The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

The EPA is proposing to grant interim approval to the operating permits program submitted by Indiana on August 10, 1994. Indiana's program substantially meets the requirements of part 70; however, certain issues must be addressed in the State's submittal before EPA can grant full approval. This notice will outline the corrections necessary for full approval.

For more detailed information on the analysis of the State's submission, please refer to the part 70 Operating Permits Program Review Checklist and technical support document (TSD) included with the docket of this interim approval.

1. Support Materials

An August 5, 1994, letter from Kathy Prosser, Commissioner of the Indiana Department of Environmental Management (IDEM), to Valdas V. Adamkus, Regional Administrator of EPA Region 5, accompanying the State's submittal, names the IDEM as the state agency responsible for the administration of Indiana's Title V operating permit program throughout the entire state.

The Indiana Title V submittal contains all the elements required by 40 CFR 70.4(b). Also included in the State's submittal is a narrative description of the State's program summarizing how the State will meet the requirements of part 70 and a legal opinion from Pamela Carter, Attorney General of the State of Indiana, certifying that the legal authority exists for the State to administer and enforce the Title V program.

The State's Title V program regulations are found in the Indiana Administrative Code (IAC) under 326 IAC 2–7. Although the Indiana Title V submittal contains regulations other than 326 IAC 2–7, this notice is only taking action on 326 IAC 2–7. Supporting legislative authority is found in the Indiana Code (IC) under IC 4–21, IC 5–14, IC 13–1, IC 13–6, and IC 13–7.

2. Regulations and Program Implementation

a. Applicability

The Indiana program meets the requirements of 40 CFR 70.2 and 70.3 for applicability in 326 IAC 2–7–2. Please refer to the TSD, included with the docket of this interim approval, for more information regarding the language in 326 IAC 2–7–2.

b. Permit Applications

The Indiana program, in 326 IAC 2–7–4, substantially meets the requirements of 40 CFR 70.5 for permit applications. The Indiana program submittal also includes complete permit application forms.

A deficiency in the State's permit application requirements exists, however, concerning insignificant activities, which are defined in 326 IAC 2–7–1(20). The following are the insignificant activity threshold levels for the Indiana program:

5 pounds per hour (lb/hr) or 25 pounds per day (lb/day) of particulate matter (PM);
10 lb/hr or 50 lb/day of sulfur dioxide (SO_2);
5 lb/hr or 25 lb/day of nitrogen oxides (NO_X);
3 lb/hr or 15 lb/day of volatile organic compounds (VOC);
25 lb/day of carbon monoxide (CO);
0.6 tons per year (tpy) or 3.29 lb/day of lead or lead compounds measured as elemental lead.

A source must meet both emission levels (i.e., lb/hr and lb/day) to qualify for the exemption. These levels equal a maximum potential of 2.74 tpy of VOC, 4.56 tpy of CO, NO_X, and PM, and 9.13 tpy of SO_2. In addition, 326 IAC 2–1–1(b)(1)(H) exempts modifications to major sources of hazardous air pollutants (HAP) which will increase allowable emissions by less than 4 tpy for one HAP or 10 tpy of any combination of HAPs from the Title V program.

EPA is granting full approval to the VOC, CO, NO_X, and PM insignificant activity levels. EPA is granting interim approval to the SO_2 and HAP insignificant activity levels. If EPA's concerns for the SO_2 and HAP levels are addressed in the State's final regulations before final action on this notice, then EPA can fully approve Indiana's SO_2 and HAP insignificant activities. Alternatively, if the State does not address EPA's concerns before final action on this notice, then EPA's final action will include an interim approval on this issue. The rationale for the interim approval status is provided in the TSD included with the docket of this interim approval.

c. Permit Issuance, Renewal, Reopenings and Revisions

The Indiana program meets the requirements of 40 CFR 70.7 and 70.8 for permit issuance, renewal, reopenings, and public participation and the requirements of 40 CFR 70.4(b)(12) for operational flexibility. Please refer to the TSD, included with the docket of this interim approval, for more information regarding the language in 326 IAC 2–7–11 for administrative permit amendments.

An interim approval issue exists, however, with respect to the State's threshold levels for group processing of permits. The Indiana program's threshold level for minor permit modification (MPM) group processing eligibility is not as stringent as the part 70 threshold level. According to 326 IAC 2–7–12(c)(1)(B), Indiana's thresholds are:

PM = 5 lb/hr or 25 lb/day (4.56 tpy)
SO_2 = 10 lb/hr or 50 lb/day (9.13 tpy)
NO_X = 5 lb/hr or 25 lb/day (4.56 tpy)
VOC = 3 lb/hr or 15 lb/day (2.74 tpy)

CO = 25 lb/hr or 125 lb/day (22.81 tpy)
Lead = 0.6 tpy
HAP = 4 tpy of one HAP/10 tpy of any combination of HAPs

40 CFR 70.7(e)(3)(i) states that the threshold for allowing group processing of permit modifications are modifications that collectively emit: 10 percent of the emissions allowed by the permit for the unit for which the change is requested; or 20 percent of the applicable definition of major source; or 5 tons per year; whichever is least. EPA is proposing interim approval for the Indiana threshold levels. To obtain full approval, Indiana must establish a group processing threshold consistent with 40 CFR 70.7(e)(3)(i) or demonstrate that an alternative threshold would alleviate severe administrative burden and would result in trivial environmental impact. If EPA's concerns are addressed by a change in the State's final regulations or by a State demonstration before final action on this notice, then EPA can fully approve the State's group processing threshold levels. Alternatively, if the State does not address EPA's concerns before final action on this notice, then EPA's final action will include an interim approval on this issue.

d. Permit Content

Another major component of Indiana's program concerns the contents of a Title V permit. The program substantially meets the requirements of 40 CFR 70.6. A Title V permit will incorporate applicable requirements of existing State Implementation Plans (SIP), as well as any future applicable requirements promulgated by EPA. Authority exists in 326 IAC 2–7–13 to develop general permits covering numerous similar sources, except for sources subject to the Acid Rain Program. These general permits are targeted for future development.

326 IAC 2–7–5(1)(F) states that emission limitations applicable to start-up, shutdown and emergency bypasses shall be addressed on a case-by-case basis in the permit. Sources that request these limitations must do so in their Title V permit application. In response to EPA's concern that such a provision could be interpreted to enable the State to issue a permit which would violate a SIP requirement, Indiana has provided assurance that it will issue only those permits that comply with all applicable requirements of the Indiana SIP. See letter of April 28, 1995, from Kathy Prosser, Commissioner of the Indiana Department of Environmental Management, to Valdas Adamkus, Regional Administrator, EPA, Region 5.

Another component of permit content is the length of time in which a source must notify the permitting authority to report a deviation from a permit condition. Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. 40 CFR 70.6(a)(3)(iii)(B) requires the permitting authority to define ''prompt'' in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define ''prompt'' for purposes of administrative efficiency and clarity, an acceptable alternative is to define the term in each individual permit. Prompt reporting, however, must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Indiana addresses the issue of prompt reporting in 326 IAC 2–7–5(3)(C)(ii). Because Indiana did not actually define ''prompt,'' EPA may veto permits that do not contain sufficiently prompt reporting requirements for deviations. EPA and Indiana will address the appropriate definition of ''prompt'' in the Implementation Agreement that will be developed for the Indiana program.

e. Public and EPA Comment Periods

326 IAC 2–7–18 provides for the public comment period for a draft permit and the EPA review of a proposed permit to occur concurrently. EPA will receive a copy of a draft permit when it is issued for a 30-day comment period for the public and affected States.

If comments are received, but the State does not change the permit, the State will notify EPA and send to EPA a signed copy of the draft permit that will then be the proposed permit. EPA has up to 15 days after the receipt of the proposed permit to notify the State if it wishes to have a full 45-day review period for the proposed permit. Otherwise, EPA's comment period ends 45 days after it first receives the draft permit. Please refer to the TSD, included with the docket of this interim approval, for more information regarding Indiana's public comment procedures.

f. Enforcement

The Indiana program meets the enforcement authority requirements of 40 CFR 70.11. The Indiana statute addresses these requirements in IC 13–7–5, 13–7–11, 13–7–12, and 13–7–13. The Indiana Attorney General's legal opinion certifies that the Indiana statue adequately meets the requirements of 40 CFR 70.11.

3. Permit Fee Demonstration

According to 326 IAC 2–7–19, Indiana will charge part 70 sources a $1500 flat fee plus $33 per ton of actual emissions of each regulated pollutant. If the source emits over 100 tpy of both VOC and NO_X and is located in Lake or Porter County, it shall not pay more than $200,000 in Title V fees. All other sources shall not pay more than $150,000. Sources will have to pay 50 percent of this amount in 1994 and 75 percent of this amount in 1995. The dollar amounts will be adjusted by the Consumer Price Index beginning in 1996. Indiana has demonstrated in the Title V program submittal that its fee schedule will collect adequate fees to satisfy the EPA presumptive minimum amount beginning in 1996.

Indiana's fee schedule for 1995 will be $24.75 per ton of emissions plus a $1,125 flat fee per source. This is below the EPA presumptive minimum fee amount. Indiana's program, however, will be in effect for only a portion of 1995 and Indiana has demonstrated that it will provide enough of the 1995 fee schedule for the post-program approval period to meet the EPA presumptive minimum amount. Please refer to the TSD, included with the docket of this interim approval, for more information regarding the State's fee demonstration.

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

a. Authority and/or Commitments for Section 112 Implementation

Indiana has demonstrated in its Title V program submittal adequate legal authority to implement and enforce all section 112 requirements through Title V permits. This legal authority is contained in Indiana's enabling legislation and in regulatory provisions defining ''applicable requirements'' and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Indiana to issue permits that assure compliance with all section 112 requirements.

The EPA is accepting the above legal authority as an adequate demonstration that Indiana is able to carry out all section 112 activities relative to Title V sources. For further rationale on this interpretation, please refer to the TSD accompanying this rulemaking and the April 13, 1993, guidance memorandum titled ''Title V Program Approval Criteria for section 112 activities,'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

b. Implementation of section 112(g) Upon Program Approval

As a condition of approval of the Title V program, Indiana is required to implement section 112(g) of the Act. Indiana has promulgated a ''MACT Rule'' in 326 IAC 2–1–3.3. The purpose of this regulation is to provide Indiana the necessary mechanism to implement section 112(g). 326 IAC 2–1–3.3(e) states that permit conditions necessary to implement the provisions of 326 IAC 2–1–3.3 shall be established in 326 IAC 2–1–3. 326 IAC 2–1–3 is the Indiana NSR construction permit regulation, which has been approved into the Indiana SIP. 326 IAC 2–1–3.3 applies to new or reconstructed sources emitting greater than 10 tpy of a HAP or 25 tpy of any combination of HAPs. The regulation also applies to modifications to HAP sources which emit 4 tpy of one HAP or 10 tpy of any combination of HAPs.

According to the **Federal Register** notice published on February 14, 1995, 60 FR 8333, the requirements of section 112(g) will not become effective until after EPA has promulgated a regulation addressing that provision. The **Federal Register** notice sets forth in detail the rationale for this interpretation. At the time of Indiana's program submittal and EPA's subsequent review period, EPA has not promulgated a federal regulation containing the specific requirements of section 112(g).

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal regulation so as to allow States time to adopt regulations implementing the Federal regulation, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Indiana must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) regulation and adoption of implementing State regulations. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis.

For this reason, EPA is proposing approval of Indiana's MACT regulation (326 IAC 2–1–3.3) under the authority of Title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between promulgation of the section 112(g) regulation and adoption by Indiana of regulations implementing the provisions of section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) regulation that sources are not subject to the requirements of the regulation until State regulations are adopted. The EPA is limiting the duration of this proposal to 18 months following promulgation by EPA of the section 112(g) regulation. Once promulgated by EPA, the 112(g) regulation will serve as the mechanism for establishing federally enforceable case-by-case MACT emission limits for HAPs. EPA is interpreting Indiana's legal authority and commitment (Enclosure H, page 33 of the Indiana program submittal) to mean that, upon promulgation of the section 112(g) regulation, the State will expeditiously adopt regulations consistent with the provisions of 112(g).

Although section 112(l) generally provides authority for approval of State air toxics programs, Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of section 110 or any other provision under the Act.

c. Program for Delegation of Section 112 Standards as Promulgated

The requirements for a Title V program approval, specified in 40 CFR 70.4(b), also encompass section 112(l)(5) requirements for approval of a State program for delegation of section 112(d), (f), or (h) standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is proposing to grant approval, under section 112(l)(5) and 40 CFR 63.91, of Indiana's program for receiving delegation of section 112(d), (f), or (h) standards that are unchanged from the Federal standards as promulgated. This program approval applies to both existing and future standards, but is limited to sources covered by the part 70 program.

Indiana has informed EPA that it intends to accept delegation of section 112(d), (f), or (h) standards through rule adoption. The details of this delegation mechanism will be set forth in a Memorandum of Agreement between Indiana and EPA expected to be completed prior to approval of Indiana's section 112(l) program for delegations.

d. Limiting HAP Emissions Through a FESOP Program

At the time of the publication of this **Federal Register** notice, USEPA has not approved a FESOP regulation which would establish federally enforceable limits on sources' potential to emit. If USEPA approves the Indiana FESOP regulation, Indiana will have the ability to place federally enforceable limits on HAPs in addition to criteria pollutants. The federal enforceability of HAP limits will be addressed in any future SIP approving the FESOP program.

e. Title IV

Indiana's program contains adequate authority to issue permits which reflect the requirements of Title IV and its implementing regulations. 326 IAC 21–1–1 incorporates by reference 40 CFR parts 72, 75, 76, 77, and 78. Indiana's program submittal contains a commitment to revise its regulations as necessary to accommodate federal revisions and additions to Title IV and the Acid Rain regulations once they are promulgated.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by Indiana on August 10, 1994. If this interim approval is promulgated, the State must make the following changes to receive full approval: (1) The State must amend its insignificant activities levels for SO_2 and HAPs to levels which assure that large sources are included in Title V review and (2) the State must revise its emissions threshold level for MPM group processing eligibility to be consistent with the 40 CFR 70.7(e)(3)(i)(B) threshold level or the State may demonstrate that an alternative to the 40 CFR 70.7(e)(3)(i)(B) level is acceptable. Indiana's program is not fully approvable because of the deficiencies mentioned above. The program, however, substantially meets the requirements of part 70 because Indiana's regulations and legislation comply with all other part 70 requirements. If EPA's concerns on the issues mentioned above are addressed before final action on this notice, then EPA can fully approve Indiana's program. Alternatively, if the State does not address EPA's concerns on these issues before final action on this notice, then EPA's final action will remain an interim approval of the Indiana program.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications. Because the interim approval automatically expires 2 years after promulgation of a final interim approval, the State may submit its interim corrections at any time. However, the State may not submit its corrections any later than 18 months after promulgation of final interim approval. The EPA will then have 6 months to promulgate a final action.

C. Federal Oversight and Sanctions

Where EPA grants interim approval, it would extend for 2 years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State would not be subject to sanctions and EPA would not be obligated to promulgate, administer, and enforce a Federal permits program for the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval as does the 3-year time period for processing the initial permit applications.

State failure to timely correct the deficiencies which are the basis for an interim approval or EPA disapproval of a submitted corrective program will start an 18-month clock for the mandatory imposition of section 179(b) sanctions. Each of these occasions starts a separate sanctions clock and time is not accumulated from one clock to another. Section 179(b) of the Act mandates the impositions of the following sanctions: (1) 2 to 1 emission offsets for new construction in nonattainment areas and (2) restriction on federal funding of highway projects. The offset sanction would be imposed 18 months after a sanctions clock is started and the highway sanction would be imposed 6 months after the offset sanction.

Following final interim approval, if the State failed to submit a complete corrective program for full approval by 6 months before expiration of the interim approval, EPA would start the sanctions clock. If the State then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply the first section 179(b) sanction, which would remain in effect until EPA determined that the State had submitted a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In any case, if, 6 months after the application of the first sanction, the State still had not submitted a corrective program that EPA found complete, the second sanction would be required.

If, following final interim approval, EPA were to disapprove the State's complete corrective program, EPA would be required to apply the first section 179(b) sanction on the date 18 months after the effective date of the disapproval, unless, prior to that date, the State had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance, In all cases, if, 6 months after EPA applied the first sanction, the State had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, the second sanction would be required.

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

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. 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 rulemaking process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by June 21, 1995.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

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

Operating permits program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal operating permits program approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action.

The Act forbids EPA to base its actions concerning operating permits programs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct 1976); 42 U.S.C. 7410(a)(2).

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.

The EPA has determined that the proposed approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in Part 70

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

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

Dated: May 9, 1995.

David A. Ullrich,

Acting Regional Administrator.

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DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AA63

Acquisition Regulation; Technology Transfer Activities of Department of Energy (DOE) Management and Operating Contractors

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes an amendment to codify DOE's implementation of its technology transfer mission for DOE laboratories (including weapon production facilities) operated by management and operating contractors. The National Competitiveness Technology Transfer Act of 1989 required that technology transfer be established as a mission of each Government-owned laboratory operated under contract by a non-Federal entity. The National Defense Authorization Act for Fiscal Year 1994 expanded the Stevenson-Wydler Technology Innovation Act of 1980 definition of laboratory to include weapon production facilities of the Department of Energy that are operated for national security purposes and are engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components. DOE is proposing to amend the Department of Energy Acquisition Regulation to specify that each new award for or renewal of an existing management and operating contract for the operation of a DOE laboratory or weapon production facility shall have technology transfer as a mission.

DATES: Written comments must be received by July 21, 1995.

ADDRESSES: Comments should be addressed to: Howard K. Mitchell, Policy Analyst, Office of Policy (HR–51), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Washington, D.C., 20585, (202) 586–8190.

FOR FURTHER INFORMATION CONTACT: Howard K. Mitchell, (202) 586–8190.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section by Section Analysis of the Proposed Rule
III. Procedural Requirements
A. Regulatory Review Under Executive Order 12866
B. Review Under Executive Order 12612
C. Review Under Executive Order 12778
D. Review Under the Regulatory Flexibility Act
E. Review Under the Paperwork Reduction Act
F. Review Under the National Environmental Policy Act (NEPA)
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I. Background

Under Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the position. Accordingly, the Department of Energy Acquisition Regulation was promulgated with an effective date of April 1, 1984, (49 FR 11922, March 28, 1984), 48 CFR chapter 9. With this rule, DOE is proposing an addition amending part 970 of the Department of Energy Acquisition Regulation to codify DOE's implementation of its technology transfer mission for DOE laboratories and weapon production facilities operated by management and operating contractors.

Technology advancement is a key component in the growth of the United States industrial economy, and a strong industrial base is an essential element of national security. Further, there is a continuing need to enhance United States competitiveness in both domestic and international markets. DOE laboratories and weapon production facilities, operated by DOE management and operating contractors, have developed outstanding capabilities in a wide variety of advanced technologies and are staffed with scientists, engineers, technicians and other personnel associated with those technologies. The deployment of these resources to work with the private sector through cooperative efforts, consistent with the laboratory's or facility's program mission assignments, can make a substantial contribution to the competitive posture of United States industry.

In recognition of such capabilities, Congress enacted the National Competitiveness Technology Transfer Act of 1989. This Act extended to Government-owned contractor-operated laboratories the same authority to enter into cooperative research and development agreements (CRADAs) which the Federal Technology Transfer Act of 1986 had given to Government-owned Government-operated laboratories and also provided for the protection from dissemination of certain types of information generated under CRADAs. Section 3133(d) of the Act required, by April 30, 1990, each agency which had contracted with a non-Federal entity to operate a Government-owned laboratory to propose for inclusion in that laboratory's operating contract, appropriate contract provisions to implement the requirements of the Act. The National Competitiveness Technology Transfer Act of 1989, as amended by Sections 3134 and 3160 of the National Defense Authorization Act for Fiscal Year 1994, established technology transfer as a mission for Government-owned, contractor-operated laboratories as well as for weapon production facilities. It also authorized such laboratories and weapon facilities to negotiate and award CRADAs with other Federal agencies, State and local governments, industrial organizations, public and private foundations, nonprofit organizations and other persons for the purposes of transferring technology and conducting research and development. Additionally, Sec. 3133(a)(7) of the Act allows certain types of information generated under CRADAs to be protected from disclosure under the Freedom of Information Act for a period of up to five years.

The promulgation and use of a final version of a technology transfer contract clause for DOE laboratories and weapon production facilities operated by