D. Enhancing the Intergovernmental Partnership under Executive Order 12875

In compliance with Executive Order 12875 we have involved state, local, and tribal governments in the development of this rule. State and local air pollution control associations participated in work group meetings and made comments which were incorporated in the proposed rule.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1739.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street SW., (2136), Washington, DC 20460 or by calling (202) 260–2740.

The public reporting burden for this collection of information is estimated to average 251 hours per respondent for the first year after the date of promulgation of the rule, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for the EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (or RFA, Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a final regulatory flexibility analysis must be prepared if a proposed regulation will have a significant economic impact on a substantial number of small entities. To determine whether a final RFA is required, a screening analysis, otherwise known as an initial RFA, is necessary.

Regulatory impacts are considered significant if:

(1) Annual compliance costs increase total costs of production by more than 5 percent, or

(2) Annual compliance costs as a percent of sales are at least 20 percent higher for small entities, or

(3) Capital cost of compliance represent a significant portion of capital available to small entities, or

(4) The requirements of the regulation are likely to result in closures of small entities.

A ''substantial number'' of small entities is generally considered to be more than 20 percent of the small entities in the affected industry.

In addition to the requirement above, the Agency requires a final RFA if any small business impacts are attributed to a regulatory action for any action initiated after April 1992. In this case, the regulatory action began before April 1992, so the former RFA requirements are pertinent.

Consistent with Small Business Administration (SBA) size standards, a firm is classified as a small entity if it has less than 500 employees for most of the affected industries at the 4-digit SIC code level, 750 for 3 affected industries at that level (2656—sanitary food containers, 2657—folding paperboard boxes, and 3221—glass containers), and 1,000 for 1 affected industry (3411—metal cans); and is unaffiliated with a larger entity.

Using the information above, none of the firms in the publication gravure sector are small. For the packaging and product gravure sector, 29 out of 60 firms, or 48.3 percent are classified as small. For the flexographic sector, virtually all of the affected firms are small.

Data were available to examine all four of the criteria.

For the first criterion, the maximum increase in the total cost of production from compliance with the standard is, on average, 1.4 percent for affected small entities. This is not a significant increase. For the second, annual compliance costs as a percentage of sales were calculated to be 9 percent higher for small entities, and this is not significant. For the third criterion, the increase in costs from compliance as a percentage of assets and as a percentage of equity was negligible (less than 1 percent). For the fourth and final criterion, no small firms are at risk of closure due to the standard.

In conclusion, and pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The basis for the certification is that the economic impacts for small entities do not meet or exceed the criteria in the Guidelines to the Regulatory Flexibility Act of 1980, as shown above. Further information on the initial RFA is available in the background information document.

G. Clean Air Act Section 117

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comment on all aspects of the proposed regulation, including health, economic, technological, or other aspects.

H. Regulatory Review

In accordance with sections 112(d)(6) and 112(f)(2) of the Act, this regulation will be reviewed within 8 years from the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

VII. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Standard for printing and publishing industry.

Dated: March 1, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–5983 Filed 3–13–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD-FRL–5172–5]

Clean Air Act Proposed Full/Interim Approval of Title V Operating Permits Program; Clark County Health District, Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by Nevada's Clark County Health District. Alternatively, EPA proposes to grant full approval if specified changes are made. Clark

County's Operating Permit Program was submitted 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 April 13, 1995.

ADDRESSES: Comments should be addressed to Ed Pike at the Region IX address below. Copies of the State's submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours at the following location: US EPA, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ed Pike (telephone 415/744–1248), Mail Code A–5–2, US EPA, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

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

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. 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 two years. If EPA has not fully approved a program by two 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 analysis in this notice focuses on the specific elements of Clark County's title V program that must be corrected to meet the minimum requirements of 40 CFR part 70. The full program submittal, the Technical Support Document, and other relevant materials are available for inspection as part of the public docket. The docket may be viewed during regular business hours at the address listed above.

1. Support Materials

The Clark County Health District (''District''), which is delegated authority to implement part 70 under state law (Nevada Revised Statues ''NRS'' section 445.546), submitted an administratively complete part 70 permitting program on January 20, 1994 with a letter requesting EPA's approval. The submittal contained regulations adopted by the District Board of Health on November 18, 1993. The District Counsel concurrently submitted an opinion that the Health District has sufficient authority to implement the program. The District adopted several rule modifications on May 26, 1994 and submitted these modifications on July 18, 1994.

The submittal contains a description of how the District will implement the program consistent with the Clean Air Act Amendments of 1990 (42 U.S.C. 7401–7671q) and 40 CFR part 70. The submittal also includes sample permits, permit applications, and reporting forms. EPA intends to develop an implementation agreement with the District by the time EPA takes final action on the program.

2. Title V Regulations and Program Implementation

The District adopted section nineteen and revised section zero of the Air Pollution Control Regulations to meet the requirements of part 70. The District also relies on sections two, four, five, six, seven, eight, nine, ten, and eighteen of its Air Pollution Control Regulations (''APCR'') to implement the permitting program consistent with part 70 requirements.

a. Applicability (40 CFR 70.2 and 70.3): The District will permit all major sources and all acid rain sources as required by part 70. The District will also permit non-major sources subject to New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants. (APCR section 19.3)

b. Permit Content (40 CFR 70.6): Each part 70 permit must contain emission limitations and standards based on all applicable emission limitations as well as monitoring, recordkeeping, and other compliance terms sufficient to ensure compliance with all applicable requirements. Sources may request provisions for operational flexibility. (APCR sections 19.4 and 19.7)

c. Public Participation and EPA oversight (40 CFR 70.7): The public will be provided notice of and an opportunity to comment on each proposed part 70 source permit, permit renewal, and significant modification. Each part 70 permit, permit renewal, significant modification, and minor permit modification is subject to EPA oversight and veto. (APCR section 19.5)

d. Variances (40 CFR 70.11): Variances may not be granted from either applicable requirements or part 70 requirements. Therefore, the variance provisions of the rule will not affect the enforcement authority required under part 70. (May 26, 1994 amendment to APCR section 7)

e. Permit Modifications (40 CFR 70.7): Sources may apply for expedited permit changes for minor permit modifications. Significant modifications must undergo the full part 70 permit issuance procedures. Significant modifications include all title I modifications and all changes to case-by-case emissions limits such as New Source Review limits. (APCR section 19.5)

3. Permit Fee Demonstration

Clark County will collect permit and emissions-based fees that are projected at $289,000 ($33.16 per ton of pollutant subject to the presumptive minimum) by the end of the ramp-up period in 1995 and $387,000 in 1996. Fees will be adjusted annually by the Consumer Price Index beginning in 1997. The District's fees for the first four years of the program exceed, in the aggregate, the fees presumed sufficient to fund the program (40 CFR 70.9). Therefore, EPA believes that the County will collect sufficient fees to implement the part 70 permitting program.

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

a. Title III—The District has demonstrated in its title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements, including section 112 standards. The District also made a commitment to implement all section 112 requirements (July 18, 1994 program update). The EPA regards the program submittal and commitment as a demonstration that the District currently has statutory and regulatory authority to carry out all section 112 requirements

required by part 70 and an acknowledgment by the District that it is obligated to obtain any further regulatory authority needed to issue permits that assure compliance with section 112 applicable requirements.

EPA is interpreting the above legal authority and commitment to mean that the District is able to carry out all section 112 activities. For further discussion, please refer to the Technical Support Document and the April 13, 1993 guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz, Director of EPA's Office of Air Quality Planning and Standards.

b. Title IV—The District committed in its July 18, 1994 program update to obtain by January 1, 1995 the necessary regulatory authority to administer an acid rain program and to make regulatory revisions as necessary to accommodate federal revisions and additions. The District has drafted, but not officially adopted, the necessary regulations. EPA anticipates that these regulations will be adopted by the time EPA takes final action on this program.

B. Options for Approval/Disapproval and Implications

1. Changes Necessary for Full Approval

EPA is proposing to grant full approval under section 502 of the Act to the program if the changes listed below are made. If the District has not adopted regulations incorporating these provisions and submitted them to EPA as part of its operating permit program by the time EPA takes final rulemaking action, EPA will grant the District's program interim approval at that time. Please refer to the Technical Support Document, which is included in the docket, for additional details.

a. Enforcement Commitments. The District must submit documentation and commitments for implementing its enforcement and compliance tracking program. Part 70 requires that the District submit enforcement policies, including agreements with the EPA, and a description of the District's enforcement program, compliance tracking activities, and inspection strategies. (40 CFR 70.4(b)(4) and (5)) In addition, failure to act on violations of permits or other program requirements, failure to seek adequate penalties and fines and collect all assessed penalties and fines, and failure to inspect and monitor activities subject to regulation are grounds for withdrawing program approval. (40 CFR 70.10(c)(iii)) Therefore, the District must submit the descriptions and/or commitments required under sections 70.4(b)(4) and (5) to qualify for full approval and should ensure that the commitments meet the criteria in section 70.10(c)(iii).

b. Operational Flexibility Gatekeeper. The District's operational flexibility gatekeeper (APCR section 19.4.1.8) is not explicitly as broad as the section 70.4(b)(12) gatekeeper for section 502(b)(10) changes. Part 70 prohibits operational flexibility for ''modifications under any provision of title I of the Act.'' In contrast, the District prohibits these changes for any ''New Source Review modifications under any provision of title I of the Act,'' which does not expressly include modifications under sections 111 and 112. EPA expects that most section 111 or 112 modifications will be subject to the District's New Source Review program; however, in certain cases the section 111 or 112 modification definition will be more inclusive than the District's New Source Review rule. Therefore, revising the rule to explicitly prohibit section 502(b)(10) changes for all title I modifications is a requirement for full approval.

c. Confidential Business Information. The District Counsel's opinion does not document that the District's definition of confidential business information (''CBI''), which is not available to the public, is as narrow as EPA's. Section 19.3.1.3 states that ''emissions'' may not be considered confidential. EPA's regulation states that ''emissions data'' may not be considered confidential. (40 CFR 2.301) The District must adopt EPA's narrower definition of confidential information. Alternatively, the District Counsel must issue a statement that the District's program does not contain more restrictions on public access to information than the federal regulations.

d. Insignificant Activities. The District submitted criteria defining which units that are not subject to the part 70 permitting program. For criteria pollutants, the rule exemption threshold is based on potential emissions of either one or two tons per year. EPA believes these criteria pollutant thresholds are acceptable. The rule also exempts units with potential emissions of 200 pounds per year of hazardous air pollutants (HAPs). EPA believes that this threshold is acceptable except for very hazardous substances for which EPA has promulgated or proposed a lower title I modification threshold. To receive full approval, the District's exemption should be no less stringent than these thresholds. In addition, the program must require sources to identify permit exemptions on their applications. (40 CFR 70.5(c)).

e. Applicable Requirements and National Ambient Air Quality Standards (NAAQS). The District must add NAAQS, visibility, and increment requirements for temporary sources to the definition of applicable requirements (40 CFR 70.3). Sources that temporarily operate at multiple locations, such as non-metallic minerals processors or asphalt batch plants, may qualify for temporary source permits. The temporary source permits issued to these sources must require compliance with applicable requirements, as defined in part 70, at each location.

f. Early reductions permit deadline. The District must add a deadline of nine months or less for early reductions permits issued under section 112(i)(5) of the Act (40 CFR 70.4(b)(11)).

2. Interim Approval

The program substantially meets the requirements of part 70 as required under section 70.4. The EPA proposes to grant interim approval to the operating permits program submitted by the District on January 20, 1994 and updated on July 18, 1994 if the changes listed above are not made prior to the final action on the program. This interim approval would be changed to a full approval if the County subsequently makes the changes necessary for full approval. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three year time period for processing the initial permit applications.

3. Sanctions and Federal Program

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the District would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program in Clark County.

Following final interim approval, if the District failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the District 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 one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the District had corrected the deficiency by submitting a

complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In any case, if, six months after application of the first sanction, the District still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove the District's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District 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 District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In all cases, if, six months after EPA applied the first sanction, the District had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a 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 the District has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to the District's 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 the District upon interim approval expiration.

4. Approval of Preconstruction Program for Section 112(g) Case-by-Case MACT Determinations

Clark County will be required to implement the Maximum Achievable Control Technology requirements of section 112(g) of the Act as a component of the part 70 program. The EPA is proposing to approve the District's preconstruction permitting program, found in section 12 of the District rules, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between the effective date of 112(g) and District adoption of a 112(g) rule. EPA has published an interpretive notice in the **Federal Register** that interprets section 112(g) to allow State and local agencies to delay implementing 112(g) of the Act until EPA promulgates a final 112(g) rule. Alternatively, State and local agencies may implement the requirements of 112(g) prior to EPA promulgation of the 112(g) rule as a matter of State or local law. 60 FR 8333 (February 14, 1995) The notice also states that EPA is considering whether to further delay the effective date of section 112(g) beyond the date of promulgation of the Federal rule so as to allow State and local agencies time to adopt rules implementing the Federal rule. 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), the District must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing District regulations and may choose to implement section 112(g) sooner as a matter of local law.

For this reason, EPA is proposing to approve the District's preconstruction review program as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and District adoption of rules specifically designed to implement section 112(g). However, since approval is intended solely to confirm that State and local agencies have 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) rule that there will be no transition period. The EPA is proposing that twelve months will be adequate for the District to adopt implementing regulations but solicits comments on whether this timeframe will be adequate.

5. Approval of Program for Straight Delegation of Section 112 Standards Under the Authority of Section 112(l) of the Act

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the District'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 also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the District's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed full/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 full/interim approval. The principal purposes of the docket are:

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

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by April 13, 1995.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

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

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

Dated: February 25, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–6267 Filed 3–13–95; 8:45 am]

BILLING CODE 6560–50–P