

institute a second comment period on this document.

**DATES:** Comments on this proposed rule must be received in writing by October 5, 1995.

**ADDRESSES:** Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT-082), Air Programs Section, at the EPA Regional Office listed below.

Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

The Alaska Department of Conservation, 410 Willoughby Avenue, Suite 105, Juneau, AK 99801-1795.

**FOR FURTHER INFORMATION CONTACT:**

David J. Dellarco, Air and Radiation Branch (AT-082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553-4978.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: August 15, 1995.

**Jane S. Moore,**

*Acting Regional Administrator.*

[FR Doc. 95-21876 Filed 9-1-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 52

[OR-31-1-5932b; FRL-5283-5]

#### Approval and Promulgation of State Implementation Plans: Oregon

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Oregon for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The SIP revision was submitted by the State to satisfy the Federal mandate, found in Section 507 of the Clean Air Act. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale

for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

**DATES:** Comments on this proposed rule must be received in writing by October 5, 1995.

**ADDRESSES:** Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT-082), Air Programs Section, at the EPA Regional Office listed below.

Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

Oregon Department of Environmental Quality, Air Quality Division, 811 SW Sixth Avenue, Portland, Oregon, 97204.

**FOR FURTHER INFORMATION CONTACT:**

David Dellarco, Air Programs Branch (AT-082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553-4978.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: August 8, 1995.

**Charles Findley,**

*Acting Regional Administrator.*

[FR Doc. 95-21885 Filed 9-1-95; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 52

[WV31-1-7063b; FRL-5279-1]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia: Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP)

revision submitted by the State of West Virginia for the purpose of establishing the requirements for determining conformity of general federal actions to applicable air quality implementation plans (General Conformity). In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by October 5, 1995.

**ADDRESSES:** Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 597-3164, at the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title (West Virginia General Conformity Rule) which is located in the Rules and Regulations Section of this **Federal Register**.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Carbon monoxide, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: June 19, 1995.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

[FR Doc. 95-21882 Filed 9-1-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 70**

[KY-95-01-FRL-5290-4]

**Clean Air Act Proposed Interim Approval of Operating Permits Program; Kentucky Natural Resources and Environmental Protection Cabinet**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

**SUMMARY:** The EPA proposes source category-limited interim approval of the operating permits program submitted by the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) 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 October 5, 1995.

**ADDRESSES:** Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of Kentucky'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:

Environmental Protection Agency,  
Region 4 Air Programs Branch, 345  
Courtland Street, NE, Atlanta, Georgia  
30365.

Division for Air Quality, Department for  
Environmental Protection, Natural  
Resources and Environmental  
Protection Cabinet, 803 Schenkel  
Lane, Frankfort, Kentucky 40601.

**FOR FURTHER INFORMATION CONTACT:**

Yolanda Adams, Title V Program  
Development Team, Air Programs  
Branch, Air, Pesticides & Toxics  
Management Division, U.S.  
Environmental Protection Agency,  
Region 4, 345 Courtland Street, NE,  
Atlanta, Georgia 30365, (404) 347-3555,  
Ext. 4149.

**SUPPLEMENTARY INFORMATION:****I. Background and Purpose****A. Introduction**

As required under title V of the Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will

approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the state's submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional material. EPA received Kentucky's title V operating permit program submittal on January 18, 1994. The Commonwealth provided EPA with additional material in supplemental submittals dated November 15, 1994, April 14, 1995, May 3, 1995, and May 22, 1995. Because these supplements materially changed the Commonwealth's title V program submittal, EPA has extended the review period and will work expeditiously to promulgate a final decision on Kentucky's program.

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 two years. Where a state requests source category-limited interim approval and demonstrates compelling reasons in support thereof, the EPA may also grant such an interim approval. 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.

**B. Federal Oversight and Sanctions**

If EPA were to finalize this proposed source category-limited 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 Commonwealth of Kentucky would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the Commonwealth of Kentucky. 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.

Following final interim approval, if the Commonwealth of Kentucky 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 Commonwealth of Kentucky 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 Commonwealth of Kentucky 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 Commonwealth of Kentucky, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the Commonwealth of Kentucky had come into compliance. In any case, if, six months after application of the first sanction, Kentucky 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 Kentucky'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 Kentucky 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 Commonwealth of Kentucky, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the Commonwealth of Kentucky had come into compliance. In all cases, if, six months after EPA applied the first sanction, Kentucky 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 Kentucky 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 Kentucky'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 Commonwealth of Kentucky upon interim approval expiration.

## II. Proposed Action and Implications

### A. Analysis of State Submission

The Commonwealth of Kentucky has requested source category-limited interim approval of its part 70 operating permits program. EPA has concluded that the operating permit program submitted by Kentucky substantially meets the requirements of title V and part 70, and proposes to grant source category-limited interim approval to the program. For detailed information on the analysis of Kentucky's submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

#### 1. Support Materials

Pursuant to section 502(d) of the Clean Air Act as amended (1990 Amendments), the Governor of each state must develop and submit to the Administrator an operating permits program under state or local law or under an interstate compact meeting the requirements of title V of the Act. Kentucky submitted, under the signature of Governor Brereton C. Jones, the operating permits program, prepared by the NREPC, to be implemented in all areas of the Commonwealth of Kentucky, except Jefferson County. Kentucky has requested that the EPA approve its operating permit program as a source category-limited interim program for a period of two years.

The Kentucky Federal Operating Permits program description, Section II of the submittal, addresses 40 CFR 70.4(b)(1) by describing how the NREPC intends to carry out its responsibilities under the part 70 regulations. This program description has been deemed to be appropriate for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the attorney general (or the attorney for the state air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The Commissioner of the Department of Law, who qualifies as independent legal counsel for the Kentucky Natural Resources and Environmental Protection Cabinet, submitted such an opinion in Section IV of the submittal,

demonstrating adequate legal authority as required by Federal law and regulation for interim approval.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms and relevant guidance to assist in the implementation of the permit program. Section V of the NREPC submittal includes the permit application form with instructions, and Section 4 of the Title V Addendum includes a model permit. It has been determined that the application forms and model permit substantially meet the requirements of 40 CFR 70.5(c).

#### 2. Regulations and Program Implementation

The Commonwealth of Kentucky has submitted Rule 401 KAR 50:034, "Permit Application Form", Rule 401 KAR 50:035, "Permits," and Rule 401 KAR 50:038, "Air Emissions Fee," for implementing the Kentucky part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption is included in Sections 1 and 4 of Kentucky's Title V Plan Addendum. Copies of all applicable Commonwealth statutes and regulations which authorize the part 70 program, including those governing Commonwealth administrative procedures, were submitted with Kentucky's program.

The Kentucky program, in Rule 401 KAR 50:035 Section 2, substantially meets the requirements of 40 CFR 70.2 and 70.3 with regard to applicability. However, Kentucky's definitions of "emissions unit", and "stationary source" do not include emissions of any pollutant listed under section 112(b) of the Act. Therefore, Kentucky's program does not require emissions of all hazardous air pollutants (HAP) listed pursuant to section 112(b) to be counted for major source applicability. The pollutants listed in section 112(b) are not considered regulated air pollutants until addressed by an applicable requirement, such as a maximum achievable control technology (MACT) standard; therefore, this omission in Kentucky's definitions prevents issuance of permits to sources that emit section 112(b) pollutants which are not yet covered by an applicable requirement. In addition, Kentucky's definition of "regulated air pollutant" found in 401 KAR 50:035, Section 1(28)(a)4., omits the phrase in the part 70 definition of regulated air pollutant "\* \* \* or other requirements established under Section 112 of the Act, \* \* \*"; therefore, Kentucky's

program does not require permits for all major sources. Since these omissions in Kentucky's definitions could cause certain part 70 major sources to be exempted from the permit process, Kentucky's program is eligible for receiving source category-limited interim approval (SCL).

Section 503(c) of the Act requires that permitting authorities, including those implementing an interim program, establish a schedule for issuing the permits subject to the program such that "at least one-third of such permits will be acted on by such authority annually over a period not to exceed 3 years after such effective date." By rulemaking, the EPA spelled out an option by which it can make SCL interim approval. Thus, although the State is required to issue permits within 3 years to all sources subject to the interim approval, some sources will not be subject to the requirement to obtain a permit until full approval is granted. Because those part 70 sources not addressed until the full approval are also subject to the 3-year phase-in required by section 503(c), completion of the initial permitting of all part 70 sources might not be completed until as late as 5 years after the granting of interim approval.

Kentucky submitted a request dated May 22, 1995, for the EPA to grant SCL interim approval of its part 70 operating permit program. The EPA policy memo from John Seitz, Director of the Office of Air Quality Planning and Standards dated August 2, 1993, entitled "Interim Title V Program Approvals" establishes the criteria for granting interim approvals. EPA can grant SCL interim approval to states whose programs do not provide for permitting all required sources if the state makes a showing that two criteria were met: (1) That there were "compelling reasons" for the exclusions and (2) that all required sources will be permitted on a schedule that "substantially meets" the requirements of part 70.

EPA considers the omissions in Kentucky's definitions of "emissions unit", "stationary source", and "regulated air pollutant", as compelling reasons for granting SCL interim approval. Kentucky's SCL interim approval request included a revised transition schedule that demonstrates the Commonwealth will permit at least 60% of its sources and at least 80% of its emissions during the first three years. The revised transition plan demonstrates that all part 70 sources will be permitted on a schedule that substantially meets the requirements of part 70.

The EPA is therefore proposing to grant Kentucky SCL interim approval.

SCL interim approval will allow Kentucky to implement the revised transition schedule to permit all part 70 sources during the transition period after the permit regulations have been revised. Revision of the aforementioned definitions is a condition of full program approval.

Kentucky's program meets the following requirements set out in EPA's part 70 operating permits program review. These requirements are addressed in Kentucky's Rule 401 KAR 50:035 as follows: (A) Permit applications (40 CFR 70.5), Section 3; (B) Provisions for permit content (40 CFR 70.6), Section 4; (C) Operational flexibility provisions (40 CFR 70.4(b)(12)), Sections 4 and 6; (D) Provisions for permit renewals, reopenings, and public participation (40 CFR 70.7), Sections 5, 6, and 7; (E) Permit review by EPA and affected states (40 CFR 70.8), Sections 8 and 9. The Kentucky Revised Statutes, Chapter 224, satisfy the requirements of 40 CFR 70.11 for enforcement authority. The Kentucky program substantially meets the requirements of 40 CFR 70.7 with regard to permit issuance and revisions. Rule 401 KAR 50:035 Section 5(2)(a) allows for the incorporation of a preconstruction permit into the title V permit as an administrative amendment. Section 1(3)(e) defines administrative amendment as a revision to a permit that incorporates into the part 70 permit requirements from preconstruction review permits, if the preconstruction review meets procedural requirements substantially equivalent to those that would be applicable to the change if it were subject to review as a permit revision (i.e., requirements of 40 CFR 70.7 and 70.8). Even though Section 5(2)(a) details the actual procedural requirements necessary to incorporate preconstruction permits into part 70 permits, it does not provide for EPA review consistent with 40 CFR 70.8. For full approval of the Commonwealth's program, Kentucky would need to revise Rule 401 KAR 50:035 Section 5(2)(a) to provide for EPA review consistent with 40 CFR 70.8.

Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purposes of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state program, a list of insignificant activities and emissions

levels which need not be included in permit applications. Under part 70, a state must request and EPA may approve as part of that state's program any activity or emission level that the state wishes to consider insignificant.

Kentucky establishes criteria for insignificant activities in Rule 401 KAR 50:035, Subsection 2(3); however, these criteria require that all activities be included in the application. By requiring description in the application, Kentucky's rule nullifies the effect of allowing for insignificant activities as contemplated by the part 70 rule, which would allow no or minimal description in the application. Since part 70 does not require a State to establish provisions for insignificant activities, this does not create a program approval issue. However, Kentucky has indicated to EPA that it plans to revise these provisions to take advantage of the flexibility allowed by Part 70. EPA will evaluate such revisions when they are submitted.

Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given that this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not require sufficiently prompt reporting of deviations. Rule 401 KAR 50:035, Subsection 4(1)(c)3.b. states that Kentucky will define prompt reporting in the permit in relation to the degree and type of deviation likely to occur and the applicable requirements.

Subsection 2(6) of Kentucky's general compliance requirements regulation, Rule 401 KAR 50:055, provides the Commonwealth the authority to grant individual variances for opacity standards for emissions from a stack or

a control device. The Commonwealth provides that it will grant this variance upon a demonstration by the owner or operator that the affected facility and associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests. The EPA regards this provision as wholly external to the program submitted for approval under Part 70, and consequently proposes to take no action on these provisions of Commonwealth law in this rulemaking. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. In other words, a variance does not affect the title V source until the title V permit is modified pursuant to the procedures in part 70. EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a Part 70 permit in a manner inconsistent with Part 70 procedures. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

The complete Kentucky operating permits program submittal and the TSD are available for review for more detailed information. The TSD contains the detailed analysis of Kentucky's program and describes the manner in which Kentucky's program meets all of the operating permit program requirements of 40 CFR part 70.

### 3. Permit Fee Demonstration

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

cover all reasonable program costs and is thus referred to as the "presumptive minimum."

Kentucky has opted to adopt an approach similar to the "presumptive minimum" of \$25/ton (annually adjusted by the CPI) approach. Emission fees will be collected from all sources subject to title V for actual emissions of each regulated pollutant, except carbon monoxide. Also, fees will be assessed on the first 4,000 tons per regulated pollutant per facility. A minimum fee of \$150 is assessed for sources emitting less than 25 tons per year.

A unique feature of the Kentucky emission fee is that the amount of fee to be collected is established in regulation. Kentucky Rule 401 KAR 50:038 provides for the collection of \$6,594,700 during state fiscal year 1995-96. It further provides the authority to collect an amount during each subsequent fiscal year, increased in direct proportion to the CPI if needed to fund the program. While this guarantees that Kentucky will continue to have the funds necessary to operate the title V program at a level at least equal to the 1995-96 level, it does not guarantee that the cost per ton of emissions will increase at a rate equal to the CPI.

For 1995-96, Kentucky estimates the total billable emissions to be 211,919 tons. Based upon that estimate, the average cost per ton for all sources, including any non-major sources subject to the title V program, in 1995-96 will be \$31.19 per ton. If the fee was collected only from major sources, the estimated cost per ton would be \$34.32 per ton. Kentucky has demonstrated that the fees collected will be sufficient to administer the program.

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

a. Authority and/or Commitments for Section 112 Implementation. Kentucky has demonstrated in its title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements. This legal authority is contained in Kentucky's enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. Kentucky has further supplemented its broad legal authority with a commitment to "take action, following promulgation by EPA of regulations implementing section 112 of Title III of the Clean Air Act to either incorporate such new or revised provisions by reference into Kentucky rules or submit Kentucky-drafted rules, for EPA approval, to implement these provisions." EPA has determined that

this commitment, in conjunction with Kentucky's broad statutory and regulatory authority, adequately assures compliance with all section 112 requirements. EPA regards this commitment as an acknowledgement by Kentucky of its obligation to obtain further regulatory authority as needed to issue permits that assure compliance with section 112 applicable requirements. This commitment does not substitute for compliance with part 70 requirements that must be met at the time of program approval.

EPA is interpreting the above legal authority and commitment to mean that Kentucky is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this proposed interim approval.

b. Implementation of Section 112(g) Upon Program Approval. EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Kentucky must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing Commonwealth regulations.

EPA is aware that Kentucky lacks a program designed specifically to implement section 112(g). However, Kentucky does have a preconstruction review program within its permits rule that can serve as an adequate implementation vehicle during the defined transition period because it would allow the Commonwealth to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

For this reason, EPA proposes to approve the use of Kentucky's preconstruction review program found

in Rule 401 KAR 50:035, under the authority of title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of a Commonwealth rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state air programs to implement section 112(g), title V and section 112(g) provide for this limited approval because of the direct linkage between the 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 purpose of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until Commonwealth regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the Commonwealth to adopt regulations consistent with the Federal requirements.

c. Program for Delegation of Section 112 Standards as Promulgated. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the Commonwealth's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the Commonwealth's program for receiving delegation of future section 112 standards that are unchanged from the Federal standards as promulgated. In addition, EPA proposes delegation of all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.<sup>1</sup>

<sup>1</sup> The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Kentucky has informed EPA that it intends to accept delegation of section 112 standards through adoption by reference. The details of the Commonwealth's use of these delegation mechanisms are set forth in a letter dated April 14, 1995, submitted by Kentucky as a title V program addendum.

d. Commitment to implement Title IV of the Act. The Commonwealth of Kentucky developed acid rain permit regulations as Rule 401 KAR 50:072, which was submitted to EPA on April 19, 1995, as part of the operating permits program. The Commonwealth also submitted standard acid rain permit application forms which will be revised as updated forms are provided by the EPA. These rules and permit application forms meet the requirements of the acid rain program.

### B. Proposed Actions

#### 1. Source Category-Limited Interim Approval

The EPA is proposing to grant SCL interim approval to the operating permit program submitted by Kentucky on December 27, 1993, and as supplemented on November 15, 1994, April 14, 1995, May 3, 1995, and May 22, 1995. If this approval is promulgated, the State must make the following changes to receive full approval: (1) Revise the definitions of "emissions unit" and "stationary source" to include emissions of any pollutant listed under section 112(b) of the Act; (2) revise the definition of "regulated air pollutant" to include any pollutant subject to any requirements established under section 112 of the Act; and (3) revise Rule 401 KAR 50:035 section 5(2)(a) to provide for EPA review consistent with 40 CFR 70.8. in order to allow for requirements from preconstruction review permits to be incorporated into part 70 permits via administrative amendments.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the Commonwealth is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the Commonwealth. 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.

#### 2. Program for Straight Delegation of Section 112 Standards

As discussed above in section II.A.4.c, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the Commonwealth's program for receiving delegation of future section 112 standards that are unchanged from Federal standards as promulgated. Additionally, EPA is proposing to delegate existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.

### III. Administrative Requirements

#### A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the Commonwealth's submittal and other information relied upon for the proposed interim approval are contained in docket number KY-95-01 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 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 process, and
- (2) To serve as the record in case of judicial review. The EPA will consider any comments received by October 5, 1995.

#### B. Executive Order 12866

The Office of Management and Budget has exempted this 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.

#### D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section

205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed 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 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. 7401-7671q.

Dated: August 22, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 95-21938 Filed 9-1-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 372

[OPPTS-400096; FRL-4970-5]

#### Diethyl Phthalate; Toxic Chemical Release Reporting; Community Right-to-Know

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is granting a petition by proposing to delete diethyl phthalate (DEP) from the list of chemicals subject to reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). Specifically, EPA is proposing to delete DEP because the Agency has preliminarily concluded that it meets the deletion criteria of EPCRA section 313(d)(3).

**DATES:** Written comments on this proposed rule must be received by EPA on or before November 6, 1995.

**ADDRESSES:** Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Nonconfidential