informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the SIP approval actions proposed today do 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. These Federal actions approve pre-existing requirements under State or local law, and impose no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from these actions.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: U.S.C. 7401–7671q.

Dated: December 2, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 96–31124 Filed 12–5–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5657–3]

Clean Air Act Interim Approval of Operating Permits Program; Delegation of Sections 111 and 112 Standards; State of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by Connecticut for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA is also approving Connecticut's authority to implement hazardous air pollutant requirements.

DATES: Comments on this proposed action must be received in writing by January 6, 1997.

ADDRESSES: Comments should be addressed to Donald Dahl, Air Permits, CAP, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211. 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: U.S. Environmental Protection Agency, Region 1, One Congress Street, 11th floor, Boston, MA 02203–2211.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–4298.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 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 1 year after receiving the submittal. 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 the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight

When EPA promulgates this interim approval, it will extend for two years following the effective date. During the interim approval period, the State of Connecticut is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal permits program for the State of Connecticut. Permits issued under a program with interim approval have full standing with respect to Part 70, and the State will permit sources based on the transition schedule submitted with the approval request.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Governor of the State of Connecticut submitted an administratively complete title V Operating Permits Program (PROGRAM) on September 28, 1995. EPA deemed the PROGRAM administratively complete in a letter to the Governor dated November 22, 1995. The PROGRAM submittal includes a legal opinion from the Attorney General of Connecticut stating that the laws of the State provide adequate authority to carry out the PROGRAM, and a description of how the State intends to implement the PROGRAM.

2. Regulations and Program Implementation

The State of Connecticut has submitted Section 22a–174–33 of the Department of Environmental Protection Regulations, implementing the State Part 70 program as required by 40 CFR § 70.4(b)(2). Sufficient evidence of procedurally correct adoption is included in the PROGRAM.

The following requirements, set out in EPA's Part 70 operating permits program review are addressed in Section IV of the State's submittal.

The Connecticut PROGRAM, including the operating permit regulations, substantially meet the requirements of 40 CFR Part 70, including §§ 70.2 and 70.3 with respect to applicability; §§ 70.4, 70.5 and 70.6 with respect to permit content and operational flexibility; § 70.5 with respect to permit applications and criteria which define insignificant activities; §§ 70.7 and 70.8 with respect to public participation and permit review by affected States; and § 70.11 with respect to requirements for enforcement authority. Although the regulations substantially meet Part 70 requirements, there are program deficiencies that are outlined in section II.B. below as Interim Approval issues. Those Interim Approval issues are more fully discussed in the Technical Support Document (''TSD''). The ''Issues'' section of the TSD also contains a detailed discussion of elements of Part 70 that are not identical to, or explicitly contained in, Connecticut's regulation, but which are satisfied by other elements of Connecticut's program submittal and/or other Connecticut State law.

Connecticut has made several important commitments that effect how the program will be implemented during the interim approval period. The EPA is relying on these commitments to insure that Connecticut operates an acceptable operating permits program during the period. These commitments include an effort by the state to expedite certain rule changes that address critical components of its implementing regulation, including:

1. Removing the permit shield for administrative amendments: Connecticut's program now gives DEP the discretion to grant a permit shield to permit changes that have not undergone review consistent with the requirements for a significant permit modification, the only type of permit modification that qualifies for a shield under Part 70. Compare 40 CFR 70.6(f)(1), 70.7(d)(4), (e)(2)(vi), and (e)(4). DEP has committed to not grant a permit shield to any administrative amendment that has not undergone review consistent with the requirements for a significant permit modification prior to the change in its program regulation.

2. Removal of cutoff date for applicable requirements:

Connecticut's program incorporates a definition of the Code of Federal Regulations that has the effect of limiting DEP's authority to impose applicable Clean Air Act requirements to only those promulgated as of September 16, 1994. Therefore, DEP does not have the authority to include all applicable requirements in operating permits, as required under 40 CFR 70.6(a)(1). DEP has committed to time the initial issuance of permits such that only those facilities not affected by standards promulgated after September 16, 1994 will be permitted prior to the change in the program regulation.

3. EPA opportunity for review: Connecticut's program gives EPA a 45 day opportunity to review a proposed permit, but does not require DEP to resubmit the permit to EPA if DEP makes a change following EPA's initial review period. DEP has committed to submit any such permit to EPA during the interim program and prior to the change in the program regulation.

A copy of these commitments is available for review in the docket supporting this proposal. For a further discussion of these program elements, see the interim approval conditions 14, 15, and 16 listed in the proposed action section of this document.

The Connecticut Department of Environmental Protection (CT DEP) defines research and development (R&D) in a manner which allows DEP to exclude research and development operations from a source when determining if the source is major. See Section 22a–174–33(c)(4). EPA has recently announced an interpretation of its Part 70 regulation which would allow most R&D facilities to be considered separately from the source, and has proposed rule changes to Part 70 to clarify the Agency's intent. See 60 FR 45556–58 (Aug. 31, 1995). This interpretation of EPA's rule is generally consistent with Connecticut's separation of R&D activities from the source under Section 22a–174–33(c)(4) of Connecticut's regulations.

The complete program submittal and the TSD dated November 15, 1996 entitled ''Technical Support Document—Connecticut Operating Permits Program'' are available in the docket for review. The TSD includes a detailed analysis, including a program checklist, of how the State's program and regulations compare with EPA's requirements and regulations.

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 permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that the fees collected exceed $25 per ton of actual emissions per year, adjusted from the August, 1989 consumer price index. The $25 per ton was presumed by Congress to cover all reasonable direct and indirect costs to an operating permit program. This minimum amount is referred to as the ''presumptive minimum.''

Connecticut has opted to make a presumptive minimum fee demonstration. Connecticut has demonstrated that actual emissions from their title V sources was 74,000 tons for 1994. Connecticut assessed 3.6 million dollars in fees from their title V sources for 1996. These fees equate to $48.64/ton of emissions which is more than the presumptive minimum of 31.78/ton of emissions. Therefore, Connecticut has demonstrated that the State will collect sufficient permit fees to meet EPA's presumptive minimum criteria. For more information, see Attachment E of Connecticut's title V program documentation.

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

a. Authority and/or commitments for section 112 implementation. Connecticut demonstrated in its title V program submittal adequate legal authority to implement and enforce section 112 requirements through the title V permit up to September 16, 1994. This legal authority is contained in Connecticut's enabling legislation, regulatory provisions defining ''applicable requirements,'' and the requirement that a title V permit must incorporate all applicable requirements. After Connecticut addresses the interim approval issue regarding the Code of Federal Regulations, EPA will evaluate Connecticut's legal authority to issue permits that assure compliance with all section 112 requirements and to carry out all section 112 activities promulgated before and after September 16, 1994. In addition, Connecticut committed in its title V program submittal to issue permits that assure compliance with all section 112 requirements, and to carry out all section 112 activities. For further discussion of this subject, please refer to the Technical Support Document, referenced above, 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 112(g) upon program approval. On February 14, 1995, EPA published an interpretive notice (see 60 FR 8333) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing the requirements of that provision. The section 112(g) interpretive notice explains that EPA is considering whether to allow States time to adopt rules implementing the Federal rule. Unless and until EPA provides for such an additional postponement of the effective date of section 112(g), section 112(g) must be implemented during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations for section 112(g) requirements. Since EPA has identified section 112(g) as an interim approval issue, if the final 112(g) rule does not provide for a transition period, then EPA will implement section 112(g) through a Part 71 permits during the transition period.

Since the EPA implementation of 112(g) would be for the single purpose of providing a mechanism to implement section 112(g) during the transition period, EPA would not implement section 112(g) if the Agency decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Also, since EPA's implementation would be for the limited purpose of allowing the State sufficient time to adopt regulations, EPA proposes to limit the duration of the Agency's implementation to 18 months following promulgation by EPA of its section 112(g) rule.

c. Program for straight delegation of sections 111 and 112 standards. The Part 70 requirements for approval of a State operating permit program, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of the hazardous air pollutant program General Provisions, Subpart A, of 40 C.F.R. Parts 61 and 63, promulgated under section 112 of the Act, and MACT standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that a State's program

contain adequate legal 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 C.F.R. 63.91 of Connecticut's mechanism for receiving delegation of section 112 standards for Part 70 sources, that are unchanged from the Federal standards as promulgated (straight delegation) promulgated prior to September 16, 1994. EPA is also proposing the same delegation mechanism for receiving straight delegation of section 112 standards and infrastructure programs including those authorized under sections 112(j) and 112(r) for Part 70 sources promulgated after September 16, 1994, on the condition that Connecticut addresses the interim approval condition regarding the definition for ''Code of Federal Regulations'' to allow DEP to implement section 112 standards promulgated after September 16, 1994. EPA will only take final action on delegating section 112 standards promulgated after September 16, 1994 once Connecticut makes the change as described in interim approval condition 16 in the proposed actions. In addition, EPA is reconfirming the delegation of 40 CFR part 60 and 61 standards currently delegated to Connecticut as indicated in Table I.[1]

EPA is proposing to delegate all applicable future 40 CFR part 61 and 63 standards pursuant to the following mechanism unless otherwise requested by Connecticut provided Connecticut corrects its authority to accept standards after September 16, 1994.[2] Connecticut will accept any future delegation of section 111 and 112 standards by letter. A list of newly applicable regulations will be sent by the EPA Regional Office to Connecticut. If Connecticut accepts delegation, a letter will be sent to EPA Region I. The details of this delegation mechanism are set forth in Attachment A of Connecticut's Title V submittal entitled ''Program Description with Transition Plan for the State of Connecticut Title V Operating Permit Program'' and is further clarified in a Memorandum of Understanding dated October 7, 1996. This mechanism will apply to both existing and future standards but is limited to Part 70 sources. In addition, Connecticut has indicated that for some section 112 standards it may choose to submit a more stringent State rule or program through section 112(l). EPA will need to take public notice and comment for any section 112 delegation other than straight delegation. The original delegation agreement between EPA and Connecticut was set forth in a letter to Stanley J. Pac, Commissioner, on September 30, 1982. All the documents referenced to in this paragraph are available for review in the docket supporting this proposal.

d. Commitment to implement title IV of the Act. Connecticut has committed to take action, following promulgation by EPA of regulations implementing section 407 and 410 of the Act, or revisions to either Parts 72, 74, or 76 or the regulations implementing section 407 or 410, to either incorporate by reference or submit, for EPA approval, regulations implementing these provisions.

B. Proposed Actions

The EPA is proposing to grant interim approval of the operating permits program submitted to EPA by the State of Connecticut. This interim approval 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 State will permit sources based on the transition schedule submitted with the PROGRAM.

The scope of the State of Connecticut's Part 70 program that EPA is approving in this notice would apply to all Part 70 sources (as defined in the approved program) within the State of Connecticut, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, *e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

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 State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. With the exceptions that Connecticut does not have the authority to implement section 112(g) requirements or section 112 requirements that were implemented through a standard which was promulgated after September 16, 1994, Connecticut's program does contain such adequate legal authorities and resources. Therefore, EPA is also proposing to grant partial approval under section 112(l)(5) and 40 CFR 63.91 of Connecticut's mechanism for receiving delegation of section 112 standards for Part 70 sources, that are unchanged from the Federal standards as promulgated (straight delegation) and section 112 infrastructure programs such as those programs authorized under sections 112(i)(5), 112(j), and 112(r), for those standards promulgated as of September 16, 1994. EPA is also proposing to approve delegation of all section 111 and 112 standards to Connecticut promulgated after September 16, 1994, provided Connecticut revises its definition of Code of Federal Regulations consistent with interim approval condition 16 listed below. In addition, EPA is reconfirming the delegation of 40 CFR Part 60 and 61 standards currently delegated to Connecticut as indicated in Table I.[3]

The EPA is proposing to grant interim approval to the operating permits program submitted by Connecticut on September 28, 1995. The State must make the following changes to its rules to receive full approval:

1. Forty CFR 70.5(c)(6) requires a source to include in its application an explanation of any proposed exemptions of otherwise applicable requirements. Connecticut must amend its regulation to require the applicant to explain any exemptions the source believes applies to its facility.

2. Forty CFR 70.5(c)(8)(ii)(B) requires a statement in the application that the source will comply with all future requirements that become effective during the permit term. Subsection (i)(4)

[1] Please note that federal rulemaking is not required for delegation of section 111 standards.

[2] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major source'' 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.

[3] Please note that federal rulemaking is not required for delegation of section 111 standards.

of Connecticut's rule limits such a statement to applicable requirements [with future effective dates] with which the subject source is not in compliance at the time of application. Connecticut must amend its rules to require an applicant to affirmatively state that it will remain in compliance with a rule that it is in compliance with, once the rule becomes effective.

3. Part 70 requires that a compliance schedule ''resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.'' Subsection (i)(1) of Connecticut's rule limits the relevant administrative and judicial orders to those involving violations that occurred not more than 5 years prior to the application. Connecticut's rule also limits relevant administrative orders to those involving a penalty of greater than $5,000. Connecticut must amend its rule by removing the limitations on the relevant administrative and judicial orders.

4. 40 CFR 70.8(d) addresses the right of the public to petition EPA to object to a proposed permit if EPA has not already objected under 40 CFR 70.8(c). Connecticut's rule provides that the State will respond to an EPA objection based on a petition only if EPA files an objection with the State within 45 days of EPA's receipt of the citizen's petition. There is no such time limitation in Part 70 or in the Clean Air Act. Since Connecticut's rule attempts to limit EPA's authority, Connecticut must amend its rule by removing the 45-day deadline. Connecticut's regulations cannot as a legal matter preempt federal law, and EPA retains authority to respond to a public petition during this interim program. Nevertheless, EPA is requiring the State to make the change in its rule due to the confusion the State rule may cause the public and regulated community.

5. 40 CFR 70.6(a)(7) requires a permit condition that permit fees shall be paid during the term of the permit. Connecticut's regulation must be amended to require that permits contain a provision requiring payment of fees during the term of the permit.

6. 40 CFR 70.5(b) requires a source to submit additional or corrected information upon becoming aware that an application was incomplete or contained incorrect information. Subsection (h)(2) of Connecticut's rule limits the obligation to submit such information to the period of pendency of the application, which is inconsistent with Part 70. Connecticut must change this provision in its rule to meet the requirements of 40 CFR 70.5(b).

7. 40 CFR 70.7(a)(5) requires that a State send to EPA, and make available to any person who requests it, a statement of the legal and factual basis for each draft permit (i.e., the version that goes to the public for comment). Connecticut must amend its rule to include this requirement. In addition, Part 70 requires the State to identify in the permit the origin and authority of each permit term and condition. Connecticut's rule only includes a requirement that the authority for each permit term be included in the permit. Therefore, Connecticut must amend its rule to require that the origin of permit terms and conditions also be placed into a title V permit.

8. Subsection (j)(1)(O) of Connecticut's rule requires reporting of permit deviations within 90 days. This time frame is inconsistent with EPA's interpretation of Part 70's use of the term ''prompt.'' Connecticut must amend its rule to require prompt reporting of permit deviations within a shorter time period. EPA suggests that Connecticut require a reporting time frame of 2 to 10 days. Alternatively, Connecticut may simply delete the reference to 90 days and issue permits with provisions requiring prompt reporting within a shorter time frame. Again, EPA suggests that Connecticut require a reporting time frame of 2 to 10 days.

In addition, Connecticut must correct the conflict between the reporting time frames set forth in subsections (j) and (p)(1) of its rule. The current State rule has several different reporting time frames for the same violation. Connecticut should clarify the reporting requirements by stating that subsection (p)(1) is intended to establish a reporting time frame only for application of Connecticut's emergency affirmative defense contained in subsection (p)(3).

Connecticut must also remove the following language contained in subsection (p)(1): ''after the permittee learns, or in the exercise of reasonable care should have learned.'' The Clean Air Act and Part 70 contain a strict liability legal standard, which does not depend on knowledge or a standard of reasonable care. Under Part 70, a permittee may only meet the reporting requirements associated with the affirmative defense provision if reporting is made ''within 2 working days of the time when emission limitations were exceeded due to the emergency.'' 40 CFR 70.6(g)(3)(iv).

9. Connecticut's emergency affirmative defense provision, subsection (p)(3), applies to violations of ''a technology-based emission limitation.'' The phrase used by Connecticut is consistent with Part 70's language; however, Connecticut defines the phrase more broadly than Part 70 intends. Connecticut defines the phrase as ''emission of pollutants beyond the level of emissions allowed by a term or condition of the subject permit.'' Connecticut's affirmative defense would thus apply to, among other things, health-based limits such as Part 61 standards (as opposed to only technology-based standards). Connecticut must therefore change its definition of ''technology-based emission limitation.''

In addition, Part 70 requires that the event at issue be ''sudden,'' ''reasonably unforeseeable,'' and ''beyond the control'' of the source. Connecticut's rule must be amended to require that the event be ''sudden.'' In addition, Connecticut must remove the word ''reasonable'' from the phrase ''beyond the reasonable control of the permittee'' in subsection (p)(3).

Note that EPA has proposed to remove the emergency defense provision from Part 70. If EPA does remove the provision, Part 70 would still allow a facility to use any defense that is available to it pursuant to an applicable requirement. If EPA should conclude during a final rulemaking to remove the emergency defense provision, then Connecticut would have to take appropriate action in the future to address that change.

10. Connecticut's rule does not address ''Section 502(b)(10) changes'' adequately. See 40 CFR 70.4(b)(12)(i). In an August 29, 1994 (59 FR 44572) rulemaking proposal, EPA proposed to eliminate section 502(b)(10) changes as a mechanism for implementing operational flexibility. However, the Agency solicited comment on the rationale for this proposed elimination. If EPA should conclude, during a final rulemaking, that section 502(b)(10) changes are no longer required as a mechanism for operational flexibility, then Connecticut will not be required to address 502(b)(10) changes in its rule. However, if Part 70 retains the concept of ''Section 502(b)(10) changes,'' Connecticut will have to amend its rule to be consistent with the detailed discussion set forth in the Technical Support Document for this action.

11. Subsection (r)(13)(B) of Connecticut's rule states that EPA may terminate, modify, or revoke a permit following ''an opportunity for a hearing pursuant to subsection (m) of this section.'' The problem with this provision is that it references a right to a hearing pursuant to State law. EPA does not derive its hearing authority and

procedures from Connecticut State law. Since this State provision may confuse the public about its rights, Connecticut must remove this language from its regulations.

12. Connecticut's definition of ''applicable requirement'' is missing the following elements of Part 70's definition:

a. Connecticut's definition does not include a reference to section 504(b) or 113(a)(3) of the CAA. Connecticut must amend its rule to include section 504(b) and 113(a)(3) or the implementing regulations as part of its definition of ''applicable requirement'' if EPA has promulgated federal regulations implementing sections 504(b) and 113(a)(3) during the interim approval period.

b. Connecticut's definition does not include a reference to section 183(e) concerning regulation of consumer commercial products. The EPA has implemented this section of the Act through rulemaking. The regulations can be found at 40 CFR Part 59. Connecticut must revise its definition of ''applicable requirements'' to include these provisions.

c. Connecticut's definition does not include a reference to the stratospheric ozone requirements under Title VI of the Act. Connecticut must include in its definition of ''applicable requirements'' the requirements protecting stratospheric ozone, which are codified at 40 CFR Part 82.

13. Subsection (c)(2) of Connecticut's rule identifies specific stationary sources which are not subject to the State's title V requirements, where the premise on which the stationary source is located would not for any other reason be subject to the State's title V requirements. Subsection (c)(3) of Connecticut's rule states that a stationary source subject to 40 CFR Part 61, Subpart I and located at a premise subject to the State's title V requirements (for reasons other than being subject to Subpart I) shall be subject to the State's title V requirements. While the provision in subsection (c)(3) is not incorrect, it is incomplete. Connecticut must amend Subsection (c)(3) to include the other stationary sources listed in subsection (c)(2), because Part 70 requires title V permits to contain all applicable requirements for *all* relevant emissions units at a major source, not just those subject to Subpart I. Alternatively, Connecticut could simply delete subsection (c)(3) because it is a redundant provision in relation to subsections (c)(1) and (2).

14. Subsection (k)(4) of Connecticut's rule, the permit shield, states that the shield may apply to permit modifications under Subsections (r)(1) and (r)(2). Subsection (r)(2) contains Connecticut's procedures for administrative permit amendments. In order to be consistent with Part 70, Connecticut's permit shield provisions must be amended to exclude administrative amendments to the title V permit.

15. Subsection (n) of Connecticut's rule specifies that the commissioner will provide EPA with an opportunity to review and comment upon a tentative determination issued by the State before issuance of a final title V permit. Connecticut's rule provides that EPA will be given a 45-day review period for the permit that Part 70 defines as the ''draft permit,'' not the proposed final permit. The provision also gives EPA a second 45-day review period if the State makes changes to the tentative determination within the first 45-day period; however, the provision does not account for changes to the tentative determination that were made after the initial 45-day period has expired. Connecticut must therefore amend this provision to ensure that EPA is provided with a 45-day review period regardless of whether the tentative determination was changed during or after the initial 45-day review period and a final copy of the permit is sent to EPA.

16. Subsection (a)(6) of Connecticut's rule defines the term ''Code of Federal Regulations'' or ''CFR'' to mean those federal regulations ''revised as of September 16, 1994, unless otherwise specified.'' The State's current definition of ''Code of Federal Regulations'' would preclude DEP from issuing title V permits containing provisions of the federal regulations that were promulgated after September 16, 1994. The State program therefore does not meet the Part 70 requirement that permits contain all applicable requirements. Thus, Connecticut must amend its rule by deleting the reference to a ''cut-off'' date associated with the federal requirements.

17. In the June 4, 1996, Federal Register (61 FR 28197), EPA revised the list of source categories and schedule for the 112 MACT program. Several areas of Connecticut's title V rule refer to an outdated Federal Register Notice listing source categories and schedules. Connecticut must amend these cites to reflect the current list in order to complete the list of regulated air pollutants. The cites are in the following sections of Connecticut's rule: Sections 22a-174–33(a)(12), 22a-174–33(e)(1), and 22a-174–33(g)(2)(G).

18. On February 14, 1995, EPA published an interpretive notice that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing the requirements of that provision. The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of 112(g) should be delayed beyond the date the federal rule is promulgated in order to allow States time to adopt rules that implement the federal rule. Connecticut must be able to implement section 112(g) on the date that the section 112(g) regulations become effective or on the date the State's title V program becomes effective, whichever is later. Connecticut must therefore amend its title V rule during the interim approval period if EPA promulgates federal regulations implementing section 112(g) and such regulations become effective during that time.

19. 40 CFR 70.4(b)(10) states that a permit shall either not expire or the terms and conditions of the permit shall remain in effect if a source submits a renewal application that is timely and complete and the State has not issued or denied the renewal permit prior to expiration of the original permit. Subsection (j)(1)(B) of Connecticut's rule states that ''upon expiration of the permit the permittee shall not continue to operate the subject source unless he has filed a timely and sufficient renewal application.'' This section does not clearly state that in a situation where the source continues to operate after filing a renewal application the terms and conditions of the original permit remain enforceable. However, Connecticut's Attorney General Opinion states that Section 4–182(b) of Connecticut's general Statutes ''provides that a permit shall not expire so long as a timely renewal application has been filed and is pending.'' Connecticut should therefore amend its regulation to be consistent with its State statutory law and with Part 70.

20. Subsection (f)(3) of Connecticut's rule addresses application time frames for sources subject to Connecticut's title V regulation solely by virtue of being subject to applicable requirements under 40 CFR parts 60 and 61 that became effective prior to July 21, 1992. The provision requires application within 90 days of notice to the source from the Commissioner or five years after the implementation date of the State's title V rule, whichever is earlier. EPA believes that this provision is Connecticut's attempt to address when ''minor sources'' and ''area sources'' subject to standards under Parts 60 and 61 must apply for title V permits. Forty CFR 70.3(b) provides that a State may

exempt nonmajor sources from the obligation to obtain a title V permit ''until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources * * *'' The possibility that a source would have up to five years from the effective date of Connecticut's program to apply for a title V permit would not necessarily be consistent with Part 70. Connecticut must amend its regulation to be consistent with Part 70.

21. 40 CFR 70.5(c) states that an applicant cannot omit any information needed to determine the applicability of, or to impose, any applicable requirement. Part 70 puts the burden of determining whether an activity is subject to an applicable requirement on the source. Subsection (g)(3) of Connecticut's rule lists the types of activities a source can omit from its application. Subsection (g)(4) requires an applicant to list on its application activities in subsection (g)(3) ''if the commissioner determines the emissions from any activity or items are needed to determine the applicability [of the State's title V regulation] or to impose any applicable requirement.'' The language of subsection (g)(3) is problematic because it shifts the burden of determining what information is necessary onto the State. The provision is also unclear because the applicant could not provide such information at the time of application since the Commissioner has not yet made a determination. Connecticut must amend its rule by clearly stating that any activity listed in subsection (g)(3)(B) be listed in an application to the extent necessary to determine or impose an applicable requirement

22. Subsection (j)(1)(U) of Connecticut's rule states that title V permits will include a provision that indicates that the permit ''may be modified, revoked, reopened, reissued, or suspended by the commissioner, or the Administrator in accordance with this section, section 22a–174 of the general statutes, or subsection (d) of section 22a–3a–5 of the Regulations of Connecticut State Agencies.'' The language of this provision implies that the Administrator's legal authority to modify, revoke, reopen, reissue, or suspend a permit derives from State law. That is not the case. Section 505(e) of the Act and Part 70 provide the Administrator with the legal authority to take such actions.

While Connecticut's language cannot as a legal matter either create or affect EPA's authority under the Act, Connecticut must amend subsections (j)(1)(U) and (r)(13) to remove any confusion caused by the State rule.

23. Connecticut has the authority to issue general permits pursuant to its statutory authority under Section 22a–174 of Connecticut's General Statutes. Forty C.F.R. 70.6(d)(1) states that a source will be deemed to be operating without a permit if the source is later determined not to qualify for the conditions and terms of the general permit which it is using to comply with title V. Neither Connecticut's statute governing general permits nor Connecticut's title V regulation contains such a provision. Connecticut must amend its title V regulation or general permit legislation to address this requirement.

24. Subsection (r)(2)(A)(v) of Connecticut's rule allows for certain permit changes to be processed as administrative amendments, including changes resulting from changes at the source subject to the State's minor preconstruction permitting program.

The problem with this provision is that Part 70 only allows a limited class of preconstruction review permitting changes to be processed as administrative permit amendments, i.e., those which incorporate the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of §§ 70.7 and 70.8, and compliance requirements substantially equivalent to those contained in § 70.6. Connecticut's minor preconstruction review permitting program does not contain provisions allowing for EPA's opportunity to veto the permit, does not contain provisions relating to notification to affected States, and does not contain the permit content elements of 40 CFR 70.6. Thus, Connecticut's administrative amendment provisions must be amended to require changes to the title V permit involving minor preconstruction review permit requirements to be processed through permit modification procedures that meet part 70 requirements, at least equivalent to 40 CFR 70.7(e)(2).

25. Forty CFR § 70.7(e)(1) requires a State to provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications. Once its administrative amendment procedures are amended to meet Part 70 requirements, Connecticut's program will require most permit changes to be processed as significant permit modifications, because Connecticut's regulation does not allow for minor permit modifications. Therefore, Connecticut must amend its permit modification procedures to make them more streamlined and reasonable. Connecticut should either adopt a minor permit modification procedure for certain permit modifications consistent with Part 70, or adopt some other equivalent process for permit modifications that do not require public notice.

26. Forty CFR 70.5(a)(1)(iii) requires that permit renewal applications be submitted ''at least 6 months prior to the date of permit expiration, or such other longer time * * * that ensures that the term of the permit will not expire before the permit is renewed.'' Connecticut's rule requires that permit renewal applications be submitted no later than 6 months prior to the permit expiration date. Connecticut's rule also requires that Connecticut process permit renewal applications no later than 18 months after receipt of an application. Connecticut's rule therefore does not ''ensure that the term of the permit will not expire before the permit is renewed.'' Connecticut must amend its rule so that the time frames for permit renewal application and permit renewal processing are consistent with one another.

27. Subsection (s) of Connecticut's rule allows for the transfer from one person to another of the authority to operate under a title V permit to be processed as an administrative amendment. Connecticut's rule does not contain the Part 70 requirement that a transfer may not occur unless a written agreement between the two parties is submitted to the State. Such agreement must contain a specific date for transfer of permit responsibility, coverage, and liability. The problem created by Connecticut's rule is that the State's administrative amendment procedure allows the source to act on the proposed amendment at the time the request for the amendment is made. Thus, the actual transfer would take effect prior to the permit amendment. Connecticut's rule also provides that the commissioner shall modify the permit to reflect the transfer, and only after the permit modification shall the transferee be responsible for complying with the permit. However, this situation would create a problem in an enforcement context. The Clean Air Act in general provides for enforcement against ''owners or operators,'' but does not clearly provide for enforcement against prior owners. EPA may not be able to enforce against the prior owner, even though Connecticut's rule indicates that the prior owner would still be responsible for compliance with the

permit rather than the new owner/operator. Thus, Connecticut must amend its rule to require submittal by a source of a written agreement consistent with Part 70.

28. Part 70 requires that where an applicable requirement does not require periodic testing or monitoring, the permit shall include periodic monitoring. Subsection (j)(1)(K)(ii) of Connecticut's rule includes the following language: ''[T]he permittee may be required by the permit to conduct periodic monitoring or record keeping sufficient to yield reliable data * * *.'' Connecticut must amend its rule to change the word ''may'' in subsection (j)(1)(K)(ii) to the word ''shall,'' because the periodic monitoring requirement is not discretionary under Part 70. Connecticut has committed to do periodic monitoring during the interim program.

29. Subsection (b)(2)(B)(ii) of Connecticut's rule allows ''an individual or position having overall responsibility for environmental matters for the company * * *.'' to act as the responsible official. Connecticut must remove this subsection to be consistent with part 70.

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 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 January 6, 1997.

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 action proposed 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 preexisting requirements under State or local law, and imposes no new 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: November 19, 1996.

John P. DeVillars,

Regional Administrator, Region I.

Tables to the Preamble

Table I—Delegation of Parts 61 and 63 Standards as They Apply to Connecticut's Title V Operating Permits Program

Part 61 Subpart Categories

C Beryllium
D Beryllium-Rocket Motor
E Mercury
F Vinyl chloride
J Equip Leaks of Benzene
L Benzene-Cole by-Product Recovery Plant
N Arsenic-Glass Manufacturing
O Arsenic-Primary Copper-Smelters
P Arsenic-Trioxide and Metallic
V Equip Leaks (Fugitive Emission Sources)
Y Benzene Storage Vessels
BB Benzene Transfer Operations
FF Benzene Waste Operation

40 CFR Part 63

A General Provisions
H Organic Hazardous Air Pollutants for Equipment Leaks
I Organic Hazardous Air Pollutants for Certain Process Subject to the Negotiated Regulation for Hazardous Leaks
N Chromium Emissions From Hard and Decorative Chromium Electroplating
O Ethylene Oxide Emission Standards for Sterilization Facilities
R Gasoline Distribution (Stage 1)
GG Aerospace Manufacturing and Rework
II Shipbuilding and Ship Repair (Surface Coating)

Table II—Part 60 Subpart Categories

D Fossil-Fuel Fired Steam Generators
Da Electric Utility Steam Generators
Db Industrial-Commercial-Institutional Steam Generating Units
Dc Small Industrial Commercial Institutional Steam Generating Units
E Incinerators
Ea Municipal Waste Combustors
F Portland Cement Plants
G Nitric Acid Plants
H Sulfuric Acid Plants
I Asphalt Concrete Plants
J Petroleum Refineries
K Petroleum Liquid Storage Vessels
Ka Petroleum Liquid Storage Vessels
L Secondary Lead Smelters
M Secondary Brass and Bronze Production Plants
N Basic Oxygen Process Furnaces Primary Emissions
Na Basic Oxygen Process Steelmaking-Secondary Emissions
O Sewage Treatment Plants
P Primary Copper Smelters
Q Primary Zinc Smelters
R Primary Lead Smelters
S Primary Aluminum Reduction
T Phosphate Fertilizer Wet Process
U Phosphate Fertilizer-Superphosphoric Acid
V Phosphate Fertilizer-Diammonium Phosphate
X Phosphate Fertilizer-Granular Triple Superphosphate Storage
Y Coal Preparation Plants
Z Ferroalloy Production Facilities
AA Steel Plants-Electric Arc Furnaces
CC Glass Manufacturing Plants
DD Grain Elevators
EE Surface Coating of Metal Furniture
GG Stationary Gas Turbines
HH Lime Manufacturing Plants
KK Lead-Acid Battery Manufacturing
LL Metallic Mineral Processing Plants
NN Phosphate Rock Plants

PP Ammonium Sulfate Manufacturing
QQ Graphic Arts-Rotogravure Printing
RR Tape and Label Surface Coatings
SS Surface Coating: Large Appliances
TT Metal Coil Surface Coating
UU Asphalt Processing Roofing
VV Equipment Leaks of VOC in SOCMI
WW Beverage Can Surface Coating
XX Bulk Gasoline Terminals
BBB Rubber Tire Manufacturing
DDD VOC Emissions From Polymer Manufacturing Industry
FFF Flexible Vinyl and Urethan Coating and Printing
GGG Equipment Leaks of VOC in Petroleum Refineries
HHH Synthetic Fiber Production
III VOC From SOCMI Air Oxidation Unit
JJJ Petroleum Dry Cleaners
NNN VOC From SOCMI Distillation
OOO Nonmetallic Mineral Plants
PPP Wool Fiberglass Insulation
QQQ VOC From Petroleum Refinery Wastewater Systems
SSS Magnetic Tape Coating
TTT Surface Coating of Plastic Parts for Business Machines
UUU Calciners & Dryers in the Mineral Industry
VVV Polymeric Coating of Supporting Substrates

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2200, 2210, 2240, 2250, and 2270

[WO–420–1800–00–24 1A]

RIN 1004–AC58

Exchanges: General Procedures; State Exchanges; National Park Exchanges; Wildlife Refuge Exchanges; Miscellaneous Exchanges

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to streamline its exchange regulations at 43 CFR group 2200 by amending § 2200.0–7 of part 2200 and by removing parts 2210, 2240, 2250, and 2270. Section 2200.0–7 would be rewritten to state clearly that, apart from the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1701 *et seq.* (FLPMA), other statutes exist which govern site- and type-specific land exchanges that may involve BLM-managed lands or interests in lands. If BLM lands or interests are involved, these other statutes will prevail over the regulations in part 2200 where they conflict with those regulations. BLM also would simultaneously remove parts 2210, 2240, 2250, and 2270 because the regulations in those parts largely restate the substance of the exchange statutes referenced in them and are, in that respect, redundant and unnecessary.

DATES: Any comments must be received by BLM at the address below on or before January 6, 1997. Comments received after the above date will not necessarily be considered in the decisionmaking process on the final rule.

ADDRESSES: If you wish to comment, you may hand-deliver comments to the Bureau of Land Management (630), Administrative Record, Room 401, 1620 L St., NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240. You also may transmit comments electronically via the Internet to WOComment@Wo.blm.gov. Please include ''attn: RIN AC58'' in your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly at (202) 452–5030. You will be able to review comments at BLM's Regulatory Affairs Group office, Room 401, 1620 L Street, NW., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Chris Fontecchio, Bureau of Land Management, Regulatory Affairs Group, at (202) 452–5012.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background and Discussion of Proposed Rule
III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background and Discussion of Proposed Rule

Land exchanges involving BLM lands and interest in lands are generally governed by FLPMA and the rules at 43 CFR part 2200. However, various other statutes authorize certain site- and type-specific land exchanges that may involve BLM lands or interests in lands. These statutes may not be fully consistent with the exchange requirements of FLPMA or with BLM's exchange regulations in part 2200. When these inconsistencies occur, the site- or type-specific statute is intended to prevail over the part 2200 regulations. Provisions currently found at 43 CFR parts 2210, 2240, 2250, and 2270 reiterate some of these site- and type-specific statutory commands.

However, in light of the regulatory reform initiative's goals of streamlining the Code of Federal Regulations (CFR), the proposed rule would remove these parts which merely restate statutory terms and would amend section 2200.0–7 to advise the public that other statutes governing certain site- and type- specific exchanges will preempt the general exchange regulations at part 2200, to the extent that they conflict. This can be accomplished without significantly affecting the rights of the United States, BLM's customers, or the public at large.

The parts which would be removed, 43 CFR parts 2210, 2240, 2250, and 2270, are almost entirely devoted to repeating statutory provisions. To the extent that they are duplicative, these regulations serve only to provide information that can be found in the statutes themselves. Furthermore, the only provisions in these parts which go beyond the statutes are provisions which can and should be removed.

For example, removing section 2240.0–3(f) would delete: (1) The requirement that States, political subdivisions thereof, or any interested party who requests public hearings to consider an exchange do so in writing; and (2) the definitions of *National Park System* and *miscellaneous areas.* These provisions constitute substance beyond that already contained in the Act of July 15, 1968, 16 U.S.C. 460*l*–22. However, BLM has determined that deleting these provisions will not meaningfully alter its administration of the Act's exchange provisions or significantly affect the rights of the United States or the public. BLM believes the benefits of streamlining and deleting unnecessary material such as part 2240 outweigh the impact of these minor substantive changes.