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 approval action proposed/promulgated 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.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the SIP revision controlling lead emissions in Philadelphia will be based on whether it meets the requirements of section 110(a)(2) (A)–(K) and of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 17, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 96–19322 Filed 7–29–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[PA065–4026b; FRL–5535–1]

Approval and Promulgation of Air Quality Implementation Plans; Proposed Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable General State Operating Permits and General Plan Approvals Under Sections 110 and 112(l)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of creating Federally enforceable conditions for sources of criteria air pollutants in general operating permits and general plan approvals issued by the Commonwealth. In order to extend the federal enforceability of general State operating permits and general plan approvals to include hazardous air pollutants (HAPs), EPA is also proposing approval of Pennsylvania's general operating permit and general plan approval program regulations pursuant to Section 112(l) of the Act. In the Final Rules section of this Federal Register, EPA is approving the Commonwealth'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 and in the Technical Support Document (TSD) for this rulemaking. 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 August 29, 1996.

ADDRESSES: Written comments on this action should be addressed to David Arnold, Chief, Permit Programs Section, Mailcode 3AT23, 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 Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, and at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8468, Harrisburg, Pennsylvania 17105–8468.

FOR FURTHER INFORMATION CONTACT: Michael H. Markowski, Mail Code 3AT23, U.S. Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 566–2063.

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

Authority: 42 U.S.C. 7401–7671q.

Dated: June 26, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 96–19206 Filed 7–29–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[NY001; FRL–5544–3]

Clean Air Act Proposed Interim Approval of Operating Permits Program: State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by the State of New York 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.

DATES: Comments on this proposed action must be received in writing by August 29, 1996.

ADDRESSES: Written comments should be addressed to Steven C. Riva, Chief, Permitting and Toxics Support Section, at the New York Region II Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed interim approval as well as the Technical Support Document are available for inspection during normal business hours at the following locations:

EPA Region II, 290 Broadway (21st Floor until July 19, 25th Floor after July 19), New York, New York 10007–1866, Attention: Steven C. Riva.

New York State Department of Environmental Conservation, 50 Wolf

Road, Room 608, Albany, New York 12233–1500, Attention: John Higgins.

FOR FURTHER INFORMATION CONTACT: Gerald DeGaetano, Permitting and Toxics Support Section, at the above EPA office in New York or at telephone number (212) 637–4020.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under Title V of the Clean Air Act (''the Act'') as amended (1990), 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 Title 40 of the Code of Federal Regulations (40 CFR) part 70. Title V of the Act directs States to develop, and submit to EPA for approval, programs for issuing operating permits to all major stationary sources and to certain other sources. Due to pending litigation over several aspects of the part 70 rule which was promulgated on July 21, 1992, part 70 is in the process of being revised. When the final revisions to part 70 are promulgated, the requirements of the revised part 70 may re-define EPA's criteria for the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits program submittals. Until the date on which the revisions to part 70 are promulgated, the currently effective July 21, 1992 version of part 70 shall be used as the basis for EPA's review.

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

Proposed Action and Implications

A. Analysis of State Submission

1. Support materials. Commissioner Thomas C. Jorling of the Department of Environmental Conservation (DEC) submitted a part 70 permitting program for the State of New York with a letter requesting EPA's approval on November 12, 1993 and Deputy Commissioner David Sterman submitted a supplemental package on June 17, 1996. These submittals contain a description of how the DEC intends to implement the program consistent with the requirements of the Act and 40 CFR part 70. The submittals include supporting documentation such as evidence of the procedurally correct adoption of the permitting rule, the permit application form, and a description of the compliance tracking and enforcement program. On June 27, 1996 the Attorney General of New York submitted a legal opinion stating that DEC has adequate legal authority to carry out the program. The Attorney General Legal Opinion was the final submission of the DEC's complete part 70 application.

The analysis contained in this document focuses on the major portions of New York's operating permits program submittal, including regulations and program implementation, the permit fee demonstration, and provisions implementing the requirements of sections 111 and 112 of Title I and of Title IV of the Act. This document also addresses the deficiencies in New York's submittal which will need to be corrected prior to full approval by EPA.

2. Regulations and program implementation.

New York's part 70 permitting regulations are contained in Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (''6 NYCRR'') Part 200; 201–1.1 to 201–1.3, 201–1.5 to 201–1.10, 201–2, 201–3, 201–6, 201–8 and Appendices A and B of Part 201; 482–2; 621.1, 621.3(e), 621.3(f), 621.4(g), 621.5, 621.6, 621.7, 621.9, 621.13 and 621.14; 624.3 and 624.12. New York's regulations meet the main requirements of part 70 as described below:

a. applicability (40 CFR 70.2 and 70.3): Sources required to obtain a part 70 permit under New York's regulation include all major stationary sources as defined in 6 NYCRR 201–2, any source subject to a New Source Performance Standard, any source subject to a standard under section 112 of the Act (except that a source is not required to obtain a part 70 permit solely because it is subject to 112(r) of the Act), any affected source under the acid rain provisions of Title IV of the Act, and any stationary source designated by the Administrator and added by the DEC pursuant to rulemaking. Please note that while New York lists sources subject to a New Source Performance Standard in 40 CFR part 60, et seq. as being subject to Title V, EPA interprets this also to include rules that DEC promulgates pursuant to section 111(d) of the Act, as defined in 40 CFR part 60, subparts B and C, but that are approved by EPA under 40 CFR part 62. New York is also deferring non-major sources, consistent with part 70, until the Administrator completes a rulemaking to determine how the Title V program should be structured for non-major sources and the appropriateness of any permanent exemptions. New York's regulation permanently exempts any source that would be required to obtain a permit solely because it is subject to Standards of Performance for New Residential Wood Heaters or the National Emission Standard for Hazardous Air Pollutants for Asbestos, Standards for Demolition and Renovation. (6 NYCRR 201–2 and 201–6.1)

b. permit content (40 CFR 70.6): 6 NYCRR 201–6.5 requires that each permit contain emission limitations and standards to ensure compliance with all applicable requirements at the time of permit issuance. Permits may also contain certain operational flexibility requirements such as terms and conditions for alternate operating scenarios and for the trading of emissions increases and decreases (to the extent the applicable requirements provide for such trading) in the permitted facility. If requested by the applicant, permits can be issued that provide for emissions trading in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap independent of otherwise applicable requirements.

c. public participation (40 CFR 70.7): The public will be provided with notice of, and an opportunity to comment on, draft permits relating to initial permit issuance, permit renewals, and significant modifications (6 NYCRR 621.6).

d. permit modifications (40 CFR 70.7): Sources may apply for expedited permit changes for minor permit modifications. Significant modifications must undergo all part 70 permit issuance procedures (6 NYCRR 201–6.7).

e. EPA oversight (40 CFR 70.8): Each permit, renewal, and minor or significant modification is subject to EPA oversight and veto (6 NYCRR 201–6.4).

f. insignificant activities (40 CFR 70.5): The list of insignificant activities can be found at 6 NYCRR 201–3.2 (''Exempt Activities'') and the list of trivial activities is found at 201–3.3. Activities can only be considered insignificant or trivial if not subject to any applicable requirements. In addition, sources must not omit

emissions from insignificant or trivial activities from emission calculations to determine if a source is subject to the part 70 permit program. Insignificant activities must still be listed in the permit application while trivial activities do not need to be listed. In addition, 6 NYCRR 201–6.3(d)(7) provides that emissions from units at major stationary sources shall be considered insignificant as long as they are not subject to any applicable requirements and meet the following criteria: emissions of criteria contaminants do not exceed 2.5 tpy based on actual emissions, provided on-site records are maintained to verify these emissions, or 2.5 tpy based on potential to emit; and emissions of a hazardous air pollutant do not exceed 1000 lb/yr and/or 5000 lb/yr for any combination of hazardous air pollutants except where the Administrator has established lower thresholds for a specific hazardous air pollutant or major source threshold (emissions can be based on actual emissions if on-site records are maintained or on potential emissions if records are not kept); and the emission unit does not utilize air pollution control devices or is not limited by an emission cap to meet the above criteria.

g. enforcement authority (40 CFR 70.11): Section 71–2103(1) of New York's Environmental Conservation Law provides that civil penalties shall be recoverable in an amount up to $10,000 per day per violation for a first violation and $15,000 per day for subsequent violations. Section 71–2103(1) also provides for injunctive authority. Section 71–2105(1) provides that for willful violations criminal fines of up to $10,000 per day per violation and/or imprisonment are available in the case of a first violation and criminal fines of up to $15,000 per day per violation and/or imprisonment are available in the case of a second or further violation.

Pursuant to 72–0201(12) of the Environmental Conservation Law, any person who fails to pay fees shall pay a penalty of 50% of the unpaid fee amount plus interest. If the source continues not to pay its fees, New York may exercise its authority under 6 NYCRR 481.8 to revoke or suspend the title V permit. The source could then be subject to civil and criminal liability for operating without a permit.

h. complete application forms (40 CFR 70.5): 6 NYCRR 201–6.2 and 201–6.3 define what elements must be in an application in order for it to be complete during the first phase application submittal and second phase application submittal. All sources, except those required to submit the entire application within the first year, must submit the phase I application within twelve months after EPA approves the program to allow DEC to commence review of the permit application. Phase II applications, which contain all required information, must be submitted in accordance with the application schedule in Appendix B of Part 201 (not yet complete—see item k. below). All information identified in 40 CFR 70.5 is included in New York's permit application.

i. prompt reporting: Part 70 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. In general, the EPA believes that ''prompt'' should be defined as requiring reporting within two to ten days for deviations that may result in emission increases. 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 deviations resulting in low levels of excess emissions, a longer time period may be acceptable. Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficient permit conditions for the prompt reporting of deviations. New York's 6 NYCRR 201–6.5(c)(3)(i) requires submittal of reports of any required monitoring at least every six months. 201–6.5(c)(3)(ii) provides that permit deviations must be reported with the monitoring reports required in 201–6.5(c)(3)(i) unless DEC specifies a different reporting requirement in the permit. DEC must issue permits which require prompt reporting of deviations. Absent this, EPA may veto permits.

j. emergency: In 201–1.5, New York provides for the affirmative defense to an action brought for noncompliance with emission limitations or permit conditions as long as the source follows specific procedures consistent with 40 CFR 70.6(g). New York defines ''emergency'' in 201–2 consistent with § 70.6(g) and limits the applicability to technology-based requirements under the permit or State-established emission limitations.

k. Transition Plan: New York currently plans to issue permits to all sources within three years. Originally, when proposing Part 201, New York had planned to request source category-limited interim approval in order to issue all permits over a five-year period. However, because the enabling legislation requires that initial permits be issued within three years, Part 201 was promulgated to provide for a three-year transition period. Currently, New York is re-proposing Appendix B of 6 NYCRR Part 201 ''Transition Plan Application Schedule'' which will inform sources of when during the three year period they must submit their Phase II permit applications. Appendix B will be finalized prior to EPA's promulgation of final interim approval of New York's part 70 program.

3. Permit fee demonstration. New York's resource fee demonstration shows that the state will collect sufficient revenue to implement the Title V program. New York began collecting permit fees on January 1, 1994 at $25 per ton of regulated pollutants up to 6000 tons annually of each regulated pollutant. This rate of $25 per ton was adjusted by the Consumer Price Index (CPI) [base year 1994]. New York's resource fee demonstration shows that New York will collect the equivalent of EPA's presumptive minimum because New York's cap on fees is 2000 tons higher than the cap assumed for the presumptive minimum and because New York has ramp-up funds available to cover the four year period provided in the resource fee demonstration. EPA agrees that New York's fee, although based on a different year for the CPI, can be considered equivalent to the presumptive minimum and should be sufficient to support the Title V program (EPA's presumptive minimum assumes use of the 1989 base year CPI). In addition, New York is required to report annually to the Governor, Legislature, and Office of State Comptroller on its program costs, revenue and progress. EPA will review these reports to ensure that New York's fee is sufficient to cover program costs after the program has been in effect for one to two years.

As specified in the enabling legislation and 6 NYCRR 482–2, fees shall be based on actual emissions for the prior calendar year, as demonstrated to DEC's satisfaction, or in the absence of such demonstration, on permitted emissions, or, where there is no permit, on potential to emit. Furthermore, New York's enabling legislation establishes a special account entitled ''operating permit account'' under the Clean Air Fund to cover the reasonable direct and indirect costs of developing and administering New York's operating permits program and the small business stationary source technical and

environmental compliance assistance program.

4. Provisions implementing Section 112 of the Act. a. authority for section 112 implementation: New York has demonstrated in its Title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the Title V permit. This legal authority is contained in New York's enabling legislation and in regulatory provisions defining ''applicable requirements'' in that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow New York to issue permits that assure compliance with all section 112 requirements, including section 112(r).

b. implementation of section 112(g): The EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of 112(g) applicability. The notice postpones the effective date of 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) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal 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), New York must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and the adoption of New York rules implementing EPA's section 112(g) regulations or New York's incorporation by reference of the 112(g) regulations.

The EPA is proposing to approve New York's preconstruction permitting program, found in 6 NYCRR Part 201, 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 Title V approval and adoption of a State rule implementing EPA's section 112(g) regulations.

c. program for straight delegation of section 112 standards: Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 *General Provision Subpart A* and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that a State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. New York has informed EPA that it intends to accept delegation of section 112 standards through either: case-by-case rule adoption; or incorporation by reference of the Federal regulation into State regulation. The details of this delegation mechanism are set forth in a letter dated June 18, 1996 in which New York requested delegation of section 112 standards and section 111 New Source Performance Standards. This program applies to both existing and future standards and covers both part 70 and non-part 70 sources. However, New York does not intend to take delegation of the 112(r) program, but will still implement the appropriate permit conditions relevant to the risk management program in part 70 permits. In addition, this delegation does not include National Emission Standards for Hazardous Air Pollutants for Asbestos, Standards for Demolition and Renovation.

5. Provisions implementing Section 111 of the Act. As requested in the letter dated June 18, 1996, the EPA is approving New York's request for delegation of all existing New Source Performance Standards promulgated pursuant to section 111 of the Act except for 40 CFR part 60, subpart AAA, Standards of Performance for New Residential Wood Heaters.

New York also commits to implement appropriately the existing and future requirements of sections 111, 112 and 129 of the Act, and all MACT standards promulgated in the future, in a timely manner.

Currently, 6 NYCRR Part 200.10(d), Table 4, does not include 40 CFR part 63, subpart D—Compliance Extensions for Early Reductions of HAPs. In addition, 6 NYCRR Part 200.10(b), Table 2, is missing 40 CFR part 60, subpart WWW—New Source Performance Standards for Landfills. New York must use its minor rulemaking procedures to incorporate by reference these federal rules.

6. Provisions implementing Title IV of the Act. In 6 NYCRR 200.10(e), Table 5, New York has incorporated by reference the provisions of 40 CFR parts 72 through 78 for purposes of implementing an acid rain program that meets the requirements of Title IV of the Act. By incorporating by reference, New York has the authority to include the applicable requirements of Title IV in permits and to enforce such requirements. 201–6.6(b) also provides additional information for facilities subject to the Acid Rain Program and clarifies that, where an applicable requirement of the Act is more stringent than the regulations promulgated under Title IV, both requirements will be incorporated into the permit.

B. Options for Approval/Disapproval and Implications

1. Interim approval. The EPA is proposing to grant interim approval to the operating permits program submitted by New York on November 12, 1993 and supplemented on June 17 and 27, 1996. New York must make the following changes to receive full program approval within eighteen months of EPA's final approval to grant interim approval program status:

i. New York's definition of 'Regulated Air Pollutant' in 6 NYCRR 200.1(bq) is not consistent with the definition in 40 CFR 70.2 since it fails to include pollutants regulated under section 112(r) of the Act. Part 70 includes in the definition of Regulated Air Pollutant ''any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including sections 112(g), (j), and (r) of the Act * * *''. New York's definition of regulated air pollutant only includes hazardous air pollutants which New York defines by providing a list of the 112(b) pollutants. In order to receive full approval, New York must include in the definition not only hazardous air pollutants but also pollutants regulated under section 112(r) of the Act. As a note, the August 31, 1995 revisions to part 70 proposed to eliminate 112(r) pollutants from the definition of regulated air pollutant. Therefore, if the revisions to part 70 are promulgated as proposed prior to the expiration of EPA's interim approval of New York's program, New York may not need to address this issue in order to receive full approval.

ii. Under the reporting requirements of 6 NYCRR 201–6.5(c)(3)(ii), New York provides that a permittee can seek to have a violation excused as provided in 201–1.4 if such violations are reported as required in 201–1.4(b). [Note: Although 201–1.4 is part of the state regulation pending approval into the State Implementation Plan (SIP), similar provisions are already part of the currently-approved SIP at 201.5. Part 201–1.4 is not part of the Title V regulation.] The language in 201–1.4 that provides the DEC Commissioner

discretion to excuse violations of any applicable emission standard for necessary scheduled equipment maintenance, start-up/shutdown conditions, malfunctions, and upsets if such violations are unavoidable and the permittee meets certain conditions and reporting requirements only applies to SIP requirements or State-only requirements. This provision does not extend to other Federal requirements such as NSPS, NESHAPs or PSD/NSR (although some Federal requirements, such as some NSPS rules, provide for an affirmative defense). In order to receive full approval, New York must add a sentence to 6 NYCRR 201–6.5(c)(3)(ii) which clarifies that the discretion to excuse a violation under 201–1.4 will not extend to Federal requirements unless the specific Federal requirement provides for the affirmative defense during start-ups, shutdowns, malfunctions, or upsets.

iii. 40 CFR 70.6 provides that permits can include alternative emission limits, equivalent to those contained in the SIP, as long as the SIP allows for alternative emission limits to be made through the permit issuance, renewal or significant modification process. However, New York's language as found in 6 NYCRR 201–6.5(a)(1)(ii) is overly broad in that it allows DEC to provide for an alternative emission limit through the part 70 permit issuance, renewal or significant modification process at any time, regardless of whether such an alternative emission limit is allowed for in a particular regulation approved into the SIP. New York's rule also fails to restrict such alternative emission limits to only those limits that are equivalent to the limits in the SIP. Therefore, this would allow DEC to issue permits with alternative emission limits regardless of whether such limits were determined to be ''equivalent''. The intent of part 70 is to only grant alternative emission limits if allowed for in a State rule that provides criteria for determining equivalency and if that rule has been approved by EPA into the SIP. Furthermore, New York frequently refers to variances in its rules and these variances are not equivalent emissions. When the state proposes to approve such variances, EPA generally identifies these as requiring SIP revisions (e.g., they cannot be handled through permit revision procedures until first approved as a source-specific SIP revision (see Table in 40 CFR 52.1679)). In order to receive full approval, New York must change this provision so that it is equivalent to 40 CFR 70.6(a)(1)(iii), in that permits will only include alternative emission limitations if provided for in the SIP and if the alternative emission limit is determined to be equivalent to the limit contained in the SIP.

iv. New York's regulation does not provide for one of the three elements defined to provide operational flexibility under section 502(b)(10) of the Act. 40 CFR 70.2 defines ''section 502(b)(10) changes'' as changes that contravene an express permit term as long as such changes would not violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements. Because 40 CFR 70.4(b)(12)(i) requires that State part 70 programs allow for such flexibility, New York must add to its program this type of flexibility in order to receive full program approval. However, the August 29, 1994 proposal to revise part 70 would remove the definition of ''section 502(b)(10) changes'' and requests comment on narrowing the types of changes eligible under section 502(b)(10) to emissions trading and not to changes that contravene a permit condition. Therefore, if the revisions to part 70 are promulgated as proposed prior to the expiration of EPA's interim approval of New York's program, New York may not need to address this issue in order to receive full program approval.

v. New York's definition of ''major source'' at 6 NYCRR 201–2(b)(21) is not consistent with the definition in 40 CFR 70.2. In 40 CFR 70.2, the last category in the list of 27 categories of stationary sources in which fugitive emissions must be included to determine if a source is subject to Title V includes ''* * * all other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category.'' New York's rule limits this last provision to source categories for which EPA has completed a rulemaking under 302(j) of the Act. Therefore, New York's rule would only require fugitives to be included in determining applicability for sources in categories subject to a New Source Performance Standard established prior to August 7, 1980. Because New York's rule is less stringent than the current part 70 rule which requires all NSPS sources to include fugitives for those air pollutants that have been regulated for that category, New York needs to revise its definition of major source to be consistent with the definition in part 70. However, as a note, revisions to part 70 were proposed on August 29, 1994 and August 31, 1995 which would change the last category of sources in which fugitives must be included in determining applicability to only those source categories in which the Administrator has made an affirmative decision under section 302(j) of the Act. Therefore, if part 70 is promulgated as proposed prior to the expiration of EPA's interim approval of New York's program, New York may not need to address this issue in order to receive full program approval.

vi. 6 NYCRR 201–6.5(f)(3) on emissions trading under the SIP does not include the gatekeeper of 40 CFR 70.4(b)(12) which states that changes do not need to undergo a permit revision as long as the changes are not modifications under any provision of Title I of the Act. 6 NYCRR 201–6.5(f)(4) on emissions trading under a cap does not include the two gatekeepers of 40 CFR 70.4(b)(12) which state that changes do not need to undergo a permit revision as long as the changes are not modifications under any provision of Title I of the Act and the changes do not exceed the emissions allowable under the permit. While New York's enabling legislation includes these gatekeepers under ECL § 19–0311(p), EPA believes that the gatekeepers should also be in the regulations, because it will be the regulations that sources will be referencing to submit applications and to comply with New York's operating permits program. Therefore, in order for New York to receive full approval, the gatekeepers in 40 CFR 70.4(b)(12) must be added to New York's Part 201 rule.

vii. 40 CFR 70.7(e)(2)(i)(B) states that minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches ''to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA''. 6 NYCRR 201–6.7(c)(2), which provides for use of minor modification procedures for permit modifications involving the use of economic incentives and marketable permits, does not include the language quoted above. In order to receive full program approval, New York must revise its rule to provide that minor modification procedures can only be used for these types of changes if explicitly provided for in the underlying SIP or EPA rule. However, as a note, EPA is revising the permit revision procedures in part 70. Therefore, if part 70 is promulgated in such a way that this is no longer an issue before the expiration of EPA's

interim approval of New York's program, New York may not need to address this issue in order to receive full program approval.

viii. 40 CFR 70.4(b)(3)(xii) requires that petitions for judicial review be filed no later than 90 days after the final permit action, or such shorter time as the State shall designate. While New York's law allows DEC to adopt a 90 day statute of limitations for judicial review of final permit actions, DEC prefers to retain the four month statute of limitations as provided in Article 78 of the New York Civil Practice Law and Rules. However, in order for New York to be consistent with part 70 and receive full approval, New York must adopt a 90 day statute of limitations through rulemaking. As a note, the August 29, 1994 revisions to part 70 propose to extend the filing date of requesting judicial review from 90 days to 125 days. Therefore, if part 70 is promulgated as proposed prior to 6 months before the expiration of EPA's interim approval of New York's program, New York may not need to address this issue in order to receive full program approval.

2. Federal oversight and sanctions. 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 1-year time period for submittal of permit applications by subject sources begins upon EPA's granting of interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim approval, if New York fails to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If New York then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA is required to apply one of the two sanctions listed in section 179(b) of the Act, and, once applied, the sanction will remain in effect until EPA determines that New York has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of New York, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that New York had come into compliance. In any case, if, six months after application of the first sanction, New York still has not submitted a corrective program that EPA finds complete, the second sanction will be applied.

If, following final interim approval, EPA disapproves New York's complete corrective program for full approval, EPA will 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 New York has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of New York, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that New York had come into compliance. In all cases, if, six months after EPA applies the first sanction, New York has not submitted a revised program that EPA has determined corrected the deficiencies that prompted disapproval, a second sanction is required.

In addition to the above, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if New York has not timely submitted a complete corrective program or EPA has disapproved a corrective program submittal. Moreover, if EPA has not granted full approval to a New York program by the expiration of an interim approval, EPA must promulgate, administer and enforce a Federal permits program for New York upon interim approval expiration.

3. Other actions. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements 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. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated for both part 70 and non-part 70 sources. In addition, EPA is also delegating to New York all existing section 111 standards.

The scope of the New York part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the State of New York, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.,* 59 FR 55813, and 55815–55818 (November 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 Act; *see also* 59 FR 43956, and 43962 (August 25, 1994); and 58 FR 54364 (October 21, 1993).

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 located in New York and at the DEC office in Albany. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

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

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by August 29, 1996.

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 Act

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 annual 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 being promulgated today does not include a federal mandate that may result in annual 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: July 18, 1996.

Jeanne M. Fox,

Regional Administrator.

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