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 preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments 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 must do so at this time.

DATES: Comments must be received in writing on or before January 5, 2000.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand , EPA, Region VIII, (303) 312–6437.

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 *et seq.*

Dated: November 22, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 99–31537 Filed 12–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[SIPTRAX No. PA138; FRL–6500–8]

Approval and Promulgation of Air Quality Implementation Plans; Allegheny County Portion of the Commonwealth of Pennsylvania's Operating Permits Program, and Federally Enforceable State Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes three actions. First, EPA proposes approval of a partial Operating Permit Program under the Clean Air Act (the Act), for the purpose of allowing the Allegheny County (Pennsylvania) Health Department (ACHD) to issue operating permits to all major stationary sources in its jurisdiction. Second, EPA proposes approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for ACHD. This revision establishes a Federally Enforceable State Operating Permit (FESOP) Program and gives ACHD the authority to create federally enforceable installation and operating permit conditions for regulated pollutants and limits on potential to emit (PTE) for hazardous air pollutants (HAPs) for the purpose of allowing sources to avoid major source applicable requirements. Third, EPA proposes approval of the mechanism for ACHD to receive delegation of Maximum Achievable Control Technology (MACT) Standards for major sources subject to operating permit program requirements.

DATES: Written comments must be received on or before January 5, 2000.

ADDRESSES: Written comments may be mailed to Kathleen Henry, Chief, Permitting and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Allegheny County Health Department Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: MaryBeth Bray, (215) 814–2632.

SUPPLEMENTARY INFORMATION: On November 5, 1998 the Commonwealth of Pennsylvania submitted a revision to its SIP on behalf of the ACHD to establish two permitting programs; the FESOP program pursuant to part 52 of Title 40 of the Code of Federal Regulations (CFR), and the Title V Operating Permit Program pursuant to 40 CFR part 70. The submittal also included a request for delegation of MACT standards for HAPs from section 112 of the Act. EPA is proposing approval of Pennsylvania's request for two permitting programs for the ACHD as well as the mechanism for the ACHD to receive delegation of section 112 standards.

Submittal Description

The ACHD November 5, 1999 submittal contained numerous revisions to the SIP, including a recodification of the regulations in general, revision to major and minor New Source Review and Prevention of Significant Deterioration programs, as well as requests for approval or delegation of programs under 40 CFR parts 52, 63, and 70. Today's rulemaking action only involves approval of the FESOP and part 70 permitting programs, and approval of the mechanism for delegation of programs under section 112 of the Act.

EPA is proposing several significant changes and additions to the ACHD's existing SIP-approved installation (preconstruction) and operating permit programs. One purpose of these proposed SIP revisions is to make all of the ACHD's SIP-approved permit programs consistent with one another and with the Clean Air Act. Another important purpose of the proposed SIP revision is to allow the ACHD, upon approval, to limit sources' PTE for the purpose of exempting certain sources from Title V and other major source requirements of the Act.

ACHD submitted the permitting programs through the Commonwealth of Pennsylvania, requesting the authority to issue operating permits (Title V and FESOP) to sources of air pollutants within its jurisdiction. The ACHD adopted the necessary regulations on October 5, 1995 and submitted a program approval request to the Commonwealth of Pennsylvania. On November 5, 1998, the Commonwealth of Pennsylvania submitted the program on behalf of ACHD to EPA for review. In addition, a three-way implementation agreement (IA) between the ACHD, Pennsylvania Department of Environmental Protection (PADEP), and the EPA was submitted on August 9, 1999 to clarify certain procedural issues

not included in the November 5, 1998 submittal. EPA found the submittal to be administratively complete pursuant to 40 CFR 70.4(e)(1) on February 2, 1999. EPA has concluded that the part 70 program and the FESOP program meet all the necessary requirements of part 70 and part 52, respectively, and is proposing to grant full approval to both of these programs. EPA has also concluded that the ACHD's program is adequate for approving the mechanism needed to delegate section 112 programs. For more detailed information on the analysis of the ACHD's submission, please refer to the technical support document included in the docket at the address noted above.

Part 70 Background

Major sources of air pollutants are required under Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Act) to obtain operating permits. EPA has promulgated rules which define the minimum elements of an approvable state or local operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of operating permits programs. See 57 FR 32250 (July 21, 1992). These rules are codified at 40 CFR part 70. Title V requires state or local agencies to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources. 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.

EPA approved the Commonwealth of Pennsylvania's program, which applied statewide, on August 29, 1996. As of that date, all major stationary sources in Pennsylvania subject to Title V permitting requirements were required to meet a one-year schedule for submitting a Title V permit application. Today's proposed rulemaking action addresses a request by Pennsylvania on behalf of the ACHD for approval of a partial program under 40 CFR 70.4. This proposed rulemaking action would allow the ACHD to carry out a Title V permitting program within its jurisdiction. Approval of this request will not change the obligation for sources located anywhere in Pennsylvania to meet the initial Title V application deadlines.

Discussion of Part 70 Submittal

The ACHD's Title V permitting regulations include Article XXI Chapters 2102, 2103, 2104, and 2109 as well as definitions in section 2101.20. EPA has determined that these regulations fully meet the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; §§ 70.4, 70.5, and 70.6 with respect to permit content; § 70.5 with respect to complete application forms and criteria which define insignificant activities; § 70.7 with respect to public participation and minor permit modifications; and § 70.11 with respect to requirements for enforcement authority. The technical support document contains a detailed analysis of the ACHD's program and describes the manner in which it meets all the operating permit program requirements of 40 CFR part 70. However, several issues were identified by EPA during its review of the ACHD's Title V operating permit program which warrant a more detailed discussion and analysis. These issues are outlined below. A discussion on fee adequacy is also included in this section.

1. Legal Opinion

The legal opinion did not address the time frame required for petitions for judicial review and the judicial review requirements for failure to issue minor permits. The discussion below shows how the ACHD's program meets these requirements.

a. *Time frame for judicial review:* Although the Title V regulations do not specify the time frame for filing a petition for judicial review, the ACHD is generally subject to ACHD Article XI, Hearings and Appeals. In order to obtain judicial review, section 1104(a) requires that an Appellant must first file a notice of Appeal to the Director of the ACHD and go through an administrative hearing process. The Notice of Appeal must be filed no later then 10 days after written notice or issuance of the action by which the Appellant is aggrieved. This meets the 90 day (or shorter time period) requirement for initiating judicial review.

b. *Judicial review for failure to act on minor permits:* The ACHD's program does not address judicial review for failure to issue a minor permit modification as a separate appealable action. Section 2103.14(c)(8) clearly requires final action within 60 days for any proposed minor permit modification. Section 2103.11(f) states that the Department's failure to take final action (on any permit application including modifications) is appealable and the Court of Common Pleas may require action on the application without further delay. Therefore, the authority exists to compel action on minor permit modifications.

2. Transition Plan

The transition plan included in section 2103.01 of the ACHD's regulations specified deadlines for permit application submittal and permit issuance. These dates have passed. Nonetheless, EPA previously approved Pennsylvania's Title V program on August 29, 1996 (see 61 FR 39598) which established deadlines for permit applications that applied state-wide. The ACHD's request to have a partial program approval does not affect, or change in any way, the dates established in the Commonwealth's approved program.

3. Insignificant Emission Units (IEUs)

Under Part 70, EPA may approve as part of a state program a list of insignificant activities and emission levels which need not be included in permit applications. The ACHD has not requested EPA approval of such a list of insignificant activities or emission levels. However, the ACHD's program provides for certain exemptions from the requirement to obtain a permit that should not be confused with IEUs. These exemptions include activities that have been historically exempt from any permitting requirements. For any activity that the ACHD treats as an IEU, a case-by-case determination must be made. Section 2103.10(b)(12) incorporates by reference (IBRs) 25 PA Code section 127.14(a)(8) and (9), and (d) as well as any future changes to these sections. Paragraphs 127.14(a)(8) and (9) allow PADEP to determine if an emission unit is of minor significance on a case-by-case basis. Paragraph 127.14(d) states that, in the future, PADEP may establish a list of sources and physical changes that are of minor significance. Further, the paragraph explains that public notice and a 30-day comment period would be provided prior to adoption of the list. If EPA approves the list as a revision to PADEP's part 70 program, then these units would be considered insignificant emission units in the Commonwealth and the County.

4. EPA 45-Day Review Period

EPA is afforded a 45-day period to review proposed permits and permit modifications for conformity with the Act and part 70 requirements. Section 2103.21(c)(3) does not ensure that EPA will have the opportunity for a 45 day period of pre-issuance review of permits that are revised as a result of the public and affected state's comments. Pursuant to sections 2103.21(c) and (e), the comment periods for EPA and the public and affected state review

comment periods begin simultaneously. Because the public and affected state comment period is only 30 days, it is theoretically possible for the ACHD to modify and issue the proposed permit or permit modification on the basis of comments received. Thus EPA would not have an opportunity to review the permit (which was revised on the basis of comments received) for 45 days prior to its issuance.

Section 2103.21(e) provides that permits will be resubmitted to EPA if any material substantive changes have been made as a result of comments received by the ACHD, but does not guarantee EPA a 45-day review. Provisions defining material substantive changes are included in the Implementation Agreement (IA) to clarify the criteria used to determine which final permits must be provided to EPA for post-issuance review. Further, the IA provides that EPA shall have 45-days from the receipt of the notice of material substantive changes to object to the permit. If a permit has been issued prior to the receipt of an EPA objection, the IA states that the ACHD will revoke the permit within 20 days.

5. Off Permit Changes

The ACHD's use of the term ''Off Permit Change'' differs from EPA's intended use. The ACHD's program limits these changes to de minimis levels in section 2103.14. De minimis changes are covered under operational flexibility changes and are not considered off-permit changes. As written, the ACHD's program does not allow for off permit changes. Furthermore, incorporation of provisions to make off permit changes is optional. (40 CFR 70.4(b)(14))

6. Absence of Part 70 Emergency Defense Provisions

The ACHD has incorporated most of the record keeping and reporting requirements required under part 70 for an emergency to be considered an affirmative defense. However consistent with Pennsylvania's program, the ACHD program does not allow for an emergency to be considered an affirmative defense. EPA clarified, in its August 31, 1995, supplemental part 70 document, that ''the part 70 rule does not require the States to adopt the emergency defense. A State may include such a defense in its part 70 program to the extent it finds appropriate, although it may not adopt an emergency defense less stringent than that set forth at 40 CFR 70.6(g).'' (60 FR 45530—45559). Thus, since the ACHD's adoption of emergency defense provisions under part 70 is discretionary, it is not inconsistent with § 70.6(g).

7. Definition of Affected Unit

The definition of affected unit may seem less inclusive than the definition in 40 CFR 72.2 because ACHD's definition is limited to fossil fuel-fired sources. At this time, only sources which run on fossil fuels are included under the Title IV acid rain requirements. Therefore, the definition is essentially equivalent.

8. Title V Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its Title V operating permits program. Each Title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from Title V sources meet or exceed $25 per ton of emission per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum'' (§ 70.9(b)(2)(i)).

PADEP's approved fee schedule, under section 127.705 of the their regulations, requires all Title V facilities in the Commonwealth to pay an annual Title V emission fee of $37 per ton for each ton of a regulated pollutant actually emitted from the facility. This amount exceeds the $25 per ton presumptive minimum. Section 127.705 also includes a provision that ties the amount of the fee to the CPI as required by 40 CFR 70.9(b)(2)(iv). The $37 per ton amount was derived by dividing the total annual estimated Title V operating permit program cost by the total annual number of billable tons of emissions. PADEP used actual operating hours and production rates, and considered in-place control equipment and the types of materials processed, stored, or combusted in calculating the total actual billable tons figure. EPA determined, in its approval of PADEP's Title V program, that these fees will result in collection and retention of revenues sufficient to cover the Title V operating permit program costs statewide. ACHD's fee requirements as outlined in section 2103.41 are consistent with PADEP's regulations and are therefore consistent with EPA's prior approval of the statewide fee demonstration. Furthermore, 25 PA Code 127.706 states that PADEP may provide financial assistance to the ACHD on an annual basis as necessary to assist implementation of the Title V program.

FESOP Program Background

Major stationary sources in Allegheny County wishing to avoid the requirement to apply for and receive a Title V permit must obtain a FESOP. Major sources are those sources whose emissions of air pollutants exceed threshold emissions levels specified in various portions of the Act. Thus, a source that has maintained actual emissions at levels below the major source threshold could still be subject to major source requirements if it has the potential to emit major amounts of air pollutants. In situations where unrestricted operation of a source would result in a PTE above major source levels, a source may legally avoid program requirements by accepting federally enforceable permit conditions which limit emissions to levels below the applicable major source thresholds. As a result, the source becomes what is commonly referred to as a ''synthetic minor'' source. Federally enforceable permit conditions, if violated, are subject to enforcement by EPA and by citizens in addition to the state or local agency.

On June 28, 1989, EPA published guidance on the basic requirements for EPA approval of (non-Title V) FESOP programs. See 54 FR 27274. Permits issued pursuant to such programs may be used to establish federally enforceable limits on a source's potential emissions to create ''synthetic minor'' sources. In short, the criteria require state programs to:

(a) be approved into the SIP,

(b) impose legal obligations to conform to the permit limitations,

(c) provide for limits that are enforceable as a practical matter,

(d) issue permits through a process that provides for review and an opportunity for comment by the public and by EPA, and

(e) ensure that there will be no relaxation of otherwise applicable federal requirements.

The Federal Court of Appeals for the District of Columbia Circuit vacated the definition of PTE as it pertains to both the new source review rules and the federal operating permit rules, 40 CFR parts 51, 52, and 70. See, *Chemical Manufacturers Association* v. *EPA,* No. 89–1514 (Sept. 15, 1995) and Clean Air Implementation Project, et al v. Browner, Civ. No. 92–1303 (June 28, 1996). Therefore, EPA also recognizes PTE limits established by state and local permitting authorities as being enforceable if the above criteria (b) through (e) are met. However, future

rulemaking action may require that PTE limits be federally enforceable.

As part of this action, EPA is also proposing to approve the ACHD's FESOP program pursuant to section 112(l) of the Act for the purpose of allowing the ACHD to issue operating permits which limit source's PTE hazardous air pollutants (HAPs). Section 112(l) of the Act provides the underlying authority for controlling emissions of HAPs. Therefore, in order to extend federal enforceability of the ACHD's FESOP to include HAPs, EPA today proposes to approve the ACHD's permit program pursuant to section 112(l) of the Act.

Discussion of FESOP Program Submittal

Subparts B and C—1 (sections 2102 and 2103.1x) of the submittal include the requirements for the FESOP program. These subparts also contain the ACHD's installation (or preconstruction) and operating permit program. The proposed revision generally strengthens the SIP by establishing a comprehensive installation and operating permit program and by making this program consistent with the Title V operating permit regulations codified in subpart C—2 (section 2103.2x).

On June 28, 1989, EPA amended the definition of ''federally enforceable'' to clarify that terms and conditions contained in state-issued operating permits are federally enforceable for purposes of limiting a source's PTE, provided that the state's operating permits program is approved into the SIP under section 110 of the Act as meeting certain conditions, and provided that the permit conforms to the requirements of the approved program. The conditions for EPA approval discussed in the June 28, 1989 notice establish five criteria for approving a state operating permit program. See 54 FR 27274-27286. The following section describes each of the criteria for approval of a state's program for the issuance of federally enforceable operating permits for purposes of limiting a source's PTE and how the ACHD's SIP submittal satisfies those criteria.

1. The State's Operating Permit Program (i.e., the Regulations or Other Administrative Framework Describing how Such Permits are Issued) Must be Submitted to and Approved by EPA as a SIP Revision.

The Commonwealth of Pennsylvania submitted the ACHD's revisions of Article XXI to EPA for approval as a revision of its SIP on November 5, 1998. EPA is proposing to approve the ACHD's regulation (subparts B and C.1 of Article XXI) as a program that meets the criteria for establishing PTE limits. Thus, EPA will recognize a source's limits on PTE for avoiding major source applicability, so long as the individual installation or operating permit issued under the approved program meets those same requirements.

2. The SIP Revision Must Impose a Legal Obligation That Operating Permit Holders Adhere to the Terms and Limitations of Such Permits (or Subsequent Revisions of the Permit Made in Accordance With the Approved Operating Permit Program) and Provide That Permits Which do not Conform to the Operating Permit Program Requirements and the Requirements of EPA's Underlying Regulations may be Deemed not ''Federally Enforceable'' by EPA.

Article XXI, section 2103.12.f.1 requires that all permits issued (major and minor) shall include provisions that the permittee must comply with at all times. Any permit noncompliance constitutes a violation of Article XXI, the Pennsylvania Air Pollution Control Act, and the Act, and is grounds for any and all enforcement actions. Additionally, section 2103.10.c.3 makes it a violation for any person to fail to comply with any term or condition of any permit.

3. The State Operating Permit Program Must Require That all Emission Limitations, Controls, and Other Requirements Imposed by Such Permits Will be at Least as Stringent as any Applicable Limitations and Requirements Contained in the SIP, or Enforceable Under the SIP, and that the Program may not Issue Permits that Waive, or Make less Stringent, any Limitations or Requirements Contained in or Issued Pursuant to the SIP, or that are Otherwise ''Federally Enforceable'' (e.g. Standards Established Under Sections 111 and 112 of the Clean Air Act).

Article XXI, section 2103.12.a.C states that the conditions of the permit must provide for and require compliance with all applicable requirements. Section 2103.12.g states that all permits shall include standard emission limit requirements, and specify the origin and authority for each limitation. Additionally, if an alternative emission limit is provided, section 2103.12.g(2) requires that it must be demonstrated to be equivalent to or more stringent than the applicable limit, and it must be quantifiable, enforceable, and based on replicable procedures.

4. The Limitations, Controls, and Requirements of the State's Operating Permits Must be Permanent, Quantifiable, and Otherwise Enforceable as a Practical Matter.

Article XXI, section 2103.12.g states that along with required emission limits and standards, the permit must include those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. For each emission rate and standard in a permit, associated conditions will be included which establish a method to determine compliance, including appropriate testing, monitoring, recordkeeping, and reporting. Section 2103.12.h.1 establishes broad authority to require the appropriate testing, monitoring, recordkeeping, and reporting. EPA understands that ACHD drafts all permits to be consistent with underlying local, state, and federal rules and incorporates monthly or more frequent short term emission limits.

5. The Permits are Issued Subject to Public Participation. This Means that the state Agrees, as Part of its Program, to Provide EPA and the Public with Timely Notice of the Proposal and Issuance of Such Permits, and to Provide EPA, on a Timely Basis, With a Copy of Each Proposed (or Draft) and Final Permit Intended to be Federally Enforceable. This Process must also Provide for an Opportunity for Public Comment on the Permit Applications Prior to the Issuance of the Final Permit.

Article XXI, sections 2102.05.c and 2103.11.e provide for public notice and participation in the issuance, modifications, and renewals of permits. Section 2102.04.h specifically lists the public notice and participation procedures for synthetic minor permits. Section 2103.11.h incorporates by reference the public notice requirements from 25 PA Code 127.424, 424 and 43. Article XXI, subchapters B and C provide thorough procedures for public participation which meet the public participation requirements.

Definitions: EPA is also, in this rulemaking action, incorporating by reference definitions that may be relied upon in issuing installation and operating permits. Certain definitions such as ''actual emissions'' and ''maximum achievable control technology (MACT)'' are not consistent with and are less stringent then 40 CFR 51.165. In such cases where the definition is not essential to this rulemaking or this FESOP SIP revision, it will be addressed in a future rulemaking action.

The following definitions are consistent with the requirements for a FESOP program and part 70 program approval. These definitions are proposed to be incorporated into the SIP for purposes of the FESOP program approval and included in the part 70 program: emissions allowable under the permit, major modification, major source, maximum achievable control technology, and PTE. Please refer to the technical support document for a more detailed analysis.

Limiting HAP Emissions Through FESOP: As part of this action EPA proposes to approve, pursuant to section 112(l) of the Clean Air Act, the ACHD's request for authority to regulate HAPs through the issuance of a FESOP. This would grant the ACHD authority to issue permits which limit PTE of HAPs. EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice referenced above, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989 document does not address HAPs because it was written prior to the 1990 amendments to section 112 of the Act.

In addition to meeting the criteria discussed above, the ACHD's permit program for limiting PTE of HAPs must meet the statutory criteria for approval under section 112(l)(5) of the Act. This section allows EPA to approve a program only if it:

(a) contains adequate authority to assure compliance with any section 112 standard or requirement;

(b) provides for adequate resources;

(c) provides for an expeditious schedule for assuring compliance with section 112 requirements; and

(d) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting the PTE of HAPs through amendments to subpart E of 40 CFR part 63, the regulations promulgated to implement section 112(l) of the Act. See 58 FR 62262 (November 26, 1993). Given the severe timing problems posed by impending deadlines set forth in MACT emission standards under section 112 and for issuing Title V permits, the EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit PTE prior to promulgation of a rule specifically addressing this issue. EPA's conclusions are discussed in the technical support document and will not be repeated here. EPA is proposing approval of the ACHD's FESOP now so that they may begin to issue federally enforceable installation and operating permits limiting PTE as soon as possible.

Provisions Implementing Other Titles of the Act for Part 70 Sources

1. *Section 112:* The guidance memorandum entitled ''Title V Program Approval Criteria for section 112 Activities,'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards of April 13, 1993 discusses the legal authority needed to implement and enforce section 112 requirements through the Title V permit as well as resource adequacy. The ACHD's program contains this legal authority in its enabling legislation (the Pennsylvania Air Pollution Control Act, Local Health Administration Law, Second Class County Code, The County Local Agency Law, and Article XI, Rules and Regulations of the ACHD) and in regulatory provisions defining applicable requirements. The ACHD's submittal also contained the Allegheny County Solicitor's Opinion stating the ACHD has the legal authority to incorporate all applicable requirements into its operating permits. The submittal also contained a demonstration of adequate resources. Therefore the ACHD has sufficient legal authority and resources to issue permits that assure compliance with all section 112 requirements and to carry out all section 112 activities, including those required under section 112(g).

2. *Program for Straight Delegation of Section 112 Standards:* The requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of the provisions of 40 CFR part 63 standards promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the permitting authority's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval, under section 112(l)(5) and 40 CFR 63.91, of the state's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated.

3. *Program for Implementing Title IV of the Act:* The ACHD's program IBRs 40 CFR parts 72 through 78, which contain the Federal acid rain requirements. The program contains adequate authority to issue permits which reflect the requirements of Title IV of the Act.

Proposed Action

EPA is proposing full approval of a Title V Operating Permits Program for Allegheny County, as submitted by Pennsylvania on November 5, 1998. The ACHD has demonstrated that the program will be adequate to meet the minimum elements of a partial operating permits program as specified in 40 CFR part 70. The scope of the ACHD's program that EPA proposes to approve in this notice would apply to all Title V facilities (as defined in the approved program) within the County. EPA is also proposing approval of the ACHD's FESOP program submitted on November 5, 1998 as a SIP revisions under section 110 of the Act. EPA has determined that the program fully meets the requirements of EPA's June 28, 1989 criteria for FESOP programs. This approval recognizes ACHD's FESOP program as capable of establishing federally enforceable limitations on criteria pollutants and hazardous air pollutants. Further, such actions will confer federal enforceability status to permits issued pursuant to ACHD's part C Operating Permit Program prior to EPA's final action so long as the requirements for federal enforceability have been met. Finally, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the ACHD's mechanism for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. EPA also proposes to approve, pursuant to section 112(l) of the Clean Air Act, the ACHD's request for authority to regulate HAPs through the issuance of federally enforceable state installation and operating permits.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental

Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.'' Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health and safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. 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 annual costs to State, local, or tribal governments in the aggregate; or to 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 for the ACHD's two permitting programs does not include a Federal mandate that may result in estimated annual 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 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 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: November 29, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

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