

- Rule 74 Specific Source Standards (Adopted 7/6/76)
- Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
- Rule 74.2 Architectural Coatings (Adopted 08/11/92)
- Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
- Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
- Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
- Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
- Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
- Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
- Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
- Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO<sub>x</sub> (Adopted 4/9/85)
- Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/17/92)
- Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 12/3/91)
- Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1-5MM BTUs) (Adopted 5/11/93)
- Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
- Rule 74.20 Adhesives and Sealants (Adopted 6/8/93)
- Rule 74.24 Marine Coating Operations (Adopted 3/8/94)
- Rule 75 Circumvention (Adopted 11/27/78)
- Appendix IV-A Soap Bubble Tests (Adopted 12/86)
- Rule 100 Analytical Methods (Adopted 7/18/72)
- Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
- Rule 102 Source Tests (Adopted 11/21/78)
- Rule 103 Stack Monitoring (Adopted 6/4/91)
- Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
- Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
- Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
- Rule 158 Source Abatement Plans (Adopted 9/17/91)
- Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

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#### 40 CFR Part 70

[LA-001; FRL-5185-4]

#### Clean Air Act Proposed Full Approval of Operating Permits Program; Louisiana Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

**SUMMARY:** The EPA proposes to rescind the proposed interim approval of the Louisiana Operating Permits Program published in the **Federal Register** (see 59 FR 43797, August 25, 1994) (hereafter Interim Approval Notice) and propose full approval of the Operating Permits Program as revised by the State's November 16, 1994, submittal. The proposed interim approval in the Interim Approval Notice was based upon the Operating Permits Program submitted by the Governor of Louisiana for the Louisiana Department of Environmental Quality (LDEQ) and received by the EPA on November 15, 1993. On November 16, 1994, the State submitted material revisions adequately addressing the issues raised by the EPA in the Interim Approval Notice and adding insignificant activities criteria to the Louisiana Operating Permits Program. This revised Operating Permits Program will provide for the issuance of operating permits to all major stationary sources and to certain other sources with the exception of sources on Indian Lands, in compliance with the Federal requirements.

**DATES:** Comments on this proposed action must be received in writing by May 8, 1995.

**ADDRESSES:** Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the EPA Region 6 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, P.O. Box 82135, Baton Rouge, Louisiana 70884-2135.

**FOR FURTHER INFORMATION CONTACT:** Joyce P. Stanton, New Source Review

Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-7218.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Purpose

###### A. Introduction

As required under title V of the Clean Air Act as amended on November 15, 1990 ("the Act"), the 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 a State Operating Permits Program (see 57 **Federal Register** 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 the 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 Operating Permits Programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each Operating Permits Program within one year after receiving the submittal. The EPA's Operating Permits Program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval and disapproval. The EPA proposed interim approval in the Interim Approval Notice on August 25, 1994, for the Operating Permits Program submitted by the LDEQ on November 15, 1993. However, 40 CFR 70.4(e)(2) allows the Administrator to extend the review period of a State's submittal if the State's submission is materially altered during the one-year review period. This additional review period may not extend beyond one year following receipt of the revised submission. On November 16, 1994, the EPA received material changes to Louisiana's Operating Permits Program from the Governor of Louisiana on behalf of the LDEQ. These changes included regulations adopted to add insignificant activities criteria, and to address issues raised in the Interim Approval Notice. The EPA will act expeditiously to promulgate a final notice on the State's revised Operating Permits Program within one year of the November 16, 1994, revised submittal. The publication of this proposal allows the public the opportunity to review and comment on the changes contained in the revised submittal.

At this time, the EPA proposes to rescind the interim approval proposed

in the Interim Approval Notice and instead proposes full approval of the Operating Permits Program as revised by the November 16, 1994, submittal. The Interim Approval Notice had a 30-day comment period which was extended an additional 30 days to October 26, 1994 (see 59 FR 50537, October 4, 1994). The comments received on issues discussed in the Interim Approval Notice during that comment period are discussed in this notice together with a discussion of the revisions to the State's Operating Permits Program received on November 16, 1994.

## II. Proposed Action and Implications

### A. Analysis of State Submission

1. Confidentiality Provisions. In the Interim Approval Notice, the EPA stated that, while the State statute provided that certain environmental information such as air emissions data may not be held confidential, it was not clear whether these confidentiality provisions could be interpreted to protect the contents of the permit itself from disclosure. The Interim Approval Notice stated that the LDEQ must either submit an Attorney General's Opinion demonstrating that the State's statute is interpreted not to allow any portion of a permit to be held confidential, consistent with section 503(e) of the Act, or revise Louisiana Administrative Code (LAC) 33:III.Chapter 5, section 517.F (permit regulations) to clarify that no portion of the permit may be held confidential. In response to this statement in the Interim Approval Notice, the LDEQ commented that it did not currently protect from disclosure as confidential any permit issued under LAC 33:III.Chapter 5, and that the LDEQ has adopted a conservative policy in interpreting the reference to "emissions data" in a manner which limits the grant of confidentiality under the Louisiana statute. The LDEQ stated, however, that in the interest of cooperation, it would revise its regulations. The November 16, 1994, submittal contained a revision to LAC 33:III.517.F which requires that no permit or portion of a permit issued to a source in accordance with Louisiana's Operating Permits Program shall be held confidential. This regulatory revision has adequately addressed the EPA's concern regarding confidentiality and is no longer an interim approval issue.

2. Requirement that No Major Source be Exempt from Part 70 Requirements Because a Research and Development (R&D) Facility is Co-located with the Source. In the Interim Approval Notice, the EPA explained that LAC 33:III.501.B.7 allows the permitting

authority to consider a certain complex within a facility as a source separate from the facility with which it is co-located, provided that the complex is used solely for R&D of new processes and/or products, and is not engaged in the manufacture of products for commercial sale. The EPA noted that this regulation was inconsistent with 40 CFR 70.3 which requires that a State's Operating Permits Program provide for the permitting of all major sources, and 40 CFR 70.4(b)(3)(i) which requires that the State demonstrate adequate legal authority to issue permits and assure compliance with each applicable requirement by all part 70 sources.

The Interim Approval Notice explained that 40 CFR 70.2 requires all sources located on contiguous or adjacent properties, under common control, and belonging to a single major industrial grouping, to be considered as the same source. The EPA concluded that the Louisiana permit regulations could cause certain part 70 major sources, as defined in 40 CFR 70.2, or portions of such sources with the same Standard Industrial Classification (SIC) code, to be treated as separate sources. This could cause some part 70 sources to be exempted from coverage by part 70 permits which must ensure that all part 70 requirements for those sources are met.

The Interim Approval Notice went on to state that for full part 70 approval, the LDEQ would be required to revise its permit regulations and demonstrate that no source, or portion of a source, which would be defined as major under 40 CFR 70.2 would be exempted from part 70 requirements because an R&D facility is co-located with the source.

One commenter objected to the EPA's proposed action related to the R&D issue and stated that by limiting the scope of the exemption to R&D facilities with different SIC codes, the EPA has virtually eliminated any relief for R&D facilities. The commenter stated that, since R&D activities are so limited in time, scale, and actual production, subjecting these activities to the Operating Permits Program requirements unnecessarily burdened research by companies as well as the State's Operating Permits Programs. This commenter also requested that any guidance concerning R&D facilities be published for public comment as part of future part 70 rulemakings. The EPA's position continues to be that 40 CFR part 70 allows R&D facilities to be treated separately in cases where the R&D facility has a different two-digit SIC code and is not a support facility.

The LDEQ commented that its regulatory provision cited as deficient

on this point had been incorporated into the State's Operating Permits Program based on the State's understanding of guidance provided by the EPA in the preamble to the part 70 regulations. In the Interim Approval Notice, the EPA explained that the preamble language was intended to clarify the flexibility in 40 CFR part 70 for allowing R&D facilities to be treated separately from the manufacturing facilities with which they are co-located where the R&D facility has a different two-digit SIC code and is not a support facility. This approach is consistent with the treatment of R&D facilities in the New Source Review program. In response to the Interim Approval Notice and in an effort to receive full approval of Louisiana's Operating Permits Program, the LDEQ has revised LAC 33:III.501.B.7 to include a provision that an R&D facility may be considered separately provided the facility has a different two-digit SIC code from, and is not a support facility of, the source with which it is co-located. This revision was included in the November 16, 1994, submittal. This change adequately addresses the EPA's concern and the State's treatment of R&D facilities is no longer an interim approval issue.

3. Acid Rain Application Deadlines. In the Interim Approval Notice, the EPA discussed LAC 33:III.507.C.1.b which contained the deadlines for submittal of acid rain permit applications. Although this section purported to cover all relevant dates for submittal of acid rain permit applications, this section did not contain the deadlines required by 40 CFR 72.30(b)(2)(iii) for new units and for units that did not serve a generator with a name plate capacity greater than 25 Megawatts electrical on November 15, 1990, but which served such a generator after November 15, 1990. In the Interim Approval Notice, the EPA noted that LAC 33:III.505.D.2 contains the deadlines for submittal of acid rain permit applications consistent with those required by title IV of the Act, but that it contradicted LAC 33:III.507.C.1.b. The Interim Approval Notice explained that, even though LAC 33:III.505.A.4 provides that Federal acid rain requirements applicable to an affected source shall supersede LAC 33:III.Chapter 5 of the Louisiana Regulations where the two are inconsistent, the inconsistency between LAC 33:III.505.D.2, 507.C.1.b and the Federal acid rain regulations created a lack of clarity and should be eliminated. The Interim Approval Notice required that, for full part 70 approval, LAC 33:III.507.C.1.b be revised to require the

affected sources to conform with the deadlines in LAC 33.III.505.D.2.

The LDEQ commented that the provisions of LAC 33.III.507.C.1.b cited by the EPA in the Interim Approval Notice as creating an interim approval issue were incorporated by the LDEQ in response to an earlier EPA comment on the LDEQ's proposed Air Quality regulations. The State responded by stating that, despite the error in LAC 33.III.507.C.1.b, LAC 33.III.505.A.4 and 505.D.2 would still require sources to comply with all Federal acid rain deadlines. However, the November 16, 1994, Operating Permits Program submittal included a revision to LAC 33.III.507.C.1.b to clarify the acid rain permit application submittal deadlines as requested by the EPA. This revision adequately addresses the EPA's concern and, therefore, this is no longer an interim approval issue.

4. Provision for Administrative Amendments. In the Interim Approval Notice, the EPA stated its concern that LAC 33.III.521.A.6 could be interpreted to allow administrative amendments to permits to incorporate changes authorized by 40 CFR 70.4(b)(14). These "off-permit" changes, which are not addressed or prohibited by the permit, may be made under part 70 without permit revisions. However, the Interim Approval Notice explained that the part 70 rule contains no authority for such changes to be incorporated into operating permits except through the appropriate part 70 permit procedures for minor or significant modifications. In the Interim Approval Notice, the EPA stated that, for full part 70 approval, section 521.A.6 of the permit regulations must be revised to eliminate administrative amendments for this type of change.

LAC 33.III.521.A.6 also allows changes to be made to operating permits by administrative amendment where the State's permitting authority has determined they are similar to the changes listed in LAC 33.III.521.A. The Interim Approval Notice explained that part 70 allows changes submitted as part of a State's part 70 program, in addition to those specified in 40 CFR 70.7(d)(1), to be made as administrative amendments where the EPA Administrator determines those changes to be similar to the changes listed in 40 CFR 70.7(d)(1)(i)-(iv). However, no such proposed changes were submitted by the State as part of its Operating Permits Program, and part 70 does not allow for the substitution of the State permitting authority's approval for the Administrator's approval, which is required by 40 CFR 70.7(d)(1)(vi). The Interim Approval Notice required that,

for full part 70 approval, this defect in LAC 33.III.521.A.6 of the permit regulations must be corrected.

The LDEQ commented that the cited provision was intended by the State to allow the LDEQ discretion in revising permits for terms and conditions altogether outside the scope of 40 CFR part 70 and would not circumscribe 40 CFR part 70. However, to receive full approval, LAC 33.III.521.A.6 has been revised to clarify that this provision can be used solely for State-only changes involving terms and conditions which are not federally enforceable. These revisions were included in the November 16, 1994, submittal and adequately address the EPA's concerns. Therefore, this is no longer an interim approval issue.

5. Requirement to Keep Records for Five Years. In the Interim Approval Notice, the EPA cited the 40 CFR 70.8(a)(3) requirement that each State permitting authority keep for five years such records as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act and 40 CFR part 70. While 44 Louisiana Revised Statute (L.R.S.) section 1 contains a very broad definition of "public records," 44 L.R.S. section 36 requires the records to be kept for only three years unless a longer formal retention schedule has been developed. The Interim Approval Notice required as a condition of full part 70 approval, a statutory change or a supplemental Attorney General's Opinion demonstrating how the current statute ensures that the required records will be kept for at least five years.

The LDEQ commented that it intended to keep records for five years, and that it believed that 40 CFR part 70 did not require a permit rule ensuring that records be retained for five years. It remains the EPA's position that because the language in the Louisiana Statute does not appear to ensure that records be retained for five years, 40 CFR 70.8(a)(3) requires either an Attorney General's Opinion demonstrating how this statute ensures a five-year retention of these records or a statutory or regulatory change. In the interest of obtaining full approval, the LDEQ revised LAC 33.III.533.B.5. As revised, LAC 33.III.533.B.5 provides that the permitting authority shall keep for five years such records and submit to the EPA such information as the Administrator may reasonably require to ascertain whether the State Operating Permits Program complies with the requirements of part 70 and the Act. This revision, which was included in the November 16, 1994, submittal, adequately addresses the EPA's concern,

and records retention is no longer an interim approval issue.

6. Significant Modification Procedures. In the Interim Approval Notice the EPA stated its concern about the lack of clarity of LAC 33.III.527.A.3. This provision allowed certain changes that rendered existing compliance terms irrelevant to be incorporated through minor modification procedures. The changes cited appeared to be of the type described in 40 CFR 70.4(b)(14), "off-permit" changes. However, the State's provision was unclear, and the Interim Approval Notice explained that, to remedy this ambiguity, the State should add language clarifying that the modification is one which would qualify as a change under 40 CFR 70.4(b)(14), because it is not addressed or prohibited by the permit and would otherwise qualify for treatment as a minor modification under 40 CFR 70.7(e)(2)(i)(A).

The LDEQ commented that the cited State provision was meant only to clarify that obsolete compliance measures could be removed from the permit without requiring a significant permit modification. In the interest of obtaining full approval, however, the LDEQ deleted LAC 33.III.527.A.3 in its entirety. This revision, which was included in the November 16, 1994, submittal, has adequately addressed the EPA's concern, and the previously noted ambiguity is no longer an interim approval issue.

7. Permit Conditions. In the Interim Approval Notice, the EPA explained that even though the permit content requirements of 40 CFR 70.6(a) are met by the model permit submitted in Volume III of the State's original part 70 submittal, 40 CFR 70.4(b)(16) also requires regulatory provisions in the State's program to implement the requirements of 40 CFR 70.6 and 70.7. The EPA noted that LAC 33.III.501.C.5 and 6 speak generally to permit terms and conditions, but do not set out all requirements for each operating permit as required.

Specifically, the EPA noted that these State provisions did not include a requirement that the permit specify the origin of and reference the authority for each term or condition, nor did they identify differences in form from the applicable requirements upon which the terms were based or contain various other elements required by 40 CFR 70.6. The Interim Approval Notice explained that 40 CFR 70.6(a) includes requirements for emission limitations, monitoring, and recordkeeping, and specifies that the regulation must state that no permit revision shall be required under any approved economic

incentive, marketable permits, or similar program. The Interim Approval Notice stated that a severability clause is also required to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit. The EPA stated that these elements must be addressed in the permit regulations in order to afford citizens the opportunity to legally challenge permits. The Interim Approval Notice stated that, although some of these elements are contained in the State's model operating permit, one condition of full part 70 approval would be that the permit regulations be revised to require that all permit elements of 40 CFR 70.6(a) be included in each permit.

In its comments, the LDEQ stated its belief that the model permit forms and applications submitted with the original Operating Permits Program submittal adequately addressed this issue. However, in an effort to obtain full approval, the LDEQ has revised LAC 33.III.507.B.2 to incorporate by reference the provisions of 40 CFR 70.6 as in effect on July 21, 1992. This revision was submitted with the November 16, 1994, submittal and adequately addresses the EPA's concern. Therefore, this is no longer an interim approval issue.

8. Title I Modifications and Case-by-case Determinations. In the Interim Approval Notice, the EPA discussed the State's definition of the phrase "title I modification." At the time of the Interim Approval Notice, the EPA believed that for a State's program to be fully approvable, it would be necessary for the State's definition of "title I modification" to be interpreted to include literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State preconstruction review programs approved into the State Implementation Plan under section 110(a)(2)(C) of the Act and regulations addressing source changes that trigger National Emission Standards for Hazardous Air Pollutants established pursuant to section 112 of the Act prior to the 1990 amendments. LAC 33.III.502 defines "title I modification" as a change at a site that qualifies as a modification under section 111 of the Act or section 112(g) of the Act, or that results in a significant net emissions increase under part C or part D of the Act. In the Interim Approval Notice, the EPA required that the LDEQ revise the definition of "title I modification" in order to receive full approval.

The LDEQ commented that it believed the part 70 regulations clearly allowed

"minor" preconstruction changes to be processed as minor permit modifications under part 70. The LDEQ further stated its belief that States which allowed minor preconstruction changes to be processed as minor operating permit modifications should be approved, and to do otherwise, would cause the States to suffer significant negative impact.

The American Forest and Paper Association (AF & PA) stated that the EPA's interpretation set out in the Interim Approval Notice was without legal basis, and that such an interpretation failed to take into account the numbers of additional source modifications which would be required to be processed under the significant modification procedures of title V of the Act. The AF & PA stated its belief that such an interpretation would further have potentially devastating consequences on the AF & PA's members doing business in Louisiana.

The Louisiana Chemical Association disagreed with the EPA's position that Louisiana's definition of "title I modification" must be revised for full approval, and provided legislative history excerpts in support of its interpretation of the term "title I modification."

On August 29, 1994, the EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to allow State Operating Permits Programs with a narrower definition of "title I modification" to receive interim approval (See 59 FR 44572, August 29, 1994). Following is a discussion of points noted in that publication.

The EPA intended to finalize its revisions to the interim approval criteria under 40 CFR 70.4(d) before taking action on part 70 Operating Permits Programs submitted by the States. However, publication of the proposed revision was delayed until August 29, 1994, and several requests to the EPA to extend the public comment period further delayed final action on the revisions. Given the importance of the issues in that rulemaking to States, sources, and the public, but mindful of the need to take action quickly, the EPA agreed to extend the comment period until October 28, 1994 (see 59 FR 52122, October 14, 1994). Consequently, final action to revise the interim approval criteria will not occur before the deadline for EPA action on State programs that were submitted on or before November 15, 1993. The EPA believes it would be inappropriate to delay action on these States' Operating Permits Programs until final action is taken on the interim approval revisions. The EPA also believes it would be

inappropriate to grant interim approval to Louisiana's Operating Permits Program on this issue before final action is taken to revise the current interim approval criteria of 40 CFR 70.4(d) in a manner which would provide a legal basis for such an interim approval. Prior to the EPA's final promulgation of interim approval criteria, Louisiana may maintain and implement the narrower definition of "title I modification." Upon the EPA's final decision of what constitutes a "title I modification," if the EPA's definition differs from Louisiana's current definition, the State will be required to revise its definition in accordance with the EPA's final definition.

The EPA is allowing this approach to "title I modification" for a number of reasons. First, the EPA has not yet conclusively determined that a narrower definition of "title I modification" is incorrect and thus a basis for disapproval (or even interim approval). The EPA has received numerous comments on this issue as a result of the August 29, 1994, FR notice, and the EPA cannot and will not make a final decision on this issue until it has evaluated all of the comments. Second, the EPA believes that the Louisiana Operating Permits Program should not be disapproved because the EPA itself has not yet been able to resolve this issue through rulemaking. Moreover, disapproving Operating Permits Programs from States such as Louisiana that submitted their Operating Permits Program to the EPA on or before the November 15, 1993, statutory deadline could lead to the unfair result that States which were late in submitting Operating Permits Programs could take advantage of revised interim approval criteria if and when these criteria become final. In effect, States would be severely penalized for having made timely program submissions to the EPA. Finally, disapproval for a State's Operating Permits Program for a potential problem that primarily affects permit revision procedures would delay the issuance of part 70 permits, hampering State/Federal efforts to improve environmental protection through the operating permits system.

For the reasons mentioned above, the EPA is approving the Louisiana Operating Permits Program's use of a narrower definition of "title I modification" at this time. However, should the EPA in the interim approval criteria rulemaking make the final determination that such a narrow definition of "title I modification" is incorrect and that a revision of the interim approval criteria is warranted, the EPA will propose further action on

Louisiana's Operating Permits Program so that the State's definition of "title I modification" could become grounds for interim approval. A State Operating Permits Program like the one in Louisiana, which receives full approval of its narrower definition pending completion of the EPA's rulemaking, must ultimately be placed on an equal footing with States which receive interim approval in later months under revised interim approval criteria based on the same issue. Converting the full approval on this issue to an interim approval after the EPA completes its rulemaking will avoid this inequity. The EPA anticipates that an action to convert the full approval on the "title I modification" issue to an interim approval would be effected through an additional rulemaking, so as to ensure that there is adequate notice of the change in approval status.

Questions have been raised on a national level concerning whether the 40 CFR 70.7(e)(2)(i)(A)(3) provisions prohibiting minor modifications for changes in "case-by-case" determinations would apply in the instance of a preconstruction permit in which the permitting authority, through a minor modification procedure, changes a source-specific control technology requirement not required under part C or D or section 111 or 112 of the Act, or an emission limitation determination established on a source-specific basis. At the time of the Interim Approval Notice, the EPA believed the better interpretation of 40 CFR 70.7(e)(2)(i)(A)(3) required that any requirement imposed on a source-specific basis, such as one in which the permitting authority has discretion in setting the requirement for the particular source, must be considered to be a "case-by-case" determination. Therefore, the EPA believed that a change involving a source-specific requirement in a preconstruction permit would be considered a "case-by-case determination of an emission limitation" under 40 CFR 70.7(e)(2)(i)(A)(3), ineligible for processing as a minor permit modification.

LAC 33.III.525.A.2.d allows the use of minor modification procedures for some changes which would be considered "case-by-case" emission limits under the EPA's narrower interpretation. The EPA is taking comment on whether a less narrow interpretation of "case-by-case" is acceptable.

Therefore, the EPA will not at this time construe 40 CFR 70.7(e)(2)(i)(A)(3) to prohibit Louisiana from allowing minor preconstruction changes to be processed as minor permit

modifications. Should the EPA's final interpretation be inconsistent with Louisiana's current regulations, the definition of "case-by-case" will also be an interim approval issue. The EPA anticipates that an action to convert the full approval on the "case-by-case" issue to an interim approval would be effected through an additional rulemaking, so as to ensure that there is adequate notice of the change in approval status.

9. Insignificant Activities. As the Interim Approval Notice indicated, provisions to determine insignificant activities were not included with the State's original submittal. The State's later, November 16, 1994, submittal contained a list of insignificant activities and criteria for determining which activities were sufficiently insignificant to be exempt from the requirement to obtain a permit, or from inclusion in a permit (for a part 70 source engaged in other activities which must appear in permits), unless the LDEQ determines on a site-specific basis that such exemption is not appropriate. These insignificant activities were divided into four categories. The first category consisted of activities based on size or production rate that were required to be included in the application but not the permit. This is consistent with 40 CFR 70.5(c) which provides that, if approved by the EPA, a list of insignificant activities based on size or production rate may be exempted from inclusion in a part 70 permit, although they must still be included in the application. LAC 33.III.501.B.5 provides that any activity to which a State or Federal applicable requirement applies is not insignificant even if the activity meets the criteria of the "Insignificant Activities List." Therefore such an activity must be included in the permit. The LDEQ has clarified in a letter that insignificant activities may not be exempted from major source applicability determinations. This is consistent with 40 CFR 70.3(c) and 70.5(c) which requires that the permitting authority include in the permit all applicable requirements for all relevant emissions units.

As allowed by 40 CFR 70.5(c), LAC 33.III.501.B.5 contains a second category based on activities that do not need to be included in a permit application. This list includes activities such as maintenance of grounds, general repairs, lawn care, steam cleaning, certain painting activities, use of adhesives, office activities, vehicle emissions, etc. The third category of insignificant activities is based on type of pollutant. LAC 33.III.501.B.5 allows water vapor,

oxygen, carbon dioxide, nitrogen, and hydrogen to be exempt from the permit application.

The last category of insignificant activities is based on emissions levels. In order to use this category, the source must receive prior approval from the LDEQ, and all of the criteria must be met. These criteria include: (a) The emissions unit emits and has the potential to emit no more than five tons per year of any regulated air pollutant; (b) the emissions unit emits and has the potential to emit less than the minimum emission rate listed in Table 51.1, LAC 33.III.Chapter 51, for each Louisiana toxic air pollutant; (c) the emissions unit emits and has the potential to emit less than the de minimis rate established pursuant to section 112(g) of the Federal Act for each hazardous air pollutant; and (d) no enforceable permit conditions are necessary to ensure compliance with any applicable requirement.

The EPA believes that these insignificant criteria are sufficient to ensure that every application contains the information needed to determine the applicability of, and to impose, any applicable requirement, or to evaluate the fee amount as required by 40 CFR 70.5(c). The list and its criteria meet the requirements of 40 CFR part 70 and therefore are approvable. The EPA will accept comments on the insignificant activities discussed herein, as well as other provisions of the State's revised submittal.

#### *B. Discussion of Other Comments*

1. Section 112(g) Comments. Louisiana Mid-Continent Oil and Gas Association (LAMOGEA) was concerned that the Louisiana Operating Permits Program was being approved prior to the finalization of Federal requirements regarding section 112(g) of the Act on modification of sources of hazardous air pollutants. The AF & PA commented that it believes the EPA's delegation to Louisiana of section 112(g) authority is unlawful and confusing to the regulated community, because the EPA has not issued any regulation to implement this statutory language and does not expect to finally adopt such a regulation for many months. The AF & PA opposes the approval of the Louisiana preconstruction permit rules for the implementation of section 112(g), because it believes that these rules were never intended to define or otherwise address issues such as "de minimis" and offsets. The AF & PA is concerned that sources would have no way to determine whether and when they are subject to the program until a final

Federal section 112(g) rule is promulgated.

In the Interim Approval Notice, the EPA also proposed to approve Louisiana's preconstruction program for the purpose of implementing section 112(g) during the transition period before a Federal rule had been promulgated implementing section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the Operating Permits Program, regardless whether the EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in the **Federal Register** (see 60 FR 8333, February 14, 1995) (hereafter Interpretive Notice). The Interpretive Notice postpones the effective date of section 112(g) until after the EPA has promulgated a final rule addressing that provision. The rationale for the revised interpretation was explained in detail in the Interpretive Notice. The EPA's new position of not requiring the implementation of section 112(g) until the Federal 112(g) rule is promulgated renders moot the AF & PA comment regarding section 112(g).

The Interpretive Notice explains that the EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule to allow States time to adopt rules implementing the Federal rule. If a decision is made to allow such additional delay in the implementation of section 112(g), the EPA will announce that decision in the final section 112(g) rulemaking.

2. Natural Resources Defense Council (NRDC) Comments. The NRDC objected to the approval of the Louisiana Operating Permits Program for the same reasons the NRDC objected to the EPA's part 70 regulation upon which the approval was based. The NRDC's earlier comments on the national proposed part 70 rulemaking were attached to its comments on the proposed approval of the Louisiana Operating Permits Program. The EPA believes the appropriate forum for pursuing objections to the legal validity of the part 70 rule is through a petition for review of the rule in the D.C. Circuit Court of Appeals; therefore, those part 70 comments will not be addressed in this notice. Unless and until the part 70 rule is revised, the EPA must evaluate proposed part 70 programs according to the rule currently in effect.

3. Enhanced Monitoring. The LAMOGA expressed concern that the Louisiana Operating Permits Program

was being approved prior to the finalization of Federal enhanced monitoring requirements. The LDEQ will implement the enhanced monitoring requirements of the Act and provide appropriate permit conditions after the Federal enhanced monitoring rules are finalized. The EPA will not delay approval of Louisiana's Operating Permits Program based on the fact that the Federal enhanced monitoring rule is not yet finalized.

4. General Comments. The EPA received comments from Citizens for a Clean Environment and some comments from LAMOGA favorable to the Louisiana Operating Permits Program and requesting full approval for the program.

#### *C. Provisions Implementing the Requirements of Other Titles of the Act*

By submitting the State's Operating Permits Program for approval, Louisiana commits to appropriately implementing and enforcing the existing and future requirements of sections 111, 112, and 129 of the Act, and all maximum achievable control technology (MACT) standards promulgated in the future, in a timely manner.

Requirements for title V approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of Federal section 112 standards as they apply to part 70 sources. The State of Louisiana acknowledges that its request for approval of a part 70 program is also a request for approval of a program for delegation of unchanged section 112 standards under the authority of section 112(l) 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 40 CFR part 70. Therefore, as part of this proposal for full approval, 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. At this time, the State plans to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 requirements into its regulations. After this approval is made final, in cases where the State utilizes the mechanism of incorporation by reference, no additional Federal public comment period will occur prior to the transfer of authority for unchanged section 112 standards to the State. This approval for delegation of unchanged Federal section 112 standards applies to

existing and future standards as they apply to sources covered by the part 70 program. The State retains the option at any time to promulgate the full text of the Federal standard unchanged or to request delegation of section 112 standards in the form of State regulations which the State demonstrates are equivalent to the corresponding section 112 provisions promulgated by the EPA instead of using the mechanism of incorporation by reference. If the State chooses either of these options, an approval under 40 CFR part 63 subpart E will be required.

#### *D. Summary*

The State of Louisiana submitted to the EPA, under cover letters from the Governor dated November 4, 1993, and November 10, 1994, the State's Operating Permits Program and the State's revised Operating Permits Program, respectively. The original and revised submittals have been reviewed for adequacy under the requirements of title V of the Act and the 40 CFR part 70 regulations which together outline criteria for approval and disapproval. The results of this review are included in the technical support document. The EPA believes that the LDEQ, in its revised submittal, has adequately addressed all issues discussed in the Interim Approval Notice which proposed interim approval. The EPA believes the insignificant activities list and criteria are fully approvable. Therefore, at this time the EPA is proposing to grant full approval to the Louisiana Operating Permits Program. The EPA is soliciting comments on all aspects of this proposed full approval.

#### *E. Options for Approval/Disapproval*

The EPA proposes to withdraw the proposed interim approval announced in the Interim Approval Notice and to fully approve the Operating Permits Program submitted to the EPA from the State of Louisiana on November 15, 1993, and revised on November 16, 1994. Louisiana has demonstrated that the program meets the minimum elements of a State Operating Permits Program as specified in 40 CFR part 70.

### **III. Administrative Requirements**

#### *A. Request for Public Comments*

The EPA is requesting comments on Louisiana's revised submittal as discussed in this proposed full approval. Copies of the State's submittal and other information relied upon for the proposed full 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, the 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 May 8, 1995.

#### B. Executive Order 12866

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

#### C. Regulatory Flexibility Act

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

#### List of Subjects in 40 CFR Part 70

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

#### V. Miscellaneous

##### A. Proposed Full Approval

Proposed full approval of the part 70 Operating Permits Program for the State of Louisiana.

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

Dated: March 30, 1995.

**Jane N. Saginaw,**

*Regional Administrator (6A).*

[FR Doc. 95-8608 Filed 4-6-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 81

[NM-25-1-6908; FRL-5185-5]

#### Designation of Area for Air Quality Planning Purposes; New Mexico; Designation of Sunland Park Ozone Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Clean Air Act (CAA), as amended in 1990, the EPA is authorized to promulgate new designations of areas (or portions thereof) as nonattainment for the ozone National Ambient Air Quality Standards

(NAAQS). In this action, the EPA is proposing to revise the ozone designation for a portion of Dona Ana County, New Mexico (i.e. the Sunland Park area). Previously, consistent with the CAA, the EPA notified the Governor of New Mexico that the Sunland Park area should be redesignated from unclassifiable/attainment to nonattainment for ozone. The redesignation is based upon violations of the ozone NAAQS which were monitored from 1992-1994.

**DATES:** All written comments must be received by May 8, 1995.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the addresses listed below. The interested persons wanting to examine these documents should make an appointment at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733.

New Mexico Environment Department, Air Monitoring & Control Strategy Bureau, 1190 St. Francis Drive, room So. 2100, Santa Fe, New Mexico 87503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch (6T-A), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7258.

#### SUPPLEMENTARY INFORMATION:

##### Background

By operation of law upon enactment of the 1990 amendments to the CAA (Public Law 101-549, 104 Statute 2399), all areas of the country were designated either nonattainment or unclassifiable/attainment for the ozone NAAQS [see section 107(d)(4)(A) of the CAA; 56 FR 56694-56858 (November 6, 1991), 57 FR 56762-56778 (November 30, 1992), and 59 FR 18967-18971 (April 21, 1994)]. The amended CAA also authorizes the EPA to revise the designation of current ozone areas from unclassifiable/attainment to nonattainment on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the EPA deems appropriate [see section 107(d)(3) of the CAA].

Following the process outlined in section 107(d)(3), on December 16, 1994, the Regional Administrator of the EPA Region 6 notified the Governor of

New Mexico that the EPA believed the Sunland Park area should be redesignated as nonattainment for ozone. Under section 107(d)(3)(B) of the CAA, the Governor of New Mexico was required to submit to the EPA the designation considered appropriate for the Sunland Park area within 120 days after the EPA's notification. The EPA received the State's response for the Sunland Park area on February 6, 1995 (letter dated January 30, 1995). Now, the EPA must promulgate the redesignation that it deems necessary and appropriate, consistent with section 107(d)(3)(C) of the CAA.

Based upon the EPA's review of the State's January 30, 1995, letter for the Sunland Park area, the EPA is proposing a redesignation to nonattainment which is consistent with the request submitted by the Governor of New Mexico. The EPA is requesting comments on this action and will consider any relevant comments before taking final action.

Section 107(d)(1)(A) of the CAA sets out definitions of nonattainment, attainment, and unclassifiable. The EPA has proposed that the Sunland Park area in Dona Ana County, New Mexico, addressed in this action, be redesignated nonattainment for the ozone NAAQS. A nonattainment area is defined as any area that does not meet (or that significantly contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for ozone [see section 107(d)(1)(A)(i) of the CAA].<sup>1</sup> Thus, in determining the appropriate boundaries for the nonattainment area proposed in this action, the EPA has considered not only the area where the violations of the ozone NAAQS are occurring, but nearby areas which significantly contribute to such violations.

##### Proposed Action

As noted above, pursuant to section 107(d)(3) of the CAA, the EPA is authorized to initiate the redesignation of areas as nonattainment for ozone. Based on the ozone air quality monitoring data for the Sunland Park monitoring station, the EPA notified the Governor of New Mexico on December 16, 1994, that the Sunland Park area should be redesignated from unclassifiable/attainment to nonattainment for the ozone NAAQS. Ozone monitoring began in Sunland Park on June 15, 1992. Seven measured

<sup>1</sup> The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.