

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this proposed approval does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

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

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

Dated: September 11, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95-23437 Filed 9-20-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 70

[AD-FRL-5300-5]

Title V Clean Air Act Proposed Interim Approval of Operating Permits Program; State of Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Interim Approval.

SUMMARY: EPA is proposing interim approval of the operating permits program submitted by the State of Delaware. This program was submitted by the State for the purpose of complying with federal requirements which mandate that states develop, and submit to EPA, programs for issuing

operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by October 23, 1995.

ADDRESSES: Comments should be addressed to Robin M. Moran, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of the State of Delaware's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Robin M. Moran, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-3023.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

As required under Title V of the Clean Air Act (CAA) as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250, July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources. Due to pending litigation over several aspects of the Part 70 rule which was promulgated on July 21, 1992, Part 70 is in the process of being revised. When the final revisions to Part 70 are promulgated, the requirements of the revised Part 70 will define EPA's criteria for the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits program submittals. Until the date which the revisions to Part 70 are promulgated, the currently effective July 21, 1992 version of Part 70 shall be used as the basis for EPA review.

B. Federal Oversight and Sanctions

The CAA requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the CAA and Part 70, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, EPA must establish and implement a federal operating permits program.

Following final interim approval, if the State fails to submit a complete corrective program for full approval by 6 months before the interim approval period expires, EPA would start an 18-month clock for mandatory sanctions. If the State then failed to submit a complete corrective program before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the CAA. Such a sanction would remain in effect until EPA determined that the State had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In any case, if, six months after application of the first sanction, the State still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove the State's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State had submitted a revised program and EPA had determined that this program corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In all cases, if, six months after EPA applied the first sanction, the State had not submitted a revised program that EPA had determined corrected the deficiencies that prompted

disapproval, a second sanction would be required.

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

C. State of Delaware's Submittal

On November 15, 1993, the State of Delaware submitted an operating permits program for review by EPA. The submittal was supplemented by additional materials on November 22, 1993, and was found to be administratively incomplete pursuant to 40 CFR 70.4(e)(1) on January 18, 1994. Additional materials were submitted on February 9, 1994, and May 15, 1995. Based on additional information received in the May 15, 1995, submittal, EPA found the submittal to be administratively complete on May 19, 1995. The State submitted supplemental information on September 5, 1995. The submittal includes a letter from the Secretary of the Department of Natural Resources and Environmental Control requesting approval of the State's Title V program, a description of the State's Title V program, permitting regulations, an Attorney General's legal opinion, permitting program documentation, a permit fee demonstration, a description of compliance tracking and enforcement program, and provisions implementing the requirements of other Titles of the CAA.

II. Summary and Analysis of the State of Delaware's Submittal

The analysis contained in this notice focuses on the major portions of the State's operating permits program submittal, including regulations and program implementation, variances, insignificant activities, permit fee demonstration, and provisions implementing the requirements of Titles III and IV of the CAA. Specifically, this notice addresses the deficiencies in the State's submittal which will need to be corrected prior to full approval by EPA. These deficiencies as well as other issues related to the State's operating permit program are discussed in detail in the Technical Support Document (TSD). The full program submittal and the TSD are available for review as part

of the public docket. The docket may be viewed during regular business hours at the EPA Region III office listed in the ADDRESSES section of this notice.

A. Regulations and Program Implementation

The State of Delaware's operating permit program is primarily defined by Regulation No. 30, "Title V State Operating Permit Program," which is part of the State of Delaware "Regulations Governing the Control of Air Pollutants." Provisions for enforcement authority are located at 7 Del. C., Chapter 60. The following analysis of the State's operating permit regulations corresponds directly with the format and structure of Part 70.

§§ 70.4 and 70.6 Permit Content. The State's regulations substantially meet the requirements of 40 CFR 70.4 and 40 CFR 70.6 for permit content. The following changes must be made to Regulation No. 30 in order to fully meet the requirements of 40 CFR 70.4 and 40 CFR 70.6:

1. Delaware must revise Regulation 30, Section 6(f) to address the scope of the permit shield provision, consistent with Part 70, as described below. The permit shield provision of 40 CFR 70.6(f)(1) provides that the permitting authority may expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance. Delaware's Regulation 30, Section 6(f) provides that a source may request that the Department include in the Part 70 permit a provision stating that compliance with the terms and conditions of the permit shall constitute compliance with "7 Del. C., Chapter 60, for the discharge of any air contaminant specifically identified in the permit application as of the day of permit issuance." The extent of the permit shield is inconsistent with Part 70 for the following reasons.

First, as written in Regulation 30, the permit shield would apply to any air contaminant specifically identified in the *permit application* as of the day of permit issuance, rather than any applicable requirement of the *final permit*. Thus, the extent of the permit shield is too broad, because a source may include provisions in its permit application that are removed or made more stringent by the permitting authority upon issuance of the final permit. Delaware must revise Regulation 30 to make it clear that the permit shield applies to any applicable requirement as of the date of permit issuance. Part 70.6(f)(1)(i) and (ii) also require, as a

condition of granting a permit shield, that the applicable requirements must be included and specifically identified in the permit, or that the permitting authority determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes a determination or a concise summary thereof. Regulation 30 also must be revised to include these provisions.

Second, the reference to "7 Del. C., Chapter 60, for the discharge of any air contaminant" appears to extend the permit shield to any requirement of the Delaware Water and Air Resources Act, which is broader than "any applicable requirement" as defined by Part 70. The definition of "air contaminant" in 7 Del. C., Chapter 60, § 6002(2), means "particulate matter, dust, fumes, gas, mist, smoke or vapor or any combination thereof, exclusive of uncombined water." For consistency with Part 70, Delaware must revise the reference to "7 Del. C., Chapter 60, for the discharge of any air contaminant" to "any applicable requirement" consistent with § 70.6(f)(1).

§ 70.7 Permit Issuance, Renewal, Reopenings, and Revisions. The State's regulations substantially meet the requirements of 40 CFR 70.7. The following changes must be made to Regulation No. 30 in order to fully meet the requirements of 40 CFR 70.7:

1. Delaware must revise Regulation 30, Section 7(d)(1)(v) to ensure that any preconstruction review permit requirements that are incorporated into a Title V permit through the administrative permit amendment procedure have undergone the procedural requirements specified in 40 CFR 70.7(d)(1)(v). This section provides that the State may include as a change under an administrative permit amendment, the incorporation of requirements from preconstruction review permits under an EPA-approved program, provided that the program meets procedural requirements for permit issuance, including public, EPA, and affected State review, substantially equivalent to the Part 70 program requirements that would apply to permit modifications, and contains compliance requirements substantially equivalent to those contained in § 70.6. Delaware's Regulation 30, Section 7(d)(1)(v), allows that the requirements from preconstruction review permits issued by the Department under Parts C and D of the Act or permits issued under Regulation No. 2 may be incorporated into the permit as an administrative permit amendment, when such permits were issued "meeting the public participation

provisions of Section 7(j)". However, Delaware's regulations do not require that a preconstruction permit must meet other procedural requirements of permit issuance, including affected state and EPA review, or that the permit contain compliance requirements substantially equivalent to those contained in 40 CFR 70.6. The anticipated future revisions to Part 70 may provide additional flexibility for the process of incorporating preconstruction review permits into a Title V operating permit.

2. Delaware must revise Regulation 30, Section 7(f)(4) to require that permits for major sources with a remaining permit term of three years or more shall be reopened for cause within 18 months after a new applicable requirement is promulgated, consistent with 40 CFR 70.7(f). Delaware's Regulation 30, Section 7(f)(4) requires permit reopening within 18 months after promulgation of an applicable requirement, but applies this provision to paragraph (1)(iii) only, which pertains to new applicable requirements for affected sources under the acid rain program. Section 7(f)(4) should refer to paragraph (1)(ii), which pertains to major sources with a permit term of more than 3 years.

3. Delaware must revise Regulation 30, Section 7(j)(4) to require that the Department shall give notice of any public hearing at least 30 days in advance of the hearing, consistent with 40 CFR 70.7(h)(4). As currently written, Section 7(j)(4) provides that any public hearing shall be held no earlier than the 31st day following publication of the public notice. However, the public notice is not required to provide notice that a hearing is scheduled; according to Section 7(j)(2), the public notice must include the time and place of the hearing or a statement of procedures to request a hearing. Section 7(j)(3) provides that the Department shall hold a hearing if the Secretary receives a meritorious request for a hearing within a reasonable time as stated in the advertisement. Regulation 30 does not provide that the Department shall give the public 30 days notice that a hearing will be held.

§ 70.11 Requirements for Enforcement Authority. The State's statute substantially meets the requirements of 40 CFR 70.11 for enforcement authority. The following changes must be made in order to fully meet the requirements of 40 CFR 70.11:

1. Delaware must revise 7 Del. C., Chapter 60, § 6013(b) to provide that each day of violation shall be considered as a separate violation. 40 CFR 70.11(a)(3)(iii) requires a penalty in a maximum amount of not less than

\$10,000 per day per violation for any person who knowingly makes a false material statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method. 7 Del. C., Chapter 60, § 6013(b) provides, for these types of violations, a criminal penalty of not less than \$500 nor more than \$10,000, or by imprisonment for not more than 6 months, or both. Section 6013(b) of the statute does not, however, provide that each day of violation shall be considered as a separate violation.

B. Variances

Section 3(f) of Regulation 30 states that "any determination by the Secretary to not require a permit under 7 Del. C., Chapter 60, Section 6003(e), or any variance granted by the Secretary under 7 Del. C., Chapter 60, Section 6011, shall not apply to this rule until such time as the exemption or variance is approved by the Administrator." EPA has no authority to approve provisions of State law that are inconsistent with the CAA. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable Part 70 permit, except where such relief is granted through procedures allowed by Part 70. EPA reserves the right to enforce the terms of the Part 70 permit where the permitting authority purports to grant relief from the duty to comply with a Part 70 permit in a manner inconsistent with Part 70 procedures.

C. Insignificant Activities

Appendix A of Regulation No. 30 contains a list of 33 insignificant activities. Appendix A provides that any information required by the permit application need not be submitted for these insignificant activities; however, the source must provide a list of any activities that are excluded from the permit application because of size, emission rate, or production rate. Section 5(c) requires that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, including those that become applicable after the effective date of this regulation. Section 5(c) also requires that emissions from the insignificant activities shall be included when determining whether a source is subject to Regulation No. 30, or when determining the applicability of any applicable requirement.

D. Permit Fee Demonstration

7 Del. C., Chapter 60, section 6097 requires owners or operators of sources

subject to Title V to pay annual fees to be used solely to carry out Title V activities. The statute establishes 13 fee categories, each category is defined by progressively increasing emission ranges. As stated in a May 15, 1995 letter from the Secretary of DNREC, the State's fee calculation, based on 1990 emissions inventory data, demonstrates that approximately \$2.15 million will be raised through the fee program. The State believes that revenues will be able to cover the estimated costs of the program. The State estimates that total emissions from Title V facilities applicable to the fees is 59,656 tons per year. Therefore, the average fee is estimated at \$36.00 per ton for calendar year 1995, which is above the presumptive minimum of \$25.00 per ton based on 1989 dollars.

E. Provisions Implementing the Requirements of Title III

Implementing Title III Standards through Title V Permits. Under 7 Del. C., Chapter 60, § 6003, and Regulation No. 30, Section 3(a) and 6(a), the State of Delaware has demonstrated in its Title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements. In its November 15, 1993, submittal, Delaware agreed to "expeditiously adopt any new authority needed to implement future applicable requirements. This will include requirements promulgated under Section 112 of [the Act]." This commitment is stated in the narrative description of Delaware's program, Section VIII (Other Provisions of the Act - Toxics and Enhanced Monitoring). EPA has determined that this commitment, in conjunction with the State of Delaware's broad statutory authority, adequately assures compliance with all the CAA's section 112 requirements. EPA regards this commitment as an acknowledgement by the State of Delaware of its obligation to obtain further legal authority as needed to issue permits that assure compliance with the CAA's section 112 applicable requirements. This commitment does not substitute for compliance with Part 70 requirements that must be met at the time of program approval.

EPA interprets the above legal authority and commitment to mean that the State of Delaware will be able to carry out all of the CAA's section 112 activities. For further rationale on this interpretation, please refer to the TSD accompanying this rulemaking which is located in the public docket and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities,"

signed by John Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, USEPA.

Implementation of 112(g) Upon Program Approval. EPA is proposing to approve the State of Delaware's operating permits program for the purpose of implementing section 112(g) during the transition period between federal promulgation of a section 112(g) rule and State adoption of 112(g) implementing regulations. EPA had until recently interpreted the CAA to require sources to comply with section 112(g) beginning on the date of approval of the Title V program regardless of whether EPA had completed its section 112(g) rulemaking. EPA has since revised this interpretation of the CAA as described in a February 14, 1995 Federal Register notice (see 60 FR 83333). The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The rationale for the revised interpretation is set forth in detail in the February 14, 1995 interpretive notice.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), the State must be able to implement section 112(g) during the transition period between promulgation of the federal section 112(g) rule and adoption of implementing State regulations.

EPA believes that, although the State currently lacks a program designed specifically to implement section 112(g), the State's Regulation No. 30 permit program will serve as an adequate implementation vehicle during a transition period because it will allow the State to select control measures that would meet Maximum Achievable Control Technology (MACT) on a case-by-case basis, as defined in section 112, and incorporate these measures into federally enforceable source-specific permits. Section 112(g) requirements for case-by-case MACT determinations are governed by the provisions of Section 5(a)(1)(iv) and the Section 2 definition of "Applicable requirement" (item 4). However, in accordance with the provisions of section 112(g), the Section 5(a)(1)(iv) requirement to obtain an operating permit or permit revision within twelve (12) months after commencing operation must instead be

satisfied prior to construction during the transition period.

This proposed approval clarifies that the operating permits program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by the State of Delaware of rules established to implement section 112(g). EPA is proposing to limit the duration of this approval to an outer limit of 18 months following promulgation by EPA of the section 112(g) rule. Comment is solicited on whether 18 months is an appropriate period taking into consideration the State's procedures for adoption of regulations.

However, since this proposed approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted.

Although section 112(l) generally provides the authority for approval of state air toxics programs, Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V.

If the State of Delaware does not wish to implement section 112(g) through its Regulation No. 30 permit program and can demonstrate that an alternative means of implementing section 112(g) exists during the transition period, EPA may, in the final action approving the State of Delaware's Part 70 program, approve the alternative instead.

Program for Straight Delegation of Section 112 Standards. Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the state programs 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 of Delaware's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. For EPA-promulgated rules which are applicable to sources in the State, the State intends to request delegation after adopting the rules. The details of this delegation mechanism will be established prior to delegating any section 112 standards under the State's

approved section 112(l) program for straight delegation. This program applies to both existing and future standards but is limited to sources covered by the Part 70 program.

F. Title IV Provisions/Commitments

As part of the program submittal, the State of Delaware committed to submit all missing portions of the Title IV acid rain program by January 1, 1995. Delaware did not meet the January 1, 1995 date for submitting its Title IV program. EPA requested the State to submit a revised commitment for submitting the Title IV acid rain program. On September 5, 1995, the State submitted a letter committing to adopt and submit to EPA their acid rain program by July 1, 1996.

III. Request for Public Comments

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

Proposed Action

EPA is proposing to grant interim approval to the operating permits program submitted by the State of Delaware on November 15, 1993, with supplemental submittals on November 22, 1993, February 9, 1994, May 15, 1995, and September 5, 1995. The scope of the State's Part 70 program applies to all Part 70 sources ("covered sources" as defined in the State's program) within the State, except for sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the CAA as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993). Prior to full approval by EPA, the State must make the following changes:

1. Revise Regulation 30, Section 6(f), to be consistent with the scope of the permit shield provision of 40 CFR 70.6(f)(1).

2. Revise Regulation 30, Section 7(d)(1)(v), to ensure that any preconstruction review permit requirements that are incorporated into a Title V permit through the

administrative permit amendment procedure meet the provisions of 40 CFR 70.7(d)(1)(v).

3. Revise Regulation 30, Section 7(f)(4) to require that permits for major sources with a permit term of three years or more shall be reopened for cause within 18 months after a new applicable requirement is promulgated, consistent with 40 CFR 70.7(f).

4. Revise Regulation 30, Section 7(j)(4) to require that the Department shall give notice of any public hearing at least 30 days in advance of the hearing, consistent with 40 CFR 70.7(h)(4).

5. Revise the Delaware Water and Air Resources Act, 7 Del. C., Chapter 60, section 6013(b) to provide that each day of violation shall be considered as a separate violation, consistent with 40 CFR 70.11.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, Delaware is protected from sanctions for failure to have a fully approved Title V, Part 70 program, and EPA is not obligated to promulgate a federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass the CAA's section 112(l)(5) requirements for approval of a program for delegation of section 112 standards applicable to Part 70 sources as promulgated by EPA. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70.

Therefore, EPA is also proposing under section 112(l)(5) and 40 CFR 63.91 to grant approval of the State's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

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

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 to propose interim approval of the State of Delaware's operating

permits program pursuant to Title V of the CAA and 40 CFR part 70 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, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

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

Dated: September 13, 1995.

Stanely L. Laskowski,

Acting Regional Administrator.

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40 CFR Part 799

[OPPTS-42111H; FRL-4972-3]

RIN 2070-AB94

Office of Water Chemicals Test Rule Proposed Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to withdraw the testing requirements for chloroethane, one of the chemical substances listed in the Office of Water Chemicals test rule published in the Federal Register of November 10, 1993. EPA believes that data recently made available provides sufficient information to determine or predict the health effects posed by short and long-term exposures to chloroethane. Therefore, EPA is proposing the withdrawal of the 14-day and 90-day testing requirements for chloroethane.

DATES: Written comments must be received by EPA on or before October 23, 1995.

ADDRESSES: Submit written comments, identified by the docket control number (OPPTS-42111H), in triplicate to: Document Control Office (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Rm. G-099, 401 M St., SW., Washington, DC 20460. A public version of the administrative record supporting this action, without Confidential Business Information (CBI), is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460, from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

Comments and data may be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS-42111H. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV. of this preamble.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document proposes to withdraw certain testing requirements for one of the chemical substances listed in the Office of Water Chemicals test rule referenced above.

I. Summary of Proposed Modification

Pursuant to section 4 of the Toxic Substances Control Act (TSCA) EPA proposed a test rule (FRL-3712-5) in the Federal Register of May 24, 1990 (55 FR 21393), and finalized the test rule (FRL-4047-2) in the Federal Register of November 10, 1993 (58 FR 59667), requiring certain testing of chloroethane. The final rule concluded that chloroethane is produced in substantial quantities and that there may be substantial exposure to it, there are insufficient data to determine or predict the health effects from short and long-term exposures to chloroethane in drinking water, and that testing is required to determine or predict the health effects from short and long-term exposures to chloroethane. Based on these conclusions, EPA required a subacute toxicity (oral 14-day repeated dose toxicity) and a subchronic (oral 90-day subchronic toxicity) toxicity test. The data from these studies would be used to develop Health Advisories (HAs) for chloroethane in drinking water as under section 1445 of the Safe Drinking Water Act (SDWA).

EPA has recently received information which, in the judgment of EPA, provides sufficient information to determine or predict the health effects from exposure to chloroethane in drinking water (Ref. 1a). On May 1, 1995, the Dow Chemical Company submitted a study entitled "Ethyl Chloride Palatability and 14-day