Health on October 20, 1993. EPA proposed interim approval, in accordance with § 70.4(d), on August 24, 1994 (59 FR 43523) on the basis that the program "substantially meets" part 70 requirements. The analysis in the proposed document remains unchanged and will not be repeated in this final document. The program deficiencies identified in the proposed document, and outlined below, also remain unchanged and must be corrected for the District to have a fully approvable

At the time of proposal, EPA believed that an implementation agreement would be completed prior to final interim approval. EPA and Washoe have not yet finalized the implementation agreement, however, but are working to do so as soon as practicable.

As discussed in the proposed document, Washoe has authority under State and local law to issue a variance from State and local requirements. The EPA would like to reiterate that the Agency has no authority to approve provisions of state or local law that are inconsistent with the Act, and 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.

## B. Public Comment

EPA received one public comment regarding the proposed approval of Washoe's preconstruction permitting program for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a District rule implementing EPA's section 112(g) regulations. In opposition to the proposed action, one commenter argued that Washoe should not, and cannot, implement section 112(g) until: (1) EPA has promulgated a section 112(g) regulation; and (2) the District has a section 112(g) program in place.

EPA disagrees with the commenter's contention that section 112(g) does not take effect until after EPA has promulgated implementing regulations. The statutory language in section 112(g)(2) prohibits the modification, construction, or reconstruction of a source after the effective date of a title V program unless MACT (determined on a case-by-case basis, if necessary) is met. The plain meaning of this provision is that the prohibition takes effect on the effective date of title V regardless of whether EPA or a state has promulgated implementing regulations.

The EPA has acknowledged that states may encounter difficulties

implementing section 112(g) prior to the promulgation of final EPA regulations (See June 28, 1994 memorandum entitled, "Guidance for Initial Implementation of Section 112(g)," signed by John Seitz, Director of the Office of Air Quality Planning and Standards.) EPA has issued guidance, in the form of a proposed rule, which may be used to determine whether a physical or operational change at a source is not a modification either because it is below de minimis levels or because it has been offset by a decrease of more hazardous emissions. See 59 FR 15004 (April 1, 1994). The EPA believes the proposed rule provides sufficient guidance to Washoe and sources until such time as EPA's section 112(g) rulemaking is finalized.

The EPA is aware that Washoe lacks a program designed specifically to implement section 112(g). However, Washoe does have authority to regulate hazardous air pollutants (HAP) in its preconstruction review program, and hence, the preconstruction review program can serve as a procedural vehicle for rendering a case-by-case MACT or offset determination federally enforceable. The EPA believes Washoe's preconstruction review program will be adequate because it will allow Washoe to select control measures that would meet MACT, as defined in section 112, and incorporate those measures into a federally enforceable preconstruction permit. By approving Washoe's preconstruction review program under the authority of title V and part 70, EPA is clarifying that it may be used for the purpose of implementing section 112(g) during the transition period.

One consequence of the fact that Washoe lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from those in section 112(g). However, whether a particular source change qualifies as a modification, construction, or reconstruction for section 112(g) purposes will be determined according to the statutory provisions of section 112(g), using the proposed rule as guidance. As noted in the June 28, 1994 guidance, EPA intends to defer wherever possible to a state's judgement regarding applicability determinations. This deference must be subject to obvious limitations. For instance, a physical or operational change resulting in a net increase in HAP emissions above 10 tons per year could not be viewed as a de minimis increase under any interpretation of the Act. The EPA would expect Washoe to issue a preconstruction permit containing a case-by-case determination

of MACT in such a case even if review under its own preconstruction review program would not be triggered.

C. Interim Approval and Implications

## 1. Title V Operating Permits Program

The EPA is granting interim approval to the operating permits program submitted to EPA by the Nevada Division of Environmental Protection, on behalf of Washoe, on November 18, 1993. The District must make the following changes to receive full approval:

(1) Revise insignificant activity provisions so that they comply with § 70.5(c). Specifically, rule 030.905(B)(3) must state that any activity at a title V facility that is subject to an applicable requirement may not qualify as an insignificant activity. Because Washoe defines insignificant activities by size, both rule 030.020(C)(4) and the application form must require the applicant to list all insignificant activities in enough detail to determine applicability and fees, and to impose any applicable requirements.

(2) Revise 030.020 to state that each application must contain the following information: (1) Description of any processes and products associated with alternate scenarios ( $\S 70.5(c)(2)$ ); (2) description of compliance monitoring devices or activities ( $\S 70.5(c)(3)(v)$ ); (3) when emissions trading provisions are requested by a source, proposed replicable procedures and permit terms (§ 70.4(b)(12)(iii)); and (4) a statement that the source will, in a timely manner, meet all applicable requirements that will become effective during the permit term (§ 70.5(c)(8)). EPA has also noted in the Technical Support Document recommended revisions to Washoe's permit application form so that the form will better reflect the information required by regulation. These recommended revisions, however, are not required for full approval. In addition, rule 030.020 must clearly require that any application form, report, or compliance certification submitted in the permit application include a certification based on information and belief formed after reasonable inquiry. (§ 70.5(d))

(3) Add a provision to the rule that imposes a general duty on the permit applicant to submit supplementary facts or corrected information upon becoming aware of any failure to submit relevant facts or submittal of incorrect information. (§ 70.5(b))

(4) Revise 030.930 to provide public notice "by other means if necessary to assure adequate notice to the affected public." (§ 70.7(h)(1))