

implement the provisions of section 112 of the Clean Air Act necessary under the Title V operating permit program." This commitment is stated in the transmittal letter of the November 12, 1993 operating permits program submittal. EPA has determined that this commitment, in conjunction with West Virginia's broad statutory authority, adequately assures compliance with all the CAA's section 112 requirements. EPA regards this commitment as an acknowledgement by West Virginia 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 is interpreting the above legal authority and commitment to mean that West Virginia is 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 West Virginia's 45CSR30 operating permits program, 45CSR13 and 45CSR14 preconstruction permit programs, and authority under W. Va Code section 22-5-4(a)(5) to issue administrative orders for the purpose of implementing section 112(g) during the transition period between federal promulgation of a section 112(g) rule and West Virginia's 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 8333). 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), West Virginia must be able to implement section 112(g) during the transition period between promulgation of the federal section 112(g) rule and adoption of West Virginia's implementing regulations.

EPA believes that, although West Virginia currently lacks a program designed specifically to implement section 112(g), West Virginia's 45CSR30 operating permits program, and 45CSR13 and 45CSR14 preconstruction permit programs will serve as adequate implementation vehicles during a transition period because they will allow West Virginia to select control measures that would meet 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 the 45CSR30 operating permits program, sections 1.1, 2.6, 2.25, 4.1.a.B., and 12.2-12.4. In those situations when the Title V process cannot insure the MACT determination is made before the construction, reconstruction or modification takes place, West Virginia will use its preconstruction permitting procedures of 45CSR13 and 45CSR14 to the extent applicable to the source. Moreover, for those sources for which the Title V process is not suitable or for which preconstruction permits are not applicable, West Virginia will issue an administrative order pursuant to the authority of W. Va. Code section 22-5-4(a)(5) and 45CSR30.12 to apply the case-by-case MACT standard.

This proposed approval clarifies that West Virginia's 45CSR30 operating permits program, 45CSR13 and 45CSR14 preconstruction permit programs, and authority under W. Va. Code section 22-5-4(a)(5) to issue administrative orders are available as mechanisms to implement section 112(g) during the transition period between EPA's promulgation and West Virginia's adoption of section 112(g) rules. 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 West Virginia'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 West Virginia does not wish to implement section 112(g) through the proposed mechanisms discussed above and can demonstrate that an alternative means of implementing section 112(g) exists during the transition period, EPA may, in the final action approving West Virginia'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 West Virginia'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 West Virginia, West Virginia intends to request delegation after adopting the rules at the State level, probably by incorporating the federal rules by reference. The details of this delegation mechanism will be established prior to delegating any section 112 standards under West Virginia'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.

E. Title IV Provisions/Commitments

As part of the November 12, 1994 program submittal, West Virginia committed to submit all missing portions of the Title IV acid rain program necessary to the Title V operating permits program by January 1, 1995. On December 15, 1994, West Virginia submitted an emergency rule to EPA which incorporates EPA's Part 72