are so designated based on size or production rate.

As discussed in Section II.A.1 above, EPA believes that part 70 would authorize a State to require an applicant to simply list the applicable requirements that apply to IEUs, rather than requiring the applicant to specifically indicate which IEUs are subject to which applicable requirements, provided the permit shield does not extend to IEUs. In this respect, EPA believes that this aspect of Washington's approach to IEU's is acceptable because WAC 173-401-530(3) specifically states that the permit shield does not extend to IEUs designated under the Washington rules. The Washington regulations fail to satisfy the requirements of part 70 with respect to permit application requirements in several other respects, however. For example, the Washington program exempts sources from the requirement of 40 CFR 70.5(a)(2) and (d) that a responsible official certify the truth, accuracy and completeness of the provisions in the permit application that relate to IEUs. In addition, WAC 173-401–500(7), which contains criteria for determining when an application is complete, appears to contain an impermissible exemption for IEUs. That section defines an application as complete when it contains, among other things, "the required information for each emission unit (other than insignificant emission units) at the facility." WAC 173-401-500(7)(a). This provision appears to define an application as complete even if it fails to include the information required by WAC 173-401-510(1) and (2)(c)(i) that would be necessary to determine the applicability of, or to impose, any applicable requirement or fee for IEUs. It would also define a permit application as complete even if it failed to include the information regarding IEUs required by WAC 173-401-530.

Although Washington does not appear to have intended to exclude IEUs from all of the requirements of WAC 173–401–501, –510, and –520, EPA believes that this is the clear effect of the exclusions contained in WAC 173–401–200(16) and 173–401–500(7)(a). EPA therefore believes that the provisions for permit applications in the Washington operating permits regulations do not fully meet the requirements of § 70.5 with respect to IEUs.³

d. Applicability determinations. Because WAC 173-401-530 does not specifically require emissions from IEUs to be included in applicability determinations, the exemption contained in the definition of IEU could be interpreted to allow emissions from IEUs to be excluded from the determination of whether a source is a major source under WAC 173-401-200(17) and (32) and thus subject to Washington's operating permits program in the first instance. In other words, the requirement to include emissions from IEUs in determining whether a source is a major source is a permit program requirement from which IEUs appear to be exempted under WAC 173-401-200(16). Nothing in title V or part 70 suggests that emissions from IEUs can be ignored in determining whether a source is a title V source. See 40 CFR 70.2 (Definition of "major source"; 40 CFR 70.3 (Applicability). Although EPA does not believe that Washington intended that emissions from IEUs be excluded in applicability determinations, EPA is concerned that Washington's IEU regulations could be interpreted to have that effect.

3. Implementation Concerns

During the public comment period on EPA's initial interim approval of the Washington program, commenters expressed concern that permit applications would have to describe emissions from all units and responsible officials would be required to conduct extensive due diligence efforts in order to certify the compliance of emission units that emit very small quantities of pollutants. These parties argued that this was an unreasonable regulatory burden that would result in excessive paperwork and would likely decrease the ability of permitting agencies to effectively enforce title V permits. The Petitioners and the State echoed these concerns in their challenge of EPA's interim approval action before the Ninth Circuit Court of Appeals.

Such program implementation concerns should be reduced now that EPA has clarified that emission units subject to applicable requirements may be defined as "insignificant," provided that the application contains sufficient information to determine the applicability of, and to impose in the permit, all applicable requirements and fees that apply to IEUs and that the permit contains all applicable requirements for all emission units,

omit information needed to determine the applicability of, or to impose, applicable requirements on IEUs. See 60 FR 12478 (March 7, 1995).

even IEUs. In addition, part 70 allows States flexibility in tailoring the quality of information required in the permit application and the rigor of compliance requirements in the permit to the type of emission unit and applicable requirement in question. See White Paper for Streamlined Development of Part 70 Permit Applications, from Lydia Wegman, Deputy Director of EPA's Office of Air Quality Planning and Standards, to EPA Regional Air Directors (July 10, 1995). For example, the requirement to include in a permit application information necessary to determine the applicability of an applicable requirement does not necessarily require an applicant to describe or quantify emissions of regulated pollutants. Units subject to an applicable requirement can be identified as a class along with the applicable requirement (e.g. valves and flanges subject to a leak detection and repair requirement). Furthermore, the requirement to include in a permit compliance certification, testing, monitoring, reporting, and recordkeeping sufficient to assure compliance with the terms and conditions of the permit does not require the permit to impose the same level of rigor with respect to small emission units that do not require extensive testing or monitoring in order to determine compliance with the applicable requirements as it does with respect to large emission units.

The State of Oregon, which received interim approval of its operating permit program effective January 3, 1995,4 59 FR 61820 (Dec. 2, 1994) has already issued several final title V operating permits. The Oregon program provides an example of how a State can meet the requirements of part 70 for IEUs and still successfully implement an operating permit program. The Oregon program defines certain activities as "insignificant," based either on the amount of emissions or the activity itself. See OAR 340-28-110(5), (15), and (50). The program requires that a permit application contain a list of all categorically insignificant activities and an estimate of all emissions of regulated air pollutants from those activities which are designated insignificant because of nonexempt insignificant mixture usage or aggregate insignificant emissions. See OAR 340-28-2120(3)(e). The Oregon program, however, prohibits the omission of information needed to determine the applicability of, or to impose, an applicable requirement, or to evaluate a required

³In this regard, EPA believes its proposed interim approval of Washington's IEU provisions is consistent with EPA action in other title V program approvals. For example, in requiring Illinois to revise its IEU provisions as a condition of full approval, EPA stated that the Illinois program would impermissibly allow a permit application to

 $^{^4\,\}mathrm{Oregon}$'s insignificant emissions unit provisions received full approval.