applicable requirement or to evaluate any required fee (the "applicable requirements gatekeeper").5 WAC 173-401-530 also does not incorporate the requirement that all applications be certified as to truth, accuracy and completeness, which is contained in WAC 173-401-500(7)(c) and 173-401-520. Another problem noted by EPA was the fact that WAC 173-401-500(7) could be interpreted as allowing a permit application to be deemed complete even if the source had not provided the information in the permit application required by Washington's regulations for IEUs.

The commenters, including the State of Washington, responded that EPA was taking an overly broad interpretation of the exclusion contained in WAC 173–401–200(16), thereby giving other provisions of Washington's IEU regulations no effect. Upon further review and based on the State's interpretation of its regulations, EPA finds that the Washington IEU provisions meet the requirements of

section 70.5(c).

The definition of IEU at WAC 173–401–200(16) does appear to exclude IEUs from all requirements except those contained in WAC 173–401–530. Certain other requirements of Washington's regulations for title V permit applications, however, specifically refer to IEUs. Importantly, WAC 173–401–510, which sets forth the permit application requirements for all sources in Washington, specifically refers to IEUs by stating:

Information as described below for each emissions unit at a chapter 401 source other than insignificant emissions units shall be included in the application. However, an application may not omit information need to determine the applicability of, or to impose, any applicable requirement or to evaluate the fee amount required under the permitting authority's schedule.

WAC 173–401–510(1). The State has argued that this provision would be nullified if WAC 173–401–200(16) was interpreted to exempt IEUs from those provisions outside of WAC 173–401–530 that specifically refer to IEUs, such as 173–401–510(1). The State has assured EPA that this was not its intent. Instead, the State has stated that the "applicable requirements gatekeeper" of

WAC 173–401–510(1) was specifically included to limit the statements in WAC 173–401–200(16) and 173–401–510(1) that IEUs are not subject to the permit program requirements, including the application requirements, except as provided by WAC 173–401–530.

In response to the EPA's concern with respect to the requirement to certify the truth, accuracy and completeness of the permit application, the commenters state that "Statements in a Washington operating permit application, including those regarding IEUs made in accordance with WAC 173-401-530, are plainly subject to the certification requirements of WAC 173-401-500(7)(c)." The State further argues that the State's standard permit application form requires certification of all information in the application and that if a source attempted to limit its certification with respect to IEUs, the State would view the application incomplete.

In response to EPA's concern that the criteria for determining completeness in WAC 173-401-500(7) could be interpreted to allow an application to be deemed complete even if it omits all required information on IEUs, the commenters again point out that the specific provisions in WAC 173-401-510(1) and -500(4) require an application to include necessary information regarding IEUs to be complete and that interpreting WAC 173-401-200(16) to vitiate those provisions would render the specific references to IEUs in WAC 173-401-500 and 173-401-510 meaningless.

Although EPA believes the interrelationship among the various provisions in Washington's regulations for IEUs is far from clear, EPA is willing to grant deference to the State's interpretation of its own rules. Accordingly, EPA now finds that Washington's program fully meets the requirements of 40 CFR 70.5 regarding permit applications. Because the State will need to revise its title V rules to get full title V approval, EPA strongly encourages the State to revise its IEU provisions to clarify the relationship among WAC 173-401-200(16), 173-401-500, 173-401-510, 173-401-520 and 173-401-530. EPA will also pay close attention during program implementation to permit applications and proposed permits to ensure that the Washington rules are implemented consistently with the State's assertions.

## 3. Applicability Determinations

A final concern raised by EPA was that State law could be interpreted so as to exclude emissions from IEUs in the calculation of a source's potential to

emit for purposes of determining whether the source was a major source and thereby subject to Washington's title V program in the first instance. Again, EPA's concern hinged on the extent of the exemption in WAC 173-401-200(16). The commenters responded by pointing out that the definition of "insignificant activity" or "insignificant emission unit" requires the unit or activity to be "located at a chapter 401 source" before it can qualify as insignificant and thus be exempted from certain permit program requirements. The commenters argue that this requires that a source first be determined to be a major source before any emission unit can be deemed insignificant, thus requiring all emissions, including emissions from IEUs, to be considered when determining if a source is a major source.

Again, EPA is willing to grant deference to the State's interpretation of its own rules and finds that this provision complies with the requirements of 40 CFR Part 70. EPA will also pay close attention to applicability determinations during program implementation to ensure that the Washington rules are implemented consistently with the State's assertions.

## B. Interim Approval Action

EPA is promulgating interim approval of Washington's regulations addressing IEUs. Ecology must make the following revisions to its IEU provisions as a condition of full approval:

(5) Revise WAC 173–401–200(16) (Definition of "insignificant activity" and "insignificant emissions unit"); WAC 173–401–530 (Insignificant emission units); WAC 173–401–532 (Categorically exempt insignificant emission units); and WAC 173–401–533 (Units and activities defined as insignificant based on size or production rate) to ensure that permits contain all applicable requirements and meet all permit content requirements of 40 CFR 70.6 for all emission units, even for IEUs.

This requirement replaces Condition 5 under the heading "Ecology" in section II.B. of EPA's November 9, 1994, Federal Register notice granting final interim approval of the Washington operating permits program. See 59 FR 55818. Note that this action in no way affects the changes necessary to address all other interim approval issues identified in the November 9, 1994 Federal Register notice. In other words, as a condition of full approval, Washington must also correct the four other deficiencies in its program identified in the November 9, 1994, notice and the other Washington permitting authorities must correct all

<sup>&</sup>lt;sup>5</sup> Although, in the September 1995 proposal on this action, EPA did not specifically discuss the applicable requirements gatekeeper as one of the examples where the Washington program fails to satisfy the requirements of part 70 with respect to permit applications, the opening sentence of the discussion in the proposal on permit applications clearly expressed EPA's concern that the exemption in WAC 173–401–200(16) appeared to extend to the gatekeeper itself, which is contained in WAC 173–401–510(1). See 60 FR 50169.