

70 operating permit. The EPA published a direct final approval of this program in the Federal Register on September 25, 1995 (60 FR 49340). Finally, Missouri will issue a third class of permit to all other air emission sources that meet or exceed the de minimis levels, yet fall below the major source threshold. This third class of source will require a basic permit. The basic operating permit program is not a Federal program and has not been submitted to EPA for approval.

The state has been collecting emission fees for two years, which have been used for "ramp-up" activities, including the hiring of additional staff. The state emissions fee is currently set at \$25.70 per ton, which may be adjusted by the Missouri Air Conservation Commission through an administrative revision of rule 10 CSR 10-6.110. The state provided a resource demonstration, discussed later, to justify deviating from the presumptive minimum of \$25 per ton, Consumer Price Index (CPI) adjusted. The state is also authorized under its statute to collect fees for non-Title V program activities.

The program submittal also contains information on the organizational structure and function of the components of the air program, including the regional and local offices which are available to assist in implementation of the program.

3. Regulations and Program Implementation

The Missouri program, including the core operating permit regulations, 10-CSR 6.065 (Division 10, Chapter 6, MDNR) substantially meets the minimum requirements for interim approval as they are denoted in 40 CFR part 70.4(d)(3). These requirements pertain to: (1) Adequate fees, (2) applicable requirements, (3) fixed terms, (4) public participation, (5) EPA and affected state review, (6) permit issuance, (7) enforcement, (8) operational flexibility, (9) streamlined procedures, (10) permit application, and (11) alternative scenarios.

However, Missouri must make the following program revisions for full approval: (1) Revise its definitions rule, 10 CSR 10-6.020 to: (a) revise (2)(I)7 to update a reference to the Standard Industrial Classification Manual, and (b) revise (3)(B), Table 2—List of Named Installations, to make it consistent with the list in the definition of major source in 70.2; (2) revise rule 10 CSR 10-6.065, Operating Permits by: (a) revising (1)(D)2 to clarify the meaning of "fugitive air pollutant" as it relates to part 70 installations; (b) revise (3)(D) to clarify part 70 applicability with respect

to emissions from exempt installations and emission units; (c) revise (6)(C)1.C.(II)(b) to clarify the retention of record requirements in permits, consistent with 70.6(a)(3); (d) revise (6)(C)1.G.(I) to clarify the general requirements for permit compliance and noncompliance, consistent with 70.6(a)(6); (e) revise (6)(C)4.A. to correct a citation error and to clarify that the requirement for EPA and affected state review applies to general permits, consistent with 70.6(d)(1); (f) revise (6)(C)7.B.(IV) to make the emergency provision notice consistent with 70.6(g)(3); (g) revise (6)(C)8, operational flexibility provisions, to clarify the term "emissions allowable under the permit"; (h) revise (6)(E)5.B.(I), minor permit modification criteria, to be consistent with 70.7(e)(2)(I)(A)(3); (i) revise (6)(E)5.B.(I) to add a paragraph (b) to incorporate the economic incentive provisions consistent with 70.7(e)(2)(I)(B); (j) revise (6)(E)5.C.(I)(b) to correct the threshold for group processing of minor permit modifications to be consistent with 70.7(e)(2)(I)(B); and (k) revise (6)(E)5.D.(II)(a), significant permit modification procedures, to be consistent with 70.4(b)(2) and 70.5(c), and make minor citation corrections to rules (6)(B)3.I.(IV), (6)(E)5.B.(II)(a), (6)(E)5.C.(V), and (6)(E)6.C. A detailed discussion of the necessary rule revisions is included in the TSD, and in the docket for this rulemaking. In addition, the rule changes proposed by Missouri to meet the requirements noted above are included in the docket.

Missouri has the authority to issue a variance from state requirements under section 643.110 of the state statutes. This provision was not included by the state in its operating permit program submittal, and EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of state law. The EPA has no authority to approve provisions of state law, such as the variance provision referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to obtain or comply with a Federally enforceable part 70 permit, except where such relief is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance

or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements, notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

4. Fee Demonstration

The state provided a detailed fee demonstration because the emissions fee, \$25.70 per ton (not adjusted), is below the presumptive minimum of \$25 plus CPI. The fee demonstration included a detailed analysis of projected hourly program requirements and costs for each of the next four years. An emission inventory of Title V sources for two preceding years (1993 and 1994) and emissions fees collected was also provided. Missouri describes a cash receipts system that identifies Title V fee receipts, a time accounting system that tracks Title V program labor costs, and an accounts payable system that tracks Title V program expenses.

5. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or commitments for section 112 implementation. Missouri has demonstrated in its program submittal adequate legal authority to implement and enforce all section 112 requirements through the Title V permit. This legal authority is contained in Missouri's enabling legislation and in regulatory provisions defining "applicable requirements," and states that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Missouri to issue permits that ensure compliance with all section 112 requirements. The EPA is interpreting the above legal authority to mean that Missouri is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the TSD accompanying this rulemaking and the April 13, 1993, guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Section 112(g) Case-by-Case Maximum Achievable Control Technology (MACT) For Modified/Constructed and Reconstructed Major Toxic Sources.

The EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of 112(g) applicability.