

period until November 27, 1994.¹ Given the importance of the issues in that rulemaking to States/locals, sources and the public, but mindful of the need to take action quickly, the EPA agreed to extend the comment period until October 28, 1994 (see 59 FR 52122 (October 14, 1994)). Consequently, final action to revise the interim approval criteria will not occur before the deadline for EPA action on State/local operating permits programs such as the City of Albuquerque/Bernalillo County's, that were submitted on or before November 15, 1993.² The EPA believes it would be inappropriate to delay action on the City of Albuquerque/Bernalillo County's operating permits program, perhaps for several months, until final action is taken on the proposed revisions to the part 70 interim approval criteria. The EPA also believes it would be inappropriate to grant interim approval to the City of Albuquerque/Bernalillo County on this issue before final action is taken to revise the current interim approval criteria of 40 CFR 70.4(b) to provide a legal basis for such an interim approval. Until the revision to the interim approval criteria is promulgated, the EPA's choices are to either fully approve or disapprove the narrower "title I modification" definition in States/locals such as the City of Albuquerque/Bernalillo County. For the reasons set forth below, the EPA believes that disapproving such operating permits programs at this time based solely on this issue would be inappropriate.

First, the EPA has not yet conclusively determined that a narrower definition of "title I modification" is incorrect and thus a basis for disapproval (or even interim approval). The EPA has received numerous comments on this issue as a result of the August 29, 1994, **Federal Register** document, and the EPA cannot and will not make a final decision on this issue until it has evaluated all comments on that proposed rulemaking. Second, the EPA believes that the City of Albuquerque/Bernalillo County Operating Permits Program should not be disapproved because the EPA itself has not yet been able to resolve this issue through rulemaking. Moreover,

disapproving operating permits programs from States/locals such as the City of Albuquerque/Bernalillo County that submitted their operating permits programs to the EPA on or before the November 15, 1993, statutory deadline, could lead to the unfair result that these States/locals would receive disapprovals, while States/locals which were late in submitting operating permits programs could take advantage of revised interim approval criteria should those criteria become final. In effect, States/locals would be severely penalized for having made timely operating permits program submissions to the EPA. Finally, disapproval of a State/local operating permits program for a potential problem that primarily affects permit revision procedures would delay the issuance of part 70 permits, hampering State/local/Federal efforts to improve environmental protection through the operating permits program.

For the reasons mentioned above, the EPA is approving the City of Albuquerque/Bernalillo County Operating Permits Program's use of the narrower definition of "title I modification" at this time.³ However, should the EPA in the interim approval criteria rulemaking make a final determination that such a narrow definition of "title I modification" is incorrect and that a revision of the interim approval criteria is warranted, the EPA will propose further action on City of Albuquerque/Bernalillo County's operating permits program so that the City/County's definition of "title I modification" could become grounds for interim approval requiring revision prior to the EPA's granting of full approval to that program.⁴ An operating permits program like the City of Albuquerque/Bernalillo County's that receives full approval of its narrower "title I modification" definition pending completion of the EPA's rulemaking must ultimately be placed on an equal footing with programs of States/locals that receive interim approval in later months under any revised interim approval criteria because of the same issue. Converting the full approval on this issue to an interim approval after the EPA completes its rulemaking

would avoid this inequity. The EPA anticipates that an action to convert the full approval on the "title I modification" issue to an interim approval would be effected through an additional rulemaking, so as to ensure that there is adequate notice of the change in approval status.

3. Permit Fee Demonstration

In AQC 21, the City/County's fee regulation, the City/County board established fees for criteria air pollutants which are below the presumptive minimum set out in 40 CFR 70.9(b)(2)(iv). The City/County regulation allows for a fee of \$22.00 per ton for criteria pollutants based on allowable emissions at major sources as defined in AQC Number 41—"Operating Permits" regulations. For facilities which are also major for hazardous air pollutants (HAP), the fees are \$250 per ton for the 189 HAPs listed in title III of the 1990 Amendments. These fees, when converted using the EPA criteria, result in the collection of an average of \$29.84 per ton for title V sources. The City/County board, after careful review, determined that these fees would support the title V permit program costs as required by 40 CFR 70.9(a). The City of Albuquerque/Bernalillo County explain in their fee demonstration that they chose this fee structure because it allowed for program costs to be covered without unduly penalizing any industry, and the fees generated would meet, but not likely exceed, program costs. The APCD will conduct a periodic review of the program fee schedule. The City of Albuquerque/Bernalillo County fee demonstration shows that this fee schedule meets the requirements for an operating permits program in the City of Albuquerque and Bernalillo County. The APCD will collect \$292,518 dollars per year to support all applicable part 70 activities for the City/County. The APCD projects the direct cost to fund the operation of the title V program to be approximately \$195,000 dollars per year, and the indirect cost to be approximately \$97,500. The APCD anticipates increasing its air quality staff by 6.3 new full time employees, a total of 1/3 of the existing air program staff. Any changes in the fees would need to be made by APCD through the Albuquerque/Bernalillo County Air Control Board.

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

The City of Albuquerque/Bernalillo County acknowledge that their request for approval of a part 70 program is also a request for approval of a program for

¹ EPA originally established a 30-day public comment period for the August 29, 1994, proposal. In response to several requests for extension, however, EPA agreed to allow an additional thirty days for public comments. See 59 FR 52122 (October 14, 1994).

² Section 502(d) requires, in relevant part, that "[n]ot later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part."

³ At the present time, therefore, the EPA is not construing 40 CFR sections 70.7(e)(2)(i)(A)(3) and 70.7(e)(2)(i)(A)(5) to prohibit Albuquerque/Bernalillo County from allowing minor NSR changes to be processed as minor permit modifications.

⁴ State programs with a narrower "title I modification" definition that are acted upon by EPA after an Agency decision that such a narrower definition is inappropriate would be considered deficient, but would be eligible for interim approval under revised 40 CFR section 70.4(b).