Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 3, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(191)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(191) * * *

(i) * * *

(B) Santa Barbara County Air Pollution Control District.

(*1*) Rule 346, adopted on October 13, 1992.

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[FR Doc. 95–1687 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 70

[CO–001; FRL–5143–5]

Clean Air Act Final Interim Approval of Operating Permits Program; State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Colorado for the purpose of complying with Federal requirements for an approvable State Program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: February 23, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART-AP, U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70) require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On October 14, 1994, EPA published a **Federal Register** document proposing interim approval of the Operating Permits Program for the State of Colorado (PROGRAM). See 59 FR 52123. The EPA received adverse comments on this proposed interim approval, which are summarized and addressed below. In this rulemaking EPA is taking final action to promulgate interim approval of the Colorado PROGRAM.

II. Final Action and Implications

A. Analysis of State Submission

The Governor of Colorado submitted an administratively complete title V Operating Permit Program for the State of Colorado on November 5, 1993. The Colorado PROGRAM, including the operating permit regulations (part C of Regulation No. 3), substantially meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; 40 CFR 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; 40 CFR 70.5 with respect to complete application forms and criteria which define insignificant activities; 40 CFR 70.7 with respect to public participation and minor permit modifications; and 40 CFR 70.11 with respect to requirements for enforcement authority.

Comments noting deficiencies in the Colorado PROGRAM were sent to the State in a letter dated April 8, 1994. The deficiencies were segregated into those that require corrective action prior to interim PROGRAM approval, and those that require corrective action prior to full PROGRAM approval. The State committed to address the deficiencies that require corrective action prior to interim PROGRAM approval in a letter dated May 12, 1994, and subsequently held a public hearing to consider and finalize these changes on August 18, 1994. EPA has reviewed these changes and has determined that they are adequate to allow for interim approval. One issue noted in the April 8th letter related to insignificant activities that requires further corrective action prior to full PROGRAM approval is discussed below in section C ''Final Action.'' An additional deficiency that requires corrective action prior to full PROGRAM approval regarding the implementation of section 112(r) of the Act is also discussed below in section C ''Final Action.''

B. Response to Comments

The comments received on the October 14, 1994 **Federal Register** document proposing interim approval of the Colorado PROGRAM, and EPA's response to those comments, are as follows:

Comment #1: The commenter objected to EPA's proposed approval of Colorado's preconstruction permitting program for purposes of implementing section 112(g) of the Act during the transition period between PROGRAM approval and adoption of a State rule implementing EPA's section 112(g) regulations. The commenter argued that there is no legal basis for delegating to Colorado the section 112(g) program until EPA has promulgated a section 112(g) regulation and the State has a section 112(g) program in place. In addition, the commenter argued that the Colorado PROGRAM fails to address critical threshold questions of when an emission increase is greater than de minimis and when, if it is, it has been offset satisfactorily.

EPA Response: EPA disagrees with the commenter's contention that section 112(g) cannot take effect until after EPA has promulgated implementing regulations. The statutory language in section 112(g)(2) prohibits the modification, construction, or reconstruction of a hazardous air pollutant (HAP) source after the effective date of a title V program unless a Maximum Achievable Control Technology (MACT) standard (determined on a case-by-case basis, if

necessary) is met. The plain meaning of this provision is that implementation of section 112(g) is a title V requirement of the Act and that the prohibition takes effect upon EPA's approval of the State's PROGRAM regardless of whether EPA or a state has promulgated implementing regulations.

The EPA has acknowledged that states may encounter difficulties implementing section 112(g) prior to the promulgation of final EPA regulations and has provided guidance on the 112(g) process (see April 13, 1993 memorandum entitled, ''Title V Program Approval Criteria for Section 112 Activities'' and June 28, 1994 memorandum entitled, ''Guidance for Initial Implementation of Section 112(g),'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards). In addition, EPA has issued guidance, in the form of a proposed rule, which may be used to determine whether a physical or operational change at a source is not a modification either because it is below de minimis levels or because it has been offset by a decrease of more hazardous emissions. See 59 FR 15004 (April 1, 1994). EPA believes the proposed rule provides sufficient guidance to Colorado and their sources until such time as EPA's section 112(g) rulemaking is finalized and subsequently adopted by the State.

The EPA is aware that Colorado lacks a program designed specifically to implement section 112(g). However, Colorado does have a preconstruction review program that can serve as a procedural vehicle for establishing a case-by-case MACT or offset determination and making these requirements federally enforceable. The EPA wishes to clarify that Colorado's preconstruction review program may be used for this purpose during the transition period to meet the requirements of section 112(g).

Note that in the notice of proposed interim approval of Colorado's PROGRAM, EPA referred to part B of Colorado Regulation No. 3 as the location of Colorado's preconstruction permitting program. While this is the correct citation in Colorado's current version of Regulation No. 3 (which was recently revised and reorganized), EPA has not yet approved the recent revisions and reorganization as part of the State Implementation Plan (SIP). However, EPA has approved the State's preconstruction permitting program as part of the SIP under the previous organization of Regulation No. 3, and EPA believes Colorado's preconstruction permitting program is adequate to meet the requirements of section 112(g). Specifically, section III.A.1. of the EPA-approved version of Regulation No. 3 requires that a preconstruction permit be obtained for construction or modification of a stationary source. ''Stationary source'' is defined in Colorado's Common Provisions Regulation as ''any building, structure, facility, or installation...which emits any air pollutant regulated under the Federal Act.'' ''Air pollutant'' is defined very broadly by the State and would consequently include all HAPs. Thus, the State has adequate authority to issue preconstruction permits to new and modified sources of HAPs and, because the State's preconstruction permitting program has been approved as part of the SIP, these permits would be considered federally enforceable.

Another consequence of the fact that Colorado lacks a program designed specifically to implement 112(g) is that the applicability criteria found in its preconstruction review program may differ from the criteria in section 112(g). EPA will expect Colorado to utilize the statutory provisions of section 112(g) and the proposed rule as guidance in determining when case-by-case MACT or offsets are required. As noted in the June 28, 1994 guidance, EPA intends to defer wherever possible to a State's judgement regarding applicability determinations. This deference must be subject to obvious limitations. For instance, a physical or operational change resulting in a net increase in HAP emissions above 10 tons per year could not be viewed as a de minimis increase under any interpretation of the Act. In such a case, the EPA would expect Colorado to issue a preconstruction permit containing a case-by-case determination of MACT.

Comment #2: The commenter asserted that Colorado has authority to issue preconstruction permits only to sources of HAPs that are components of criteria pollutants, such as PM–10 and volatile organic compounds (VOCs).

EPA Response: EPA disagrees with this assertion. As described above, EPA believes the State's preconstruction permitting program requires permits for all new and modified sources of HAPs. The exemptions to the construction permitting requirements in section III.D. of the EPA-approved version of Regulation No. 3 support this claim, in that many of the exemptions specifically clarify that the construction permit exemptions do not apply to HAPs, and HAPs are defined in the Common Provisions Regulation as including all of those pollutants listed in section 112(b) of the Act. Therefore, EPA believes that, until the 112(g) rule has been promulgated and adopted by the State, the State has the authority to issue preconstruction permits to all new and modified major sources of HAPs.

Comment #3: Two commenters expressed concern with the EPA proposal to consider Colorado's law (S.B. 94–139) preventing the admission of voluntary environmental audit reports as evidence in any civil, criminal or administrative proceeding as ''wholly external'' to Colorado's PROGRAM and asserted that these provisions are consistent with congressional intent and EPA policy, and the Federal Government should not interfere in the State's interpretation and exercise of its own prosecutorial discretion. In addition, one commenter also stated that, absent the audit privilege, it would be unlikely that voluntarily disclosed information would be identified and further indicated that, although title V may be delegated by EPA, such delegation does not preempt or require the State to defend its laws to EPA.

EPA Response: EPA did not identify this as an approval issue and stated that it is not clear at this time what effect this privilege might have on title V enforcement actions. A national position on approval of environmental programs in states which adopt statutes that confer an evidentiary privilege for environmental audit reports is being established by EPA. Further, EPA disagrees with the commenter's interpretation of congressional intent and EPA policy. Congressional intent was to encourage owners and operators to do self-auditing and correct any problems expeditiously, but this is not the same as providing an evidentiary privilege and enforcement shield. Congress could have provided such a privilege and shield in the Act, but did not. Section 113 of the Act and title V contain no exceptions for withholding self-auditing reports as evidence in any enforcement proceeding. Likewise, 40 CFR part 70 contains no such exceptions. Also, EPA disagrees with the commenter's assumption that, absent the audit privilege provided by Colorado law, it is unlikely that voluntarily disclosed information would otherwise be identified. For example, section 114 of the Act gives EPA the authority to issue information requests and requires disclosure of information regardless of whether it is generated through a self-audit. Colorado has similar authority. EPA agrees that Colorado has the authority to adopt its own laws regarding environmental matters as long as the area has not been preempted by Congress. However, title V of the Act and the part 70 regulations give EPA the responsibility to ensure

that states implement their operating permit programs in accordance with title V and part 70. Thus, if Colorado's self-audit privilege impedes Colorado's ability to implement and enforce its PROGRAM consistent with title V and part 70, EPA may find it necessary to withdraw its approval of the Colorado PROGRAM.

Comment #4: Two commenters objected to EPA's requirement that the State obtain EPA approval of any new additions to Colorado's list of insignificant activities before such exemptions can be utilized by a source. One commenter stated that the State's administrative process was for adding new exemptions to the State's Air Pollution Emission Notice (APEN) requirements (which is a State program separate from the part 70 operating permit program) and not for adding new insignificant activities to be exempt from part 70 permitting requirements.

EPA Response: 40 CFR 70.5(c) requires EPA approval for lists of insignificant activities identified in a state's title V operating permit program. States have discretion to develop such lists but EPA is required to review and approve these lists initially during the program review and later during implementation as states seek to add new exemptions to the list. Section 70.5(c) states, in part, ''the Administrator may approve as part of a State program a list of insignificant activities and emissions levels . . .'' [emphasis added]. Thus, EPA is not interfering with Colorado's legitimate exercise of discretion but is merely requiring Colorado to include EPA review and approval when amending its PROGRAM so it is consistent with 40 CFR 70.5(c). In addition, EPA agrees with the commenter that Colorado's Exemption From APEN Requirements (Regulation 3, section II.D.1. of part A) is separate from title V's insignificant activities list and additions or changes to the list would not be effective until approved by the Colorado Air Quality Control Commission as a revision to Regulation 3. However, Regulation 3, part A, section II.D.5. specifically states that ''any person may request the Division to examine a particular source category or activity for exemption from APEN or permit requirements'' [emphasis added]. Thus, this provision would allow Colorado to add new exemptions from permit requirements (which could include part 70 operating permit requirements) without requiring EPA review and approval. This is inconsistent with title V requirements and must be corrected to include EPA review and approval.

Comment #5: The commenter objected to EPA's statement that Colorado's PROGRAM ''should'' define the meaning of ''prompt'' as used in the requirements for reporting deviations from applicable requirements, but that an ''acceptable alternative'' is for the State to define ''prompt'' in each individual permit. The commenter stated that EPA should not deny interim or full approval to any title V operating permit program on grounds that it allows for defining ''prompt'' in the permit and that several earlier interim approval notices must be revised.

EPA Response: EPA stated in the **Federal Register** notice proposing interim approval of the Colorado PROGRAM that it believes that ''prompt'' should be defined in the PROGRAM regulations for purposes of administrative efficiency and clarity. However, EPA agrees that the State can define ''prompt'' for deviation reporting in each individual permit but cautioned that EPA may veto permits that do not contain sufficiently prompt reporting of deviations. This was not identified as an approval issue. In addition, it would be inappropriate in this notice to comment on how the definition of ''prompt'' was handled in notices for other states' part 70 approvals.

Comment #6: The commenter expressed concern with EPA's statement that the contents of risk management plans are not considered an applicable requirement at this time but that rulemaking is ongoing and changes to the State PROGRAM may be necessary to comply with new or supplemental section 112(r) rulemaking. The commenter believes that risk management plans should not be subject to permit revision procedures under title V. The commenter also supports Colorado's position that it will only implement the accidental release prevention program under section 112(r) if Federal funds are available and further notes that the State has no authority under title V to use permit fees to fund risk management plan implementation.

EPA Response: Guidance issued April 13, 1993 (a memorandum from John Seitz entitled: ''Title V Program Approval Criteria for Section 112 Activities'') states that when general statutory authority to issue permits implementing title V is present, but the Attorney General is unable to certify explicit legal authority to carry out specific section 112 requirements at the time of PROGRAM submittal, the Governor may instead submit commitments to adopt and implement applicable section 112 requirements. The memo further states that the EPA will rely on these commitments in granting part 70 program approvals provided the underlying legislative authority would not prevent the State from meeting the commitments. Another guidance memorandum issued June 24, 1994 (from John Seitz and Jim Makris entitled: ''Relationship between the Part 70 Operating Permit Program and section 112(r)'') states that the final risk management program rule, which has not been promulgated at this time, will likely expand the scope of section 112(r) applicable requirements for sources. If Colorado's funding restriction is incompatible with the final section 112(r) rule, the State must eliminate this restriction from their legislation.

Comment #7: The commenter expressed a general concern that, ''Although Colorado chooses not to provide explicit variances through its operating permit program, EPA should acknowledge that the state retains enforcement discretion for any violation of permit requirements.''

EPA Response: As the commenter noted, Colorado does not include variances in its PROGRAM. 40 CFR part 70 does not allow states to grant variances from title V requirements. EPA recognizes that title V permits may include compliance schedules for sources which are out of compliance with applicable requirements. However, such measures to bring a source into compliance are not the same as variances, which normally provide a complete exemption from a requirement. EPA also recognizes that Colorado may exercise enforcement discretion when addressing permit violations, but such discretion is not unlimited.

Comment #8: The commenter objected to EPA granting interim approval of Colorado's PROGRAM because the Colorado SIP, according to the commenter, has not been corrected to conform with the National Ambient Air Quality Standard (NAAQS) for PM_{10}. The commenter contends that Colorado's SIP is based on total suspended particulate (TSP), which they believe has no legal or regulatory basis as an air quality standard. The commenter also asserts that EPA's listing of TSP as a regulated pollutant in the April 26, 1993 guidance memorandum entitled ''Definition of Regulated Air Pollutant for Purposes of Title V'' is an error and claims the correct regulated pollutant should be total particulate, not TSP. Last, the commenter stated that ''enforcing policies based on TSP instead of PM_{10} violates EPA's own regional consistency rule'' found in 40 CFR 56.1–56.7.

EPA Response: EPA disagrees with the commenter's claim that the Colorado SIP has not been revised to conform with the NAAQS for PM_{10}. On the contrary, Colorado has developed nonattainment plans regulating sources of PM_{10} for all of the State's PM_{10} nonattainment areas designated upon enactment of the 1990 Amendments. All of those plans have been approved in at least some form (i.e., full, conditional, partial, or limited approval) by EPA. Further, the State has updated its nonattainment new source review (NSR) and prevention of significant deterioration (PSD) permitting requirements to apply to new and modified major sources of PM_{10}, and these programs require compliance with the NAAQS (including the PM_{10} NAAQS) as a condition of permit issuance. EPA approved these revisions to the State's permitting program as conforming to the PM_{10} NAAQS on June 17, 1992 (57 FR 26997).

However, the State has retained some requirements pertaining to sources of TSP, as follows: The State's PSD permitting program applies to new and modified major sources of particulate matter (of which TSP is a subset), as well as PM_{10}. Regulation of such sources of particulate matter is required by the Federal PSD permitting regulations. Also, the State regulates minor sources of TSP in its minor NSR permitting regulations, and the State regulations still include the previous Federal ambient air quality standard for TSP. However, on June 24, 1993, when the State adopted the PM_{10} NAAQS into its regulations, the State temporarily suspended the TSP ambient standard while the State determines whether to retain, revise, or delete the TSP standard. In any case, the State always has the option of adopting requirements that are more stringent than the Federal requirements, as provided by section 116 of the Act. Further, EPA has, in general, approved State provisions that are more stringent than the Federal requirements as part of the SIP if such provisions can be considered to control NAAQS (i.e., criteria) pollutants or their precursors. Colorado's regulation of TSP under the minor NSR program and its TSP ambient air quality standard will control PM_{10} emissions, since PM_{10} is a component of TSP. Thus, EPA believes there is legal basis for the State retaining some controls on TSP in its SIP.

In regard to the comment that TSP is not a regulated pollutant, the commenter is correct. As pointed out in a June 14, 1993 memorandum from John Seitz, some EPA guidance documents have incorrectly used the term ''TSP'' interchangeably with ''particulate matter emissions.'' However, TSP is not a regulated air pollutant as defined in 40 CFR 70.2. Particulate matter emissions (of which TSP is a component), on the other hand, are considered to be regulated pollutants as defined in 40 CFR 70.2. The EPA notes that Colorado's definition of ''regulated air pollutant'' in its part 70 operating permit regulations includes both particulate matter and PM_{10}, so there is no flaw relative to this issue which would prevent interim approval of Colorado's PROGRAM. If Colorado also considers TSP as a regulated pollutant under its PROGRAM, EPA would have no concerns with this issue as states' part 70 programs are generally allowed to be more stringent than the corresponding Federal requirements. Last, EPA does not believe it is violating the regional consistency rules in 40 CFR 56.1–56.7 by allowing a State to be more stringent than the corresponding Federal requirements. As discussed above, EPA believes section 116 of the Act provides states with the option of adopting requirements that are more stringent than the Federal requirements. In fact, it has generally been a national policy to allow state rules to be more stringent than the Federal requirements, except in those cases where the Act or the corresponding Federal regulations prohibit a state rule from being more stringent. (For example, some of the operational flexibility rules in 40 CFR 70.4(b)(12) are a required element of states' part 70 programs, and states do not have the option of prohibiting such flexibility.) Thus, in this case, EPA believes it has followed its regional consistency rules, and the fact that Colorado's SIP still regulates TSP does not impact EPA's ability to grant interim approval to Colorado's PROGRAM.

Comment #9: The commenter expressed concern that EPA was requiring the State of Colorado to authorize automatic annual increases in spending to administer the State's PROGRAM. In addition, the commenter stated that ''Colorado may, in the future, charge whatever fees it wants in whatever combination it wishes, with or without any specific, annual fee escalation mechanism, so long as it can run the aspects of the Program set forth in Part 70.9(b)(1).''

EPA Response: EPA disagrees with the commenter's assertion that EPA was requiring Colorado to authorize automatic annual increases in spending. EPA simply wished to clarify that, regardless of the amount of money the State collects to adequately fund all reasonable direct and indirect costs of the PROGRAM, the State Legislature retains spending authority and must annually authorize the spending of the necessary fee revenue by the Permitting Authority. If adequate spending authority is not authorized, and the State is therefore unable to fund all the reasonable direct and indirect costs of the PROGRAM, the EPA would be required to disapprove or withdraw the part 70 PROGRAM, impose sanctions and implement a Federal permitting program. This language was intended to clarify EPA's position and was not considered an issue for interim approval. In addition, EPA agrees with the commenter's statement regarding Colorado's authority to levy fees in whatever combination it wishes so long as the State can adequately fund its PROGRAM.

Comment #10: The commenter requested that EPA's final interim approval of the Colorado PROGRAM clearly reflect OAQPS guidance stating that preconstruction permits containing federally enforceable section 112(g) conditions need not be reopened subsequent to Colorado's adoption of EPA's final section 112(g) rule.

EPA Response: The June 28, 1994 memorandum entitled ''Guidance for Initial Implementation of Section 112(g)'' provides that ''if the State issues a final, federally enforceable preconstruction permit before the final section 112(g) rule is promulgated, the EPA recommends relying on that permit rather than requiring the permit to be reopened as a result of the final rule, so long as the permit reflects compliance with the requirements of section 112(g).'' However, EPA wishes to clarify the previous guidance statement by emphasizing that it cannot unequivocally declare that all existing federally enforceable preconstruction permits will not need to be reopened. EPA does not know which permits, if any, will need to be reopened until after the section 112(g) rule is promulgated, and this will be a case-by-case determination. Until the section 112(g) rule is final, EPA will expect states to implement the section 112(g) requirements using the guidance that has been provided.

Comment #11: The commenter stated that Colorado's PROGRAM allows minor New Source Review changes to be processed as minor permit modifications under Regulation No. 3, part C, consistent with EPA's proposed interim approval criteria published at 59 FR 44572 (August 29, 1994), and that EPA's proposed interim approval correctly leaves intact Colorado's procedures for minor permit modifications. The commenter also stated that EPA should not lose sight of the importance of this flexibility

between the date of interim approval of Colorado's PROGRAM and final PROGRAM approval. In addition the commenter believes that classifying minor new source review changes as title I modifications would have disastrous consequences for industry.

EPA Response: EPA does not consider this an adverse comment regarding approval of the Colorado PROGRAM since Colorado has submitted a SIP revision to their new source review regulations (Regulation 3, part B) which will enable minor modifications to be processed under the title V minor permit modification procedures. However, the commenter should note that EPA has not yet acted on this SIP revision and therefore, it is not currently available. EPA expects to approve this SIP revision before processing Colorado's full PROGRAM approval. In addition, the broader issue of whether or not minor new source review changes should be classified as title I modifications must be addressed at the National level.

Comment #12: The commenter submitted comments it had previously filed on the proposed part 70 rule and stated that it objected to the interim approval of the Colorado PROGRAM for the same reasons it had objected to the part 70 rule itself.

EPA Response: EPA believes the appropriate forum for pursuing objections to the legal validity of the part 70 rule is through a petition for review of the rule brought in the D.C. Circuit Court of Appeals. EPA notes that this commenter has filed such a petition. However, unless and until the part 70 rule is revised, EPA must evaluate programs according to the rule that is in effect.

C. Final Action

The EPA is promulgating interim approval of the PROGRAM submitted by the State of Colorado on November 5, 1993. The State must make the following changes to receive full PROGRAM approval:

(1) The State must revise its administrative process in section II.D.5 of part A of Regulation 3, for adding additional exemptions to the insignificant activities list, to require approval by the EPA of any new exemptions before such exemptions can be utilized by a source.

(2) The State must revise the Colorado Air Quality Control Act (25–7–109.6(5)) to remove the condition that an accidental release prevention program pursuant to section 112(r) of the Act will only be implemented if Federal funds are available.

Refer to the technical support document accompanying this rulemaking for a detailed explanation of each PROGRAM deficiency.

In Colorado's part 70 program submission, the State did not seek part 70 PROGRAM approval within the exterior boundaries of Indian Reservations in Colorado. The scope of Colorado's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved PROGRAM) within the State, except the following: any sources of air pollution located in ''Indian Country,'' as defined in 18 U.S.C. 1151, including the Southern Ute Indian Reservation and the Ute Mountain Ute Indian Reservation, or any other sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–55818 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43955, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

In not extending the scope of Colorado's approved PROGRAM to sources located in ''Indian Country,'' EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over such sources. Should the State of Colorado choose to seek PROGRAM approval within ''Indian Country,'' it may do so without prejudice. Before EPA would approve the State's part 70 PROGRAM for any portion of ''Indian Country,'' EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval, that such approval would constitute sound administrative practice, and that those sources are not subject to the jurisdiction of any Indian Tribe.

This interim approval, which may not be renewed, extends until February 24, 1997. During this interim approval period, the State of Colorado is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the State of Colorado. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State of Colorado fails to submit a complete corrective PROGRAM for full approval by August 24, 1996, EPA will start an 18-month clock for mandatory sanctions. If the State of Colorado then fails to submit a corrective PROGRAM that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State of Colorado has corrected the deficiency by submitting a complete corrective PROGRAM. Moreover, if the Administrator finds a lack of good faith on the part of the State of Colorado, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that the State of Colorado had come into compliance. In any case, if, six months after application of the first sanction, the State of Colorado still has not submitted a corrective PROGRAM that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of Colorado's complete corrective PROGRAM, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Colorado has submitted a revised PROGRAM and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State of Colorado, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State of Colorado has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State of Colorado has not submitted a revised PROGRAM that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State of Colorado has not timely submitted a complete corrective PROGRAM or EPA has disapproved its submitted corrective PROGRAM. Moreover, if EPA has not granted full approval to the Colorado PROGRAM by the expiration of this interim approval and that expiration

occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of Colorado upon interim approval expiration.

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 as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 PROGRAM.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including public comments received and reviewed by EPA on the proposal, are maintained in a docket at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: January 13, 1995.

Jack McGraw,

Acting Regional Administrator.

Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Colorado in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Colorado

(a) Colorado Department Health–Air Pollution Control Division: submitted on November 5, 1993; effective on [date 30 days after date of publication]; interim approval expires February 24, 1997.

(b) [Reserved]

* * * * *

[FR Doc. 95–1736 Filed 1–23–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5143–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Suffolk City landfill site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Suffolk City Landfill in Suffolk, Virginia, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA has determined that all appropriate CERCLA response actions have been implemented and that no further CERCLA response actions are appropriate. Moreover, EPA has determined that response actions conducted at the Site to date have been protective of public health, welfare, and the environment. The Commonwealth of Virginia has concurred with these determinations.

EFFECTIVE DATE: January 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ronnie M. Davis, US EPA Region 3, 841 Chestnut Building, Philadelphia, PA 19107; (215) 597–1727.

SUPPLEMENTARY INFORMATION: The Site to be deleted from the NPL is the ''Suffolk City Landfill Site,'' Suffolk City, Virginia. A Notice of Intent to Delete for this Site was published on October 20, 1994 (59 FR 52949). The initial closing date for public comment was November 21, 1994. EPA extended the comment period through December 8, 1994. EPA received no comments during the comment period.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as a list of the most serious of those sites. Sites on the NPL may be the subject of remedial response actions financed using the Hazardous Substances Response Trust Fund (Fund). Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.424(e)(3) of the NCP, 40 CFR 300.424(e)(3), provides that in the event of a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System, one of the means by which a site may be promulgated to the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

Dated: January 11, 1995.

Peter H. Kostmayer,

Regional Administrator, Environmental Protection Agency, Region III.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923; E.O. 12777, 56 FR 54747.

Appendix B—[Amended]

2. Table 1 of appendix B is amended by removing the site for the Suffolk City Landfill Site, Suffolk City, Virginia.

[FR Doc. 95–1739 Filed 1–23–95; 8:45 am]

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