section 172(c)(9) contingency measures, is hereby stopped as the deficiencies for which the clock was started no longer exist.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action will become effective on July 24, 1995. However, if the EPA receives adverse comments by July 10, 1995, then the EPA will publish a notice that withdraws the action, and will address those comments in the final rule on this action which has been proposed for approval in the proposed rules section of this **Federal Register**.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but allows suspension of the indicated requirements. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which suspends the indicated requirements. Thus, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and record keeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 31, 1995.

William P. Yellowtail,

Regional Administrator.

40 CFR part 52, Subpart TT, 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 TT—Utah

2. Section 52.2332 is added to read as follows:

§ 52.2332 Control strategy: Ozone.

Determination—EPA is determining that, as of May 17, 1995, the Salt Lake and Davis Counties ozone nonattainment area has attained the ozone standard based on air quality monitoring data from 1992, 1993, and 1994, and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Salt Lake and Davis Counties ozone nonattainment area, these determinations shall no longer apply.

[FR Doc. 95–14067 Filed 6–7–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[UT–001; FRL–5217–8]

Clean Air Act Final Full Approval of Operating Permits Program; Approval of Construction Permit Program Under Section 112(l); State of Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: The EPA is promulgating full approval of the Operating Permits Program submitted by the State of Utah 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. EPA is also approving the Utah Construction Permit Program under section 112(l) of the Clean Air Act for the purpose of creating Federally enforceable permit conditions for sources of hazardous air pollutants listed pursuant to section 112(b) of the Clean Air Act.

EFFECTIVE DATE: July 10, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final full 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

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 one 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 two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On March 22, 1995, EPA proposed full approval of the Operating Permits Program for the State of Utah (PROGRAM). See 60 FR 15105. EPA received public comments on the proposal, and is taking final action to promulgate full approval of the Utah PROGRAM.

II. Final Action and Implications

A. Analysis of State Submission

The Governor of Utah submitted an administratively complete title V Operating Permit Program (PROGRAM) for the State of Utah on April 14, 1994. The Utah PROGRAM, including the operating permit regulations (Utah Administrative Code Rule R307–15, Operating Permit Requirements), fully meets the requirements of 40 CFR parts 70.2 and 70.3 with respect to applicability; parts 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; part 70.5 with respect to complete application forms and criteria which define insignificant activities; part 70.7 with respect to public participation and minor permit modifications; and part 70.11 with respect to requirements for enforcement authority.

R307–15–3 contains the PROGRAM definitions. EPA is aware that other Utah regulations may contain similar, but not identical, definitions as those contained in R307–15–3. For purposes of this PROGRAM approval, EPA wishes to clarify that the binding definitions are those contained in R307–15–3.

R307–15–5(5) of the State's permitting regulation lists the insignificant activities that sources do not have to include in their operating permit application. This list includes specific activities and sources which are considered to be insignificant. This provision states that the source's application may not omit information needed to determine applicable requirements or to evaluate the fee amount required.

Utah has the authority to issue a variance from requirements imposed by State law. Section 16–2–113, Utah Code Ann., provides that any person may apply to the board for a variance from its rules. The board may grant the requested variance, ''if it determines that the hardship imposed by compliance would outweigh the benefit to the public.'' This authority is limited by regulation: Utah Administrative Code section R307–1–2.3 provides that the board may grant variances to the extent provided under law, unless prohibited by the Act. Other statutory provisions of State law require that the operating permit program must meet the requirements of title V of the Act. See, section 19–2–104(1)(f) and 19–1–109.1(c)–(d), Utah Code Ann.

In addition to these limitations, EPA regards Utah's variance 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. EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with part 70. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. If the State uses its variance provision strictly to establish a compliance schedule for a source that will be incorporated into a title V permit, then EPA would consider this an acceptable use of a variance provision. However, the routine process for establishing a compliance schedule is through appropriate enforcement action. EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures.

Part 70 of the Federal operating permit regulation requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) of that regulation requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A) of the Federal operating permit regulation. Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations. The Utah PROGRAM will define prompt reporting of deviations in each permit consistent with the degree and type of deviation likely and the applicable requirements (see subsection R307–15–6(1)(c)(iii)(B) of the Utah permitting rule). Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the unavoidable breakdown provisions of the Utah Administrative Code section R307–1–4.7.

R307–15–7(5)(a)(v) correctly allows the State to incorporate the terms of a construction permit (i.e., an ''approval order'') into an operating permit using the administrative permit amendment process. This process will be available when a source requests enhanced procedures in the issuance of its construction permit that are ''substantially equivalent'' to the operating permit issuance or modification procedures. ''Substantial equivalence'' between the construction permit and operating permit issuance procedures necessarily includes, among other things, public and affected state review as well as EPA's 45-day review period and veto authority.

B. Response to Comments

The comments received on the March 22, 1995 **Federal Register** notice proposing full approval of the Utah PROGRAM, and EPA's response to those comments, are as follows:

Comment #1: One commenter objected to EPA's statement that the Utah SIP currently does not allow for emission trading within a permitted facility without requiring a permit revision. The commenter stated that the federally-approved PM10 SIP for Utah currently contains a plant-wide emissions limitation for their specific source for the purposes of providing operational flexibility and further stated that they do not need to request operational flexibility under R307–15–7(a)(ii) since their specific source has existing operational flexibility that is provided in this SIP limit. The commenter stated that R307–15–7(a)(ii) is not applicable to their plant-wide annual emissions limitation.

EPA Response: EPA would like to clarify its statement that ''the approved

Utah SIP does not provide for such trading [as allowed in 40 CFR 70.4(b)(12)(ii)] at this time.'' When it made this statement, EPA was thinking only in terms of a generic trading program. EPA was not addressing whether or not the SIP includes operational flexibility for an individual source. Furthermore, EPA only included the statement for informational purposes. Given that the presence or absence of an emissions trading program in the SIP, whether generic or plant-specific, has no bearing on the approvability of the part 70 PROGRAM, EPA has deleted from this notice the language related to 40 CFR 70.4(b)(12)(ii) which appeared in the notice of proposed rulemaking. Finally, if the Utah SIP includes plant-specific operational flexibility as the commenter suggests, the determination of the applicability of specific part 70 provisions to the exercise of such flexibility is not an approval issue, but an implementation issue. Because Utah's PROGRAM meets all of the requirements of part 70 and Title V of the Act, the commenter's assertions have no bearing on EPA's decision to approve Utah's PROGRAM. Questions pertaining to applicability of specific provisions of Utah's PROGRAM will be addressed during State implementation of the PROGRAM.

Comment #2: One commenter suggested that Utah does not have the authority to impose case-by-case maximum achievable control technology (MACT) limitations under 307–1–3, unless the final section 112(g) rule imposes National Emission Standards for Hazardous Air Pollutants (NESHAP). The commenter also stated that the only conditions applicable to hazardous air pollutants (HAPs) under Utah's construction review program are best available control technology and NESHAPs, but not MACT.

EPA Response: The EPA is aware that Utah lacks a program designed specifically to implement section 112(g). However, Utah does have a construction 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 approval of Utah's construction review program clarifies that it may be used for this purpose during any transition period to meet the requirements of section 112(g). An alternative would be for Utah to disallow construction and modifications subject to 112(g) during any transition period if the States are not given a grace period in the final 112(g) rule. See also EPA's response to comment #4.

Comment #3: One commenter indicated that Utah's construction review program, as approved under section 112(l), is an appropriate mechanism for establishing limits on the potential-to-emit hazardous air pollutants. However, this mechanism may only be used if a source voluntarily requests a limit on their potential-to-emit hazardous air pollutants.

EPA Response: EPA agrees with the commenter and does not consider this an adverse comment.

Comment #4: One commenter stated that EPA is proposing to approve Utah's construction review program, found in R307–1–3 of the State's regulations, solely for the purpose of implementing section 112(g) during the transition period between federal promulgation of a section 112(g) rule and the adoption of State implementing regulations. However, the commenter continued on to indicate objection to EPA's proposed approval of the Utah construction review program to implement section 112(g) because (a) Utah's PROGRAM may not conform to the section 112(g) requirements once they have been issued by EPA; and (b) EPA is proposing to approve the PROGRAM without clarifying whether Utah's PROGRAM addresses the critical threshold questions of how a source is to determine if an emissions increase is or is not greater than de minimis, and whether or not it has been offset satisfactorily. The commenter also stated that, until the Agency completes its 112(g) rulemaking, there is no legal basis for allowing Utah to implement section 112(g).

EPA Response: EPA agrees with the commenter's first statement that EPA is proposing to approve Utah's construction review program, found in R307–1–3 of the State's regulations, solely for the purpose of implementing section 112(g) during the transition period between federal promulgation of the section 112(g) rule and the adoption of State implementing regulations. However, EPA disagrees with the remaining comments. The **Federal Register** notice dated March 22, 1995 (60 FR 15107) proposing full approval of the Utah Operating Permits PROGRAM, under ''b. Implementation of Section 112(g),'' clearly stated that ''On February 14, 1995 EPA published an interpretive notice (see 60 FR 8333) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision.'' Questions regarding the threshold for determining when an emission increase is greater than de minimis and when it has been offset satisfactorily will be addressed in the final section 112(g) rule. The 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. However, unless and until EPA provides for such an additional postponement of section 112(g), Utah must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. EPA believes that, if necessary, Utah can utilize its construction review program to serve as a procedural vehicle for implementing Section 112(g) and making these requirements federally enforceable between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. EPA's approval of Utah's construction review program may be used solely for the purpose of implementing section 112(g) during the transition period to meet the requirements of section 112(g). EPA is limiting the duration of the approval to 12 months following promulgation by EPA of its section 112(g) rule and this approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted.

C. Final Action

The EPA is promulgating full approval of the Operating Permits Program submitted by the State of Utah on April 14, 1994. Among other things, Utah has demonstrated that the PROGRAM will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70. EPA is also approving the Utah Construction Permit Program found in section R307–1–3 of the State's regulations under section 112(l) of the Act for the purpose of creating Federally enforceable permit conditions for sources of hazardous air pollutants listed pursuant to section 112(b) of the Act, and, under the authority of title V and 40 CFR part 70, for the purpose of providing a mechanism to implement section 112(g) of the Act during any transition period between EPA's promulgation of a section 112(g) rule and adoption by the State of rules to implement section 112(g).

Since EPA proposed full approval of Utah's PROGRAM, EPA has learned that the Utah Legislature adopted two laws which provide a privilege related to

Environmental Self-Evaluations—S.B. 84 and S.J.R. 6, codified at 19–7–101—19–7–108, Utah Code Annotated, and Rule 508 of the Utah Rules of Evidence. It is not clear at this time what effect, if any, this privilege might have on title V enforcement actions. However, EPA regards these bills as being wholly external to the PROGRAM submitted for approval under part 70, and consequently is taking no action in this approval on these provisions of State law. If, during PROGRAM implementation, EPA determines that these provisions interfere with Utah's enforcement responsibilities under part 70, EPA will consider this grounds for withdrawing PROGRAM approval in accordance with 40 CFR 70.10(c).

In Utah's part 70 program submission, the State indicated that it is not seeking approval from EPA to administer the State's part 70 PROGRAM within the exterior boundaries of Indian Reservations in Utah. In this notice, EPA is approving Utah's part 70 PROGRAM for all areas within the State except the following: lands within the exterior boundaries of Indian Reservations (including the Uintah and Ouray, Skull Valley, Paiute, Navajo, Goshute, White Mesa, and Northwestern Shoshoni Indian Reservations) and any other areas which are ''Indian Country'' within the meaning of 18 U.S.C. 1151 (excepted areas).

In not extending the scope of Utah's part 70 PROGRAM to sources located in the excepted areas, EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over such sources. Should the State of Utah choose to seek program approval within these areas, it may do so without prejudice. Before EPA would approve the State's part 70 PROGRAM for any portion of the excepted areas, 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 and that such approval would constitute sound administrative practice.

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 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 applies to sources covered by the part 70 program, as well as non-part 70 sources.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final full 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 full 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: May 26, 1995.

Jack W. 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 Utah in alphabetical order to read as follows:

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

* * * * *

Utah.

(a) Utah Department of Environmental Quality—Division of Air Quality: submitted on April 14, 1994; effective on July 10, 1995.

(b) [Reserved]

[FR Doc. 95–13927 Filed 6–7–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–270]

Organization and Delegation of Powers and Duties Transfer of Delegations From the Administrator of the Research and Special Programs Administration to the Director of the Bureau of Transportation Statistics

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Responsibility for the Department's aviation information program has been transferred from the Administrator of the Research and Special Programs Administration to the Director of the Bureau of Transportation Statistics. This rule amends the delegations to be in accordance with the changed responsibilities. The rule is necessary to reflect the delegations in the Code of Federal Regulations.

EFFECTIVE DATE: This rule is effective on May 28, 1995.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366–9306, United States Department of Transportation, 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Responsibility for the Department's aviation information program is being transferred from the Administrator of the Research and Special Programs Administration (RSPA) to the Director of the Bureau of Transportation Statistics (BTS). The office within RSPA that has had this responsibility is the Office of Airline Statistics (OAS), formerly known as the Office of Aviation Information Management (OAIM). The name change occurred as part of a 1990 reorganization of RSPA. Although the Code of Federal Regulations (CFR) was not revised to reflect the name change, the industry was informed of the change by a directive issued by RSPA.

The office within BTS that is receiving the responsibility is the Office of Airline Information. This rule