(i) Conduct an active oversight program to ensure that the appropriate provisions of these regulations are complied with;

(ii) Chair a committee composed of the Manager, Payroll Accounting and Records; the Chief Postal Inspector (USPS Security Officer); the General Counsel; the Executive Assistant to the Postmaster General; and the Director, Operating Policies Office; or their designees, with authority to act on all suggestions and complaints concerning compliance by the Postal Service with the regulations in this part;

* * * * *

(vi) Establish, staff, and direct activities for controlling documents containing national security information at USPS Headquarters and to provide functional direction to the field.

* * * * *

§§ 267.5 and 267.5 [Amended]

38. In the following places, remove the words ''USPS Records Officer'' and add, in their place, the words ''Manager, Payroll Accounting and Records'':

(a) Section 267.5(c)(2)(i); and

(b) Section 267.5(c)(3)(v).

§ 267.5 [Amended]

39. Section 267.5(e)(3)(i) is amended by removing the words ''USPS Records Officer, U.S. Postal Service, Washington, DC 20260–5010'' and adding, in their place, the words ''Manager, Payroll Accounting and Records, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5243''.

PART 268—PRIVACY OF INFORMATION—EMPLOYEE RULES OF CONDUCT

40. The authority citation for part 268 is revised to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 268.1 [Amended]

41. Section 268.1(b) is amended by removing the words ''Records Officer'' and adding, in their place, the words ''Freedom of Information/Privacy Acts Officer''.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–28107 Filed 11–14–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AL–95–01; FRL–5332–4]

Clean Air Act Final Interim Approval of Operating Permits Program; Alabama Department of Environmental Management, Jefferson County Department of Health, and the City of Huntsville Department of Natural Resources and Environmental Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating source category-limited interim approval of the Operating Permits Programs submitted by the State of Alabama Department of Environmental Management (ADEM) and the Jefferson County Department of Health (JCDH). The EPA is also promulgating interim approval of the Operating Permits Program submitted by the City of Huntsville Department of Natural Resources and Environmental Management (City of Huntsville). These approvals are 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: December 15, 1995.

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:

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365, (404) 347–3555, Ext. 4170.

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 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 September 13, 1995, EPA proposed source category-limited interim approval of the operating permits programs submitted by ADEM and JCDH, and interim approval of the program submitted by the City of Huntsville. See 60 FR 47522. The EPA received public comments from four organizations on the proposal and responds to those comments in the discussion below. The EPA has also compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. In this document EPA is taking final action to promulgate source category-limited interim approval of the operating permits programs submitted by ADEM and JCDH, and interim approval of the program submitted by the City of Huntsville.

II. Final Action and Implications

A. Analysis of State Submission

The EPA is promulgating source category-limited (SCL) interim approval of the operating permits program submitted by ADEM on December 15, 1993, as supplemented on March 3, 1994; March 18, 1994; June 5, 1995; July 14, 1995; and August 28, 1995. The EPA is promulgating SCL interim approval of the operating permits program submitted by JCDH on December 14, 1993, as supplemented on July 14, 1995. The EPA is promulgating interim approval of the operating permits program submitted by the City of Huntsville on November 15, 1993, as supplemented on July 20, 1995. The State and local programs substantially, but not fully, meet the requirements of part 70 and meet the interim approval requirements under 40 CFR 70.4.

B. Response to Comments

In this document, EPA discusses in detail all comments received concerning the proposal notice. The EPA responds to each comment and provides clarification where requested. Significant changes to EPA's opinions stated in the proposal notice include the

retraction of three interim approval issues.

A public comment period on the proposed interim approval was held from September 13, 1995, until October 13, 1995. During that period EPA received comments from ADEM, the City of Huntsville, the Alabama Pulp and Paper Council (APPCO), and Exxon Company, U.S.A. The ADEM submittal includes eight comments regarding the interim approval issues listed in the proposed interim approval notice. The City of Huntsville concurs with the comments provided by ADEM and provides additional comments on three of those issues. The APPCO submittal includes three comments similar to those contained in ADEM's submittal. The Exxon submittal requests clarification on three items related to the definition of ''administratively complete'' applications. Responses to each comment follow.

1. Criminal Penalty Provisions

The ADEM agrees that a criminal penalty provision of not less than $10,000 per day per violation should be addressed in its program before full approval can be granted. The ADEM reaffirmed that they will continue to pursue the necessary criminal penalty authority with their State legislature. The City of Huntsville concurs with ADEM on this issue.

2. Certification of Completeness

The ADEM acknowledges their agreement with EPA to require the minimum elements of an ''administratively complete'' permit application in all initial applications submitted to the State. These elements are outlined in section II.D. of EPA's July 25, 1995, White Paper for Streamlined Development of Part 70 Permit Applications. This policy is necessary to support the two-step process discussed in the White Paper for accepting applications that are not acted upon within the first year of ADEM's title V program approval. Those applications will first be determined to be administratively complete, then be updated with supporting information as needed. The ADEM will receive fully complete applications from 40 percent of all part 70 sources within the first year of interim program approval. Also within the first year, the remaining 60 percent of part 70 sources will submit initial applications that meet the minimum requirements of an administratively complete permit application. The two-step application process is not being used by JCDH or the City of Huntsville.

ADEM Regulation 335–3–16–.04(9)(b) (JCDH Regulation 18.4.9(b) and City of Huntsville Regulation 3.9.4(b)) states: ''Certification for completeness shall not be required for initial applications that will not be processed in the first year the regulations in this chapter are effective.'' However, since adopting this rule, ADEM has included the certification of completeness on all application forms. As discussed above, all sources will submit applications containing the minimum elements to be deemed administratively complete by the end of the first year of program approval. Therefore, ADEM Regulation 335–3–16–.04(9)(b) (JCDH Regulation 18.4.9(b) and City of Huntsville Regulation 3.9.4(b)) is extraneous and should be deleted.

The Exxon Company also submitted comments related to the certification of completeness required for initial applications. They are concerned that the requirements of an administratively complete application committed to by ADEM will not grant the same degree of relief envisioned in ADEM Regulation 335–3–16–.04(9)(b) discussed above. The Exxon submittal requests clarification on three items:

(a) Defining Applicable Requirements. The Exxon Company requests that EPA confirm that only a small amount of detail is required in defining applicable requirements in the initial applications of a two-step process. The EPA confirms that defining the part 70 applicable requirements could be accomplished by listing all requirements that apply to the facility, and that detailed rule citations and descriptions should not be necessary. The State has discretion in determining how much additional information they would need in order to begin processing the permit.

(b) Requirements of Compliance Status Certification. Exxon believes that a certification of compliance status regarding all applicable requirements (without the option of stating that compliance status is unknown for certain requirements) would create a burden on the applicant equivalent to that required to prepare and submit a fully complete title V application. Exxon requests that EPA state what is specifically required in the certification of compliance status.

Sources should certify either that they are in compliance with all applicable requirements, or that they are not in compliance with specific applicable requirements. A statement from a source that it is not in compliance with an applicable requirement would require a brief explanation of the pertinent circumstances and an acknowledgment of the need to submit a compliance plan in accordance with ADEM Regulation 335–3–16–.04(8)(h) (JCDH Regulation 18.4.8(h) and City of Huntsville Regulation 3.9.3(h)).

The EPA points out that this certification does not imply any guilt on the part of the certifying official and does not itself subject the source to any enforcement action. The certifying official is simply certifying that, to the best of his or her knowledge and belief, the statements and information contained in the document are truthful, accurate, and complete. The only necessary result of a negative statement on compliance status would be the submission of a plan to bring the facility into compliance.

The EPA does not agree that this certification creates a burden on the applicant equivalent to that required to prepare and submit a fully complete title V application. Several items are required in a fully complete application that are not required for an administratively complete initial application. These include the description of the source's processes and products, detailed emissions related information, air pollution control requirements, etc.

(c) Intent of Completeness Certification. The Exxon Company requests that EPA state whether the intent for the applicant to certify that applications are complete is only in regard to the limited information that they assume ADEM is going to request. The EPA affirms that the certification applies only to the information contained in the document submitted. This includes certifications in initial applications that are submitted to satisfy the requirement that administratively complete applications be submitted by all part 70 sources within the first year of program approval. This certification serves as an assurance from the source that the statements and information contained in the document submitted are truthful, accurate, and complete.

3. Insignificant Activities

The EPA received comments on three issues regarding ''insignificant activities'' as discussed in the proposed interim approval notice:

(a) Section 112(g) De Minimis Levels for HAPs. The ADEM objects to EPA's requirement that the definition of insignificant activities be revised such that emissions thresholds for individual activities or units that are exempted from permitting requirements (but are to be listed in the permit application) will not exceed five tons per year for criteria pollutants, and the lesser of 1,000 pounds per year or section 112(g) de minimis levels for hazardous air

pollutants (HAPs). With regard to HAPs, ADEM's definition of insignificant activities includes a potential to emit threshold of 1,000 pounds per year only. The ADEM states that if and when EPA establishes the de minimis levels for HAPs, they have the ability to reduce (or increase) each HAP's significance level. They also state that the part 70 regulations do not define what an insignificant activity is and that it is left to each agency to establish its own definition.

The APPCO states that ADEM's current program of addressing trivial and insignificant activities and emitting units should receive final approval without revision, with the exception of addressing section 112(g) de minimis levels when promulgated. They do not consider the issue of section 112(g) de minimis levels to be inconsistent with 40 CFR part 70, but point out that these levels have yet to be established.

For other state and local programs, EPA has accepted emission thresholds for insignificant activities of five tons per year for criteria pollutants and the lesser of 1,000 pounds per year or section 112(g) de minimis levels for HAPs. Since publication of the Alabama proposal notice, EPA has reconsidered the 1,000 pounds per year limit established by the State. The EPA now agrees that this limit is acceptable as long as the requirements discussed in (c) below are met. Important to this finding is the fact that the level is articulated in terms of potential emissions rather than actual emissions. Where EPA has rejected similar HAP thresholds in other programs, it has been because those levels were in terms of actual emissions and because those programs did not attempt to demonstrate why such a level would be insignificant. Even absent a demonstration, EPA believes the use of potential rather than actual levels, in combination with the gatekeepers discussed in (c) below, provide adequate assurance that significant activities will not be excluded from the application.

(b) EPA and Public Review of List of Insignificant Activities. The ADEM objects to the requirement to make their list of insignificant activities available for EPA and public review and comment each time that the list is revised. They state: ''Due to the number of different industries in Alabama, changes to the insignificant list will occur often, especially at the beginning of the program. For this reason, it would be difficult and burdensome to require EPA and public review of the list each time it is revised . . . ADEM has committed to EPA to have semi-annual reviews of its list by EPA and the public. In addition, each time a new insignificant activity not previously reviewed by EPA and the public is put into an application, it is put out for the public and EPA to review per the requisite title V review requirements.''

The City of Huntsville believes that the requirement for public comment and EPA review of additions to their list of recognized insignificant activities is already satisfied in that any activities which the applicant is claiming to be insignificant must be identified in the permit application. They state that the vast majority of insignificant activities will be initially identified in the permit application review process which involves EPA and public participation. They add that a duplicative requirement for public and EPA notice and review when revising a list of insignificant activities is entirely unnecessary.

The APPCO considers EPA's comments regarding insignificant activities to be inconsistent with part 70, with the exception of addressing the issue of section 112(g) de minimis levels. They provided a review of the insignificant activities provisions contained in ADEM's program, the Federal regulations, and other guidance promulgated by EPA. Overall, the APPCO summary is correct. However, the distinction between what is required for trivial activities and what is required for insignificant activities was not addressed by APPCO. Trivial activities, as discussed in section II.B.3. of the White Paper, are certain activities that are clearly trivial (i.e., emissions units and activities without specific applicable requirements and with extremely small emissions). Trivial activities can be omitted from applications even if they are not included on a list of insignificant activities approved in a State's part 70 program. Attachment A of the White Paper lists examples of activities which EPA believes should normally qualify as trivial in this sense. Permitting authorities can allow, on a case-by-case basis without EPA approval, exemptions similar to those activities identified in Attachment A.

Insignificant activities are emissions units and activities included on a list approved by EPA as part of a State program pursuant to 40 CFR 70.5(c). As provided in the White Paper, permitting authorities can allow sources merely to list in applications the kinds of insignificant activities that are present at the source or check them off a list of insignificant activities approved in the program. The White Paper also states that ''additional exemptions, to the extent that the activities they cover are not clearly trivial, still need to be approved by EPA before being added to State lists of insignificant activities'' [emphasis added].

The fact that EPA will have the opportunity to review insignificant activities contained in title V applications does not satisfy the requirement for EPA approval of additions to the list of insignificant activities. Considering resource constraints, it is unlikely that EPA will be able to review each and every permit issued. Therefore, relying upon the permit review process for concurrence on additions to the lists of insignificant activities would result in additions being made without any review by EPA. Also, ADEM's commitment to a semi-annual review of their list of insignificant activities by EPA and the public is not sufficient for EPA to confirm that new additions to the list are appropriate. Such a procedure gives no protection from the possibility of issued permits having to be reopened to remove listed insignificant activities that are disallowed by EPA.

States can develop lists of insignificant activities, however 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 lists. The EPA is not interfering with the State and Locals' legitimate exercise of discretion but, to be consistent with 40 CFR 70.5(c), is merely requiring them to include EPA review and approval when amending their lists. To obtain full approval the State and the Local agencies must revise their approach on insignificant activities such that the lists are made available for EPA review each time the lists are revised. However, EPA acknowledges that no requirement exists for public review of a State's list of insignificant activities.

(c) *Exemptions from Permitting Requirements and Major Source Applicability Determinations.* The ADEM objects to prohibiting any emissions units with applicable requirements from being exempted from title V permitting requirements or major source applicability determinations. They argue that such a prohibition would prevent any unit subject to generic State Implementation Plan (SIP) requirements, no matter how small, from being treated as an insignificant activity, thus rendering the concept of insignificant activities useless.

The City of Huntsville states that their rules do not provide for exemptions from applicable requirements and that ''squeezing'' under a facility-wide applicability threshold by ''subtracting'' aggregated emissions resulting from

insignificant activities is not being sanctioned.

The EPA disagrees with ADEM and the City of Huntsville on this issue. Generic SIP requirements are discussed in section II.B.4. of the White Paper. Emissions units and activities may be treated generically in the application and permit for certain broadly applicable requirements often found in the SIP. Examples of such requirements include those that apply identically to all emissions units at a facility (e.g., source-wide opacity limits), general housekeeping requirements, and requirements that apply identical emissions limits to small units (e.g., process weight requirements). These requirements are sometimes referred to as ''generic'' because they apply to all subject units or activities at a facility and they are enforced in the same manner for all. If the applicant documents the applicability of these requirements and describes the compliance status as required by 40 CFR 70.5(c), the individual emissions units or activities may be excluded from the application, provided no other requirement applies that would mandate a different result.

Additionally, although section 70.5(c) provides that insignificant activities need not be described in permit applications, EPA maintains that part 70 does not allow for insignificant activities to be excluded from major source applicability determinations. Major source determinations are made in accordance with the definitions in section 70.2, which do not allow for exclusions of emissions from insignificant activities. EPA believes that this does not create a burdensome inquiry. Part 70 does not require use of any specific method for estimating the impact of these emissions for applicability purposes. However, it does require them to be taken into account where they could impact a major source applicability determination.

As indicated in the proposal notice, EPA finds that the ADEM, JCDH, and City of Huntsville programs lack assurance that insignificant activities will not be exempted from title V permitting requirements or be excluded from major source applicability determinations. As a condition of full approval, State and Local agencies must revise their regulations, consistent with section 70.5(c), to ensure that (1) applications do not omit information needed to determine or impose applicable requirements, and (2) insignificant activities or emissions units will not be exempted from the determination of whether a source is major.

4. Trading of Emissions Increases and Decreases

The ADEM objects to adding provisions to their regulations that allow for the trading of emissions under a Federally enforceable emissions cap. They state that their regulations do not prohibit putting these types of conditions in an operating permit, and nothing prevents them from doing so if requested by an applicant. They also point out that ADEM has always had the ability to put conditions in a permit that provide for emissions trading, and have done so extensively in their construction permit program. The City of Huntsville concurs with ADEM on this issue.

The APPCO concurs with EPA that these operational flexibility provisions should be added to ADEM regulations in order to be consistent with Federal standards. However, APPCO feels that, given the present operational flexibility within ADEM regulatory framework, such provisions would be moot.

The EPA agrees with ADEM that nothing prevents them from issuing permits that contain conditions that allow trading of emissions increases and decreases under an emissions cap if requested by an applicant. However, having this ability does not satisfy Federal regulations which require all part 70 programs to include these provisions. Section 70.4(b)(12)(iii) states: ''The program shall require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions . . . allowing for the trading of emissions increases and decreases . . .'' [emphasis added].

As a prerequisite for full program approval, the ADEM, JCDH, and City of Huntsville regulations must be amended to require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions, including all standard permit requirements and compliance requirements, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a Federally enforceable emissions cap established in the permit independent of otherwise applicable requirements. As noted in the proposed interim approval of Alabama's program, EPA recognizes that the flexibility provisions of 40 CFR part 70 are under revision due to litigation on the rule. However, for this notice to accurately reflect current Federal regulations, this deficiency must remain noted until the State revises its program accordingly.

5. Director's Discretion in Approving Alternative Methods

The ADEM objects to deleting the Department Director's discretion in approving alternatives to standard reference test methods used in demonstrating compliance with title V permit terms. In the proposal notice, EPA required this deletion due to a State regulation which suggests that the Director has authority to approve alternatives to any required standard reference test methods. ADEM Regulation 335–3–16–.04(8)(b)(3) (JCDH Regulation 18.4.8(c)(3) and City of Huntsville Regulation 3.9.3(c)(3)) states that the permit application shall include ''emission rates of all pollutants in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, or alternative method approved by the Department's Director.''

The ADEM agrees that the Director does not have the discretion to change a compliance method that has been established for any Federal regulation that the State adopts by reference. This includes compliance methods contained in any NESHAP, NSPS, or MACT regulation. The ADEM points out, however, that they can change any method established to determine compliance with a State Implementation Plan (SIP) regulation (including Prevention of Significant Deterioration (PSD) and New Source Review (NSR)) or other non-Federal regulation. They add that even in Federal regulations, which only have provisions for initial compliance determinations, ADEM can establish its own compliance methods to determine compliance on an interim or continuous basis. The City of Huntsville concurs with ADEM on this issue.

The APPCO concurs with EPA that test methods approved by EPA should be utilized for compliance determinations. However, APPCO points out that this may not always be the case for determining title V fee amounts.

The EPA agrees with ADEM's statements on this issue and has not called for changes in current testing protocol. However, the State regulation in question seems to imply that the Director may approve alternatives to standard reference test methods under any circumstance. Based upon ADEM's comments on this issue, EPA has reevaluated its interpretation of the regulation and now finds no need for change. The reference to an ''alternative method approved by the Department's Director'' is confined to those

circumstances in which the Director has already been granted authority to approve such changes. This includes and is limited to methods established to determine compliance with SIP regulations (i.e., PSD and NSR) and methods used to determine compliance with Federal regulations on an interim or continuous basis. However, methods used to determine compliance with Federal regulations on an interim or continuous basis must be established in the operating permit in order for them to be sufficient for a demonstration of compliance.

6. Definition of Significant Modifications

The ADEM objects to modifying their definition of ''significant modifications'' to meet part 70 requirements. Their rule defines significant modifications as changes that result in a net emissions increase of any of the pollutants and levels listed in ADEM Regulation 335–3–14–.04 or .05 (JCDH Regulation 2.4 or 2.5 and City of Huntsville Regulation 3.4 or 3.5), or any modifications under NSPS or NESHAP. The EPA pointed out in the proposal notice that 40 CFR 70.7(e)(4)(i) requires the State's program to contain criteria for determining whether a change is significant. These criteria must include, at a minimum, ''every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions . . .'' The ADEM states that the modification requirements of a title V permit, including the definition of a significant modification, will be changed in the upcoming part 70 revision. The ADEM feels that it would be premature to change their regulations prior to this revision.

The City of Huntsville concurs with ADEM and adds that, in their opinion, no deficiency exists in their program regarding the types of changes mentioned in 40 CFR 70.7(e)(4)(i). They point out that these types of changes do not fall under the definition of ''administrative amendments'' (City of Huntsville Regulation 3.9.11(a)(1)) and are specifically excluded from the definition of ''minor permit modifications'' (City of Huntsville Regulation 3.9.11(c)(1)(i)(b)). Also, City of Huntsville Regulation 3.9.11(c)(4)(iii) stipulates that requested permit modifications not meeting the minor permit modification criteria will be reviewed under the significant modification procedures. Therefore, the types of changes mentioned in 40 CFR 70.7(e)(4)(i) could only be considered to be significant modifications and would be processed as such.

The EPA agrees with the City of Huntsville's assessment on the adequacy of their regulations regarding the types of changes mentioned in 40 CFR 70.7(e)(4)(i), and concludes that no modifications regarding this issue are necessary. For the same rationale, EPA also finds that the ADEM and JCDH programs are not in need of modification regarding this issue.

7. Director's Discretion in Allowing Administrative Permit Modifications

The ADEM objects to revising their regulations to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, thus obtaining the Administrator's approval of such changes as part of the State's part 70 program. This requirement was made because ADEM Regulation 335–3–16–.13(1) (JCDH Regulation 18.13.1 and City of Huntsville Regulation 3.9.11(a)) does not require the Administrator's approval of administrative changes similar to those listed in the chapter. This is inconsistent with 40 CFR 70.7(d)(1)(vi) which requires that, in order for changes other than those specified in 40 CFR 70.7(d) (i) through (v) to be made as administrative amendments, they must first be determined by the Administrator, as part of the approved part 70 program, to be similar to those specified in 70.7(d)(1) (i) through (iv).

The ADEM states that the definition of what can be an administrative permit amendment is likely to be changed in the upcoming part 70 revision. The ADEM feels that it would be unproductive to change their regulations now when the new definition may give the governing agency the ability to make such a change. They also assert that ADEM should have this type of discretion in order to deal with the day-to-day variations that will occur in running the operating permits program.

The City of Huntsville states that no need exists to revise their rules to be consistent with part 70 in its present form. They state that the Director's discretion in approving administrative changes in addition to the ones specifically mentioned in 40 CFR 70.7(d) (i) through (v) is clearly circumscribed by City of Huntsville Regulation 3.9.11(a) (i.e., the types of changes specified in 70.7(d)(1) (i) through (iv)). The City of Huntsville asserts that this flexibility allowed to their Director ''merely serves as a safety valve against the ludicrous, not as a mechanism for circumventing the requirement to provide opportunity for EPA and public participation when such opportunity is clearly appropriate.'' They also point out that the Director must submit copies of all administrative amendments to the Administrator, thus affording opportunity for EPA objection.

The EPA does not agree with the positions taken by ADEM and the City of Huntsville on this issue. The purpose of 40 CFR 70.7(d)(1)(vi) is to allow states to have the opportunity to make additions to the list of items that can be considered administrative permit amendments in their programs. Any changes that might be considered to be inconsequential, or ludicrous, are already allowed by the regulations in place. Section 70.7(d)(1)(i) grants the permitting authority the ability to make amendments which correct typographical errors. Section 70.7(d)(1)(ii) grants the permitting authority the ability to make amendments which identify changes in name, address, or phone number, or which provide a similar minor administrative change at the source [emphasis added].

For full approval, ADEM Regulation 335–3–16–.13(1)(a)7 (JCDH Regulation 18.13.1(a)(7) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) must be revised to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, thus obtaining the Administrator's approval of such changes as part of the State's part 70 program. Alternatively, the State may revise 335–3–16–.13(1)(a)7 (JCDH Regulation 18.13.1(a)(5) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) to reference the ''Administrator'' rather than the ''Director.'' The EPA recognizes the possibility of a change to this requirement in forthcoming revisions to the part 70 regulations. However, for this notice to accurately reflect current Federal regulations, this deficiency must remain noted until the State revises its program accordingly.

8. EPA and Affected State Review of Administrative Permit Amendments

The ADEM commits to correcting an error in citation contained in ADEM Regulation 335–3–16–.13(1)(a)6. This change will remove an apparent lack of EPA and affected states review of administrative permit amendments required by 40 CFR 70.7(d)(1)(v).

In addition to the necessary changes to the title V programs noted above, it has come to EPA's attention that two questions of interpretation exist with respect to ADEM Regulations 335–3–16–.11(1) and 335–3–16–.11(2)(c) (JCDH Regulations 18.11.1 and 18.11.2(c), and City of Huntsville Regulations 3.3.8(a),

3.3.8(b) and 3.3.8(b)(3)). The questions of interpretation concern the Director's ability to exempt emissions exceedances on a case-by-case basis and the ability of EPA and citizens to participate in the emergency determination process. The EPA and the State agree to develop a program revision that resolves these issues in a manner consistent with part 70.

C. Final Action

1. Title V Operating Permits Program

The EPA is promulgating final source category-limited interim approval of the operating permits programs submitted by ADEM and JCDH on December 15, 1993, and December 14, 1993, respectively. The EPA is also promulgating final interim approval of the program submitted by the City of Huntsville on November 15, 1993. The State and Local agencies must make the following changes to receive full approval:

(a) The State statutes must be revised to provide adequate criminal authority as required by 40 CFR 70.11(a)(3) (ii)–(iii), including criminal fines recoverable in a maximum amount of not less than $10,000 per day per violation.

(b) The ADEM, JCDH, and City of Huntsville must revise their regulations regarding insignificant activities such that (1) their list of insignificant activities is made available for EPA review each time the list is revised and (2) emissions units with applicable requirements will not be exempted from title V permitting requirements or major source applicability determinations, even if listed on an approved list of insignificant activities.

(c) The ADEM, JCDH, and City of Huntsville programs must be revised to provide for operational flexibility in accordance with 40 CFR 70.4(b)(12)(iii), 70.5(c)(7), and 70.6(a)(10). These rules allow the agencies, if requested by permit applicants, to issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in permitted facilities.

(d) ADEM Regulation 335–3–16–.13(1)(a)7 (JCDH Regulation 18.13.1(a)(7) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) must be revised to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, thus obtaining the Administrator's approval of such changes as part of the State's part 70 program. Alternatively, the State may revise 335–3–16–.13(1)(a)7 (JCDH Regulation 18.13.1(a)(5) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) to reference the ''Administrator'' rather than the ''Director.'' Also, ADEM Regulation 335–3–16–.13(1)(a)6 must be revised to include the EPA and affected states review provisions required by 40 CFR 70.7(d)(1)(v).

The ADEM and JCDH are being granted source category-limited (SCL) interim approval of their part 70 operating permits programs. For a discussion on the basis for SCL interim approval, refer to the proposal notice of September 13, 1995. See 60 FR 47522.

The scope of the ADEM, JCDH, and City of Huntsville part 70 programs approved in this notice applies to all part 70 sources (as defined in the approved programs) within the State, except any sources of air pollution over which an Indian tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (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 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until December 15, 1997. During this interim approval period, ADEM, JCDH, and the City of Huntsville are protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the jurisdictions of ADEM, JCDH, and the City of Huntsville. 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 ADEM, JCDH, or the City of Huntsville fail to submit a complete corrective program for full approval by June 16, 1997, EPA will start an 18-month clock for mandatory sanctions. If ADEM, JCDH, or the City of Huntsville then fail 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 ADEM, JCDH, or the City of Huntsville has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of ADEM, JCDH, or the City of Huntsville, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that ADEM, JCDH, or the City of Huntsville has come into compliance. In any case, if, six months after application of the first sanction, ADEM, JCDH, or the City of Huntsville still have not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the ADEM, JCDH, or City of Huntsville's complete corrective programs, 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 ADEM, JCDH, or the City of Huntsville 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 ADEM, JCDH, or the City of Huntsville, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that ADEM, JCDH, or the City of Huntsville has come into compliance. In all cases, if, six months after EPA applies the first sanction, ADEM, JCDH, or the City of Huntsville 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 ADEM, JCDH, or the City of Huntsville has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to ADEM, JCDH, or the City of Huntsville 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 ADEM, JCDH, or the City of Huntsville upon interim approval expiration.

2. Preconstruction Review Program Implementing Section 112(g)

The EPA is approving the use of Alabama's preconstruction review program found in Chapter 335–3–14 of the ADEM Regulations (Chapter 2 of the JCDH Regulations and Chapter 3.5 of the City of Huntsville Regulations) as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and Alabama's adoption of rules

specifically designed to implement section 112(g). This approval is limited to the implementation of the 112(g) rule and is effective only during any transition time between the effective date of the 112(g) rule and the adoption of specific rules by Alabama to implement section 112(g). To provide the State and Locals adequate time to adopt regulations consistent with federal requirements, this approval is granted with a duration of 18 months following promulgation by EPA of section 112(g) regulations.

3. Program for Delegation of Section 112 Standards as Promulgated

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, EPA is approving under section 112(l)(5) and 40 CFR 63.91, the State's program for receiving delegation of section 112 standards and programs that are unchanged from Federal rules as promulgated. In addition, EPA is delegating all existing standards and programs under 40 CFR Parts 61 and 63. This program for delegation applies to part 70 and non-part 70 sources.[1]

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including 17 public comments received and reviewed by EPA on the proposal, are contained in docket number AL–95–01 maintained 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.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 of the Unfunded Mandates Act requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal 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. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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: November 8, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 70, 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 Alabama in alphabetical order to read as follows:

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

* * * * *

Alabama

(a) Alabama Department of Environmental Management: submitted on December 15, 1993, and supplemented on March 3, 1994; March 18, 1994; June 5, 1995; July 14, 1995; and August 28, 1995; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

(b) City of Huntsville Department of Natural Resources and Environmental Management: submitted on November 15, 1993, and supplemented on July 20, 1995; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

(c) Jefferson County Department of Health: submitted on December 14, 1993, and supplemented on July 14, 1995; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

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[FR Doc. 95–28212 Filed 11–14–95; 8:45 am]

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40 CFR Part 70

[AD–FRL–5332–5]

Title V Clean Air Act Final Interim Approval of Operating Permits Program; West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permits program submitted by West Virginia for the purpose of complying with federal requirements for an approvable program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: December 15, 1995.

ADDRESSES: Copies of West Virginia'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: Air, Radiation, and Toxics Division, U.S.

[1] The radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with ADEM, JCDH, and the City of Huntsville in the development of their radionuclide program to ensure that permits are issued in a timely manner.