years) to correct these program provisions.

Several requests for an extension of the comment period on the interim approval criteria notice were received soon after publication of the proposal notice. Because of the significance of the issues (e.g., the definition of title I modification), these commenters felt the 30-day comment period provided was not long enough to prepare their comments. In another **Federal Register** document also published on August 29 (59 FR 44460), EPA has proposed to add a definition of title I modification to the part 70 regulations. That document provides a 90-day comment period. However, EPA must resolve the issue of the proper definition of title I modification in order to complete the interim approval criteria rulemaking, since that issue bears on the decision to change the criteria as proposed. The Agency is required to begin making final decisions on the approvability of part 70 programs in the next several months, so EPA must complete the interim approval criteria rulemaking soon. In view of that timeframe, EPA is extending the comment period on the interim approval criteria rulemaking by 30 days, until October 28. Anyone wishing to submit comments on the definition of title I modification should submit their comments on that issue by October 28. The Agency will make its determination on the title I modification definition based on comments received on the interim approval criteria notice. Both of the August 29 proposals have the same docket number (A–93–50).

Dated: October 4, 1994.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–25228 Filed 10–13–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[CO–001; FRL–5090–5]

Clean Air Act Proposed Interim Approval of Operating Permit Program; State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by the State of Colorado. Colorado's Operating Permits Program was submitted for the purpose of complying with federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by November 14, 1994.

ADDRESSES: Comments on this action should be addressed to Laura Farris, 8ART–AP, U.S. Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202.

Copies of the State's submittal and other supporting information used in developing the proposed rule 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, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Introduction

As required under title V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these 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. Based on a material change to the State's submittal, which consisted of a revised permit fee demonstration, the EPA is extending the review period for an additional 3 months. 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.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Governor of Colorado submitted an administratively complete Title V Operating Permit Program (PROGRAM) for the State of Colorado on November 5, 1993. EPA deemed the PROGRAM administratively complete in a letter to the Governor dated December 28, 1993. The PROGRAM submittal includes a legal opinion from the Attorney General of Colorado stating that the laws of the State provide adequate legal authority to carry out all aspects of the PROGRAM, and a description of how the State intends to implement the PROGRAM. The submittal additionally contains evidence of proper adoption of the PROGRAM regulations, application and permit forms, a transition plan, and a permit fee demonstration.

2. Regulations and Program Implementation

The Colorado PROGRAM, including the operating permit regulation (part C of Regulation No. 3), substantially meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; §§ 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; § 70.5 with respect to complete application forms and criteria which define insignificant activities; § 70.7 with respect to public participation and minor permit modifications; and § 70.11 with respect to requirements for enforcement authority.

Section II.E. of part C of Regulation 3 lists the insignificant activities that sources do not have to include in their operating permit application. This list includes emission thresholds for criteria pollutants in nonattainment areas (less than one ton per year), criteria pollutants in attainment areas (less than two tons per year); lead (less than 100 pounds per year); non-criteria pollutants (less than the de minimis levels determined by the method set forth in Appendix A of Regulation 3); as well as other specific activities and sources which are considered to be insignificant activities. Section II.E. states that sources may not use any insignificant activity exemptions from the list to avoid any applicable requirements.

Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) 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 that this is a distinct reporting obligation under § 70.6(a)(3)(iii)(A). 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. Colorado's PROGRAM, in section V.C.7.b of part C of Regulation 3, states that "prompt" will be defined in each individual permit, depending on the type and degree of deviation likely to occur and the applicable requirements; however, "prompt" reporting will be required at least every six months, except as otherwise specified by the State in the permit.

Colorado State law does not authorize variances from Clear Air Act requirements. Additionally, the Attorney General's opinion that was part of the PROGRAM submittal states that the State will not authorize the granting of a variance from an applicable requirement or from the terms of an operating permit.

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 final 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 requires further corrective action prior to full PROGRAM approval as follows: 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. An additional deficiency that requires corrective action prior to full PROGRAM approval regarding the implementation of section 112(r) of the Act is addressed in section 4.a below. Refer to the technical support document accompanying this rulemaking for a detailed explanation of each comment and the State's corrective actions.

1994 Colorado Senate Bill 94–139, now codified at section 13–25–126.5 of the Colorado Revised Statutes, contains an "environmental self-evaluation privilege" which prevents the admission of voluntary environmental audit reports as evidence in any civil, criminal or administrative proceeding, with certain exceptions. It is not clear at this time what effect, if any, this privilege might have on title V enforcement actions. In addition, EPA is currently establishing a national position regarding EPA approval of environmental programs in States which adopt statutes that confer an evidentiary privilege for environmental audit reports. The EPA regards Senate Bill 94–139 as wholly external to the program submitted for approval under part 70, and consequently proposes to take no action on this provision of State law. If, during PROGRAM implementation, EPA determines that this provision interferes with Colorado's enforcement responsibilities under part 70, EPA will consider this grounds for withdrawing PROGRAM approval in accordance with 40 CFR section 70.10(c).

3. Permit Fee Demonstration

The Colorado PROGRAM included an original fee structure that set fees below the presumptive minimum set in part 70. Specific fee provisions included $17.23 per ton fee for regulated air pollutants for fiscal year 1994, to be increased on an annual basis to $22.17 in fiscal year 1995, $27.01 in fiscal year 1996 and $28.30 in fiscal year 1997; an additional fee of $100 per ton for hazardous air pollutants (HAPs), including ozone depleting substances, for fiscal year 1994 and thereafter; a permit application processing fee of $50 per hour; and a fee of $100 to accompany air pollution emission notices required of new, modified and existing sources by the State which must be renewed every five years (fees will not be charged on emissions exceeding 4,000 tons per year per pollutant at a source). Because Colorado's estimated aggregate fee per ton (i.e. total revenues divided by annual tons of emissions subject to fees) was below the presumptive minimum set in part 70, it was necessary for the State to include a permit fee demonstration in their PROGRAM submittal.

Legislation recently adopted by the Colorado Legislature (SB 217) reduced the per ton fee for regulated air pollutants. After careful review, the State has determined that these fees would support the Colorado PROGRAM costs as required by 40 CFR part 70.9(a). Subsequently, the State submitted a material change to their original PROGRAM submittal on July 27, 1994, which consisted of a revised permit fee demonstration and addressed how the State will adjust to the new fees set in SB 217 and adequately fund the operation of the Colorado PROGRAM. The revised permit fee demonstration also included a workload analysis which estimated the annual cost of running the PROGRAM to be $1.87 million for fiscal year 1994/1995; and a new fee structure that consists of a $9.02 per ton fee for regulated air pollutants for fiscal year 1994, to be increased on an annual basis to $10.87 in fiscal year 1995, $13.66 in fiscal year 1996 and $11.58 in fiscal year 1997; with the additional HAP and permit application processing fees given above.

Upon review of the revised permit fee demonstration, the EPA noted the following concern (which is not a disapproval issue at this time): Although the Colorado Legislature gives the State the authority to assess and collect annual permit fees in an amount sufficient to cover all reasonable direct and indirect costs of the PROGRAM for a two year period of time, the State must authorize an increase in the spending of such fees for title V activities annually. If such an increase in spending authority is not granted, and the State is not able to fund all the 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.

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

a. Authority and/or commitments for section 112 implementation. Colorado has demonstrated in its PROGRAM submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit This legal authority is contained in Colorado's enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Colorado to issue

permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that Colorado is able to carry out all section 112 activities. However, the following areas of concern have been identified in the Colorado PROGRAM: The Colorado Air Quality Control Act (25–7–109.6(5)) states that implementation and effectiveness of an accidental release prevention program, required under section 112(r) of the Act, is contingent on the receipt of federal funding. This condition is unacceptable since the State cannot put a condition on a specific requirement mandated through EPA rulemaking. Section 25–7–109.6(5) of the Colorado Air Quality Control Act must be revised before full PROGRAM approval can be granted. An additional concern lies in the definition of applicable requirement in section I.B.9. of part A of Regulation 3 which excludes the contents of any risk management plan, and in section V.C.17 of part C of Regulation 3 which specifies that the contents of risk management plans shall not be incorporated into operating permits. Although the contents of risk management plans are not an applicable requirement at this time that must be incorporated into operating permits, section 112(r) rulemaking is ongoing in an effort to define the requirements. Changes to the PROGRAM may be necessary in the future to comply with any new or supplemental rulemaking concerning section 112(r).

For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Implementation of 112(g) upon program approval. As a condition of approval of the part 70 PROGRAM, Colorado is required to implement section 112(g) of the Act from the effective date of the part 70 PROGRAM. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis. The EPA is proposing to approve Colorado's preconstruction permitting program found in Regulation 3, part B under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that Colorado has a mechanism in place to establish federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Section 112(l) provides statutory authority for approval for the use of State air programs to implement section 112(g), and title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act. If Colorado does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, the EPA may, in the final action approving Colorado's PROGRAM, approve the alternative instead. To the extent Colorado does not have the authority to regulate HAPs through existing State law, the State may disallow modifications during the transition period.

This approval is for an interim period only, until such time as the State is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that Colorado, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. The EPA is proposing here to limit the duration of this approval to 12 months following promulgation by EPA of section 112(g) regulations. Comment is solicited on whether 12 months is an appropriate period considering Colorado's procedures for adoption of federal regulations.

c. Program for straight delegation of section 112 standards. 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 General Provisions Subpart A and 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 proposing to grant approval under section 112(l)(5) and 40 CFR Part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Colorado has informed EPA that it intends to accept delegation of section 112 standards through a combination of case-by-case rulemaking and incorporation by reference. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

The radionuclide national emission standard for HAPs (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State PROGRAM. Sources which are currently defined as part 70 sources and emit radionuclides are subject to federal radionuclide standards. Additionally, sources which are not currently part 70 sources may be defined as major sources under forthcoming federal radionuclide regulations. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

d. Program for implementing title IV of the Act. Colorado's PROGRAM contains adequate authority to issue permits which reflect the requirements of Title IV of the Act, and commits to adopt the rules and requirements promulgated by EPA to implement an acid rain program through the title V permit.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by the State of Colorado on November 5, 1993. The State must make the following changes, as discussed above, 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 will only be implemented if federal funds are available. Evidence of these statutory and regulatory revisions must be submitted to the EPA within 18 months of the EPA's interim approval of the Colorado PROGRAM.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full

standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three year time period for processing the initial permit applications.

The EPA is proposing to disapprove the operating permits program submitted by Colorado if the specified changes are not made within 18 months of the effective date of final interim approval. If promulgated, this disapproval would constitute a disapproval under section 502(d) of the Act (see generally 57 FR 32253–54). As provided under section 502(d)(1) of the Act, Colorado would have up to 180 days from the date of EPA's notification of disapproval to the Governor of Colorado to revise and resubmit the PROGRAM. The EPA will apply sanctions to Colorado if the Governor fails to submit a corrected PROGRAM within 18 months following EPA disapproval of the PROGRAM. If the State has not come into compliance within 6 months after EPA applies the first sanction, a second sanction is required. In addition, discretionary sanctions may be applied any time during the 18-month period following PROGRAM disapproval. If the State has not received full PROGRAM approval within two years after final interim PROGRAM approval, the EPA must promulgate, administer, and enforce a Federal permits program for the State.

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 proposing to grant approval under section 112(l)(5) and 40 CFR Part 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. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed rule. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket 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 proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by November 14, 1994.

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.

Authority: 42 U.S.C. 7401–76719.

Dated: September 30, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–25388 Filed 10–13–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 82

[FRL–5087–6]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes to allocate potential production allowances to producers who have baseline allowances for the production of methyl bromide. These potential production allowances would be intended solely for the production of methyl bromide for export to Article 5 countries, as defined under Article 5 of the Montreal Protocol on Substances that Deplete the Ozone Layer. In drafting the accelerated phaseout rule, which was published in the **Federal Register** on December 10, 1993, the Agency inadvertently omitted methyl bromide from the list of chemicals for which potential production allowances were granted. Today's action proposes an allocation of potential production allowances for all control periods beginning January 1, 1994, and ending before January 1, 2001, equal to 10 percent of a company's baseline production allowances. The Agency may propose potential production allowances for methyl bromide for control periods after January 1, 2001, at a later date.

DATES: Written comments on this proposed rule must be received on or before November 14, 1994, unless a public hearing is requested. In the case where a public hearing is requested, the public hearing will be scheduled on October 31, 1994. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact person listed below by October 24, 1994. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Information Hotline at 1–800–296–1996.

ADDRESSES: Comments on this proposed rulemaking should be submitted in duplicate (two copies) to: Air Docket No. A–92–13, U.S. Environmental Protection Agency, 401 M Street, SW., room M–1500, Washington, DC 20460.

Materials relevant to this proposed rulemaking are contained in Docket No. A–92–13. The Docket is located in room M–1500, First Floor, Waterside Mall at the address above. The materials may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying the docket.

FOR FURTHER INFORMATION CONTACT: Tom Land, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 401 M Street, SW., Washington, DC 20460, (202) 233–9185. The Stratospheric Ozone Hotline at 1–800–296–1996 can also be contacted for further information.

I. Background

When Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol) first met in 1987, they agreed to allow additional production of controlled substances for developing countries beyond the levels being set for the developed countries. The United States, as well as other Parties to the Protocol, recognized the need to continue to supply controlled substances to developing countries during the period of scheduled reductions and for a limited time after the phaseout of production of controlled substances. In Article 2H of the