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