

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