that states implement their operating permit programs in accordance with title V and part 70. Thus, if Colorado's self-audit privilege impedes Colorado's ability to implement and enforce its PROGRAM consistent with title V and part 70, EPA may find it necessary to withdraw its approval of the Colorado PROGRAM.

Comment #4: Two commenters objected to EPA's requirement that the State obtain EPA approval of any new additions to Colorado's list of insignificant activities before such exemptions can be utilized by a source. One commenter stated that the State's administrative process was for adding new exemptions to the State's Air Pollution Emission Notice (APEN) requirements (which is a State program separate from the part 70 operating permit program) and not for adding new insignificant activities to be exempt from part 70 permitting requirements.

EPA Response: 40 CFR 70.5(c) requires EPA approval for lists of insignificant activities identified in a state's title V operating permit program. States have discretion to develop such lists but 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 list. Section 70.5(c) states, in part, "the Administrator may approve as part of a State program a list of insignificant activities and emissions levels . . . ' [emphasis added]. Thus, EPA is not interfering with Colorado's legitimate exercise of discretion but is merely requiring Colorado to include EPA review and approval when amending its PROGRAM so it is consistent with 40 CFR 70.5(c). In addition, EPA agrees with the commenter that Colorado's **Exemption From APEN Requirements** (Regulation 3, section II.D.1. of part A) is separate from title V's insignificant activities list and additions or changes to the list would not be effective until approved by the Colorado Air Quality Control Commission as a revision to Regulation 3. However, Regulation 3, part A, section II.D.5. specifically states that "any person may request the Division to examine a particular source category or activity for exemption from APEN or permit requirements' [emphasis added]. Thus, this provision would allow Colorado to add new exemptions from permit requirements (which could include part 70 operating permit requirements) without requiring EPA review and approval. This is inconsistent with title V requirements and must be corrected to include EPA review and approval.

Comment #5: The commenter objected to EPA's statement that Colorado's PROGRAM "should" define the meaning of "prompt" as used in the requirements for reporting deviations from applicable requirements, but that an "acceptable alternative" is for the State to define "prompt" in each individual permit. The commenter stated that EPA should not deny interim or full approval to any title V operating permit program on grounds that it allows for defining "prompt" in the permit and that several earlier interim approval notices must be revised.

*EPA Response:* EPA stated in the Federal Register notice proposing interim approval of the Colorado PROGRAM that it believes that "prompt" should be defined in the PROGRAM regulations for purposes of administrative efficiency and clarity. However, EPA agrees that the State can define "prompt" for deviation reporting in each individual permit but cautioned that EPA may veto permits that do not contain sufficiently prompt reporting of deviations. This was not identified as an approval issue. In addition, it would be inappropriate in this notice to comment on how the definition of "prompt" was handled in notices for other states' part 70 approvals.

*Comment #6:* The commenter expressed concern with EPA's statement that the contents of risk management plans are not considered an applicable requirement at this time but that rulemaking is ongoing and changes to the State PROGRAM may be necessary to comply with new or supplemental section 112(r) rulemaking. The commenter believes that risk management plans should not be subject to permit revision procedures under title V. The commenter also supports Colorado's position that it will only implement the accidental release prevention program under section 112(r) if Federal funds are available and further notes that the State has no authority under title V to use permit fees to fund risk management plan implementation.

EPA Response: Guidance issued April 13, 1993 (a memorandum from John Seitz entitled: "Title V Program Approval Criteria for Section 112 Activities") states that when general statutory authority to issue permits implementing title V is present, but the Attorney General is unable to certify explicit legal authority to carry out specific section 112 requirements at the time of PROGRAM submittal, the Governor may instead submit commitments to adopt and implement applicable section 112 requirements. The memo further states that the EPA

will rely on these commitments in granting part 70 program approvals provided the underlying legislative authority would not prevent the State from meeting the commitments. Another guidance memorandum issued June 24, 1994 (from John Seitz and Jim Makris entitled: "Relationship between the Part 70 Operating Permit Program and section 112(r)") states that the final risk management program rule, which has not been promulgated at this time, will likely expand the scope of section 112(r) applicable requirements for sources. If Colorado's funding restriction is incompatible with the final section 112(r) rule, the State must eliminate this restriction from their legislation.

Comment #7: The commenter expressed a general concern that, "Although Colorado chooses not to provide explicit variances through its operating permit program, EPA should acknowledge that the state retains enforcement discretion for any violation of permit requirements."

*EPA Response:* As the commenter noted, Colorado does not include variances in its PROGRAM. 40 CFR part 70 does not allow states to grant variances from title V requirements. EPA recognizes that title V permits may include compliance schedules for sources which are out of compliance with applicable requirements. However, such measures to bring a source into compliance are not the same as variances, which normally provide a complete exemption from a requirement. EPA also recognizes that Colorado may exercise enforcement discretion when addressing permit violations, but such discretion is not unlimited.

*Comment #8:* The commenter objected to EPA granting interim approval of Colorado's PROGRAM because the Colorado SIP, according to the commenter, has not been corrected to conform with the National Ambient Air Quality Standard (NAAQS) for PM<sub>10</sub>. The commenter contends that Colorado's SIP is based on total suspended particulate (TSP), which they believe has no legal or regulatory basis as an air quality standard. The commenter also asserts that EPA's listing of TSP as a regulated pollutant in the April 26, 1993 guidance memorandum entitled "Definition of Regulated Air Pollutant for Purposes of Title V" is an error and claims the correct regulated pollutant should be total particulate, not TSP. Last, the commenter stated that "enforcing policies based on TSP instead of PM<sub>10</sub> violates EPA's own regional consistency rule" found in 40 CFR 56.1-56.7.