TENNESSEE—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Statewide	Unclassifiable/Attainment.			
* * *	*	*	*	*
Davidson County	Oct. 30, 1996.			
* * *	*	*	*	*
Rutherford County	Oct. 30, 1996.			
* * *	*	*	*	*
Sumner County	Oct. 30, 1996.			
* * *	*	*	*	*
Williamson County	Oct. 30, 1996.			
* * *	*	*	*	*
Wilson County	Oct. 30, 1996.			
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 96–27606 Filed 10–29–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5642–1]

Clean Air Act Final Interim Approval of Operating Permits Program; Arizona; Direct Final Interim Approval of Operating Permits Program; Pinal County Air Quality Control District, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval; direct final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Arizona, which comprises programs from the Arizona Department of Environmental Quality (ADEQ), the Maricopa County Environmental Services Department, (Maricopa), the Pima County Department of Environmental Quality (Pima), and the Pinal County Air Quality Control District (Pinal) 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. The EPA is also taking direct final action to promulgate interim approval of specified portions of the Pinal County Operating Permits Program submitted by ADEQ on behalf of Pinal County on August 15, 1995. These specified portions of the program reflect changes to the permitting regulation that was part of Pinal's original program submittal.

DATES: The final interim approval of the Arizona program is effective on November 29, 1996. The direct final interim approval of the specified portions of the Pinal County program as codified in paragraph (d)(2) of the Arizona entry of Appendix A to part 70, is effective on December 30, 1996 unless adverse or critical comments are received by November 29, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State and county submittals and other supporting information used in developing the final interim approval and direct final interim approval are available for inspection (docket number AZ–95–1–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Regina Spindler (telephone 415–744–1251), Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

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 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. 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. On July 1, 1996, EPA promulgated the part 71 regulations that govern EPA's implementation of a federal operating permits program in a state or tribal jurisdiction. See 61 FR 34202. On July 31, 1996, EPA published a notice at 61 FR 39877 listing those states whose part 70 operating permits programs had not been approved by EPA and where a part 71 federal operating permit program was therefore effective. In that notice EPA stated that part 71 is effective in the State of Arizona. The EPA also stated its belief that it would promulgate interim approval of the Arizona part 70 program prior to the deadline for sources to submit permit applications under part 71. Today's action cancels the applicability of a part 71 federal operating permits program in Arizona in those areas under the jurisdiction of the State and county agencies. The part 71 application deadline contained in the July 31, 1996 notice is now superseded

by the State and county part 70 application deadlines.

On July 13, 1995, EPA published a notice of proposed rulemaking (NPR) in which it proposed interim approval of the operating permits program for ADEQ, Maricopa, Pima, and Pinal. See 60 FR 36083. The NPR identified several deficiencies in the State and county programs and proposed that the Arizona agencies make specified changes to correct those deficiencies as a condition of full approval. The EPA received public comment on the proposal and is responding to most of those comments in this document. The EPA has addressed all of the comments received on the proposal in a separate ''Response to Comments'' document contained in the docket at the Regional Office. After considering the comments, EPA determined that some of the changes proposed in the NPR are not necessary. In this final interim approval, EPA has therefore modified the list of changes (''interim approval issues'') that was set forth in section II.B.1. of the NPR. The public comments that prompted EPA to modify the list are discussed below in II.B. along with other issues raised during the public comment period. In addition, ADEQ, on behalf of Pinal County, has submitted a revised operating permits program for Pinal. Some of the revisions to the list of interim approval issues for Pinal result from revisions to the Pinal program that the County made in response to EPA's NPR. These revisions to the Pinal program are also discussed in section II.B. of this rulemaking. Revisions to portions of the Pinal program that were not addressed by EPA's NPR are discussed in III.A. below. The EPA is taking direct final action to promulgate interim approval of these changes to the Pinal operating permits program.

The EPA's NPR also proposed approval, under section 112(l), of the State and county programs for accepting delegation of section 112 standards as promulgated. The EPA received public comment on this proposed action for the Pinal County program only, as is discussed below in II.B.

In this document EPA is taking final action to promulgate interim approval of the operating permits programs for ADEQ, Maricopa, Pima, and Pinal. In this document EPA is also taking final action to approve, under section 112(l), these agencies' programs for accepting delegation of section 112 standards as promulgated. Finally, EPA is taking direct final action today to promulgate interim approval of specific changes to the Pinal County operating permits program.

II. Final Action and Implications

A. Analysis of State Submission

The title V programs for ADEQ, Maricopa, Pima, and Pinal were submitted by ADEQ on November 15, 1993. Additional material was submitted by ADEQ on March 14, 1994; May 17, 1994; March 20, 1995; and May 4, 1995. Additional information was submitted by Maricopa on December 15, 1993; January 13, 1994; March 9, 1994; and March 21, 1995. Additional information was submitted by Pima on December 15, 1993; January 27, 1994; April 6, 1994; and April 8, 1994. On Pinal's behalf, ADEQ submitted a revision to Pinal's program on August 16, 1994. On July 13, 1995, EPA proposed interim approval of The Arizona State title V operating permits program in accordance with § 70.4(d), on the basis that the program ''substantially meets'' part 70 requirements. Additional material submitted by the State and county agencies in response to EPA's NPR is referenced below in II.B. in the discussion of public comments.

The analysis of the State submittal given in the July 13, 1995 proposed action is supplemented by the discussion of public comments made on the NPR, including the discussion of the additional material submitted by the State and county agencies, and the resulting changes to the interim approval issues list. Otherwise, the analysis in the proposed document remains unchanged and will not be repeated in this final document. The program deficiencies identified in the proposed document have been modified as discussed below in II.B. The program deficiencies that remain, however, must be corrected for the State and counties to have fully approvable programs. These program deficiencies, or interim approval issues, are enumerated in II.C. below.

B. Public Comments and Responses

The EPA received comments on the NPR for the Arizona program from fifteen interested parties. The majority of the comments are discussed below. Comments that are not addressed in this document are addressed in a separate ''Response to Comments'' document contained in the docket (AZ-95–1–OPS).

Several commenters expressed a general concern that sources which have already submitted permit applications in accordance with the existing Arizona regulations should not be required to submit new applications due to program deficiencies identified by EPA in this document. The EPA is therefore clarifying that today's final interim approval of the Arizona program authorizes the State and county agencies to implement the interimly approved programs as the title V operating permits program for a period of two years. The EPA has identified certain deficiencies in the program that must be corrected by the end of this two year period but until that time, the agencies may implement the program in accordance with the interimly approved regulations cited in today's document. Therefore, sources that have submitted applications in accordance with these regulations need not reapply. The applications will not be deemed incomplete or returned for revision solely because the permit application relies upon the Arizona agencies' interimly approved regulations. If an applicant submitted a timely and complete application in accordance with these regulations, its application shield is not jeopardized by changes to the interimly approved regulations that the State or county agencies may make. Other comments on the July 13, 1995 proposal are discussed below.

1. Insignificant Activities

Section 70.5(c) provides that states may develop as part of their program, and EPA may approve, a list of insignificant activities and emissions levels that need not be included in permit applications but that applications may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fees. Several commenters disagreed with EPA's requirement in the NPR that all activities identified as insignificant by the Director of ADEQ must first be approved by EPA. The EPA proposed that in order to receive full approval, ADEQ must remove the provisions in its current title V regulation that gives the Director the discretion to identify activities as insignificant without prior EPA approval. These commenters argued that § 70.5(c) provides only that EPA may approve a list of insignificant activities as part of a permitting authority's title V program and by including discretionary authority as one item on the list, ADEQ has met the requirements of § 70.5(c). They also argued that nothing in § 70.5(c) suggests that all insignificant activities must be submitted to EPA in the form of a rule and requiring so would unnecessarily limit the flexibility of states to identify new insignificant activities as they arise. The commenters also stated that EPA would have opportunity to review such newly designated insignificant activities when it receives permit applications

identifying such activities. Several commenters also cited the discussion in EPA's July 10, 1995 ''White Paper for Streamlined Development of Part 70 Permit Applications'' (''White Paper'') of trivial activities. They argued that the discretion allowed permitting authorities by EPA to list additional items as trivial should also be extended to insignificant activities.

The EPA's reading of § 70.5(c) is that EPA must approve as part of a state's title V program any activities the state considers to be insignificant. The EPA's ''White Paper'' also states that activities that are not clearly trivial ''still need to be approved by EPA before being added to State lists of insignificant activities.'' The EPA therefore does not agree that the reasons offered by the commenters are adequate to support full approval of the State rule provision discussed here. However, EPA does believe this provision is fully approvable for the reasons discussed in the following paragraph.

ADEQ's rule clearly states that certain activities may be considered insignificant only if the emissions unit ''is not otherwise subject to any applicable requirement.'' (Arizona Administrative Code (AAC) R18–2–101(54)) AAC R18–2–304(E)(7) requires that all insignificant activities be listed in the permit application. This goes beyond the § 70.5(c) requirement that ''for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application.'' The preamble to the final part 70 rule clarifies the distinction. It discusses a boiler that is insignificant because it is below a specified size as an example of an insignificant activity that is exempted because of size and would be required by § 70.5(c) to be listed in the application. It goes on to state that for insignificant activities ''which apply to an entire category of activities, such as space heaters, the application need not contain any information on the activity.'' [57 FR 32273, July 21, 1992] ADEQ does not distinguish its insignificant activities in this way and instead requires that all insignificant activities be listed in the application. The ''White Paper'' generally provides that sources need only submit detailed emissions information on emissions units as necessary to determine the applicability of requirements, to verify compliance, and to compute permit fees. The EPA believes that ADEQ's handling of insignificant activities is consistent with this discussion. By requiring all insignificant activities to be listed, ADEQ provides that information on all emission units will be included in the application. Any units that are subject to applicable requirements may not be considered insignificant and the source must provide more detailed information for those units. It therefore is appropriate that the Director of ADEQ may allow activities other than those on the list submitted as part of its title V program to be merely listed in the application. Because these activities would be listed in the application, ADEQ and EPA would have an opportunity to review the list and request additional information if they believed the activity did not qualify as insignificant.

Regarding the proposal that ADEQ submit a demonstration to EPA that the specific activities listed in R18–2–101(54)(a-i) are truly insignificant, EPA has further evaluated the activities on this list and found that they do qualify for treatment as insignificant in the title V application because their exclusion is not likely to interfere with determining or imposing applicable requirements in the State or with the determination of fees. Therefore, no further demonstration is necessary.

The EPA is therefore revising its proposal regarding insignificant activities. The EPA is eliminating ADEQ's interim approval issue regarding insignificant activities and finds that the provisions in ADEQ rules regarding insignificant activities are fully approvable.

In the July 13, 1995 proposal, EPA stated that Pinal County's 200 pound per year insignificant activity threshold may not be appropriate for units emitting hazardous air pollutants (HAP) and proposed that in order to receive full approval Pinal must demonstrate that this threshold level is insignificant compared to the level of HAP emissions from units required to be permitted. The EPA also proposed that Pinal demonstrate that the insignificant activities specifically listed in its program are truly insignificant. Pinal County commented that they have no objection to adopting lower thresholds for HAPs (such as § 112(g) de minimis levels) that EPA may set by rule but that they should not be required to submit a demonstration that their listed activities are truly insignificant until EPA establishes by rule what qualifies as insignificant.

The EPA has further evaluated the activities specifically listed by Pinal in its definition of ''insignificant activity'' and determined that they are acceptable because their exclusion is not likely to interfere with determining or imposing applicable requirements in the County or with the determination of fees. The EPA has also reevaluated its proposal regarding Pinal's emissions threshold definition of ''insignificant activity'' in light of the ''White Paper'' guidance on permit applications. Pinal's rule (PCR § 3–1–050(E)) provides that title V applications need not contain emissions data regarding insignificant activities but that all insignificant activities must be listed in the application. Pinal's definition of ''insignificant activity'' excludes any activities subject to an applicable requirement (PCR § 1–3–140(74a)). As discussed above regarding ADEQ's insignificant activity provisions, EPA believes that this approach is consistent with the ''White Paper'' guidance. Pinal is assuring that information on all emission units will be included in the application by requiring insignificant activities to be listed and that more detailed information, including emissions information, will be provided for those units subject to applicable requirements. The EPA believes that the 200 pound per year threshold used to define insignificant activities in Pinal's regulation is appropriate for the County given these other provisions in the rule. The EPA is, therefore, eliminating the proposed interim approval issue regarding Pinal's insignificant activities and finds that these provisions are fully approvable.

The EPA did not receive any comments specific to its proposal regarding Pima's insignificant activities provision. Pima's rule (PGC § 17.12.160(E)(7)) provides that emission units that do not emit more than 2.4 pounds per day of VOC or 5.5 pounds per day on any other regulated air pollutant must be listed in the application but the application need not provide detailed information on these units. The EPA stated in its proposal its concern that the emissions thresholds may not be acceptable for defining insignificant activities for HAP. The EPA also stated in the proposal that Pima must restrict such insignificant emission units to those that are not likely to be subject to an applicable requirement. The EPA now believes that if Pima adds the restriction that emissions units that are subject to any unit-specific applicable requirements may not be eligible for treatment as insignificant, then the County's treatment of insignificant emission units will be consistent with the ''White Paper'' guidance as discussed above regarding the ADEQ and Pinal insignificant activity provisions. With the ''applicable requirement'' restriction, and the requirement that all insignificant emission units be listed in the application, EPA believes that the

emissions thresholds described above are appropriate for Pima County. The EPA is therefore modifying the proposed interim approval issue accordingly. (See II.C.1.c.3 below.)

Maricopa County's Regulation II, Rule 210, section 301.5(g) allows that emissions information for activities included in an extensive list (MAPC Regulation II, Rule 200, section 303.3(c)) need not be included in applications though the activities themselves must be listed in the application. The EPA proposed that Maricopa be required to submit a demonstration that the activities are truly insignificant and not likely to be subject to an applicable requirement. Alternately, EPA proposed that Maricopa restrict the exemptions to activities that are less than County-established emission levels and that are not likely to be subject to an applicable requirement. The EPA believes that there are items on Maricopa's list that could emit significant amounts of pollutants and/or that could be subject to non-general applicable requirements. Maricopa County Environmental Services Department was the only commenter that addressed EPA's proposal on Maricopa's insignificant activities provision. Maricopa responded that they agree to provide EPA with a demonstration that the activities are truly insignificant and not likely to be subject to an applicable requirement and also to revise Rule 200 to include emissions and/or operation limits for the activities as necessary. The EPA is requiring, therefore, that for full approval Maricopa must demonstrate that the activities on its list are insignificant. It must revise the list to ensure that nothing on the list will be subject to a unit-specific requirement. In some cases, this may require removing some items from the list completely. Another option is to add emissions cut-offs or size limitations to items on the list to ensure that the listed activities are below any applicability thresholds for applicable requirements.

Several commenters took exception to EPA's proposal that one way to identify insignificant activities is to set emissions limits. The commenters argue that this contradicts both the purpose of establishing insignificant activities and the ''White Paper.'' They contend that establishing an emissions cutoff for insignificant activities would require sources to quantify and document the level of emissions from insignificant activities in an effort to show that they do indeed qualify as insignificant. This emissions quantification, they argue, is exactly what the concept of insignificant activities and the ''White Paper'' discussion of application content intended to avoid. The purpose of the insignificant activities exclusion, they say, is to relieve sources from the obligation to develop and submit detailed information about activities that are not relevant to determining fees or the applicability of CAA requirements. The commenters also cite the ''White Paper'' discussion which says that emissions estimates should not be required when they serve no useful purpose.

While EPA is not requiring that states set an emissions level cutoff to define insignificant activities, the agency maintains that it is acceptable to do so as long as such levels are insignificant compared to the level of emissions from units that are subject to applicable requirements. The EPA also believes that where a state's list of insignificant activities contains activities that may be significant if emitting above a certain level, then imposing an emissions cap on the list will ensure that the activities are truly insignificant. As to the comment that emissions cutoffs defeat the purpose of an exemption, EPA notes that Pima and Pinal Counties chose to define insignificant activities in this way. The EPA's proposal merely expressed the concern that the chosen levels may be too high. As discussed above, EPA now believes the emissions thresholds set by Pima and Pinal to be acceptable in their jurisdictions given the other conditions placed on emissions units to be treated as insignificant in these counties.

2. Excess Emissions

Numerous parties commented on EPA's proposal to require ADEQ to clarify that its excess emissions affirmative defense provision does not apply to part 70 sources. They challenged EPA's authority to assert that part 70 programs may not contain an affirmative defense for excess emissions beyond that provided in section 70.6(g) for emergency situations and cited section 70.6(g)(5) which provides that the emergency affirmative defense ''is in addition to any emergency or upset provision contained in any applicable requirement.'' They contend that ADEQ's excess emissions provision is necessary because part 70 sources will have unavoidable excess emissions for purely technological reasons and not emergencies as described in section 70.6(g). Many sources, they argue, are unable to maintain emissions below applicable emissions limits during startup and shutdown events as well as during malfunctions. They also cite EPA's recognition of this situation in many NSPS regulations which provide that emission limits do not apply during periods of startup, shutdown, and malfunction. The commenters also pointed out that the purpose of title V is not to impose new substantive requirements but to set forth all requirements that apply to a source in a single document. They assert that establishing the emergency provision of section 70.6(g) as the only defense for violations would increase the stringency of EPA's NSPS regulations and Arizona State rules. By prohibiting an affirmative defense that has been in Arizona regulations for many years, they argue, EPA will create new standards for sources. The commenters also referred to EPA's September 22, 1986 proposal to approve the ADEQ excess emissions provision as part of the SIP. They argued that if EPA had finalized its action on this rule then there would be no question as to its applicability to part 70 sources.

The EPA agrees that it is not the purpose of title V to create any new substantive requirements for sources but rather to assure source compliance with federal applicable requirements. The EPA's proposal to not fully approve a provision that would allow sources an affirmative defense to noncompliance with federal applicable requirements is fully consistent with this purpose. The EPA does recognize that there are times when it is technologically infeasible for sources to comply with applicable emissions limits. This rationale was behind the promulgation of the 70.6(g) affirmative defense. Moreover, where EPA, in promulgating individual standards, has found that it is necessary to provide relief from compliance during such periods, it has done so. Several NSPS and recently promulgated NESHAP allow, as commenters noted, that standards apply at all times except periods of startup, shutdown, and malfunction. Similarly, a state could, within a specific source category rule approved into the SIP, provide such relief where appropriate.

The section 70.6(g)(5) provision which recognizes upset provisions ''in addition'' to the § 70.6(g) emergency defense is intended to confirm that startup, shutdown, and malfunction provisions contained in specific federal applicable requirements will continue to have effect once those requirements are incorporated into part 70 permits. Section 70.6(g)(5) does not imply that affirmative defenses may be established beyond those found in the applicable requirements or in § 70.6(g). AAC R18–2–310 (Rule 310) is broader that § 70.6(g), and moreover would provide a defense to noncompliance with federal applicable requirements where the applicable requirement itself requires

compliance. By approving such a provision, EPA would be granting authority to the State to change applicable requirements through title V beyond what § 70.6(g) specifically allows.

The EPA is not increasing the stringency of the Arizona SIP rules by not approving Rule 310 into the State's title V program. Because Rule 310 has never been approved into the SIP, the provisions of Rule 310 have never been part of these federal applicable requirements. Regardless of whether such provisions have existed as a matter of Arizona State law, they have never had legal effect as a matter of federal law. It follows that Arizona's SIP rules will be no more stringent when incorporated into the title V permit. Similarly, because Rule 310 never applied to NSPS and other federal standards, they will be no more stringent after incorporation into the title V permit. As section 70.6(g)(5) confirms, any exemptions or defenses included in these federal requirements will still be available once the requirements are incorporated into the title V permit, along with the emergency defense allowed by § 70.6(g).

As to the comments regarding EPA's 1986 proposed approval of Arizona's excess emissions provision, EPA did not finalize its action on the excess emissions rule and therefore this rule is not part of the SIP and does not affect any federally enforceable applicable requirement. The EPA has informed ADEQ that it would not approve such a broadly applicable rule into the SIP because it is inconsistent with EPA's policy on excess emissions. *See* EPA's ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions'' from Kathleen Bennett dated September 28, 1982 and as revised on February 15, 1983.

The EPA maintains that a fully approvable part 70 program must not provide for an affirmative defense to violations beyond that provided by the section 70.6(g) emergency provision. AAC R18–2–310 is therefore not fully approvable because it is a more broadly applicable provision than the section 70.6(g) emergency defense. Rather than being limited to emergencies, it applies during startup, shutdown, malfunction, and scheduled maintenance. It is also available as a defense to violations of all standards while section 70.6(g) applies only to technology-based standards. For full approval, ADEQ must correct these deficiencies such that its rule is consistent with section 70.6(g) (see II.C.1.a.5 below). During the interim approval period, however, ADEQ may implement its title V program according to the regulations receiving interim approval in today's action, including the AAC R18–2–310 excess emissions affirmative defense provision.

3. Criminal Affirmative Defense/ Material Permit Conditions

The EPA received a number of comments regarding the affirmative defense to criminal prosecution for violation of emission and opacity requirements and the revisions to the regulatory definitions of material permit condition EPA proposed in sections II.B.1.a.9., II.B.1.b.3, II.B.1.c.8, and II.B.1.d.9. of the NPR. ADEQ and a number of industry commenters opposed EPA's proposed revisions. ADEQ's comments explained that the types of permit conditions which EPA had proposed to add to the regulatory definition are already covered by existing statutory provisions. After reviewing these provisions (Arizona Revised Statutes (ARS) §§ 49–464(C), (G), (J), and (U)), EPA defers to the State's interpretation of the statute and is therefore removing the requirements to revise the definition of material permit condition in the State and county regulations. The EPA is, however, finalizing the requirement that ADEQ clarify that a material permit condition may be contained in a permit or permit revision issued by the Control Officer of a county agency as well as by the Director of ADEQ. (See II.C.1.a.6 below.)

One commenter felt that the State regulatory definition of material permit condition was also deficient in that it covers only those emission limits imposed to avoid classification as a major source or modification or to avoid triggering other requirements. Such requirements are commonly referred to as synthetic minor restrictions. While these limits can be federally enforceable, they are not required under the federal CAA in the same way that other emission limits are because they are opted into by the source voluntarily to avoid other requirements. Thus, ADEQ included such limits in the definition of material permit condition to fill a perceived gap. However, as ADEQ pointed out in its comment letter, the criminal violation of emission limits in general is specifically covered by ARS § 49–464(C). ARS § 49–464(G) makes it clear that emissions limit violations are to be addressed under subsection (C). The commenter also argued that R18–2–331(B) incorporates the excess emissions defense which EPA has cited as an interim approval issue. The EPA disagrees with this analysis. This provision does not provide a defense; rather it decreases the available criminal charge from a felony to a misdemeanor in a narrowly proscribed set of circumstances.

4. Public Notice

ADEQ, the Arizona Chamber of Commerce, and the Arizona Mining Association (AMA) disagreed with EPA's proposal to require revision of the Arizona agencies' rules to allow for providing ''notice by other means if necessary to assure adequate notice to the affected public.'' All three parties contend that the public notice provisions in the State and county rules go well beyond the minimum federal requirements and will allow for more than adequate notice to the affected public. AMA also argued that the addition of a vague and indefinite requirement for additional notice could lead to litigation claiming that issued permits are invalid because public notice was inadequate. While EPA recognizes that the State and county notice provisions are quite extensive, there may be certain instances when the agencies must use alternative means not specifically provided for in their rules to reach a particular community or group of people that may be affected by a permitting action. On July 22, 1996, the Office of the Attorney General of Arizona submitted a supplement to the Attorney General's opinion in response to EPA's proposal on this matter. This supplement cites ARS 49–104(B)(3) which gives ADEQ the power to ''utilize any medium of communication, publication and exhibition in disseminating information, advertising, and publicity in any field of its purposes, objectives and duties.'' This, in the Attorney General's opinion, gives ADEQ the power to provide notice by any means as necessary to assure adequate notice to the affected public. The EPA is deferring to the Attorney General's opinion, and is therefore eliminating the interim approval issue regarding the public notice provision (see II.B.1.a.8 of the NPR) identified in the proposed interim approval of ADEQ's program.

Neither the Attorney General's Office, nor the county attorney's offices, submitted a statement citing a provision in State or county law that gives similar broad authority to the counties. Maricopa stated in its comment letter on the proposed interim approval and also in a letter from the County Attorney submitted on August 5, 1996 that its rule was revised in February, 1995 to authorize notice by other means necessary to assure adequate notice. Pinal County revised its rules to add such a provision to its public notice procedures (Pinal County Code of

Regulations (PCR) § 3–1–107(C)(3)) and Pima has also added such a provision to its rules. Pinal submitted its revised rules, including the revised section 3–1–107(C)(3), as a revision to its title V program submittal on August 15, 1995 and therefore EPA is eliminating the interim approval issue for Pinal's program related to public notice (see II.B.1.d.8. of EPA's July 13, 1995 proposal) such that Pinal's public notice procedures are now fully approvable. Maricopa and Pima have not submitted their revised rules as revisions to their title V programs and thus EPA must finalize action on the Maricopa and Pima public notice provisions as proposed (see II.C.1.b.11 and II.C.1.c.6 below). The EPA recognizes, however, that once Maricopa and Pima submit their revised rules for approval under title V, the public notice provisions regarding notice by other means necessary to assure adequate notice will be fully approvable.

5. Public Access to Records

The Arizona Center for Law in the Public Interest (ACLPI) commented that the Arizona State program does not meet the Clean Air Act requirement (§ 7661a(b)(8)) that state permit programs include the authority and procedures to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report. ACLPI argues that ARS § 49–432 allows a source to declare a wide variety of information confidential, and therefore unavailable to the public, upon submittal to the permitting authority. ACLPI argues further that the burden is on the permitting authority to demonstrate in court that the information does not qualify as confidential and that there is no avenue of redress for a citizen if the permitting authority chooses not to contest a claim of confidentiality.

The Attorney General's opinion submitted as part of the State program addresses public access to permit information. The Attorney General states that AAC R18–2–305(A) provides that all permits, including all elements required to be in the permit pursuant to AAC R18–2–306, shall be made available to the public and that no permit may be issued unless the information required by AAC R18–2–306 is present in the permit. The Attorney General goes on to state that the Director of ADEQ has 30 days to determine whether the information satisfies the requirements for trade secret or competitive position pursuant to ARS § 49–432(C)(1) and if the Director decides that the material does not satisfy these requirements, he may direct the Attorney General's office to seek a court order authorizing disclosure. The Attorney General further asserts that the ''burden of proof in a court proceeding is on the party asserting the affirmative of an issue, the claimant. The statute in question shifts the burden of proceeding but does not shift the burden of proof.'' He also states that if the Director disagrees with a permit applicant's assertion of confidentiality, the permit application is incomplete until the disagreement is resolved.

The regulations clarify this interpretation. AAC R18–2–305(B) requires that any notice of confidentiality submitted pursuant to ARS § 49–432(C) must contain sufficient supporting information to allow the Director to evaluate whether such information satisfies the requirements related to trade secrets or how the information, if disclosed, is likely to cause substantial harm to competitive position. AAC R18–2–305(C) further provides that the Director shall make a determination as to whether the information satisfies the requirements for trade secret or competitive position and notify the applicant. Only if the Director agrees that the applicant's notice satisfies the statutory requirements will the Director attach a notice to the applicant's file that certain information is confidential.

The EPA defers to the opinion of the Attorney General that Arizona's confidentiality provisions will not interfere with the public's access to information intended to be public under title V. If EPA finds, however, that Arizona is routinely withholding information that EPA would release to the public under federal confidentiality provisions, EPA will revisit this portion of the program approval. The EPA also notes that AAC R18–2–304(F) requires a source that is applying for a title V permit and has submitted information under a claim of confidentiality to submit a copy of that information directly to EPA. The release of this information to the public by EPA would be governed by federal confidentiality provisions under § 114(c) of the Act.

6. Exemption of Agricultural Activities

ACLPI commented that the Arizona program exempts from permitting ''agricultural vehicles or agricultural equipment used in normal farm operations'' (ARS § 49–426.01) and that title V does not allow for such an exemption. ACLPI further commented that ADEQ's regulatory definition of ''agricultural equipment used in normal farm operations'' as not including equipment that would require a title V permit could be readily challenged by farm interests as not reflecting the plain language of the statute.

The Attorney General's Opinion submitted as part of ADEQ's title V program states that in granting ''agricultural equipment used in normal farm operations'' an exemption from the permitting requirement, the ''legislature sought in no way to exempt any major sources.'' The opinion goes on to state that AAC R18–2–302(C)(3) clarifies this point by providing that ''agricultural equipment used in normal farm operations'' does not include equipment that requires a permit under title V or is subject to a standard under 40 CFR parts 60 or 61. The EPA defers to the opinion of the Attorney General regarding this issue. However, if, as ACLPI suggests, a successful legal challenge to the regulation occurs, EPA will revisit this portion of the program approval.

7. Deadline for Permit Applications

ACLPI commented that ADEQ's rules do not require all sources to submit applications within 12 months of EPA approval of the State's program. ACLPI references AAC R18–2–303(E) which provides that permit applications that were determined to be complete prior to the effective date of ADEQ's rules shall be deemed complete for title V purposes and that the Director shall include a compliance schedule in the source's permit for submitting a title V application according to the newly effective rules. ACLPI argues that because there is no time limit on the compliance schedule it could go beyond the title V statutory requirement. ACLPI also commented that there is no deadline for Class II sources (non-title V) to submit permit applications other than 180 days from a written request from the Director.

AAC R18–2–303(E) allows that permits issued to sources whose applications were deemed complete prior to the effective date of ADEQ's rules shall contain a schedule of compliance for submitting an application to address the additional elements that were not included in the original application. The EPA considers this a reasonable approach since sources that submitted applications prior to the rule's effective date prepared the application pursuant to ADEQ's permit application requirements in effect before the new rules were adopted. AAC R18–2–303(B) contains a schedule by which existing sources requiring a Class I permit (title V permit) must submit permit applications. The last date that any source requiring a Class I permit

could submit its complete application was May 1, 1995, well in advance of EPA's statutory deadline. The EPA considers AAC R18–2–303(B) to be the permit application deadline for all Class I sources, regardless of whether that source had submitted an application prior to the effective date of the ADEQ rules.

Regarding the application deadline for Class II operating permits, as these are state-only enforceable permits and not title V permits, they need not meet the requirements of title V.

The EPA's NPR did identify a deficiency with the application deadline as applied to certain existing sources that are not Class I sources during the initial phase of the program but that later become Class I sources after obtaining Class II permits. The EPA's proposal included a requirement that ADEQ revise its regulation to include an application deadline (12 months from becoming subject) for existing sources that become Class I sources after initial permit issuance is complete. One example is a source with a Class II permit that removes operational limits such that it is no longer nonmajor. ADEQ's regulation contains a specific schedule for existing Class I sources to submit permit applications and does not contain a general requirement that all Class I sources submit applications within one year of becoming subject to Class I permit requirements. ADEQ argued in its comment letter that any existing source that makes a facility change or seeks to remove limits on its potential to emit such that it qualifies for a Class I permit is required to obtain a significant revision to its existing permit, or under AAC R18–2–302, if not previously regulated, a new Class I permit. The EPA agrees that the regulation requires a significant permit revision or new Class I permit prior to making the change in such cases but significant permit revisions normally address only the portion of the source and permit that is being modified and for any source obtaining its initial Class I permit, the entire permit must be subject to the full Class I permit issuance procedures including public comment and EPA review. ADEQ's regulation does not clearly provide that this would occur in the instances discussed above. The EPA has, therefore, finalized the interim approval identifying this as a deficiency that must be corrected but has clarified that the rule must be revised to ensure that an entire source is issued a permit under the Class I permitting procedures (see II.C.1.a.2 below).

The EPA also proposed requiring revisions to the county regulations to clarify that all existing title V sources must submit title V permit applications within 12 months of EPA's approval of the Arizona program and all sources that become subject after the program is approved must apply within 12 months of becoming a title V source. Maricopa and Pinal counties submitted comments that they intend to revise the rules accordingly. No parties commented on this proposed requirement for Pima. The EPA is therefore finalizing its action regarding the application deadline issue as proposed for Maricopa, Pima, and Pinal counties (see II.C.1.b.5, II.C.1.c.2, and II.C.1.d.5 below).

8. Conditional Orders

ACLPI commented that it believes Arizona's conditional order provisions are inconsistent with title V. ADEQ has authority under ARS § 49–437 through § 49–441 to grant a conditional order that allows a source to vary from any provision of ARS Title 49, Chapter 3, Article 2, any rule adopted pursuant to Article 2, or any requirement of a permit issued pursuant to Article 2. The county agencies have similar authority under ARS § 49–491 through § 49–495. In the NPR, EPA stated that it considers such conditional order provisions as wholly external to the program submitted for approval under part 70. In that proposal, EPA also described how the State and county regulations limit the applicability of the conditional order provisions. ADEQ provides that conditional orders may only apply to non-federally enforceable conditions of a permit and that issuance of a conditional order may not constitute a violation of the Act. The county regulations all provide that conditional orders may not be granted to part 70 sources. (Please see the July 13, 1995 NPR for more detail.) In consideration of the regulatory limitations placed on the issuance of conditional orders and the fact that EPA considers the statutory provisions to be external to the title V program, EPA believes it does have authority to approve Arizona's program without further regard to the conditional order provisions than was expressed in the NPR.

The EPA did propose that Pinal modify its conditional order provisions in PCR § 3–4–420 to provide that a conditional order may not be granted to vary from the requirement to obtain a title V permit. Pinal submitted a comment that it acknowledges the need for this correction. The EPA is finalizing this interim approval issue as proposed (see II.C.1.d.8 below).

9. Permit Renewal Provisions

The EPA proposed that the State and counties revise their regulations, in accordance with § 70.4(b)(10), to include a provision that a source's permit not expire until a renewed permit is issued or denied or, alternately, provide that the terms and conditions of the source's existing permit remain in effect until the permit renewal action is final. ADEQ informed EPA in its comment letter that ARS § 41–1064 provides that an existing permit does not expire until the issuing agency has acted on the application for renewal. The EPA agrees that this statutory provision satisfies the requirement of § 70.4(b)(10) for all the Arizona agencies and has eliminated the proposed interim approval issues regarding permit renewal accordingly (see II.B.1.a.7, II.B.1.b.8, II.B.1.c.6, and II.B.1.d.7 of the NPR). The EPA recognizes in this final interim approval action that Pinal County has clarified in its revised title V regulation under section 3–1–089 that any source relying on a timely and complete application as authority to operate after expiration of a permit must comply with the terms of the expired permit.

10. Fines for Fee and Filing Violations

As discussed in II.B.1.a.10, II.B.1.b.4, II.B.1.c.9, and II.B.1.d.10 of the NPR, EPA believed that ADEQ and the counties needed to revise their regulations to provide for adequate criminal penalties for knowing violations of fee and filing requirements. This proposal was based on EPA's evaluation of Arizona's statute, specifically ARS § 49–464(L)(3) and § 49–514(L)(3), which provide for criminal enforcement of fee and filing requirements due to criminal negligence only, which carries lower penalties than knowing violations.

ADEQ's comment stated that the ''criminal negligence'' standard covers knowing violations and that penalties associated with such violations are $20,000 maximum for each violation. The Arizona Attorney General's Office submitted a clarifying statement on July 22, 1996 citing ARS § 13–202(C) as providing that if ''criminal negligence suffices to establish an element of an offense, that element also is established if a person acts intentionally, knowingly or recklessly * * *'' The statement went on to say that ARS § 49–464(L)(3), therefore, already imposes criminal fines for knowing violations of fee or filing requirements and that the fine imposed may be up to $20,000 per violation for an enterprise (see ARS § 13–803). Because the penalty

applicable to individuals is lower, and not adequate for title V purposes, it is important to establish that all permits are issued to enterprises. ARS § 13–105(12) defines an enterprise to include any corporation, association, labor union or other legal entity. The July 22, 1996 Attorney General's statement assured that air permits are issued only to enterprises because AAC § R18–2–304(B) provides that all air permits be issued only to businesses. Given that ARS § 49–480(B) requires that county permitting procedures be identical to ADEQ title V permitting procedures, EPA assumes that county title V permits may be issued only to businesses. The EPA is deferring to the Attorney General's interpretation of the relevant Arizona statutory and regulatory provisions as assurance that the State and county agencies have adequate enforcement authority for violations of fee and filing requirements and is therefore eliminating the interim approval issues regarding such authority as proposed in the NPR.

11. General Permit Public Notice Procedures

The EPA proposed that ADEQ and the counties revise their general permit public notice provisions to ensure that they contain all of the part 70 public notice requirements. Article 5 [general permit requirements] of ADEQ's rule provides that ''unless otherwise stated, the provisions of Article 3 [individual permit requirements] shall apply to general permits.'' The EPA is concerned, however, that because Article 5 contains specific public notice provisions and these provisions state that ''this section applies to issuance, revision or renewal of a general permit,'' that these would supersede the public notice provisions of Article 3. The Article 5 provisions do not contain all of the public notice requirements of part 70. The Attorney General's July 19, 1996 addendum clarified that in his opinion all public notice and hearing provisions contained in Article 3 of Regulation 18 of Chapter 2 of the AAC apply to general permits issued pursuant to Article 5. The EPA is deferring to the Attorney General's opinion and is therefore eliminating the interim approval issue for ADEQ as proposed in II.B.1.a.11 of its July 13, 1995 NPR.

Pinal County commented that following the County's regulatory revisions of February 22, 1995, PCR § 3–5–500, which contained public notice procedures for the issuance of general permits, has been repealed. The County rules, which were submitted as a title V program revision on August 15, 1995, no longer provide for local issuance of general permits. The EPA has eliminated the interim approval issue related to public notice for general permit issuance as proposed in II.B.1.d.12 of the July 13, 1995 NPR.

Maricopa and Pima provisions for general permit public notice are the same as the provisions in ADEQ's regulations. Because ARS § 49–480(B) requires county permitting procedures to be identical to procedures used by ADEQ, EPA assumes that the counties will interpret their regulations in the same way as the Attorney General has interpreted ADEQ's general permit public notice provisions. The EPA is therefore eliminating the interim approval issues for Maricopa and Pima as proposed in II.B.1.b.15 and II.B.1.c.10 of the NPR.

12. Title I Modification

In the NPR, EPA discussed its position that the definition of ''title I modification'' is best interpreted as not including changes reviewed under minor NSR programs or changes that trigger the application of a pre-1990 NESHAP requirement. The EPA stated that it considers the definitions of ''title I modification'' in the ADEQ, Maricopa, and Pinal programs, which are consistent with this interpretation, to be fully consistent with part 70. The EPA also found Pima's interpretation of ''title I modification'', which included minor source preconstruction review changes, to be consistent with part 70 since nothing in part 70 bars a state from considering minor NSR to be a title I modification.

Several commenters stated that they agree with EPA's interpretation that ''title I modification'' does not include minor NSR. The commenters also objected to EPA's approval of the Pima County interpretation of ''title I modification'' on the grounds that it is inconsistent with EPA's interpretation and also because it is contrary to Arizona State law which requires that county agencies have identical title V permit issuance procedures to ADEQ. On August 14, 1995, Pima County submitted a letter to EPA dated August 11, 1995, in which Pima's Director, David Esposito, informs EPA that in order to conform with these requirements of state law, Pima now interprets ''title I modification'' *not* to include changes reviewed under a minor source preconstruction review program, consistent with ADEQ's interpretation. The EPA recognizes this revised interpretation as the Pima County definition of ''title I modification'' being acted on today and finds that it is fully consistent with part 70.

Pinal County also submitted a comment suggesting a clarification of EPA's statement in the proposal that Pinal does not interpret ''title I modification'' to include changes reviewed under a minor source preconstruction review program. Pinal believes it is more accurate to state that: ''At least to the extent that a change does not trigger any additional applicable requirements, and merely requires *new* monitoring and recordkeeping requirements rather than modification of existing provisions, Pinal does not interpret 'title I modification' to include changes eligible for approval as 'off-permit' revisions under § 3–2–180 or minor permit revisions under § 3–2–190.'' Pinal went on to state that in general, changes at an existing source, including the addition of new emissions units, that do not involve ''significant'' increases in emission levels and do not trigger or violate applicable requirements may be processed as an ''off-permit'' revision or minor permit revision.

13. Applicability of the Pinal County Program

In the NPR, EPA indicated that in addition to major sources, affected sources, and solid waste incinerators, Pinal requires nonmajor sources subject to a standard under section 111 or section 112 to obtain a title V permit. Pinal County submitted a comment that while this statement accurately reflects the program as originally submitted on November 15, 1993 and amended on August 18, 1994, that on February 22, 1995, the County adopted revised rules that allow nonmajor sources regulated under sections 111 or 112 to defer or be exempted from the title V permit requirement to the extent allowed by the Administrator. See PCR § 3–1–040(B)(1)(b) and (c). Pinal submitted these revised regulations on August 15, 1995. The approach taken in Pinal's revised program is clearly consistent with part 70, represents the norm among State part 70 programs, and so would not have presented an issue at proposal had it been a feature of the originally submitted program. The EPA is therefore finalizing its interim approval of Pinal's program with this understanding of the applicability of the program.

This change in the applicability of Pinal's program affects EPA's approval under section 112(l) of Pinal's program for accepting delegation of section 112 standards as promulgated. The EPA stated in the NPR that requirements for approval under 40 CFR 70.4(b) encompass the section 112(l)(5)

requirements for approval of a program for delegation of section 112 standards. Because Pinal's original program submittal included all sources subject to section 112 standards in the universe of sources subject to its title V permitting requirements, EPA's proposed approval of Pinal's program under section 112(l) extended to section 112 standards as applicable to all sources. In cases where a permit program has chosen to defer or exempt certain sources subject to section 112 requirements from the title V permitting requirement as allowed by EPA (e.g., nonmajor sources), approval under section 112(l) of the program for delegation extends to section 112 standards as applicable to only those sources that will receive title V permits. Pinal's program no longer applies to all sources subject to section 112 standards. On August 23, 1995, however, ADEQ submitted a separate request on behalf of Pinal for approval under section 112(l) of Pinal's program for seeking delegation of section 112 standards even insofar as they extend to sources that are deferred or exempted from the title V permit requirement under the Pinal program. (See letter from Donald Gabrielson, Pinal County Air Pollution Control Officer, to David Howekamp, Director, Air and Toxics Division, EPA Region IX, dated June 8, 1995.) Pinal refers to this request in its comment letter. Pinal's request for approval under section 112(l) references the information contained in Pinal's original title V program submittal as a demonstration that Pinal meets the criteria under section 112(l)(5) and section 63.91 for approval of a delegation program. The EPA is therefore finalizing its approval under section 112(l) of Pinal's program for delegation of section 112 standards as they apply to all sources. See II.C.2 below.

14. Major Source Definition in Pinal Program

In response to EPA's proposed interim approval issue regarding inclusion of HAP fugitive emissions in determining major source status (see II.B.1.d.2 of the NPR), Pinal commented that it has revised its definition of ''major source'' in PCR § 1–3–140(79)(b) accordingly. This revision was included in the revised Pinal program submitted on August 15, 1995. The EPA believes that this provision requires further revision, however, to clarify that fugitive emissions must be included in determining whether the source is major for purposes of both the 10 ton per year and 25 ton per year HAP major source thresholds. Currently, the phrase ''including any fugitive emissions of any such pollutants'' modifies only the 25 ton per year threshold. The EPA is modifying the interim approval issue to reflect this necessary clarification. See II.C.1.d.2 below.

The EPA's NPR also required Pinal to revise its ''major source'' definition to provide that fugitive emissions shall not be considered in determining whether it is a major source for purposes of section 302(j) of the Act unless the source belongs to one of the categories of sources listed in section 70.2 under the definition of ''Major source,'' paragraph 2, items (i) to (xxvii). Pinal commented that its revised program submittal addresses this issue. Pinal revised PCR § 1–3–140(79)(c) to include a provision for defining when fugitive emissions must be included in determining a sources potential emissions for purposes of title V applicability. This provision includes the list of categories as discussed above except for the final item on the list, namely ''all other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category.'' Instead, Pinal's definition of major source states that fugitive emissions shall be considered in determining whether a source is major for purposes of § 302(j) of the Act if the source is regulated by a standard promulgated as of August 7, 1980 under section 111 or section 112 of the Act or if a section 111 or section 112 standard expressly requires inclusion of fugitive emissions in determining major source status (PCR § 1–3–140(79)(c)(ii),(iii), and (iv)). This definition is not consistent with the current section 70.2 definition of ''major source'' and therefore is not fully approvable.

In today's final interim approval action on the Pinal County program, EPA is requiring that for full approval Pinal must revise its definition of major source to provide that fugitive emissions must be included in determining if a source is major for purposes of section 302(j) of the Act if that source belongs to a source category regulated by a standard promulgated under section 111 or section 112 of the Act, but only with respect to those pollutants that have been regulated for that category. See II.C.1.d.3 below. The EPA notes that it has proposed revisions to the major source definition with regard to the inclusion of fugitives in determining major source status. (See 59 FR 44527, August 29, 1994 and 60 FR 45565, August 31, 1995.) The EPA recognizes that Pinal may be required to revise its major source definition differently than described above should EPA finalize its proposed revisions to the major source definition prior to the date that Pinal must submit its revised program submittal.

C. Final Action

1. Title V Operating Permits Program

The EPA is promulgating interim approval of the operating permits program submitted by the Arizona Department of Environmental Quality on behalf of itself, the Maricopa County Environmental Services Department, the Pima County Department of Environmental Quality, and the Pinal County Air Quality Control District on November 15, 1993 as supplemented by additional materials as referenced in II.A and II.B of this document. The EPA is also promulgating interim approval of the portions of the revised Pinal County operating permits program submitted on August 15, 1995 that address the program deficiencies and other issues discussed in EPA's July 13, 1995 proposed interim approval. These provisions include Sections 1–3–140(79)(b) and 1–3–140(79)(c) of Article 3 of Chapter 1; Sections 3–1–040(B)(1), 3–1–089(C), and 3–1–107(C)(3) of Article 1 of Chapter 3; and Section 3–5–500 of Article 5 of Chapter 3 of the Pinal County Code of Regulations as adopted or revised on February 22, 1995. The remainder of the Pinal County revised program is addressed by the direct final action in section III of this document.

As discussed in II.A.2 of the NPR, this interim approval does not apply to the State and county operating permit programs for non-part 70 sources or to State and county preconstruction review programs. This interim approval applies only to that part of the State and county permit programs that provide for the issuance of Class I operating permits (in ADEQ), Title V operating permits (in Maricopa and Pima), and Class A operating permits (in Pinal).

This interim approval, which may not be renewed, extends until November 30, 1998. During this interim approval period, ADEQ, Maricopa, Pima, and Pinal are protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in Arizona. 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 the State or county agencies fail to submit a complete corrective program

for full approval by May 30, 1998, EPA will start an 18-month clock for mandatory sanctions. If the State or counties 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 the State or counties have corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State or counties, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that the State or counties had come into compliance. In any case, if, six months after application of the first sanction, the State or counties still have not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the ADEQ, Maricopa, Pima or Pinal complete corrective program, 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 the State or county agency 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 the State or county agency, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State or county agency has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State or counties have 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 the State or counties have not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the Arizona State or county agency program by the expiration of this interim approval, EPA must promulgate, administer and enforce a Federal permits program for the State or counties upon interim approval expiration.

Areas in which the Arizona program is deficient and requires corrective action prior to full approval are as follows:

a. Arizona Department of Environmental Quality. ADEQ must make the following changes, or changes that have the same effect, to receive full approval:

(1) Revise AAC R18–2–101(61)(b) to clarify that fugitive emissions of hazardous air pollutants must be considered in determining whether the source is major for purposes of both the 10 ton per year and 25 ton per year major source thresholds. The phrase ''including any major source of fugitive emissions'' in the current rule modifies only the 25 ton per year threshold. This phrase could also imply that fugitives are included in the potential to emit determination only if the source emits major amounts of fugitive emissions. The EPA expects, however, that ADEQ will implement this provision consistent with the EPA policy that all fugitive emissions of hazardous air pollutants at a source must be considered in determining whether the source is major for purposes of section 112 of the CAA.

(2) Revise AAC R18 to clarify that, when an existing source obtains a significant permit revision to revise its permit from a Class II permit to a Class I permit, the entire permit, and not just the portion being revised, must be issued in accordance with part 70 permit application, content, and issuance requirements, including requirements for public, affected state, and EPA review.

(3) Section 70.6(a)(8) requires that title V permits contain a provision that ''no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.'' AAC R18–2–306(A)(10) includes this exact provision but also includes a sentence that negates this provision. ADEQ must either delete the negating sentence:

> ''This provision shall not apply to emissions trading between sources as provided in the applicable implementation plan.''

or revise this sentence as follows:

> ''This provision shall not apply to emissions trading between sources [as provided] if such trading is prohibited in the applicable implementation plan.''

(§ 70.6(a)(8))

(4) Section 70.4(b)(12) provides that sources are allowed to make changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit. Specifically, section 70.4(b)(12)(iii) provides that if a permit applicant requests it, the permitting authority shall issue a permit 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. AAC R18–2–306(A)(14) provides for such permit conditions but does not restrict the allowable changes to those that are not modifications under title I of the Act and those that do not exceed the emissions allowable under the permit. ADEQ must revise AAC R18–2–306(A)(14) to clarify that changes made under this provision may not be modifications under any provision of title I of the Act and may not exceed emissions allowable under the permit.

(5) Revise AAC R18–2–310 to be consistent with the section 70.6(g) provision for an emergency affirmative defense. Part 70 programs may only provide for an affirmative defense to actions brought for noncompliance with technology-based emission limits when such noncompliance is due to an emergency situation.

(6) Revise AAC R18–2–331(A)(1) to provide under the definition of ''material permit condition'' that ''the condition is in a permit or permit revision issued by the Director or the Control Officer after the effective date of this section.''

b. Maricopa County Environmental Services Department. Maricopa must make the following changes, or changes that have the same effect, to receive full approval:

(1) Delete the following language from MAPC Regulation I, Rule 100, section 224:

> ''Properties shall not be considered contiguous if they are connected only by property upon which is located equipment utilized solely in transmission of electrical energy.''

This language, which is part of the definition of a stationary source, is not consistent with the stationary source definition in section 70.2.

(2) Revise MAPC Regulation I, Rule 100, section 251.2 to clarify that fugitive emissions of hazardous air pollutants must be considered in determining whether the source is major for purposes of both the 10 ton per year and 25 ton per year major source thresholds. The phrase ''including any major source of fugitive emissions'' in the submitted § 251.2 modifies only the 25 ton per year threshold. This phrase could also imply that fugitives are included in the potential to emit determination only if

the source emits major amounts of fugitive emissions. The EPA expects, however, that Maricopa will implement this provision consistent with the EPA policy that all fugitive emissions of hazardous air pollutants at a source must be considered in determining whether the source is major for purposes of section 112 of the CAA.

(3) Revise MAPC Regulation I, Rule 100, section 505 to clarify that for Title V sources, records of all required monitoring data and support information must be retained for a period of five years, as provided in Regulation II, Rule 210, section 302.1(d)(2). (§ 70.6(a)(3)(ii)(B))

(4) Revise MAPC Regulation I, Rule 100, section 506 to clarify that for Title V sources, all permits, including all elements of permit content specified in Rule 210, section 302, shall be available to the public, as provided in Regulation II, Rule 200, section 411.1. (§ 70.4(b)(3)(viii))

(5) Revise MAPC Regulation II, Rule 200, section 312.2 to define when sources become ''subject to the requirements of Title V.'' A source becomes subject to the requirements of title V from the effective date of EPA's approval of the County's program when the source meets the applicability requirements as provided in section 302 of Rule 200. In addition, revise section 312.5 to require that existing sources that do not hold a valid installation or operating permit must submit an application within 12 months of becoming subject to the requirements of title V.

(6) Provide a demonstration that the activities listed in MAPC Regulation II, Rule 200, Section 303.3(c) are insignificant. Remove from the list any activities that are subject to a unit-specific applicable requirement. Another option is to add emissions cut-offs or size limitations to ensure that the listed activities are below any applicability thresholds for applicable requirements. (§ 70.5(c), § 70.4(b)(2))

(7) For the reason explained above in II.C.1.a.(3), revise MAPC Regulation II, Rule 210, Section 302.1(j) by either deleting the following sentence:

> ''This provision shall not apply to emissions trading between sources as provided in the applicable implementation plan.''

or by revising this sentence as follows:

> ''This provision shall not apply to emissions trading between sources [as provided] if such trading is prohibited in the applicable implementation plan.''

(§ 70.6(a)(8))

(8) For the reason explained above in II.C.1.a.(4), revise MAPC Regulation II, Rule 210, Section 302.1(n) to clarify that changes made under this provision may not be modifications under any provision of title I of the Act and may not exceed emissions allowable under the permit. In addition, revise this provision to require the notice required by sections 403.4 and 403.5 to also describe how the increases and decreases in emissions will comply with the terms and conditions of the permit. (§ 70.4(b)(12))

(9) Delete the provision of MAPC Regulation II, Rule 210, section 404.1(e) that provides for equipment removal that does not result in an increase in emissions to be processed as an administrative permit amendment. Equipment removal, even if it does not result in an increase in emissions, is not similar to the types of changes that EPA has included in the part 70 definition of ''administrative permit amendment.'' In some cases removal of equipment, such as monitoring equipment, will require processing as a significant permit revision. In other situations removal of equipment may qualify for processing as a minor permit revision or possibly for treatment under the operational flexibility provisions. (§ 70.7(d), § 70.7(e)(4))

(10) Delete the following language from the criteria for minor permit revisions in MAPC Regulation I, Rule 210, section 405.1(c):

> '' * * * other than a determination of RACT pursuant to Rule 241, Section 302 of these rules, * * *''

This language is included in the rule as an exception to the prohibition against allowing case-by-case determinations to be processed as minor permit revisions. The definition of RACT in section 272 of Rule 100 states that ''RACT for a particular facility, other than a facility subject to Regulation III, is determined on a case-by-case basis * * *'' Rule 241 is not in Regulation III, so RACT determinations made pursuant to this rule are done so on a case-by-case basis. Excepting RACT determinations from the prohibition against processing case-by-case determinations through the minor permit revision process violates the requirement of section 70.7(e)(2)(i)(A)(3).

(11) Revise Regulation II, Rule 210, Section 408 to include a provision for giving public notice ''by other means if necessary to assure adequate notice to the affected public.'' (§ 70.7(h)(1))

c. *Pima County Department of Environmental Quality.* Pima must make the following changes, or changes that have the same effect, to receive full approval:

(1) Revise the definition of major source in PCC § 17.04.340(133)(b)(i) to clarify that fugitive emissions of hazardous air pollutants must be considered in determining whether the source is major for purposes of both the 10 ton per year and 25 ton per year major source thresholds. The current definition appears to require inclusion of fugitive emissions only when determining applicability according to the 10 ton per year major source threshold.

(2) Revise PCC § 17.12.150(B) and § 17.12.150(G)(1) to clarify when a source becomes subject to obtaining title V permits. A source becomes subject to obtaining a title V permit from the effective date of EPA's approval of the County's program when the source meets the applicability requirements as provided in section 17.12.140(B)(1).

(3) Revise PCC § 17.12.160(E)(7) to provide that only emissions units that are not subject to unit-specific applicable requirements may qualify for treatment as insignificant emissions units.

(4) For the same reason discussed above in II.C.1.a.(3), revise PCC § 17.12.180(A)(10) by either deleting the following sentence:

> ''This provision shall not apply to emissions trading between sources as provided in the applicable implementation plan.''

or by revising this sentence as follows:

> ''This provision shall not apply to emissions trading between sources [as provided] if such trading is prohibited in the applicable implementation plan.''

(§ 70.6(a)(8))

(5) For the same reason discussed above in II.C.1.a.(4), revise PCC § 17.12.180(A)(14) to clarify that changes made under this provision may not be modifications under any provision of title I of the Act and may not exceed emissions allowable under the permit. (§ 70.4(b)(12))

(6) Revise PCC § 17.12.340 to include a provision for giving public notice ''by other means if necessary to assure adequate notice to the affected public.'' (§ 70.7(h)(1))

d. Pinal County Air Quality Control District. Pinal must make the following changes, or changes that have the same effect, to receive full approval:

(1) Revise PCR § 1–3–140(79)(b)(i) to clarify that fugitive emissions of hazardous air pollutants must be considered in determining whether the source is major for purposes of both the 10 ton per year and 25 ton per year HAP major source thresholds. The phrase ''including any fugitive emissions of any such pollutants'' in the current rule

modifies only the 25 ton per year threshold. The EPA expects, however, that Pinal will implement this provision consistent with the EPA policy that all fugitive emissions of hazardous air pollutants at a source must be considered in determining whether the source is major for purposes of section 112 of the CAA.

(2) Revise PCR § 1–3–140(79)(c) to delete sections 79(c)(ii), (iii), and (iv) and to add the following to the list of sources that must include fugitive emissions when determining major source status as defined in section 302(j) of the Act:

''The source belongs to a category regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category.''

(3) Revise PCR § 3–1–040(C)(1) to require that the motor vehicles, agricultural vehicles, and fuel burning equipment that are exempt from permitting shall not be exempt if they are subject to any applicable requirements. (70.5(c))

(4) Revise PCR § 3–1–045(F)(1) to require sources requiring Class A permits to submit a permit application no later than 12 months after the date the Administrator approves the District program. Revise PCR § 3–1–050(C) to include an application deadline for existing sources that become subject to obtaining a Class A permit after the initial phase-in of the program. One example is a synthetic minor source that is not initially required to obtain a Class A permit but later removes federally enforceable limits on its potential emissions such that it becomes a major source, but is not required to go through the preconstruction review process. This application deadline must be 12 months from when the source becomes subject to the program (meets Class A permit applicability criteria). (§ 70.5(a)(1)(i))

(5) For the reason discussed above in II.C.1.a.(3), revise PCR § 3–1–081(A)(10) by either deleting the following sentence:

''This provision shall not apply to emissions trading between sources as provided in the applicable implementation plan.''

or by revising this sentence as follows:

''This provision shall not apply to emissions trading between sources [as provided] if such trading is prohibited in the applicable implementation plan.''

(§ 70.6(a)(8))

(6) For the reason discussed above in II.C.1.a.(4), revise PCR § 3–1–081(A)(14) to clarify that changes made under this provision may not be modifications under any provision of title I of the Act and may not exceed emissions allowable under the permit. In addition, revise this provision to require that the permit terms and conditions shall provide for notice that conforms to section 3–2–180(D) and (E) and that describes how the increases and decreases in emissions will comply with the terms and conditions of the permit. (§ 70.4(b)(12))

(7) Revise PCR § 3–4–420 to provide that a conditional order that allows a source to vary from the requirement to obtain a Class A permit may not be granted to any source that meets the Class A permit applicability criteria pursuant to PCR § 3–1–040.

The scope of the part 70 programs approved in this document applies to all part 70 sources (as defined in the approved program) within the State of Arizona, 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).

2. 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 state and county programs contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR section 63.91 of ADEQ's, Maricopa's, Pima's, and Pinal's programs for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated and that apply to sources covered by the part 70 program.

As discussed in the NPR, because Pima's approved program requires all sources (including nonmajor sources) subject to a requirement under section 112 of the Act to obtain a part 70 permit, the proposed approval of Pima's program for delegation extends to section 112 standards as applicable to all sources. ADEQ, Maricopa, and Pinal will not issue part 70 permits to nonmajor sources subject to a section 112 standard (unless such sources are designated by EPA to obtain a permit) but these agencies submitted addenda to their title V programs in which they specifically requested approval under section 112(l) of a program for delegation of unchanged section 112 standards applicable to non-part 70 sources. (See discussion in II.B.2 of the NPR and in II.B.13 of this document.) Therefore, today's proposed approval under section 112(l) of ADEQ's, Maricopa's, and Pinal's program for delegation extends to non-part 70 sources as well as part 70 sources.

III. Direct Final Action on Revised Pinal County Program

A. Analysis of County Submission

ADEQ, on behalf of Pinal County, submitted a revised title V permit program for Pinal County on August 15, 1995. The revised program submittal consisted of a revised County code of regulations adopted by the Pinal County Board of Supervisors on February 22, 1995 and a supplemental County Attorney's legal Opinion. The other program elements submitted on November 15, 1993 and subsequent dates as noted in the proposed interim approval are considered part of this revised program except where the revised regulation or supplemental County Attorney's opinion change or replace those program elements. In some cases, the County revised its regulations to correct deficiencies or address other issues identified by EPA in its July 13, 1995 proposed interim approval. The EPA has discussed such changes in II.B above and taken final action on those program revisions in II.C above. The discussion that follows and the direct final interim approval action being taken today apply to changes to the regulation that are relevant to implementation of the title V operating permits program that were not addressed in the final interim approval action in section II of this document.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing interim approval of the specified portions of the operating permit program submitted by Pinal should adverse or critical comments be filed.

If EPA receives adverse or critical comments, this action will be withdrawn before the effective date by publishing a subsequent document that

will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 30, 1996.

Today's direct final action promulgates approval of specific changes to the Pinal County Code of Regulations adopted on February 22, 1995 that are relevant to implementation and enforcement of the Pinal County title V operating permits program. The specific provisions of Pinal's title V regulations adopted or revised on February 22, 1995 that are addressed by this direct final action are Sections 1–3–140(1a), 140(16a), 140(44), 140(56), 140(58e), 140(59), 140(66), 140(86), 140(89), and 140(146) of Article 3 of Chapter 1; Sections 3–1–042, 045(C), 050(C)(4), 050(G), 080(A), 081(A)(5)(b), 081(A)(6), 100(A), and 109 of Article 1 of Chapter 3; and Articles 5 and 7 of Chapter 3 of the Pinal County Code of Regulations (PCR). These regulations substantially meet the requirements of 40 CFR part 70, §§ 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; § 70.7 for public participation and minor permit modifications; § 70.5 for criteria that define insignificant activities; § 70.5 for complete application forms; and § 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are deficiencies in the program that are outlined under section III.C. below as interim approval issues and further described in the Technical Support Document.

The analysis contained in this document focuses on the specific elements of the revised Pinal title V operating permits program that must be corrected to meet the minimum requirements of part 70. The full program submittal; the Technical Support Document (TSD), which contains a detailed analysis of the submittal; and other relevant materials are available for inspection as part of the public docket (AZ–95–1–OPS). The docket may be viewed during regular business hours at the address listed above.

1. General Permits.

Section 70.6(d) provides that permitting authorities may issue a general permit covering numerous similar sources. General permits must meet all requirements applicable to other part 70 permits and must specify the criteria that sources must meet to be covered under the general permit. Qualifying sources may then apply for coverage under the terms and conditions of the permit. Article 5 of Chapter 3 of the Pinal County regulations contain the provisions pertaining to general permits. Article 5 as submitted on November 15, 1993 provided that the Control Officer of Pinal County could issue a general permit for a class of facilities that had similar operations, similar emissions, and similar applicable requirements. Article 5 as amended by Pinal on February 22, 1995 and submitted to EPA on August 15, 1995 repeals the authority of the Control Officer to issue a general permit. Instead, the regulations provide for the District to administer general permits that are issued by ADEQ. Administration of general permits includes receiving applications from sources in the District that seek authorization to operate under a general permit; issuing, denying, or revoking such authorizations to operate under the permit; and enforcing the terms and conditions of the general permit.

PCR § 3–5–490 contains the requirements for applying for coverage under a general permit. There are several deficiencies in this portion of the rule that must be corrected before Pinal can receive full approval of its revised program. PCR § 3–5–490(C) provides that an existing source that files a timely and complete application seeking coverage under a general permit either as a renewal of authorization under the general permit or as an alternative to renewing an individual part 70 permit may operate within the limitations set forth in its application until the District takes action on the application. This is inconsistent with the requirements of part 70 and with other provisions of Pinal's rules. Section 70.4(b)(10) requires that if a timely and complete application for a permit renewal is submitted but the state has failed to issue or deny the renewal permit before the end of the term of the previous permit then either: (1) The permit shall not expire until the renewal permit has been issued or denied; or (2) All terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied. PCR § 3–1–089 requires that any source relying on a timely and complete application as authority to operate after expiration of the permit shall be legally bound to adhere to and conform to the terms of the expired permit. This provision is consistent with part 70. Pinal must revise PCR § 3–5–490(C) to be consistent with § 70.4(b)(10) and EPA recommends that it be revised to be consistent with PCR § 3–1–089.

Section 490(C) also provides that if an existing source seeking coverage under a general permit as an alternative to renewing an individual permit is denied authorization to do so, that the source must apply for an individual permit within 180 days of being notified to do so but may continue to operate within the limitations of the general permit under which coverage was denied during that 180 day period. This also conflicts with § 70.4(b)(10). Pinal must revise the rule to require that the source must continue to comply with the terms and conditions of its individual source permit. In addition, Pinal must revise section 490(C) to clarify, consistent with § 70.7(d) and § 70.4(b)(10), that notwithstanding the 180 day permit application deadline set by the District in its notification to the source, the source that was denied coverage under the general permit may not operate after the date that its individual permit expires unless it has submitted a timely and complete application to renew that individual permit in accordance with PCR § 3–1–050(C)(2).

PCR § 3–5–550 includes provisions for the Control Officer to revoke a source's authorization to operate under a general permit and require that it obtain an individual source permit. PCR § 3–5–550(C) provides that a source previously authorized to operate under a general permit may operate under the terms of the general permit until the earlier of the date of expiration of the general permit, the date it submits a complete application for an individual permit, or 180 days after receipt of the notice of termination of any general permit. This provision also requires the source to comply with the provisions of PCR § 3–1–089, which requires that any source relying on a timely and complete application as authority to operate after a permit expires must comply with the terms of the expired permit. PCR § 3–5–550(C) therefore contradicts itself. Pinal must revise the rule to clarify that if the Control Officer revokes the source's authorization to operate under a general permit then, if the source submits a timely and complete application for an individual source permit as required by the Control Officer, it may continue to operate under the terms of the general permit until the District issues or denies the individual source permit.

B. Direct Final Interim Approval and Implications

The EPA is promulgating direct final interim approval of the following

provisions of the revised operating permits program submitted by the Arizona Department of Environmental Quality, on behalf of the Pinal County Air Quality Control District, on August 15, 1995: Sections 1–3–140(1a), 140(16a), 140(44), 140(56), 140(58e), 140(59), 140(66), 140(86), 140(89), and 140(146) of Article 3 of Chapter 1; Sections 3–1–042, 045(C), 050(C)(4), 050(G), 080(A), 081(A)(5)(b), 081(A)(6), 100(A), and 109 of Article 1 of Chapter 3; and Articles 5 and 7 of Chapter 3 of the Pinal County Code of Regulations (PCR).

This direct final interim approval does not apply to the County operating permit program for non-part 70 sources or to the County preconstruction review program. This interim approval applies to the regulatory provisions cited above only as they apply to Class A operating permits.

Areas in which Pinal's program is deficient and requires corrective action prior to full approval are as follows. Pinal must correct these deficiencies by November 30, 1998. This is the expiration date of the interim approval granted by EPA to the original program submitted by Pinal on November 15, 1993 as discussed above in II.C.1. The timeframes and conditions of this direct final interim approval action and for EPA oversight and sanctions are the same as discussed above in II.C.1.

Pinal must make the following changes, or changes that have the same effect, to receive full approval:

(1) Revise PCR § 3–5–490(C) to provide that when an existing source that files a timely and complete application seeking coverage under a general permit either as a renewal of authorization under the general permit or as an alternative to renewing an individual part 70 permit, that the source must continue to comply with the terms and conditions of the permit under which it is operating, even if that permit expires, until the District issues or denies the authorization to operate under the general permit.

(2) Revise PCR § 3–5–490(C) to require that if an existing source seeking coverage under a general permit as an alternative to renewing an individual permit is denied authorization to do so, that the source must continue to comply with the terms and conditions of its individual source permit. In addition, Pinal must revise § 3–5–490(C) to clarify that notwithstanding the 180 day permit application deadline set by the District in its notification to the source, the source that was denied coverage under the general permit may not operate after the date that its individual permit expires unless it has submitted a timely and complete application to renew that individual permit in accordance with PCR § 3–1–050(C)(2).

(3) Revise PCR § 3–5–550(C) to clarify that if the Control Officer revokes the source's authorization to operate under a general permit then, if the source submits a timely and complete application for an individual source permit as required by the Control Officer, it may continue to operate under the terms of the general permit until the District issues or denies the individual source permit.

IV. Administrative Requirements

A. Docket

Copies of the State and county submittals and other information relied upon for the final interim approval and direct final interim approval, including public comments on the proposal from 15 different parties, are contained in docket number AZ–95–1–OPS 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 and direct final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. 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.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), 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 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.

D. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

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: October 18, 1996.

John Wise,

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 Arizona in alphabetical order to read as follows:

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

* * * * *

Arizona

(a) *Arizona Department of Environmental Quality:* submitted on November 15, 1993 and amended on March 14, 1994; May 17, 1994; March 20, 1995; May 4, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires November 30, 1998.

(b) *Maricopa County Environmental Services Department:* submitted on November 15, 1993 and amended on

December 15, 1993; January 13, 1994; March 9, 1994; and March 21, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires November 30, 1998.

(c) *Pima County Department of Environmental Quality:* submitted on November 15, 1993 and amended on December 15, 1993; January 27, 1994; April 6, 1994; and April 8, 1994; August 14, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires November 30, 1998.

(d) *Pinal County Air Quality Control District:*

(1) submitted on November 15, 1993 and amended on August 16, 1994; August 15, 1995; July 22, 1996; and August 12, 1996; interim approval effective on November 29, 1996; interim approval expires November 30, 1998.

(2) revisions submitted on August 15, 1995; interim approval effective on December 30, 1996; interim approval expires November 30, 1998.

* * * * *

[FR Doc. 96–27836 Filed 10–29–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 97

[ET Docket No. 94–32; FCC 96–390]

Allocation of Spectrum Below 5 GHz Transferred From Federal Government Use

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission declines to adopt additional service rules or coordination procedures for the amateur service and Data-PCS devices or for the amateur service. The Commission also prohibits airborne use of all unlicensed devices in the 2390–2400 MHz band in order to protect space research conducted at the National Astronomy and Ionospheric Center Observatory (NAIC) at Arecibo, Puerto Rico. In addition, the Commission declines to combine the 2390–2400 MHz and 2400–2483.5 MHz bands for use by both Data-PCS and other unlicensed devices. It reaffirms that as long as the unlicensed device satisfies the technical standards of the band in which it is operating, the device would be permitted to transmit in either band. This action permits immediate use of the 2390–2400 MHz and 2402–2417 MHz bands by the amateur service, Data-PCS devices, and other unlicensed devices under existing rules. Finally the new and enhanced services and uses permitted by this action will create new jobs, foster economic growth, and improve access to communications by industry and the American public.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Sean White (202) 418–2453 and Tom Derenge (202) 418–2451, Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Report and Order,* ET Docket 94–32, FCC 96–390, adopted September 20, 1996, and released October 18, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of the Report and Order

1. By this action, the Commission addresses issues raised in the *First Report and Order and Second Notice of Proposed Rule Making (First R&O and Second NPRM),* 60 FR 13102, March 10, 1995, 10 FCC Rcd 4769 (1995) in this proceeding regarding sharing of the 2390–2400 MHz and 2402–2417 MHz bands by the Amateur Radio Service and unlicensed devices. On February 7, 1995, the Commission adopted the *First R&O and Second NPRM.* In that action, the Commission made the 2390–2400 MHz band available for use by unlicensed Data Personal Communications Services (Data-PCS) devices on a non-interference basis, provided for continued use of the 2402–2417 MHz band by other, non-Data-PCS, Part 15 devices, upgraded the allocation for both of these bands for use by the Amateur Radio Service from secondary to primary, and allocated the 4660–4685 MHz band for use by the Fixed and Mobile Services. Additionally, we extended the existing rules governing Data-PCS at 1910–1920 MHz to the 2390–2400 MHz band and decided that both the amateur service and non-Data-PCS Part 15 operations at 2402–2417 MHz would continue to be governed in accordance with currently applicable technical and operational rules.

2. In the *First R&O and Second NPRM,* we also requested comment on any rule changes that might be necessary for the amateur service and non-Data-PCS Part 15 devices to share the spectrum more efficiently. In addition, we stated that Data-PCS and amateur use of 2390–2400 MHz would generally be compatible and that it was unnecessary to propose any formal standards for sharing between these services in this band. However, we requested comment on whether formal sharing requirements would be needed or whether formal coordination procedures should be developed for amateur/Data-PCS use.

3. We also proposed to prohibit airborne use of all unlicensed devices operating at 2390–2400 MHz in order to protect space research operations at 2380 MHz in the vicinity of the National Astronomy and Ionospheric Center Observatory (NAIC) at Arecibo, Puerto Rico. Noting that we were not proposing similarly to prohibit the terrestrial use of unlicensed devices in the vicinity of the NAIC, we sought comment on whether the proposed ban on airborne use would provide adequate protection to space research operations and, if not, what additional steps we should take to provide greater protection. In addition, we sought comment on whether the 2390–2400 MHz band and the superjacent 2400–2483.5 MHz band, where Part 15 operations are currently authorized, should be combined for use as a single, large Part 15 band.

4. In addition to commenting on these proposals, several commenters requested that we allocate the 2390–2400 MHz and 2402–2417 MHz bands to unlicensed devices on a primary basis. Currently, unlicensed devices have no allocation status, but are permitted to operate on a non-interference basis to other users of the bands.

5. In this *Fourth Report and Order (Fourth R&O)* the Commission declines to adopt additional service rules or coordination procedures for the amateur service and Data-PCS devices or for the amateur service and other Part 15 devices. We find that the existing technical rules governing use of these bands are adequate and that no additional rules are needed. We also prohibit airborne use of all unlicensed devices in the 2390–2400 MHz band in order to protect space research conducted at the NAIC. In addition, we decline to combine the 2390–2400 MHz and 2400–2483.5 MHz bands for use by both Data-PCS and other Part 15 devices. Instead, the item reaffirms that as long as the unlicensed device satisfies the technical standards of the band in which it is operating, the device would be permitted to transmit in either band. Finally, the Commission concludes that this is not the appropriate proceeding to address requests for a primary allocation for unlicensed devices in the 2390–2400 MHz and 2402–2417 MHz bands.