and adding, in its place, ''chloracne,''; and by adding '', and acute and subacute peripheral neuropathy'' immediately following ''tarda''.

§ 3.309 [Amended]

3. In § 3.309, paragraph (e), the listing of diseases is amended by adding ''Acute and subacute peripheral neuropathy'' between ''Non-Hodgkin's lymphoma'' and ''Porphyria cutanea tarda''; by adding ''Prostate cancer'' between ''Porphyria cutanea tarda'' and ''Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)''.

4. Section 3.309, paragraph (e) is further amended by redesignating the Note as ''Note 1:''; and by adding ''Note 2:'' immediately following the last entry in note 1 to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(e) * * *

Note 2: For purposes of this section, the term *acute and subacute peripheral neuropathy* means transient peripheral neuropathy that appears within weeks or months of exposure to an herbicide agent and resolves within two years of the date of onset.

[FR Doc. 96–28683 Filed 11–6–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NY001; FRL–5646–7]

Clean Air Act Final Interim Approval of Operating Permits Program; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating final interim approval of the operating permits program that the State of New York (NY) submitted in accordance with Title V of the Clean Air Act (the Act) and its implementing regulations codified at Part 70 of Title 40 of the Code of Federal Regulations (40 CFR Part 70). This approved interim program allows NY to issue operating permits to all major stationary sources, and to certain other sources, for a period of two years, at which time the interim program must be replaced by a fully approved program.

EFFECTIVE DATE: This interim program will be effective December 9, 1996.

ADDRESSES: Copies of NY's submittal and other supporting information used in developing the final interim approval as well as the Technical Support Document are available for inspection, during normal business hours, at the following location: U.S. Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, NY 10007–1866; Attention: Steven C. Riva.

FOR FURTHER INFORMATION CONTACT: Gerald P. DeGaetano, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, at the above EPA Office, or at telephone number (212) 637–4020.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

The Act and its implementing regulations at 40 CFR Part 70 require that States develop and submit operating permit programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving a complete submittal. The EPA reviews State programs pursuant to Section 502 of the Act and the Part 70 regulations, which together outline the criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of 40 CFR Part 70, EPA may grant the program interim approval for a period of up to two years. If a State does not have an approved program by the end of an interim program, EPA must establish and implement a federal operating permits program for that State.

On July 30, 1996, EPA proposed interim approval of the operating permits program submitted by NY (see 61 FR 39617). In that Federal Register document, EPA indicated that NY was in the process of re-proposing Appendix B of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 201 (Appendix B is entitled, ''Transition Plan Application Schedule''), and that such would be finalized prior to EPA's final interim approval of the NY program. Subsequently, Appendix B was adopted by NY on September 11, 1996, and became effective 30-days from that date, on October 11, 1996.

During the 30-day public comment period that ended on August 29, 1996, two comment letters were received on the aforementioned EPA proposal to grant NY interim program approval. One comment letter supported the State program, and the other letter provided a number of comments and concerns and asked that these be addressed. A response to all of the pertinent comments received is included in Section II.B. of this notice. Based upon EPA's review, none of the comments received alters EPA's decision to approve the NY program. Therefore, in this notice, the EPA is taking final action to promulgate interim approval of the NY Operating Permits Program.

II. Final Action and Implications

A. Analysis of State Submission

On July 30, 1996, the EPA proposed interim approval of NY's Title V Operating Permits Program. The program elements discussed in the proposed notice are unchanged, except for Appendix B of 6 NYCRR Part 201, discussed above. EPA's position remains unchanged, in that the NY program substantially meets the requirements of 40 CFR Part 70.

B. Response to Public Comments

1. Comments From the Society of Plastics Industry, Inc.

In this letter, dated August 27, 1996, the commenter supports NY's efforts to implement an operating permits program. In addition, the commenter requested that EPA finalize its August 1994 and August 1995 proposals (to 40 CFR Part 70), to allow the State to quickly receive final program approval.

Response. In the July 30, 1996 Federal Register Notice, EPA listed eight items that NY must correct in order for EPA to grant full (rather than interim) program approval to the State. Under 5 of these 8 items, it was noted that EPA had proposed revisions to 40 CFR Part 70 on August 29, 1994 and August 31, 1995 which, if such revisions were to be promulgated as proposed, would eliminate these 5 issues from being a barrier to full program approval for NY. That is, NY would not have to revise its regulations for these 5 issues to receive full program approval. However, NY will still be required to revise its regulations with respect to the other 3 issues (refer to Section II.C., below, for additional discussion on this matter).

EPA is required to grant or deny Title V program approval based on current requirements. At present, these requirements are those listed in the 40 CFR Part 70 regulations promulgated on July 21, 1992. Unless and until these regulations are revised, the July 21, 1992 version will be applied to determine a State program's approvability. Also, if future revisions to 40 CFR Part 70 do not address the ''Interim Program Approval'' items noted in EPA's July 30, 1996 Federal Register Notice, then New York State must correct those items as described therein, in order to be granted full program approval.

2. Comments From the Consumer Policy Institute

This letter, dated August 29, 1996, provided a number of comments on

EPA's proposed interim operating permits program approval to NY (this included specific comments to EPA Region 2 on its proposed approval of NY's program, and an attachment with comments that were previously provided to NY during the State's public comment period relative to revisions to regulations codified at 6 NYCRR Parts 200, 201 and 621). In today's Notice, EPA will address each of the comments made by the Consumer Policy Institute in its August 29th submittal that pertains to the subject Title V program. However, a number of other comments in this letter and attachment relate solely to how changes to NY's permitting rules impact the State Implementation Plan (SIP). Approval of the Title V permitting program does not revise any SIP requirements. Therefore, these SIP-related comments will not be addressed in this Notice, but will be deferred until such time as EPA processes the State's rule changes as a SIP revision.

a. *Public Review.* The commenter states that the public never received the permit application forms or the compliance tracking and enforcement program description during the comment period, and that a chart of SIP-applicable requirements (for use by Title V-affected sources to ensure that applications list all SIP-applicable requirements) was still being prepared by NY.

Response. As was noted in the July 30, 1996 Federal Register, which commenced the public comment period, copies of the State's Title V operating permits program submittal and other supporting information are available for inspection during normal business hours at the EPA Region 2 Office and the New York State Department of Environmental Conservation (NYSDEC) Central Office, located in Albany, New York. This available documentation included both the permit application forms, as well as the compliance and enforcement program description. In addition, the July 30th Notice listed two EPA Region 2 representatives that could be contacted for additional information. During the 30-day public comment period, Region 2 personnel did not receive any calls from the public requesting to visit the EPA Office to review this documentation, or requesting that copies be provided.

With respect to the compilation of a chart of SIP-applicable requirements, while the EPA agrees that such a document will be a valuable guide for applicants, preparation of the subject chart is not a criterion of approval for a State Title V program. Therefore, lack of a final SIP chart will not affect EPA's determination on final program approval.

b. *Fee Demonstration.* The commenter states that the purpose of the fee demonstration is to show that adequate resources will be available to carry out the Title V program. However, the NYSDEC (the permitting authority in NY) and, specifically, its Air Division, has lost large numbers of employees. EPA was questioned as to whether the State's fee demonstration identifies the resources for program implementation, and whether fees are being spent where intended, or are being funneled elsewhere. It was requested that State staff that will work on this program be identified by name and technical qualifications.

Response. Based upon the EPA's review of NY's fee demonstration, it has been determined that the State has the authority to collect sufficient fees to implement its Title V program. As noted in the July 30, 1996 Federal Register Notice, NY's fee demonstration shows that the State will collect the equivalent of EPA's ''presumptive minimum'' fee amount. As such, as delineated at 40 CFR § 70.9, a detailed analysis showing staffing and qualifications was not required. EPA has determined that the fees collected will enable NY to adequately implement the operating permits program. This will be certified through EPA's ongoing program audit of permitting activities, and the review by EPA of State-prepared, annual program cost documentation.

c. *Definition of Source.* The commenter states that NY does not define ''source'' as that term is defined in the Act. Instead, the State regulates by 'emission-point,' and this difference between the State regulations and 40 CFR Part 70 would allow sources to avoid Title V permitting via emissions ''capping'' of one or more emission units.

Response. First, it must be noted that NY's definition of source is consistent with that of the Act (see 6 NYCRR Part 201–2(b)(21)). In addition, the rules promulgated at 6 NYCRR Part 201–6 are consistent with the requirements of 40 CFR Part 70, in that all major stationary sources of air pollution will need to apply for and obtain a Title V operating permit. However, major sources may wish to restrict their operations by accepting federally enforceable permit restrictions, so as to escape from the purview of Title V, and may do so by establishing such federally enforceable limits in accordance with the State rules promulgated at 6 NYCRR Part 201–7 (that is, such sources would become ''synthetic'' minor sources). These procedures are acceptable in accordance with the operating permit program requirements delineated at 40 CFR Part 70 and, as such, do not affect EPA's determination to grant NY interim program approval.

d. *Permitting of Dry Cleaners.* The commenter asserts that New York should have made a provision for permitting non-major area source dry cleaners.

Response. With respect to non-major sources regulated under section 112 of the Act after July 21, 1992, 40 CFR Part 70 provides that permitting requirements will be determined at the time that the new standard is promulgated. However, for dry cleaners and numerous other non-major sources regulated under section 112, EPA promulgated regulations deferring the Title V permitting of such sources until December, 1999 (see 61 FR 27785, dated June 3, 1996). Prior to that point in time, EPA will determine whether permanent exemptions to Title V permitting should be established.

e. *Two-Phased Application.* The commenter asserts that use of a two-phased application system by NYSDEC during its 3-year transition period will impact the public's right to review complete applications and participate in enforcement activities. In addition, the commenter states that the plan provides for permit shield protection based only on Phase I submittals.

Response. A two-phased application system, such as the one established by NY, is discussed in EPA's first ''White Paper,'' dated July 10, 1995. This guidance document provides that permitting authorities have considerable flexibility in initially processing the large amount of applications over a 3-year period, and determining application completeness pursuant to 40 CFR § 70.5(c). It further discusses the need to balance the receipt of information to support timely permit issuance versus the workload associated with managing and updating the initially submitted information. The White Paper allows that permitting authorities may implement a two-phased permit application process during the transition period, first providing for submittal of an administratively complete application and followed, at the appropriate time, with a complete application that will ensure issuance of a draft Title V permit. Furthermore, this EPA guidance document states that permitting authorities must award the application shield if the source submits a timely application pursuant to 40 CFR § 70.5(c).

The Phase I application requirement developed by NY for use during its

transition period meets the minimum information submittal requirements delineated at 40 CFR Part 70 and EPA's White Paper. It should be noted, however, that not all Title V-affected sources will need to file a Phase I application. If a source is required, pursuant to NY's transition plan, to apply during the first year after program approval, then only the Phase II application need be submitted. The Phase I application is only to be used by those sources whose permit applications are due subsequent to the first year after program approval.

Finally, it should be noted that an application shield (see 40 CFR §§ 70.5(a)(2) and 70.7(b)) should not be confused with a permit shield (see 40 CFR § 70.6(f)). An application shield provides, in general, that if an affected source submits a timely and complete Title V application, then that source's failure to have a valid permit is not a violation of the operating permits program. A permit shield provides, in general, that a source's compliance with the conditions of its permit constitutes compliance with any applicable requirements as of the date of permit issuance.

f. *Professional Engineers Certification*. The commenter believes that NYSDEC should retain the former requirement that permit application submittals be certified by a licensed professional engineer, in addition to the requirement of certification by a responsible official, to ensure the quality and accuracy of the information submitted.

Response. The requirement for a professional engineer's certification is discretionary on the part of the permitting authority. Lack of such a requirement in a Title V program is not an issue relating to program approval.

g. *Incorporation of ''State-only'' Requirements*. The commenter opposes a provision in 6 NYCRR Part 201–6.6(a)(2), which allows a source to delay incorporating State-only requirements into its Title V permit until the expiration of an existing State permit held by the source, if the State permit contains solely State-only requirements.

Response. This section of NY's rules does not affect the requirement of 40 CFR Part 70 that a Title V operating permit must include all ''applicable requirements'' (State-only requirements are not ''applicable requirements'' and, as such, do not fall under the purview of EPA review of Title V program approvability). Because EPA cannot base its review for approvability of State program submittals on criteria not required by Part 70, this comment will not change EPA's decision to approve the NY program on an interim basis.

h. *Special Treatment Under 201–6.3(c)*. The commenter poses a question as to which sources are being afforded ''special treatment,'' as defined at 6 NYCRR Part 201–6.3(c), during the transition period, and what is the meaning of, and justification for, such treatment. [Specifically, this provision states that the 18-month timeframe for permit issuance does not apply to Title V applications that are afforded special expedited review during the transition period.]

Response. The purpose of this NY State provision is to differentiate between initial permit issuance (i.e., permits issued during the 3-year transition period) and all permits issued thereafter. In accordance with the requirements of Title V, all permits must be issued within 18-months of receipt of a complete application (see 40 CFR § 70.7(a)(2)), with the exception of those permits issued during the transition period. During this transition period, Part 70 provides for initial permit issuance over a 3-year period from the date the program becomes effective, with approximately one third of the total number of permits issued each year (see 40 CFR § 70.4(b)(11)). This reflects the ''special treatment'' that NY is affording sources during the transition period; as such, this State provision conforms to the requirements of Title V and 40 CFR Part 70.

i. *Public Review When NY is an ''Affected State''*. The commenter states that the NYSDEC has not made any plans to notify the affected public when NY receives notice of a permitting action from an adjacent State. The commenter further suggests that, in these situations, NY request that the adjacent State publish a notice of the permitting action in a widely circulated newspaper.

Response. Title V and 40 CFR Part 70 only require that permitting authorities notify other affected States of permitting actions. Although there is no requirement to provide public notification in another State, oftentimes, the public notice for the permitting action being processed in the adjacent State will be circulated over the State boundaries into the ''affected'' State (i.e., newspaper circulation, if that is the method used, usually crosses State lines). It should also be noted that, in accordance with the provisions of 40 CFR 70.7(h)(1), anyone can request to be placed on the mailing list (i.e., a list of ''interested persons'') developed for the operating permits program by the permitting authority, and such a request can be made to any permitting authority. In any case, the public notification and participation procedures implemented under NY's program meet the requirements of Title V.

j. *Exempt and Trivial Activities*. The commenter requested that NYSDEC provide scientific analysis that supports the identification in 6 NYCRR Part 201–3 of exempt and trivial activities. The commenter further notes that these regulations include exemptions entirely new to Part 201, and activities not provided for in EPA's ''White Paper.''

Response. Exempt and trivial activities are allowed for under the Title V program, and are expounded upon in EPA's first White Paper. During its review of the NY program, EPA reviewed the State's list of exempt and trivial activities and determined that the lists comply with the requirements and general intent of the provisions of the Title V program. This list can only be revised by NY through the rulemaking process. With respect to the listing of trivial activities provided in EPA's White Paper, it was noted therein that this was not an all-inclusive, comprehensive list, but a ''starting-point'' that permitting authorities can supplement in their own programs. In addition, there exists a ''gatekeeper'' for these listed activities in NY's rule that precludes any of the activities listed from being considered as exempt or trivial if such activities are subject to an applicable requirement. EPA's review, together with this gatekeeper, are sufficient to determine that the NY program is approvable with respect to this issue.

k. *Insignificant Emission Levels*. The commenter requested that NYSDEC provide scientific analysis that supports the listing of insignificant emission levels at 6 NYCRR Part 201–6.3(d)(7).

Response. The insignificant emission levels established by NY at 6 NYCRR Part 201–6.3(d)(7) conform to National EPA guidance on establishing such levels and, as such, are approvable.

l. *Operational Flexibility*. The commenter states that NYSDEC should, under the operational flexibility provisions of 6 NYCRR Part 201–6.5, prohibit the trading of toxic air pollutants, or trading that would directly effect exposing employees to higher concentrations of a particular pollutant.

Response. Operational flexibility, such as the flexibility delineated under NY's program at 6 NYCRR Parts 201–6.5(f) (3) and (4), is provided for by the Title V program. Specifically, 40 CFR §70.4(b)(12)(iii), which corresponds to NY's regulations at 6 NYCRR Part 201–6.5(f)(4), allows for the trading of any regulated pollutant, as long as no applicable requirements are

contravened. The NY program includes such a gatekeeper. Trading of toxic air pollutants cannot normally be achieved via the provision listed at 6 NYCRR Part 201–6.5(f)(3), because this provision only allows trades to occur if such trades are allowed by the SIP.

m. *Operational Flexibility Protocol.* The commenter requested that NYSDEC drop the provision at 6 NYCRR Part 201–6.5(f)(2), which allows an applicant to propose incorporation of a protocol to evaluate changes for compliance with applicable requirements. Descriptions or definitions relating to such protocols or their approval procedures are not contained in Part 201.

Response. This provision in NY's rule is an additional provision that the State has incorporated into its program. It is not specifically addressed in 40 CFR Part 70, nor is it precluded by those federal regulations. NY would have to set the procedures for approval of such protocols as part of the program implementation.

C. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by NY on November 12, 1993, as supplemented on June 17, 1996, and June 27, 1996. Among other things, the State has demonstrated that the program substantially meets the minimum requirements for an interim State operating permits program as specified in 40 CFR Part 70, and as discussed in EPA's Guidance entitled ''Interim Title V Program Approvals'' issued by John S. Seitz, Director, Office of Air Quality Planning and Standards on August 2, 1993. This interim approval, which may not be renewed, extends until December 7, 1998. Under the approved interim operating permits program, NY may issue operating permits pursuant to Title V of the Act to all major stationary sources, and to certain other sources, for the duration of this approval. During this interim approval period, the State is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in NY. Permits issued under a program with interim approval have full standing with respect to Part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing initial permit applications. In order to ensure that a fully approved program will be in place by the expiration date of the interim approval, NY must submit a modified program to EPA by June 8, 1998 that addresses the following deficiencies (for additional discussion of these deficiencies, refer to the July 30, 1996 Federal Register document, 61 FR 39617):

1. Regulated Air Pollutant

NY's definition of 'Regulated Air Pollutant' in 6 NYCRR Part 200.1(bq) must be changed to be made consistent with the definition in 40 CFR 70.2 (unless, as described in the above-cited Federal Register document, the Part 70 regulations are revised in a way that would make this NY provision acceptable, prior to the time that NY State's full program submittal is due). The definition in 40 CFR part 70 currently includes: ''any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including sections 112 (g), (j), and (r) of the Act * * *''. NY's definition of regulated air pollutant only includes hazardous air pollutants, which the State defines by providing a list of the 112(b) pollutants. Therefore, NY must include in its definition not only the section 112(b) hazardous air pollutants, but also pollutants regulated under section 112(r) of the Act.

2. Enforcement Discretion

NY must revise its rules at 6 NYCRR 201–6.5(c)(3)(ii) to clarify that the discretion to excuse a violation under 6 NYCRR Part 201–1.4 will not extend to federal requirements, unless the specific federal requirement provides for affirmative defense during start-ups, shutdowns, malfunctions, or upsets.

3. Alternative Emission Limits

NY must change its provision at 6 NYCRR Part 201–6.5(a)(1)(ii), so that it is equivalent to 40 CFR 70.6(a)(1)(iii). That is, the State provision should be revised to require that permits will only include alternative emission limitations if provided for in the SIP and if the alternative emission limit is determined to be equivalent to the limit contained in the SIP.

4. Operational Flexibility

NY must add to its program the operational flexibility provisions provided for by section 502(b)(10) of the Act. However, as discussed in the above-cited Federal Register document, NY may not need to make such changes if revisions to 40 CFR Part 70 are promulgated prior to NY's full program submittal, and such Part 70 revisions would not require the State to provide for this type of operational flexibility.

5. Definition of Major Source

NY must revise its definition of major source to be consistent with the definition in 40 CFR part 70, as it relates to accounting for fugitive emissions to determine the applicability of section 111 sources. As noted in the July 30, 1996 Federal Register document, this NY definition need not be revised if the Part 70 regulations are changed in a way that would make this NY provision acceptable, and such change occurs prior to the time that NY State's full program submittal is due.

6. Emissions Trading

NY must include the two gatekeepers listed in 40 CFR 70.4(b)(12) in its regulations at 6 NYCRR Parts 201–6.5 (f)(3) and (f)(4). Specifically, NY must add to its rule at 6 NYCRR Part 201–6.5(f)(3) the gatekeeper which states that changes under this provision do not need to undergo a permit revision as long as the changes are not modifications under any provision of Title I of the Act. In addition, NY must supplement its rule at 6 NYCRR Part 201–6.5(f)(4) by adding the two gatekeepers of 40 CFR 70.4(b)(12) which state that changes do not need to undergo a permit revision as long as 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.

7. Minor Permit Modification Procedures

New York must revise its rule at 6 NYCRR Part 201–6.7(c)(2) to provide that minor modification procedures can only be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches ''to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA'' (the language in quotations must be added). This change must be made unless revisions to 40 CFR part 70 are promulgated prior to NY's full program submittal, and such revisions would exclude this issue from affecting full program approval.

8. Petitions for Judicial Review

In order for NY to be consistent with 40 CFR part 70 and receive full program approval, the State must adopt a 90 day statute of limitations, through rulemaking, for judicial review of final permit actions, rather than its current 120-day review period. As discussed in the July 30, 1996 Federal Register document, this change may not be

required if the regulations at 40 CFR Part 70 are revised in a way that would make this NY provision acceptable, and such a revision would occur prior to the time that NY State's full program submittal is due.

If NY fails to submit a complete corrective program for full approval by June 8, 1998, EPA will start an 18-month clock for mandatory sanctions. If the State then fails to submit a complete corrective program before the expiration of that 18-month period, EPA will apply sanctions as required by section 502(d)(2) of the Act, which will remain in effect until EPA determines that NY has corrected the deficiencies by submitting a complete corrective program.

If EPA disapproves NY's complete corrective program, EPA will apply sanctions as required by Section 502(d)(2) on the date 18 months after the effective date of the disapproval unless, prior to that date, NY has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if NY has 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 NY program by the expiration of this interim approval, EPA must promulgate, administer and enforce a federal operating permits program for the State upon interim approval expiration.

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 the EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, an expeditious compliance schedule, and adequate enforcement ability, which are also requirements under 40 CFR part 70. In a letter dated June 18, 1996, NY requested delegation through section 112(l) of all existing section 112 standards for both Part 70 sources and those not subject to the Part 70 requirements and infrastructure programs, with the following exceptions. NY does not intend to take delegation of either the section 112(r) program or the National Emission Standards for Hazardous Air Pollutants for Asbestos, Standards for Demolition and Renovation; however, the State will still implement the appropriate permit conditions relevant to the risk management program in part 70 permits. With respect to future 112 standards, the State intends to accept delegation of most, if not all, of the standards. This will be accomplished either through incorporation by reference of the federal regulations into State regulations, as expeditiously as possible, or via case-by-case program substitution. In the June 18, 1996 letter, NY demonstrated that it has sufficient legal authorities, adequate resources, and adequate enforcement ability for implementation of Section 112 of the Act for all Part 70 sources. Therefore, the EPA is also promulgating interim approval under Section 112(l)(5) and 40 CFR 63.91 to grant NY approval for its program mechanism for receiving delegation of all existing and future Section 112(d) standards for all Part 70 sources, and Section 112 infrastructure programs that are unchanged from federal rules as promulgated.

In its June 18, 1996 letter, NY also requested delegation of all existing New Source Performance Standards promulgated pursuant to Section 111 of the Act, except for 40 CFR part 60, subpart AAA, Standards of Performance for New Residential Wood Heaters. While EPA proposed to approve this request in the July 30, 1996 Federal Register document, we are deferring a final decision on this matter until a later date.

III. Administrative Requirements

A. Docket

Copies of the NY submittal and other information relied upon for the final interim approval, including the public comments received and reviewed by EPA on the proposal, are contained in the docket maintained at the EPA Region 2 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. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

The EPA's actions under Section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy 40 CFR Part 70. Since these operating permits programs were already adopted at the State level, and today's action does not introduce any additional requirements that are new to the State program already in effect, no significant impact on a substantial number of small entities is expected to occur as a result of today's action. Therefore, I certify that this rule will not have a significant impact on a substantial number of small entities.

D. 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 annual 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 of the Unfunded Mandates Act 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 annual 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.

E. Submission to Congress and the General Accounting Office

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).

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 22, 1996.

William J. Muszynski,

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 New York in alphabetical order to read as follows:

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

* * * * *

New York

(a) The New York State Department of Environmental Conservation submitted an operating permits program on November 12, 1993, supplemented on June 17, 1996 and June 27, 1996; interim program approval effective on May 7, 1999; interim program approval expires December 7, 1998.

(b) [Reserved]

* * * * *

[FR Doc. 96–28539 Filed 11–6–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5646–1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the Harbor Island Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces the deletion of a portion of the Harbor Island Superfund Site, located in Seattle, King County, from the National Priorities List (NPL). The portion of the site to be deleted is the Lockheed Shipyard Operable Unit (OU). The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA and the State of Washington Department of Ecology (Ecology) have determined that no further cleanup under CERCLA is required and that the selected remedy has been protective of public health, welfare, and the environment.

EFFECTIVE DATE: November 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Rose, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, ECL–111, Seattle, WA 98101, (206) 553–7721.

SUPPLEMENTARY INFORMATION: The site to be partially deleted from the NPL is:

The Harbor Island Site located in Seattle, King County, Washington.

This partial deletion pertains only to the Lockheed Shipyard OU, which is known as OU No. 3. The Lockheed Shipyard OU is located at 2929 16th Avenue Southwest, and is bounded on the north by the ARCO petroleum storage tank facility, on the east by 16th Avenue Southwest, on the south by the Fisher Mills facility, and on the west by the West Waterway of the Duwamish River. This partial deletion pertains only to OU No. 3 of the Harbor Island site. Response activities at OU Nos. 1, 2, 4, and 5 of this Site are not yet complete and these Ous will remain on the National Priorities List and are not subject of this partial deletion.

This partial deletion is in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466 (Nov. 1, 1995). A Notice of Intent for Partial Deletion was published September 5, 1996, (61 FR 46749). The closing date for comments on the Notice of Intent to Delete was October 7, 1996. EPA did not receive any comments on the proposed partial deletion and has not prepared a Responsiveness Summary.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site, or portion of a site, deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control.

Dated: October 25, 1996.

Chuck Clarke,

Regional Administrator, U.S. Environmental Protection Agency, Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by revising the entry for Harbor Island (lead), Seattle, Washington, to read as follows:

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes
*	*	*	*
WA	Harbor Island	Seattle/King County	P
*	*	*	*

P=Sites with partial deletion(s).

[FR Doc. 96–28429 Filed 11–6–96; 8:45 am]

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