For the reasons set out in the preamble, 33 CFR Part 334 is amended as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.360 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 334.360 Chesapeake Bay off Fort Monroe, Virginia; restricted area, U.S. Naval Base and Naval Surface Weapons Center.

(a) *The area.* Beginning at latitude 37°01′03″, longitude 076°17′52″; thence to latitude 37°01′00″, longitude 076°16′11″; thence to latitude 36°59′43″, longitude 076°16′11″; thence to latitude 36°59′18″, longitude 076°17′52″; thence to latitude 37°00′05″, longitude 076°18′18″; thence north along the seawall to the point of beginning.

(b) *The regulations.* (1) Anchoring, trawling, fishing and dragging are prohibited in the restricted area, and no object, either attached to a vessel or otherwise, shall be placed on or near the bottom unless authorized by the Facility Manager, Naval Surface Warfare Center, Dahlgren Division Coastal Systems Station Detachment, Fort Monroe, Virginia.

* * * * *

3. Section 334.530 is amended by revising paragraph (b)(2) to read as follows:

§ 334.530 Canaveral Harbor adjacent to the Navy Pier at Port Canaveral, Fla.; restricted area.

* * * * *

(b) * * *

(2) The area will be closed when a red square flag (bravo), and depending on the status of the hazardous operation, either an amber or red beacon, steady burning or rotating, day or night, when displayed from any of the three berths along the wharf.

* * * * *

4. Section 334.1340 is amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(1) and (a)(2), respectively, revising the heading of newly designated paragraph (a)(2), and revising paragraph (c) to read as follows:

§ 334.1340 Pacific Ocean, Hawaii; danger zones.

(a) *Danger zones.* (1) * * *

(2) *Submerged unexploded ordnance danger zone, Kahoolawe Island, Hawaii.* * * *

* * * * *

(c) *Enforcing agency.* The regulations in this section shall be enforced by Commander, Naval Base, Pearl Harbor, Hawaii 96860–5020, and such agencies as he/she may designated.

Dated: June 19, 1996.

Stanley G. Genega,

Major General, U.S. Army, Director of Civil Works.

[FR Doc. 96–16850 Filed 7–2–96; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD-FRL–5530–4]

Title V Clean Air Act Final Interim Approval of Operating Permits Program; Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Interim Approval.

SUMMARY: EPA is promulgating interim approval of the operating permits program submitted by Maryland for the purpose of complying with federal requirements for an approvable program to issue operating permits to all major stationary sources, and to certain other sources. Maryland has substantially, but not fully, met the requirements for an operating permits program set out in title V of the Clean Air Act (CAA) and 40 CFR part 70. Upon the effective date of this program approval, those sources must comply with Maryland's regulatory requirements to submit an application for an operating permit pursuant to the state's submittal schedule.

EFFECTIVE DATE: August 2, 1996.

ADDRESSES: Copies of Maryland's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Lisa M. Donahue, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2062, donahue.lisa@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the 1990 CAA Amendments (sections 501–507 of CAA), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that states seeking to administer a title V operating permits program develop and submit a program to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. 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 of an operating permits program submittal. 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 November 15, 1995, or by the expiration of the interim approval period, it must establish and implement a federal program.

EPA compiled a technical support document (TSD), associated with the proposal, which contains a detailed analysis of the operating permits program. On October 30, 1995, EPA proposed interim approval of the operating permits program for Maryland, and requested comments on that proposal. (See 60 FR 55231). In this document EPA is taking final action to promulgate interim approval of the operating permits program for Maryland.

II. Analysis of State Submission

On May 9, 1995, Maryland submitted an operating permits program to satisfy the requirements of the CAA and 40 CFR part 70 and the submittal was found to be administratively complete pursuant to 40 CFR 70.4(e)(1). The submittal was supplemented by additional material on June 9, 1995. EPA reviewed the program against the criteria for approval in section 502 of the CAA and the part 70 regulations. EPA determined, as fully described in the notice of proposed interim approval of the state's operating permits program (see 60 FR 55231 (October 30, 1995)) and the TSD for this action, that Maryland's operating permits program substantially meets the requirements of the CAA and part 70.

III. Response to Public Comments

EPA received several comments during the public comment period. Additional comments to clarify comments submitted during the comment period were submitted after the expiration of the public comment period. These comments and EPA's responses are grouped into four categories. All comments are contained

in the docket at the address noted in the ADDRESSES section above.

A. Judicial Standing

Comment 1: One commenter expressed the belief that EPA was overstepping its authority in proposing that Maryland amend the Maryland Environmental Standing Act (MESA) to afford non-state residents and organizations the same standing rights as other ''persons'' as defined in MESA. Citing the 10th amendment to the U.S. Constitution, the commenter argues that the regulation of state courts is clearly a right reserved to the states and that the Maryland common law ''specific interest or property right'' test of harm is a reasonable criteria for determining standing in a state court that EPA should not seek to alter.

EPA Response to comment 1: EPA does not agree that Maryland's common law standing requirements fully meet the standards of title V. Moreover, EPA does not believe that section 502(b)(6) of the CAA, and the requirements of 40 CFR 70.4(b)(3)(x) regarding the necessary opportunity for judicial review of permit actions represent an unconstitutional invasion of state sovereignty or a coercion of state legislative or regulatory action since, under title V, states are required to amend their standing laws only if they wish to obtain EPA approval under the CAA. If a state elects not to participate in implementing title V, it is free to make that choice. EPA's position has been upheld recently at both the Federal District Court and Appellate Court levels. See, State of Missouri and Mel Carnahan v. U.S., et al, No. 4:94CV01288 ELF, 1996 U.S. Dist. Lexis 3215 (E.D. Mo. Feb. 5, 1996). See also, Commonwealth of Virginia v. Carol Browner, et al., No. 95–1052, 1996 U.S. App. Lexis 5334 (4th Cir. Mar. 26, 1996).

Comment 2: Two commenters, including the Maryland Department of the Environment (MDE), expressed disagreement with EPA's evaluation that title V standing criteria must meet the minimum requirements of Article III of the U.S. Constitution. One of these commenters disagreed with EPA's conclusion that MESA consequently provides an inadequate opportunity for judicial review of part 70 permits.

EPA Response to comment 2: Section 502(b)(6) states that every approvable permit program must provide the applicant and ''any person who participated in the public comment process'' with the opportunity for judicial review of the final permit action in state court. The same opportunity must also be afforded to any other person who could obtain judicial review of the action under any applicable state law. EPA believes that for a state title V operating permits program to be approved by EPA, that program must provide access to judicial review to any party who participated in the public comment process and who at a minimum meets the threshold standing requirements of Article III of the U.S. Constitution.

EPA's interpretation is consistent with the language, structure, and legislative history of the Act, under which it is clear that affected members of the public must have an opportunity for judicial review of permit actions to ensure an adequate and meaningful opportunity for public participation in the permit process. See, Chafee-Baucus Statement of Senate Managers, S. 1630, the Clean Air Act Amendments of 1990, reprinted in 136 Cong. Rec. S169941 (daily ed. October 27, 1990). The legislative history, together with the expansive language of section 502(b)(6), demonstrates the clear intent of the Congress to provide citizens a broad opportunity for judicial review.

EPA's position regarding the Article III standard recently was affirmed by the U.S. Court of Appeals for the Fourth Circuit in Commonwealth of Virginia v. Carol M. Browner, et al., No. 95–1052, 1996 U.S. App. Lexis 5334 (4th Cir. Mar. 26, 1996). The Fourth Circuit Court of Appeals therein held that:

> Here, EPA resolved the slight tension within § 502(b)(6) by interpreting the section to require that states, at a minimum, extend judicial review rights to participants in the state public comment process who satisfy the standard for Article III standing. This resolution is both authorized by Congress and reasonable, and therefore we must reject Virginia's alternative interpretation.

Commonwealth v. Browner, 1996 U.S. App. Lexis 5334 at 25–26.

Certain parties, including non-state residents and organizations not doing business in Maryland, do not fall within MESA's definition of ''person'' and cannot take advantage of the standing provisions of MESA. These parties are required to establish standing for judicial review under the Maryland common law of standing. While Maryland's program submittal provides adequate standing for state residents and organizations doing business in Maryland and thus substantially meets the standing requirements of title V of the CAA and 40 CFR part 70, EPA has concluded that Maryland standing requirements are somewhat less favorable than the standing requirements of Article III with respect to non-state residents and organizations not doing business in Maryland. In order to fully meet the standing requirements for judicial review required by CAA section 502(b)(6) and 40 CFR 70.4(b)(3)(x), MESA must be amended to accord such non-state residents and organizations the same standing to challenge part 70 permit decisions as other ''persons'' defined in MESA, or, in the alternative, other appropriate legislative action must be taken to ensure that standing requirements for such organizations are not more restrictive than the minimum requirements of Article III of the U.S. Constitution as they apply to federal courts.

Comment 3: One commenter argues that judicial review under the Maryland Administrative Processes Act (APA) is unavailable in Maryland for a part 70 permit and the scope of review under MESA is much narrower than that afforded under the APA. The commenter further asserts that MESA does not abrogate the existing requirement of exhaustion of remedies, expresses due process concerns inherent under Maryland APA standing principles and questions whether MESA can serve as the ''primary avenue'' for third parties to obtain judicial review of part 70 permits issued by MDE. A second commenter generally asserted the belief that Maryland's permit program effectively precludes citizen suits under all circumstances and is deficient in its citizen suit ''standing'' provisions.

EPA Response to comment 3: The Maryland Attorney General acknowledges that in order to obtain judicial review under the APA, a party must show that the party has been ''aggrieved''. The Maryland Attorney General recognizes that MESA cannot be used for this purpose and that MESA does not provide standing for a direct judicial review of permit actions under Maryland's APA. See, Medical Waste Associates, Inc. v. Maryland Waste Coalition, Inc., 327 Md. 596, 612 A.2d 241 (1992). Citing Medical Waste, the Maryland Attorney General concludes that MESA cannot be used by a plaintiff organization to create standing rights that the organization otherwise would not have to obtain judicial review of a contested case decision under the APA. However, the Maryland Attorney General concludes that the decision in Medical Waste has relevance to the scope of review available under MESA only with respect to MDE permits that are subject to contested case hearings. The Maryland Attorney General states that part 70 operating permits will not be subject to contested case proceedings and that Medical Waste should not be seen as controlling with respect to part

70 permits, especially where MDE has specified that MESA is the appropriate mechanism for obtaining judicial review of such permits.

The Maryland Attorney General acknowledges that the nature and scope of review that is available with respect to part 70 operating permits will depend on the issues raised by the petitioner and on the type of action brought. However, the Maryland Attorney General notes that the Maryland Court of Appeals, in discussing the type of review available in an adjudicative type of permit review proceeding, has stated that:

> Consequently, such an administrative proceeding, even if not subject to judicial review under the APA, would be subject to judicial review, of essentially the same scope, in an action for mandamus, certiorari, injunction, or declaratory judgment.

Medical Waste, 327 Md. at 610.

The Maryland Attorney General further asserts that, in the absence of an express provision for review, actions for declaratory or injunctive relief, as well as mandamus, are available to persons challenging state permit issuance. The Maryland Attorney General notes that a reviewing court essentially may provide the same remedies that a person could obtain from judicial review under the APA and that MESA, therefore, should provide the basis for judicial review of any part 70 permit in which MDE fails correctly to apply applicable CAA requirements that pertain to the source covered under the permit. As to the issue of exhaustion of remedies, neither title V nor 40 CFR part 70 prohibit an administrative remedy exhaustion requirement.

On the basis of the Maryland Attorney General's Opinion, it appears that review of essentially equivalent scope as direct judicial review is available in administrative proceedings such as permit issuances or denials, even if not subject to direct review under the Maryland APA. Nevertheless, Maryland could avoid the risk of any future Maryland judicial decision interpreting MESA or Maryland's common law of standing in such a manner as potentially to compromise Maryland's part 70 approval status if Maryland were to amend its state APA to provide directly for the opportunity for judicial review of permit actions in state court, consistent with CAA section 502(b)(6) and 40 CFR 70.4(b)(3)(x).

Comment 4: One commenter opines that Maryland part 70 regulations should be able to provide expressly for standing consistent with existing Federal law through an adoption of the Federal definition of standing, as Maryland has done with state regulations promulgated under the Federal Surface Mining Control and Reclamation Act.

EPA Response to comment 4: EPA believes that the commenter may have identified one of several potential alternatives available to Maryland to meet fully the requirements of CAA section 502(b)(6) and 40 CFR 70.4(b)(3)(x). However, EPA does not believe that Maryland must select this particular alternative in order to maintain part 70 approval status.

Comment 5: One commenter notes that the Maryland APA requirement that a party be ''aggrieved'' mirrors general common law standing principles applicable to judicial review of administrative decisions, but asserts that Maryland imposes a ''special interest'' requirement whereby a party ''ordinarily must'' show that his personal property rights are specially affected in a way different from the general public in order to have common law standing. The commenter states that Maryland's ''special interest'' requirement differs significantly from the ''general interest'' requirement under the Federal rule and that the Court of Special Appeals of Maryland has virtually excluded anyone but an adjoining property holder from meeting the ''special harm'' requirement of standing.

EPA Response to comment 5: No Maryland appellate decision has articulated those ''interests'' which are sufficient to establish standing on the part of an individual in an environmental permit case. In the event that a Maryland judicial decision having precedential effect is issued in the future which makes Maryland common law standing requirements more stringent than Article III standing requirements, EPA will take appropriate action under 40 CFR 70.10(c) (''Criteria for Withdrawal of State Programs'').

Comment 6: One commenter asserts that MESA places major limitations upon when and where a private citizen may initiate an action and that judicial application of MESA renders nugatory MESA's supposedly broad standing requirements.

EPA Response to comment 6: While it is clear that MESA confers standing on any individual citizen residing ''in the county or Baltimore City where the action is brought'', no reported Maryland appellate decision has interpreted the additional standard set forth in MESA which confers standing on any individual citizen able to ''demonstrate that the alleged condition, activity, or failure complained of affects the environment where he resides.'' In the event that a Maryland judicial decision having precedential effect is issued in the future which makes MESA's standing requirements more stringent than Article III standing requirements, EPA will take appropriate action under 40 CFR 70.10(c).

Comment 7: One commenter notes that organizational standing under Maryland common law is significantly more restrictive than under Federal law in that the organization's members must meet the ''special harm'' test and the organization itself must have its own ''property'' interest, separate and distinct from that of its members and the public at large.

EPA Response to comment 7: EPA has identified the commenter's concerns as an interim approval issue and agrees that Maryland standing requirements are somewhat less favorable than the standing requirements of Article III with respect to organizations not doing business in Maryland. See, 60 FR 55231, 55233. The federal courts interpret Article III to provide standing for organizations in actions brought to protect the interests of their members, provided certain conditions are met. See, Chesapeake Bay Foundation v. Bethlehem Steel Corp., 608 F.Supp. 440 (D. Md. 1985). Under the Maryland common law of standing, an organization must have an interest of its own, separate and distinct from that of its individual members, in order to establish standing. Medical Waste Associates, Inc. v. Maryland Waste Coalition, 327 Md. 596 (1992). However, the Maryland Attorney General notes that if at least one plaintiff in an action for review of a permit establishes standing, the Maryland courts will not ordinarily inquire as to whether other plaintiffs have standing. Therefore, an organization doing business outside of Maryland may be able to participate in a permit challenge on behalf of its individual members if other parties having the requisite standing also join as plaintiffs in the action.

Maryland's program submittal substantially meets the standing requirements of title V of the CAA and 40 CFR part 70. However, in order to meet fully the requirements of section 502(b)(6) of the CAA and 40 CFR 70.4(b)(3)(x), MESA must be amended to accord non-state residents and organizations not doing business in Maryland the same standing to challenge part 70 permit decisions as other ''persons'' as defined in MESA, or, in the alternative, other appropriate legislative action must be taken to ensure that standing requirements for such organizations are not more restrictive than the minimum

requirements of Article III of the U.S. Constitution as they apply to federal courts.

Comment 8: One commenter questions where the Maryland Attorney General finds support for the proposition that Maryland would recognize a non-economic interest as sufficient for standing purposes. The commenter considers it clear that Maryland recognizes only an individual's ''health or property'' interest and that not one single case allows recreational, environmental or aesthetic interests as being sufficient to constitute the type of special interest needed to establish standing under Maryland common law (i.e., non-MESA) standing.

EPA Response to comment 8: There are no reported cases in Maryland that would preclude a non-economic interest (such as a recreational, conservational or aesthetic interest) from constituting the type of specific interest needed to establish standing under Maryland common law. If a Maryland judicial decision having precedential effect is issued in the future limiting the special interest required for standing to economic interests, then the Maryland standing requirement would become more stringent than Article III standing requirements. See e.g., Commonwealth of Virginia v. Carol M. Browner, et al., No. 95–1052, 1996 U.S. App. Lexis 5334 (plaintiff need not show ''pecuniary'' harm to have Article III standing; injury to health or to aesthetic, environmental, or recreational interests will suffice). See, also, United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 686–87 (1973); Sierra Club v. Morton, 405 U.S. 727, 734 (1972). EPA would then take appropriate action under 40 CFR 70.10(c).

Comment 9: One commenter asked that EPA disapprove the Maryland part 70 Permit Program and take the first steps to institute discretionary sanctions.

EPA Response to comment 9: Maryland's part 70 Permit Program submittal does not meet fully the requirements of title V of the CAA and 40 CFR part 70 and full approval by EPA is inappropriate. However, Maryland's part 70 Permit Program submittal substantially meets the requirements of title V of the CAA and 40 CFR part 70 and interim approval is appropriate. During the interim approval period, which may extend for up to 2 years, Maryland is protected from sanctions for failure to have a fully approved title V, part 70 program. EPA may apply discretionary sanctions, where warranted, any time after the end of an interim approval period if Maryland has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program.

B. Programmatic Issues

Comment 10: A commenter disagreed with EPA's statement that any relaxation of a compliance plan or schedule must be processed as a significant permit modification. The commenter believes that Maryland should be allowed discretion to process insubstantial changes to a compliance plan or schedule as either administrative or minor permit revisions, and cites an example. The commenter believes that it is inappropriate to require a significant permit modification for a one month delay in meeting a compliance milestone, when the state can assure that the source is acting in good faith and that the delay is beyond the source's control. The commenter believes that this provision of the regulation (Code of Maryland Regulations (COMAR) 26.11.03.14.C) should be approved as currently written.

EPA Response to Comment 10: EPA agrees with the comment and revises its position, removing the requirement to revise COMAR 26.11.03.14C as set out in the proposed interim approval notice. COMAR 26.11.03.14C does not prohibit MDE from considering a change to a compliance plan as a significant permit modification. Rather, it provides an additional requirement for changes to compliance plans. Whereas sources may make changes addressed in administrative permit amendments (see COMAR 26.11.03.15F) or minor permit modifications (with some exceptions, see COMAR 26.11.03.16G) before MDE completes its amendment or modification, changes to compliance plans may not be made until they have been approved in writing. The criteria for determining the type of permit modification that is required in any particular instance are set out at COMAR 26.11.03.14–19. In keeping with these criteria, Maryland has the discretion to treat ''insubstantial'' changes as administrative or minor permit modifications, as appropriate.

Comment 11: A commenter expressed support for MDE's plan to place fee revenues from the title V program into a segregated portion of the Air and Radiation Management and Administration's budget. Maryland's title V program allows surplus funds from previous years to be carried over to the following year and used solely for the part 70 permit program. The commenter recommended that the funds be placed in an interest bearing account, and credited to sources, according to the proportion of the total of all emission fees which were paid by the source in a timely manner.

EPA Response to Comment 11: Part 70 requires that states establish a fee schedule that results in revenues sufficient to cover the permit program costs. Part 70 does not specify how surplus funds from one year should be carried over to fund the next year, and does not require that funds be placed in an interest bearing account and credited to sources. Maryland has discretion to manage surplus funds as the state determines is appropriate, provided that the funds are used solely for title V purposes and in accordance with the provisions of part 70. The state is also required under part 70.9(d) to provide periodic accounting updates demonstrating how fee revenues are used solely to cover the costs of implementing the title V program.

Comment 12: A commenter requested that EPA encourage Maryland to adopt a ''trivial activities'' list and set up a process for approving trivial activities on a case by case basis, as provided for in the EPA's ''White Paper for Streamlined Development of Part 70 Permit Applications.''

EPA Response to Comment 12: As discussed in the ''White Paper for Streamlined Development Part 70 Permit Applications'', dated July 10, 1995, EPA believes that, in addition to the insignificant activity provisions of part 70.5(c), part 70.5 allows permitting authorities to recognize certain activities as being clearly trivial (i.e., emissions units and activities which do not in any way implicate applicable requirements) and that such trivial activities can be omitted from the permit application even if not included on a list of insignificant activities approved in a state's part 70 program. Permitting authorities may, on a case-by-case basis and without EPA approval, exempt additional activities which are clearly trivial. However, additional exemptions, to the extent that the activities they cover are not clearly trivial, still need to be approved by EPA before being added to state lists of insignificant activities. While part 70.5 has been interpreted to allow flexibility for the determination of trivial activities, EPA will defer to Maryland to determine whether similar flexibility exists under its own permit application provisions. EPA believes that it is appropriate to have such determinations made in the first instance at the state level as the decision of whether any particular item should be on a state's trivial list may depend on

state-specific factors, such as whether the activity is subject to state-only requirements or specific requirements of the SIP.

Comment 13: A commenter urged EPA to allow the state to provide more time for facilities to submit permit applications. Maryland requires facilities to submit permit applications on a staggered basis within 4, 6 or 8 months after the effective date of EPA's approval of the title V program. The commenter is concerned that pending rulemakings for the title V program and monitoring requirements are needed to determine what will be required in a title V permit application and permit. Further, the commenter requested EPA to develop a national standard for permit application forms, so that no one company or state would have a greater or lesser burden in completing its permit application.

EPA Response to Comment 13: Section 503(c) of the CAA requires that any person required to have a permit shall submit to the permitting authority a permit application and compliance plan not later than 12 months after the date on which the source becomes subject to the program, or such earlier date as the permitting authority may establish. This requirement is established by regulation at 40 CFR part 70.5(a)(1). EPA has no authority to allow states to extend the time frame for sources to submit permit applications beyond the required 12 months. The CAA and part 70 provide states discretion to establish earlier due dates for sources to submit permit applications. Many states, including Maryland, have done so, particularly so that they will be able to meet the requirement for issuing one-third of permits within the first year of title V program approval. EPA supports states' decisions to establish earlier due dates for permit applications and believes that Maryland's approach is reasonable.

EPA's pending rulemakings pertaining to the title V program and monitoring requirements do not have an impact on the information that sources must include in permit applications. Sources subject to Maryland's title V program, once approved, will be subject to the requirements for permit applications found in Maryland's regulations (primarily COMAR 26.11.03.02, 26.11.03.03, and 26.11.03.04).

EPA does not agree that a national standardized permit application form should be established. Part 70.5(c) requires the state to provide a standard application form(s) and provides that the permitting authority may use its discretion in developing application forms that best meet program needs and administrative efficiency. Part 70.5(c) specifies the minimum types of information that must be included in permit applications.

C. Decision for ''Interim'' Approval

Comment 14: One general comment raised with respect to several of the proposed interim approval issues questions why such program deficiencies warrant interim approval status. Although this same comment was submitted with respect to several of the proposed interim approval issues, EPA will respond to this comment generally in this rulemaking action.

EPA Response to comment 14: The part 70 regulations define the minimum elements required by the CAA for approval of state operating permit programs. Section 70.4(d) authorizes EPA to grant interim approval in situations where a state's program substantially meets the requirements of part 70, but is not fully approvable. In reviewing Maryland's operating permit regulations, several instances in which the impact of seemingly ''small'' deficiencies such as vague or awkward language, misplaced, misreferenced or mislabeled provisions prevents EPA from being able to determine that the requirements of part 70 are fully met. EPA identified such deficiencies as ''interim approval issues'' which Maryland must revise, modify or otherwise clarify to fully meet part 70's requirements. To the extent that EPA's concerns can be satisfied through other mechanisms, regulatory revision may not be necessary.

Comment 15: Commenters also have questioned the propriety of EPA's proposal to grant interim approval status to Maryland's title V Program in light of recognized deficiencies in the Program's standing requirements for judicial review and have previously suggested that EPA may be applying inconsistent approval standards and an inconsistent level of review and comment among the various state and local jurisdictions seeking operating permit program approvals under title V of the CAA.

EPA Response to comment 15: EPA believes that MESA provides adequate standing for judicial review to Maryland residents and corporations, and any partnership, organization, association or legal entity doing business in the state, all of whom are defined as ''persons'' therein. EPA further believes that the substantial majority of challenges to state permit actions will be brought by resident individuals and organizations doing business within the state and who will have standing for judicial review pursuant to MESA. EPA recognizes that non-state residents must establish standing pursuant to Maryland common law, which requires a ''specific interest or property right'' such that the party will suffer harm that is different in kind from that suffered from the general public. However, there are no reported cases in Maryland that would preclude non-economic interests such as recreational, conservational or aesthetic interests from constituting the type of specific interest needed for standing. In the event that a Maryland decision having precedential effect subsequently limits the special interest required for standing to economic interests, or otherwise makes the Maryland standing requirements more stringent that Article III standing requirements, EPA has previously stated its intent to take appropriate action under 40 CFR 70.10(c). EPA also acknowledges, as an interim approval issue, that Maryland standing requirements are somewhat less favorable than the standing requirements of Article III with respect to organizations not doing business in Maryland and that Maryland must accord non-state residents and organizations not doing business in the state the same standing rights to challenge part 70 permit decisions as other ''persons'' as defined in MESA. In the interim, an organization doing business outside Maryland still may be able to participate in a permit challenge on behalf of its individual members if it joins other plaintiffs who already have the requisite standing in the action, as Maryland courts will not ordinarily inquire as to whether other plaintiffs have standing.

For these reasons, EPA believes that Maryland's program currently provides the requisite standing for judicial review to the broad majority of prospective plaintiffs in part 70 state permit actions and substantially meets the requirements of part 70. EPA further believes that Maryland's program meets each of the minimum requirements of 40 CFR 70.4(d)(3), such that interim approval should be granted to Maryland's title V Program.

EPA has applied consistent review, comment and approval standards among the various jurisdictions seeking approval of operating permit programs under title V of the CAA. EPA evaluates each program separately to determine if it meets the requirements of 40 CFR part 70 and has not proposed approval for any state operating permits program that does not substantially meet the requirements for standing for judicial review as required by section 502(b)(6) of the Act and 40 CFR 70.4(b)(3)(x).

Some commenters have questioned the consistency of EPA's review, comment and approval standards with respect to the issue of standing for judicial review because EPA proposes to grant interim approval status to Maryland's title V Program after acknowledging certain deficiencies in Maryland's program submittal. These commenters note that EPA previously denied approval of the Commonwealth of Virginia's Program upon finding that limitations on judicial review in Virginia did not meet the minimum threshold standing requirements of Article III.

On the basis of five disapproval issues, including the issue of standing for judicial review, EPA determined that Virginia's operating program submittal did not substantially meet the requirements of part 70 and, therefore, was not eligible for interim approval. (See 59 FR 62324 (December 5, 1994)). On the issue of standing for judicial review, EPA took particular note that section 10.1–1318(B) of the Code of Virginia extends the right to seek judicial review only to persons who have suffered ''actual, threatened, or imminent injury * * *'' where ''such injury is an invasion of an immediate, legally protected, pecuniary and substantial interest which is concrete and particularized * * *'' and found that the limitations on judicial review in Virginia did not meet the minimum threshold standing requirements of Article II of the U.S. Constitution and did not meet the minimum program approval criteria under title V. (See 59 FR 31183, 31184 (June 17, 1994)).

The strict limitations on judicial review which are contained in Virginia's program submittal are in sharp contrast to the comparatively minor limitations on judicial review contained in Maryland's operating program submittal (as described above). Because Maryland's program submittal confers general standing privileges on all state residents and organizations doing business in the state (i.e., the broad majority of potential plaintiffs), and for the additional reasons explained above, EPA believes that Maryland's program submittal substantially meets the standing requirements of title V of the CAA and 40 CFR part 70. EPA further believes that such a finding is factually appropriate and is consistent with applicable approval standards and prior EPA program evaluations.

D. Part 70 Supplemental Rule

Comment 16: A commenter expressed support for EPA's supplemental proposed rule for the title V program (See 60 FR 45530, August 31, 1995) which would provide states the flexibility to match the level of review of permit revisions to the environmental significance of the operational change.

EPA Response to Comment 16: This comment does not pertain to EPA's proposed interim approval action for Maryland's title V program. EPA's approval action for Maryland is based on 40 CFR part 70 as promulgated on July 21, 1992. Once EPA promulgates final revisions to the part 70 program, the state will be required to amend its title V program to reflect the changes.

FINAL ACTION: EPA is promulgating interim approval of the operating permits program submitted by Maryland on May 9, 1995, and supplemented on June 9, 1995. Maryland must make the changes identified in the notice of proposed rulemaking, with the exception noted in Comment 10 above, in order to fully meet the requirements of the July 21, 1992 version of part 70 (See 60 FR 55231, October 30, 1995).

The scope of Maryland's part 70 program approved in this action applies to all part 70 sources (as defined in the approved program) within Maryland, 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).

This interim approval extends until August 3, 1998. During this interim approval period, Maryland is protected from sanctions for failure to have a fully approved title V, part 70 program, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in Maryland. 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 Maryland fails to submit a complete corrective program for full approval by February 3, 1998, EPA will start an 18-month clock for mandatory sanctions. If Maryland then fails 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 Maryland has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of Maryland, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that Maryland had come into compliance. In any case, if, six months after application of the first sanction, Maryland still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Maryland's 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 the date on which the sanction would be applied Maryland 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 Maryland, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Maryland has come into compliance. In all cases, if, six months after EPA applies the first sanction, Maryland has 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 Maryland 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 Maryland's program by the expiration of the interim approval period, EPA must promulgate, administer and enforce a federal permits program for Maryland upon the date the interim approval period expires.

Requirements for approval, specified in 40 CFR 70.4(b), encompass the CAA's 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 the state's program 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 63.91 of Maryland's program for receiving

delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

Additionally, EPA is promulgating approval of Maryland's operating permits program, under the authority of title V and part 70 for the purpose of implementing section 112(g) to the extent necessary during the transition period between promulgation of the federal section 112(g) rule and adoption of any necessary state rules to implement EPA's section 112(g) regulations. However, since this approval is for the purpose of providing a mechanism to implement section 112(g) during the transition period, the approval of the operating permits program for this purpose will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. Although section 112(l) generally provides the authority for approval of state air toxics programs, title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. Unless the federal section 112(g) rule establishes a specific time frame for the adoption of state rules, the duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide the state with adequate time to adopt regulations consistent with federal requirements.

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

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 to grant interim approval of Maryland's operating permits program pursuant to title V of the CAA and 40 CFR part 70 does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

EPA has determined that this action, promulgating interim approval of Maryland's operating permits program, 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.

List of Subjects in 40 CFR Part 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: June 19, 1996.

W. Michael McCabe,

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 Maryland in alphabetical order to read as follows:

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

* * * * *

Maryland

(a) Maryland Department of the Environment: submitted on May 9, 1995; interim approval effective on August 2, 1996; interim approval expires August 3, 1998.

(b) Reserved

* * * * *

[FR Doc. 96–17020 Filed 7–3–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300420A; FRL–5381–5]

RIN 2070–AB78

Potassium Citrate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of potassium citrate (CAS Reg. No. 866–84–2), when used as an inert ingredient (chelating agent and pH control) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest and animals. This regulation was requested by Monsanto Company and Zeneca Ag Products, pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective July 3, 1996.

ADDRESSES: Written objections, identified by the document control number, [OPP–300420A] may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300420A]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8375; e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 10, 1996 (61 FR 15915), EPA issued a proposed rule (FRL–5361–2) gave notice that Monsanto Company, 700 14th Street, NW., Washington, DC 20005 had submitted pesticide petition (PP) 6E4607 and Zeneca Ag Products, 1800 Concord Pike, Wilmington, DE 19850–5458 had submitted pesticide petition (PP) 6E4637 to EPA requesting that the