

List of Subjects**40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen Dioxide, Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 19, 1995.

Patrick M. Tobin,
Acting Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520, is amended by adding paragraph (c)(89) to read as follows:

§ 52.520 Identification of plan.

* * * *

(c) * * *
(89) The maintenance plan for Tampa, Florida, submitted by the Florida Department of Environmental Protection on February 7, 1995.

(i) Incorporation by reference. Tampa Redesignation Request and Attainment Maintenance Plan for the Tampa Bay Florida Ozone Nonattainment Area including Emissions Inventory Summary and Projections adopted on November 16, 1994.
(ii) Other material. None.

PART 81—[AMENDED]**Subpart C—Section 107 Attainment Status Designations**

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.310 the “Florida-Ozone” table is amended by removing the entry for “Tampa-St. Petersburg-Clearwater Area;” and by adding entries for Hillsborough and Pinellas Counties in alphabetical order; and by revising the entry “Rest of State” to read “Statewide.”

§ 81.310 Florida.

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FLORIDA-OZONE

Designated Area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Statewide	Unclassifiable/ Attainment
Hillsborough County	February 5, 1996.	*	*
Pinellas County	February 5, 1996.	*	*
.....	*	*	*	*

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

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[FR Doc. 95-29817 Filed 12-6-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 70

[AD-FRL-5341-7]

Clean Air Act Interim Approval of Operating Permits Program; San Diego Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating direct final interim approval of the title V operating permits program submitted by the California Air Resources Board, on behalf of the San Diego Air Pollution Control District (San Diego or District), 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. In addition,

today's action promulgates direct final approval of San Diego's mechanism for receiving delegation of section 112 standards as promulgated.

DATES: This direct final rule is effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the District's submittal and other supporting information used in developing this direct final rule are available for public inspection (docket number CA SD-95-1-OPS) during normal business hours at the following location: Operating Permits Section (A-5-2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744-1249), Operating Permits Section (A-5-2), Air and Toxics Division, U.S. Environmental Protection Agency,

Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:**I. Background and Purpose****A. Introduction**

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (Act)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (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.

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 operating permit program submitted by San Diego 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 February 5, 1996.

B. Federal Oversight and Sanctions

This interim approval, which may not be renewed, extends until February 9, 1998. During this interim approval period, San Diego is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in the District. 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 San Diego fails to submit a complete corrective program for full approval by August 7, 1997, EPA will start an 18-month clock for mandatory sanctions. If San Diego 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 San Diego has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that San Diego has come into compliance. In any case, if, six months after application of the first sanction, the District still has

not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves San Diego'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 that date San Diego 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 District, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that San Diego has come into compliance. In all cases, if, six months after EPA applies the first sanction, the District 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 San Diego 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 District's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for San Diego upon interim approval expiration.

II. Direct Final Action and Implications

A. Analysis of State Submission

The analysis contained in this notice focuses on specific elements of San Diego's 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 (CA-SD-95-1-OPS). The docket may be viewed during regular business hours at the address listed above.

1. Support Materials

San Diego's title V program was submitted by the California Air Resources Board (CARB) on April 22, 1994 and found to be complete on June 9, 1994. On April 4, 1995, the District amended the regulatory portion of its submittal. On October 10, 1995, EPA received from CARB, on behalf of the District, a revised fee program and an

updated program description. Enabling legislation for the State of California and the Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in San Diego's submittal. The San Diego submission does contain a Governor's letter requesting source category-limited interim approval, District implementing and supporting regulations, and all other program documentation required by section 70.4. An implementation agreement is currently being developed between San Diego and EPA.

2. Regulations and Program Implementation

San Diego's title V implementing regulation, District Regulation XIV, was first adopted on January 18, 1994. After preliminary review of Regulation XIV, EPA identified numerous regulatory deficiencies and communicated the potential disapproval issues to San Diego in letters dated September 6, 1994 and December 13, 1994. In response, San Diego revised Regulation XIV. The amended regulation was adopted on March 7, 1995 and submitted to EPA by CARB, on behalf of the District, on April 4, 1995. San Diego's program description was also revised to reflect the changes made to Regulation XIV. EPA is therefore evaluating and acting on the March 7, 1995 version of Regulation XIV.

San Diego's title V implementing regulations substantially meet the requirements of 40 CFR part 70, sections 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; section 70.7 for public participation and permit modifications; section 70.5 for criteria that define insignificant activities; section 70.5 for complete application forms; and section 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are a few deficiencies in the program that are outlined under section II.B.1. below as interim approval issues and further described in the TSD.

a. Insignificant Activities

Section 70.5(c) states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Section 70.5(c) also states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.4(b)(2) requires states to include in their part 70

programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Under part 70, a state must request and EPA may approve as part of that state's program any activity or emission level that the state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

San Diego submitted an extensive list of insignificant activities that the District determined to be insignificant based on having "relatively low potential to emit" (Regulation XIV, Appendix A). While the potential to emit criterion is an acceptable mechanism for identifying insignificant units, the District did not provide emissions level cut-offs for many of the listed units. For instance, Regulation XIV, Appendix A(p)(17) exempts most refrigeration units regardless of size. Such units, if they have a charge rate of 50 pounds or more of a Class I or II ozone-depleting compound, would be subject to applicable requirements and could not be considered insignificant. EPA believes that in order to have fully approvable insignificant activities provisions, the listed units should not confuse the regulated community's obligation to provide all information needed to determine the applicability of, or to impose, any applicable requirement.

For interim approval, EPA is relying on several rules in Regulation XIV that affect the scope and usage of insignificant activities. Specifically, Rule 1401(a) ensures that the District's permit exemption rule, Rule 11, will not interfere with title V applicability determinations. Similarly, Rule 1401(b)(4) ensures that emissions from insignificant units will be included in all title V applicability determinations. In addition, Rules 1411, 1414(f)(1), 1414(f)(3)(iii) (A)&(B), 1414(f)(4) and the application "Completeness Criteria" guidance document require the permit application to include all information necessary to determine whether and how an applicable requirement applies at a source, regardless if a unit qualifies as insignificant. Finally, Rules 1401(b)(4) and 1401(c)(24) prohibit activities that are subject to an applicable requirement (other than two specified generic facility-wide requirements) from qualifying as an insignificant activity. For full approval, San Diego must revise its list of insignificant activities for title V

permitting as discussed in section II.B.1.5. of this notice.

b. Variances

San Diego's Hearing Board has the authority to issue variances from requirements imposed by State and local law. See California Health and Safety Code sections 42350 *et seq.* In the legal opinion submitted for California operating permit programs, California's Attorney General states that "[t]he variance process is not part of the Title V permitting process and does not affect federal enforcement for violations of the requirements set forth in a Title V permit." (Emphasis in original.)

EPA regards the State and District variance provisions as wholly external to the program submitted for approval under part 70, and consequently, is not taking action on those provisions of State and local law. EPA has no authority to approve provisions of state or local law, such as the variance provisions referred to, that are inconsistent with the Act. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR § 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

c. Reporting of Permit Deviations

Part 70 requires prompt reporting of deviations from permit requirements, and San Diego has not defined "prompt" in its program. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviations likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined

as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

d. Temporary Authorization

San Diego's title V regulation provides for the issuance of a "temporary authorization" which allows a source to operate without an operating permit. Temporary authorizations are not required by part 70, but they exist in San Diego's title V program in order to maintain consistency with the District's existing local permitting program. San Diego structured its temporary authorization mechanism to ensure that the issuance of temporary authorizations would not interfere with any of the requirements established under part 70. Specifically, temporary authorizations may only be issued to sources that have met the requirements of section 112(g) or the preconstruction permitting requirements under parts C or D of title I; i.e., the same scope of sources that do not have to submit applications for title V permits or title V permit modifications until 12 months after commencing operation (section 70.5(a)(1)(ii)). Furthermore, possession of a temporary authorization does not affect a source's obligation to submit a title V permit application, and the temporary authorization expires on the date that a complete title V permit application is due.

e. Enhanced New Source Review

San Diego's title V permit program provides for enhanced preconstruction review, an optional process that allows sources to satisfy both new source review and title V permit modification requirements at the same time. Any modification processed pursuant to San Diego's enhanced preconstruction review procedures may be incorporated into the title V permit as an administrative permit amendment. These enhanced procedures obviate the need to undergo two application, public notice, and permit issuance/revision processes for the same change.

f. Applicability

EPA found during its review of the San Diego title V program that the District's applicability provisions are consistent with part 70 and fully approvable, but that there is atypical language which warrants a brief discussion in this notice. First, the requirement to count fugitive hazardous air pollutant emissions in major source determinations is contained in the definition of "potential to emit" rather than the definition of "major stationary source." The term "potential to emit" is used to define "major stationary source." (See Regulation XIV, Rules 1401(c)(25) and (36).)

Second, a broad applicability exemption for all non-major stationary sources (Rule 1401(b)(1)) appears at first glance to be in conflict with the part 70 requirement to permit non-major affected sources and solid waste incineration units subject to section 129(e) of the Act (section 70.3(b)). However, San Diego's regulation provides that the applicability exemptions in Rule 1401(b)(1) apply only when referenced in the applicability section (Rule 1401(a)(2) and (3)); i.e., to non-major sources subject to sections 111 or 112 of the Act. (See Regulation XIV, Rule 1401(a)(2-4).) San Diego's program description confirms this reading (section III.B.1.b., p.2). In any case, if EPA completes a rulemaking that would require a non-major source to obtain a title V permit, the non-major stationary source exemption would not apply for that source (Rule 1401(b)(1)).

g. Federally Mandated New Source Review

In order to have an approvable title V program, permits must assure compliance with all federal applicable requirements. The part 70 definition of "applicable requirement" includes "any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;" (section 70.2, definition of "applicable requirement," subsection (2)) i.e., major and minor new source review and prevention of significant deterioration requirements.

Rather than citing parts C or D of title I, San Diego's definition of "federally enforceable requirement" states that requirements imposed by "federally mandated new source review" or prevention of significant deterioration regulations are applicable requirements. The use of the term "federally mandated new source review" is unclear. Under

San Diego's definition, "federally mandated new source review" is linked to "emission thresholds specified in federal law or in the approved State Implementation Plan (SIP)." (See Regulation XIV, Rule 1401(c)(19).) The District has a SIP-approved minor new source review program that is triggered by *any emissions increase*, which could be construed as an emissions threshold of zero, and therefore all NSR, major and minor, is federally mandated. (See Regulation II, Rule 10(a).) Yet, San Diego has contended that minor NSR is not always federally mandated, leaving the term "federally mandated new source review" subject to conflicting interpretations.

The District must revise either the definition of "federally mandated new source review" or the definition of "federally enforceable requirement" to clearly include minor new source review as an applicable requirement under title V. However, San Diego's program is approvable for an interim period because the District's approved SIP contains a minor new source review program, and San Diego's definition of "federally enforceable requirement" also includes "[a]ny standard or other requirement provided for in the State Implementation Plan" (Regulation XIV, Rule 1401(c)(18)(i)). Rules 10 and 21 of San Diego's portion of the California SIP constitute the District's minor (and major) NSR program. (See June 22, 1994 letter from Richard Smith, San Diego Air Pollution Control District, to Ron Friesen, California Air Resources Board.) Since Rules 10 and 21 are in San Diego's SIP, the requirement to obtain, and the specific conditions of, a minor NSR permit are federally enforceable.

EPA has discussed this interim approach with San Diego, and the District agrees that SIP-approved Rules 10 and 21 provide for a federally enforceable minor NSR program. However, EPA and San Diego disagree about whether Rule 21 extends federal enforceability to all terms and conditions of minor NSR permits. EPA believes that, until San Diego's SIP is revised to state otherwise, Rule 21 makes all terms and conditions of minor NSR permits federally enforceable. San Diego believes that minor NSR permit terms that do not originate from the SIP or other federal law or regulations are not made federally enforceable by Rule 21. As an interim solution until San Diego's SIP is revised or this disagreement is resolved, the District has agreed to designate in the part 70 permit certain minor NSR permit terms as "District-only minor NSR" and stipulate that those terms so listed will be reviewed and, as necessary, be

deleted, revised, or incorporated as federally-enforceable terms of the part 70 permit on or before a specified deadline (not later than the renewal of the permit).

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed \$25 per ton per year (adjusted annually based on the Consumer Price Index (CPI), relative to 1989 CPI). The \$25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum" (40 CFR 70.9(b)(2)(i)).

San Diego has opted to make a presumptive minimum fee demonstration. The District's fees are based on the actual direct and indirect costs of evaluating and issuing a title V permit. In addition to employing a cost recovery approach, the District will charge an initial title V permit application fee of \$2,200 per permitted source (Rule 40, Section (s)). San Diego estimates an average implementation cost, and hence fees, of \$320,000 per year for the first 5 years of the program. The presumptive minimum is calculated at \$309,300 per year by multiplying an estimated 10,000 tons of pollutants emitted each year in San Diego by the CPI adjusted presumptive dollar amount of \$30.93. San Diego will therefore be collecting fees in an amount that exceeds the presumptive minimum.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and Commitments for Section 112 Implementation

San Diego has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining federal "applicable requirements" and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. EPA has determined that this legal authority is sufficient to allow San Diego to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the TSD accompanying

this action and the April 13, 1993 guidance memorandum entitled, "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Authority for Title IV Implementation

On March 7, 1995, San Diego incorporated by reference part 72, the federal acid rain permitting regulations. The incorporation by reference was codified in Rule 1412 of Regulation XIV and submitted to EPA on April 4, 1995.

B. Proposed Interim Approval and Implications

1. Title V Operating Permits Program

The EPA is promulgating direct final interim approval to the operating permits program submitted by the California Air Resources Board, on behalf of the San Diego Air Pollution Control District, on April 22, 1994 and amended on April 4, 1995 and October 10, 1995. Areas in which San Diego's program is deficient and requires corrective action prior to full approval are as follows:

(1) California State law currently exempts agricultural production sources from permit requirements. CARB has requested source category-limited interim approval for all California districts. In order for San Diego's program to receive full approval (and to avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

(2) Part 70 requires that any significant change in monitoring permit terms or conditions be processed as a significant permit modification. Rule 1401(c)(43), definition of "Significant Permit Modification," must be revised accordingly. (See section 70.7(e)(4).)

(3) San Diego's treatment of affected state notification is unclear in the program submittal. Part 70 requires that air permitting authorities provide notice to all affected states of all proposed permits, minor and significant permit modifications, and renewals (section 70.8(b)(1)). The term "affected state" is defined in section 70.2 as a contiguous state whose air quality may be affected or a state within 50 miles of a permitted source. EPA is also undergoing a rulemaking action that will allow Native American lands to be treated as a state. (See 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).)

San Diego's program does not define "affected state," and it does not specify any affected state notification procedures. It does provide, however, the requirement to notify affected states

in the case of minor or significant permit modifications. In addition, San Diego has indicated that it currently has cooperative permitting agreements with Native American tribes.

EPA is not concerned about the notice deficiencies with respect to states that border California because of San Diego's coastal location. On the other hand, in order to receive full approval on this issue, San Diego's program must ensure that Native American tribes will be adequately notified and consulted once such tribes apply for treatment as affected states. If San Diego's existing cooperative permitting practices meet the affected state notification requirements set out in section 70.8(b), the District may submit them to EPA for incorporation into its title V program to satisfy the affected state notice requirements. As an alternative to up-front adoption of affected state notice provisions or incorporation of existing practices, EPA will accept a commitment from San Diego to: (1) Initiate rule revisions upon notification from EPA that an affected tribe has applied for state status; and (2) provide affected state notice to tribes upon a tribe's filing for state status, that is, prior to the District's adoption of affected state notice rules.

(4) Revise Rule 1410(h)(7), paragraph 2 to require permit reopening procedures for any inactive status permit that is modified to reflect new applicable requirements upon being converted to active status if there are 3 years or more remaining on the term of its 5-year permit. (See section 70.7(f)(1)(i).)

(5) Remove any activities from the District's list of insignificant activities that are subject to a unit-specific applicable requirement and adjust/add size cut-offs to ensure that the listed activities are truly insignificant. (See sections 70.4(b)(2) and 70.5(c).)

(6) Remove the reference to Rules 1401(j) and (k) in Rule 1401(i). This reference to minor and significant permit modifications in the provisions for administrative permit amendments could be read to be inconsistent with the definition of "significant permit modification" (Rule 1401(c)(43)), which correctly defaults unspecified changes to the significant permit modification process. In addition, the phrase "These shall include the following" in the administrative permit amendment section (Rule 1410(i)) creates ambiguity about whether the list of administrative permit amendments is exhaustive or open ended. Because part 70, section 70.7(d)(vi) requires that administrative permit amendments be specifically approved as part of the title V program,

the word "include" in the above phrase must also be removed.

(7) The District must revise either the definition of "federally mandated new source review" or the definition of "federally enforceable requirement" to clearly include minor new source review as an applicable requirement under title V.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, San Diego is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a federal permits program in the District. 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 interim approval, as does the three-year time period for processing the initial permit applications.

The scope of San Diego's part 70 program that EPA is acting on in this notice applies to all part 70 sources (as defined in the approved program) within San Diego's jurisdiction. The approved program does not apply to any part 70 sources 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. State Preconstruction Permit Program Implementing Section 112(g)

The EPA has published an interpretive notice in the Federal Register regarding section 112(g) of the Act (60 FR 8333; February 14, 1995) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice also explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), San Diego must be able to implement section 112(g) during the period between promulgation of the

federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is approving the use of San Diego's preconstruction review program as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by San Diego of rules specifically designed to implement section 112(g). However, since the sole purpose of this approval is to confirm that the District has a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR section 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 a 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 part 63.91 of San Diego's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. California Health and Safety Code section 39658 provides for automatic adoption by CARB of section 112 standards upon promulgation by EPA. Section 39666 of the Health and Safety Code requires that districts then implement and enforce these standards. Thus, when section 112 standards are automatically adopted pursuant to section 39658, San Diego will have the authority necessary to accept delegation of these standards without further regulatory action by the District. The details of this mechanism and the means for finalizing delegation of standards will be set forth in an implementation agreement between San Diego and EPA. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Docket

Copies of San Diego's submittal and other information relied upon for this direct final action is contained in docket

number CA-SD-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 direct final rulemaking. 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.

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. Executive Order 12866

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

List of Subjects in 40 CFR Part 70

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

Dated: November 8, 1995.

Felicia Marcus,
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 paragraph (x) to the entry for California to read as follows:

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

* * * * *

The following district program was submitted by the California Air Resources Board on behalf of:

(x) *San Diego Air Pollution Control District*: submitted on April 22, 1994 and amended on April 4, 1995 and October 10, 1995; approval effective on February 5, 1996, unless adverse or critical comments are received by January 8, 1996.

* * * * *

[FR Doc. 95-29836 Filed 12-06-95; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 70

[AD-FRL-5341-9]

Clean Air Act Interim Approval of Operating Permits Program; Mariposa Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating direct final interim approval of the title V operating permits program submitted by the California Air Resources Board (CARB), on behalf of the Mariposa Air Pollution Control District (Mariposa or District), 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. In addition, today's action promulgates direct final approval of Mariposa's mechanism for receiving delegation of section 112 standards as promulgated.

DATES: This direct final rule is effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the District's submittal and other supporting