

Court of Appeals for the appropriate circuit by August 22, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action.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 rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 2, 1995.

**Dennis Grams,**

*Regional Administrator.*

Part 52, chapter I, title 40 of the 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 Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(61) to read as follows:

##### § 52.820 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(61) On October 18, 1994, and January 26, 1995, the Director of the Iowa Department of Natural Resources

submitted revisions to the State Implementation Plan (SIP) to include special requirements for nonattainment areas, provisions for use of compliance and enforcement information, and adoption of EPA definitions. These revisions fulfill Federal regulations which strengthen maintenance of established air quality standards.

(i) Incorporation by reference.

(A) Revised rules "Iowa Administrative Code," effective November 16, 1994. This revision approves revised rules 567-20.2, 567-22.5(1)a, 567-22.5(1)f(2), 567-22.5(1)m, 567-22.5(2), 567-22.5(3), 567-22.5(4)b, 567-22.5(6), 567-22.5(7), 567-22.105(2), and new rule 567-21.5. These rules provide for enhanced monitoring, special requirements for nonattainment areas, and adopts EPA's definition of volatile organic compound.

(B) Revised rules, "Iowa Administrative Code," effective February 22, 1995. This revision approves new definitions to rule 567-20.2. This revision adopts EPA's definitions of "EPA conditional method" and "EPA reference method."

(ii) Additional material.

(A) None.

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#### 40 CFR Parts 52 and 70

[CA 147-1-6995-a; FRL-5216-3]

#### Clean Air Act Final Approval of Title V Operating Permits Program Revisions; Final Approval of Amended Synthetic Minor Operating Permit Program as a State Implementation Plan Revision; Bay Area Air Quality Management District, California

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is promulgating direct final approval of the title V operating permit program revisions adopted by the Bay Area Air Quality Management District (Bay Area, BAAQMD, or District) on February 1, 1995 and submitted to EPA on March 23, 1995. These revisions modify Bay Area's title V program as proposed for interim approval on November 29, 1994 by providing for optional permit shield provisions, clarifying permit application requirements, and making other minor program changes in response to local concerns. In this direct final action, EPA is also promulgating approval of revisions that Bay Area made to its synthetic minor operating permit

program. The synthetic minor program allows for the issuance of federally enforceable state operating permits (FESOP) and was also proposed for approval on November 29, 1994. The synthetic minor amendments being approved in this notice clarify the District's permit modification procedures for synthetic minors. Upon approval, the amended synthetic minor regulations will be incorporated into Bay Area's portion of the State Implementation Plan (SIP). In order to extend the federal enforceability of synthetic minor operating permit conditions to hazardous air pollutants (HAP), EPA is also approving Bay Area's amended synthetic minor regulations pursuant to section 112(l) of the Clean Air Act (Act or CAA).

**EFFECTIVE DATE:** This action is effective on August 22, 1995 unless adverse or critical comments are received by July 24, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the rules and EPA's Technical Support Document for the amended title V and synthetic minor programs are available for public inspection 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.

Copies of the regulations being incorporated by reference in today's rule are available for inspection at the following location: Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**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

On November 29, 1994, EPA proposed in the **Federal Register** to grant Bay Area's title V operating permits program interim approval (59 FR 60939) in accordance with title V of the Act (as amended in 1990) and 40 CFR part 70 (the title V implementing regulations). In the same notice, EPA proposed approval of Bay Area's synthetic minor program based on the June 28, 1989 (54 FR 27274) approval criteria for federally enforceable state operating permit programs. On February 1, 1995, Bay Area adopted revisions to Regulation 2, Rule 6 (Regulation 2-6) and the

District's Manual of Procedures, Volume II, Part 3 (MOP), which implement the District's title V and synthetic minor programs. These revisions were not made in response to the title V program deficiencies identified by EPA in the proposed rulemaking, but rather to address local issues and concerns. EPA is promulgating a direct final approval of the amendments to coordinate the effective date of the title V and FESOP programs (which are being promulgated in today's Final Rules Section) with the effective date of the revisions.

## II. EPA Evaluation and Action

On March 23, 1995, the California Air Resources Board (CARB) submitted to EPA, on behalf of the Bay Area, revisions to the District's title V operating permits program. The revisions, adopted February 1, 1995 by the Bay Area, address local issues and concerns and were not adopted in response to EPA's November 29, 1994 proposed interim approval notice (59 FR 60939). The District's synthetic minor program revisions, also adopted on February 1, 1995, were submitted to EPA by CARB, on behalf of the Bay Area, on March 31, 1995. The synthetic minor revisions clarify the District's processing of synthetic minor permit modifications.

The EPA has evaluated the submitted rules and has determined that they are substantially consistent with 40 CFR part 70 and fully consistent with the June 28, 1989 approval criteria (54 FR 27274) for SIP-approved state operating permit programs. The following is a brief analysis of the key regulatory revisions being acted on in today's notice. (Please refer to the Technical Support Document for a complete analysis of the submission.)

### A. Analysis of Submission

#### 1. Title V Operating Permit Program

a. Federal Enforceability—Title V permits in the Bay Area will contain District, State, and federal requirements. Bay Area's regulation, prior to the February 1, 1995 revisions, interchanged the terms "applicable requirement" and "federally enforceable requirement," causing District and State-only requirements to become federally enforceable. (See 59 FR 60942.) On February 1, 1995, Bay Area revised its regulations to ensure that District and State-only requirements would not automatically become federally enforceable. (See 2-6-305, 2-6-307, 2-6-311.)

b. Duty to Apply—EPA proposed source category-limited interim approval of Bay Area's title V program

on November 29, 1994 because the program allows certain sources to remain out of the program for two years by deferring the duty to apply for a title V permit. On February 1, 1995, Bay Area revised the duty to apply section of its regulation to clarify eligibility and timing issues associated with this deferral of applications. The changes ensure that only smaller sources of emissions will receive the deferral (2-6-403.1). These changes are consistent with the source category-limited interim approval proposed in the November 29, 1994 **Federal Register** notice. The revisions further specify which sources are required to submit applications within three months from the effective date of Bay Area's title V program so that the District can meet federal requirements for initial permit issuance (2-6-404.7 and section 70.4(b)(11)).

c. Permit Applications—Bay Area made several revisions to its permit application requirements. The primary substantive revision relieves sources of the requirement to calculate and summarize emissions from units that emit quantities below given thresholds (2 tons per year of a regulated air pollutant and 1000 pounds per year of a hazardous air pollutant) (2-6-405.6). EPA stated in its proposed notice that it would accept emissions cut-offs of 2 tons per year for criteria pollutants and the lesser of 1000 pounds per year or the section 112(g) de minimis levels for hazardous air pollutants (HAP) as criteria used to establish insignificant activities. According to section 70.5(c), once an activity qualifies as insignificant under these cut-offs, a source need only list it on the permit application. Bay Area's approach is substantially consistent with EPA's interpretation of insignificant activities. (For further analysis, please refer to the Technical Support Document located in the docket and Bay Area's final title V interim approval notice published in today's Final Rules Section of the **Federal Register**.)

d. Insignificant Activities—As noted above, section 70.5(c) in part 70 defines insignificant activities as "activities and emissions levels which need not be included in permit applications." Bay Area indicated in the program description for its initial title V submittal that sources listed as exempt or excluded from permitting in Regulation 2, Rule 1, section 113.3 and sections 114-128 constitute the District's list of insignificant activities ("November 1993 List"). (See November 16, 1993 submittal: Program Description, p.II-3; rule 2-6-405.4, adopted November 3, 1993; and Appendix B, Part III.) The threshold on

the November 1993 List is 150 pounds per day, which exceeds the level that EPA has allowed to be insignificant; therefore, EPA noted this provision as an interim approval issue. (See 59 FR 60939, November 29, 1994.) In the February 1, 1995 revisions, rule 2-6-405.6 is unclear as to whether Bay Area intended to require the activities on the November 1993 List to be quantified on the permit application. For an interim period, EPA will allow Bay Area not to require quantification of emissions from units on the November 1993 List, unless the emissions are necessary for determining the applicability of requirements or establishing permit terms and conditions that assure compliance with the applicable requirements. (See MOP, section 2.1.2, subsection d (p.3-8), adopted February 1, 1995.) At the end of the two-year interim approval period, Bay Area must demonstrate that each of the activities on the November 1993 List meet EPA's criteria for insignificant activities in section 70.5(c) and revise the list to exclude activities and emissions that do not qualify as insignificant to ensure that such activities and emissions will be quantified on the permit application. EPA also recommends that the District clarify that any "exemption" or "exclusion" provided by Regulation 2, Rule 1 as referred to in rule 2-6-405.4.2 (February 1, 1995 version of Regulation 2-6) does not exempt sources from title V permitting requirements.

In addition, the February 1, 1995 version of Regulation 2-6 relieves sources emitting less than 2 tons per year of a regulated air pollutant or 1000 pounds per year of a hazardous air pollutant from having to quantify emissions. While the emissions cut-off approach is acceptable for defining insignificant activities, Bay Area must add a provision to Regulation 2-6 stating that information from insignificant activities may not be omitted from the permit application if it is necessary to determine the applicability of a requirement, to impose any applicable requirement, or to assess fees (section 70.5(c)). This addition will ensure that Bay Area's insignificant activities provisions will not interfere with determining whether and how a CAA requirement applies at a source.

e. Fees—Section 3 of the revised MOP specifies fees associated with permit shields, acid rain facility monitors, public notice, etc. These fees are in addition to those that EPA found adequate for full approval in its November 29, 1994 proposal. Part 70 gives the District discretion to establish fees as long as all direct and indirect

costs of the program are covered (section 70.9(b)).

## 2. Synthetic Minor Operating Permit Program

Bay Area added a definition for "synthetic minor operating permit modification" to section 232 of Regulation 2-6 and procedural requirements for such modifications in sections 421, 422, and 423. The definition and procedural requirements provide additional assurance that revisions made to federally enforceable permit conditions contained in a synthetic minor permit will be revised in accordance with the procedures established for initial issuance of the synthetic minor permit. These revisions are fully approvable since they are consistent with the five approval criteria for FESOP programs set out in the June 28, 1989 **Federal Register** notice. (See 59 FR 60939).

### B. Final Action and Implications

The EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing approval of Bay Area's title V and synthetic minor program revisions should adverse or critical comments be filed. This action will be effective August 22, 1995, unless, within 30 days of its publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice 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 a proposed rule. The EPA will not institute a second comment period on this action. 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 August 22, 1995.

### 1. Title V Operating Permits Program

EPA is promulgating approval of the title V operating permit program revisions submitted to EPA by CARB on March 23, 1995. These revisions do not correct the deficiencies identified in the November 29, 1994 proposed interim approval, and hence, do not impact Bay Area's interim approval status. In order for the February 1, 1995 revisions to be fully approvable with respect to insignificant activities, Bay Area must revise Regulation 2-6 to: (1) State that

the permit application may not omit any information necessary to determine the applicability of, or to impose, any applicable requirement, or to assess fees; and (2) clarify that the November 1993 List no longer defines insignificant activities, or correct the deficiencies associated with the November 1993 List (59 FR 60939).

## 2. Synthetic Minor Operating Permit Program

EPA is promulgating approval of the synthetic minor operating permit program revisions submitted to EPA by CARB on March 31, 1995. Bay Area has already begun to issue permits containing voluntarily accepted limits pursuant to the District's synthetic minor regulations as adopted on February 1, 1995 (synthetic minor provisions are contained within Regulation 2, Rule 6). If the District followed its own procedures, each of those permits was subject to public notice and prior EPA review. Therefore, EPA will consider all voluntarily accepted limits in any District permit issued pursuant to the February 1, 1995 version of Bay Area's synthetic minor program which is being proposed for direct final approval in today's **Federal Register**, to be federally enforceable upon promulgation of this rule provided that any such permit is submitted to EPA and accompanied by documentation that the approved procedures were followed. The EPA will expeditiously review individual permits to ensure their conformity to the program requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

### III. Administrative Requirements

#### A. Docket

Copies of Bay Area's submittal and other information relied upon for the direct final actions are contained in docket number CA-BA-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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address revisions to Bay Area's existing operating permits program that was submitted to satisfy the requirements of 40 CFR part 70. Application for limits under Bay Area's synthetic minor provisions is voluntary and therefore does not create any new requirements. Because these approval actions do not impose any new requirements, I certify that they do not have a significant impact on any small entities affected.

### 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**

*40 CFR Part 52*

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 70*

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

**Note:** Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 25, 1995.

**David P. Howekamp,**

*Acting Regional Administrator.*

Chapter I, title 40 of the 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 F—California**

2. Section 52.220 is amended by adding paragraph (c)(216)(i)(B) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

- (c) \* \* \*
- (216) \* \* \*
- (i) \* \* \*

(B) Bay Area Air Quality Management District.

(I) Amended Regulation 2, Rule 1, Section 129 adopted on February 1, 1995; Amended Regulation 2, Rule 6, Sections 232, 234, 310, 311, 403, 404, 420, 421, 422, 423 adopted on February 1, 1995.

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**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 revising paragraph (b) to the entry for California to read as follows:

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

\* \* \* \* \*

(b) Bay Area Air Quality Management District: submitted on November 16,

1993, amended on October 27, 1994, and effective as an interim program on July 24, 1995. Revisions to interim program submitted on March 23, 1995 and effective on August 22, 1995 unless adverse or critical comments are received by July 24, 1995. Approval of interim program, including March 23, 1995 revisions, expires July 23, 1997.

\* \* \* \* \*

[FR Doc. 95-15037 Filed 6-22-95; 8:45 am]

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**40 CFR Parts 52 and 70**

[CA 77-1-6996; AD-FRL-5216-5]

**Clean Air Act Final Interim Approval of the Operating Permits Program; Final Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable State Operating Permits; Bay Area Air Quality Management District, California**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is promulgating interim approval of the title V operating permits program submitted by the Bay Area Air Quality Management District (Bay Area, BAAQMD, or District) for the purpose of complying with federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. In addition, EPA is promulgating final approval of a revision to Bay Area's portion of the California State Implementation Plan (SIP) regarding synthetic minor regulations for the issuance of federally enforceable state operating permits (FESOP). In order to extend the federal enforceability of state operating permits to hazardous air pollutants (HAP), EPA is also finalizing approval of Bay Area's synthetic minor regulations pursuant to section 112(l) of the Clean Air Act (CAA or Act). Finally, today's action grants final approval to Bay Area's mechanism for receiving delegation of section 112 standards as promulgated.

**EFFECTIVE DATE:** July 24, 1995.

**ADDRESSES:** Copies of Bay Area's submittals and other supporting information used in developing the final approvals are available for inspection (docket number CA-BA-94-1-OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the regulations being incorporated by

reference in today's rule are also available for inspection at the following location: Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Celia Bloomfield (telephone 415/744-1249), Mail Code A-5-2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Purpose**

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act (Act)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70, require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

On November 29, 1994, EPA proposed interim approval of the operating permits program for Bay Area, California. See 59 FR 60939. The November 29, 1994 **Federal Register** document also proposed approval of Bay Area's interim mechanism for implementing section 112(g) and program for delegation of section 112 standards as promulgated. Public comment was solicited on these proposed actions. EPA received public comment on the proposal and is responding to those comments in this document and in a separate "Response to Comments" document that is available in the docket at the Regional office. In this notice, EPA is promulgating interim approval of Bay Area's operating permits program and approving the section 112(g) and section 112(l) mechanisms noted above.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of federally enforceable state operating permits. Permits issued pursuant to a program meeting the June 28, 1989 criteria and approved into the SIP are considered