

CLEVELAND/AKRON OZONE NONATTAINMENT AREA
[Tons per day]

| Source type | VOC | CO | NO _x |
|-------------------------------|--------|----------|-----------------|
| Point sources | 80.24 | 707.32 | 244.77 |
| Area sources | 120.86 | 12.64 | 9.54 |
| On-road mobile sources | 248.37 | 1,402.01 | 176.58 |
| Off-road mobile sources | 80.19 | 808.32 | 70.92 |
| Biogenic sources | 195.32 | | |
| Totals | 724.98 | 2,930.29 | 501.81 |

YOUNGSTOWN OZONE NONATTAINMENT AREA
[Tons per day]

| Source type | VOC | CO | NO _x |
|-------------------------------|--------|--------|-----------------|
| Point sources | 16.33 | 18.74 | 23.25 |
| Area sources | 27.80 | 13.02 | 7.00 |
| On-road mobile sources | 48.97 | 293.54 | 29.87 |
| Off-road mobile sources | 13.48 | 87.88 | 10.98 |
| Biogenic sources | 50.26 | | |
| Totals | 156.84 | 413.18 | 71.10 |

Please note that no further action will occur on this SIP revision until the State submits (and USEPA completes its review) on the response to the point source emissions inventory comments.

VIII. General Provisions

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA 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 populations of less than 50,000.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671(q).

Dated: June 28, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95-16832 Filed 7-7-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 70

[AD-FRL-5256-6]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Santa Barbara County Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by the Santa Barbara County Air Pollution Control District (Santa Barbara 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.

DATES: Comments on this proposed action must be received in writing by August 9, 1995.

ADDRESSES: Comments should be addressed to Martha Larson, Mail Code A-5-2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Martha Larson (telephone: 415/744-1238), Mail Code A-5-2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act (Act) as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable State operating permits program and the

VI. Proposed Rulemaking Action and Solicitation of Public Comment

Public comments are solicited on USEPA's proposed rulemaking action. Public comments must be received by August 9, 1995. Notice of final action on the requested approval of the emissions inventories will be provided to the State of Ohio by letter, and a subsequent notice of such action will be published in the **Federal Register**. Subsequent to the submittal of acceptable point source corrections, USEPA will issue a letter to the State of Ohio providing notice of USEPA's final action on the requested approval of the inventories. The effective date of these SIP revisions shall be the date that the letter notice is issued. Interested parties wishing to comment on these SIP revisions, or on USEPA's approval by means of the letter notice procedure, must submit written comments by August 9, 1995. USEPA plans to announce such final action in the **Federal Register** within 30 days of its effective date.

VII. Proposed Action

The USEPA is proposing to approve, with "letter notice" of any final action, Ohio's 1990 base-year ozone precursor emissions inventories for the Canton (Stark County); Cincinnati (Butler, Clermont, Hamilton and Warren Counties); Cleveland (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); and Youngstown (Mahoning and Trumbull Counties) ozone nonattainment areas.

corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 CFR part 70 (part 70). Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit title V 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.

II. Proposed Action and Implications

A. Analysis of State Submission

The analysis contained in this notice focuses on specific elements of Santa Barbara's title V operating permits program that must be corrected to meet the minimum requirements of 40 CFR 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. The docket may be viewed during regular business hours at the address listed above.

1. Title V Program Support Materials

Santa Barbara's original title V program was submitted by the California Air Resources Board (CARB) on November 15, 1993. Additional material was submitted on March 2, 1994, August 8, 1994, December 8, 1994 and June 15, 1995. The submittal was found to be complete on January 13, 1994. The Governor's letter requesting source category-limited interim approval, California enabling legislation, and Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in Santa Barbara's submittal. The Santa Barbara submission does contain a complete program description, District implementing and supporting regulations, and all other program

documentation required by § 70.4. An implementation agreement is currently being developed between Santa Barbara and EPA.

2. Title V Operating Permit Regulations and Program Implementation

Santa Barbara's regulations adopted or revised to implement title V include Regulation XIII, Part 70 Operating Permit Program, adopted November 9, 1993; Rule 202, Exemptions to Rule 201: Sections 202.A.1., 202.A.2., 202.A.3., 202.C., 202.D., 202.E., and 202.F., adopted March 10, 1992; Rule 205, Standards for Granting Applications: Sections 205.C.1.a.23., definition of "Net Emissions Increase," 205.C.5.b.1.a.2.c., significant increases for new source nonattainment review, and 205.C.5.c.6., public notification and comment period, adopted July 30, 1991; and Rule 210, Fees, adopted May 7, 1991. The regulations substantially meet the requirements of 40 CFR part 70, §§ 70.2 and 70.3 for applicability; §§ 70.4, 70.5, and 70.6 for permit content, including operational flexibility; § 70.7 for public participation and minor permit modifications; § 70.5 for complete application forms; and § 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are several deficiencies in the program that are outlined under Section II.B. below as interim approval issues and further described in the Technical Support Document.

a. *Variations*—Santa Barbara has authority under State and local law to issue a variance from State and local requirements. Sections 42350 et sec. of the California Health and Safety Code and District Regulation V, Rule 506 allow the District to grant relief from enforcement action for permit violations. In the opinion submitted with 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.)

The EPA regards these State and district variance provisions as wholly external to the program submitted for approval under part 70, and consequently, is proposing to take no action on these provisions of State and local law. The 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. The 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."

b. *Permit Content*—Santa Barbara's permit content rule (Rule 1303) does not include certain important § 70.6 permit content requirements. Santa Barbara's rule does not require the level of detail regarding recordkeeping associated with monitoring found in § 70.6(a)(3)(ii) (A) and (B). Paragraph D.1.f. of Rule 1303 more generally addresses the requirements for recordkeeping associated with monitoring. Paragraph 1303.D.1.f. provides that operating permits issued pursuant to this rule will contain conditions establishing applicable recordkeeping requirements. Although 1303.D.1.f. does not explicitly state the recordkeeping requirements associated with monitoring, the paragraph's general language is consistent with the requirements of § 70.6(a)(3)(ii) (A) and (B).

In addition to lacking specific recordkeeping requirements of § 70.6, paragraph 1303.D.1.b. of Santa Barbara's rule does not require the permit to contain identification of any difference in form from the applicable requirement upon which a term or condition is based, as is required under § 70.6(a)(1)(ii). Additionally, Santa Barbara's definition of "prompt" reporting in the case of deviations, found in 1303.D.1.g, applies only to deviations due to emergency upset conditions, and does not define "prompt" for all deviations, as is required under § 70.6(a)(3)(iii)(B).

Santa Barbara's part 70 program submittal included a "Standard Permit Format," (Appendix B-1, submitted November 15, 1993). The conditions of the Standard Permit Format included conditions that would correct the deficiencies identified above. For interim approval, EPA is specifically approving the Standard Permit Format

that was submitted as part of Santa Barbara's part 70 program [Appendix B-1, Sections C, E.3.c through h, and E.6, submitted November 15, 1993.] Any modifications to these sections of the Standard Permit Format must be approved by EPA. Failure to include these conditions in part 70 permits will be cause for EPA to object to a District operating permit. See § 70.8(c)(1). In order to receive full approval, Santa Barbara must modify Rule XIII to include the level of detail regarding recordkeeping associated with monitoring found in § 70.6(a)(3)(ii) (A) and (B), identification of difference in form from the applicable requirement, consistent with the requirements of § 70.6(a)(1)(ii), and definition of "prompt", consistent with § 70.6(a)(3)(iii)(B).

c. Insignificant Activities—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. Section 70.5(c) 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 70.5(c) also 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. Under part 70, a State must request and EPA must 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.

Santa Barbara submitted District Rule 202, its current permit exemption rule, as its list of insignificant activities. It is clear that Rule 202 was not developed with the purpose of defining insignificant activities under the District's title V program in mind; the applicability provisions of the rule state that the exemptions apply to the requirements of Rule 201, the District requirements for obtaining Authority to Construct permits and non-federally enforceable Permits to Operate. Santa Barbara did not provide EPA with criteria used to develop the exemptions list, information on the level of emissions from the activities, nor with a demonstration that these activities are not likely to be subject to an applicable requirement. Therefore, EPA cannot

propose full approval of the list as the basis for determining insignificant activities.

For other State and district programs, EPA has proposed to accept, as sufficient for full approval, emission levels for insignificant activities of 2 tons per year for criteria pollutants and the lesser of 1000 pounds per year, Section 112(g) de minimis levels, or other title I significant modification levels for hazardous air pollutants (HAP) and other toxics (40 CFR 52.21(b)(23)(i)). The EPA believes that these levels are sufficiently below the applicability thresholds of many applicable requirements to assure that no unit potentially subject to an applicable requirement is left off a title V application. The EPA is requesting comment on the appropriateness of these emission levels for determining insignificant activities in Santa Barbara. This request for comment is not intended to restrict the ability of States or districts, including Santa Barbara, to propose, and EPA to approve, different emission levels if the State or district demonstrates that such alternative emission levels are insignificant compared to the level of emissions from and types of units that are permitted or subject to applicable requirements.

d. Definition of Title I Modification—Among the several criteria that Santa Barbara includes in its definition of "significant part 70 permit modification" is the provision that it not included a "minor permit modification." Santa Barbara's exclusion of minor permit modifications as well as its definition of "title I (or major) modification" to include only modifications that are major under federal NSR and PSD resulting in a 'significant' net emissions increase, or a new or modified HAPs source resulting in a 'de minimis' increase of HAPs, clearly indicates that Santa Barbara does not interpret "title I modification" to include "minor NSR changes." Additionally, Santa Barbara's definition of "title I modification" does not include modifications under part 60. Santa Barbara's definition of "significant part 70 permit modification" includes only "Any equivalent or identical replacement of an emissions unit that is subject to standards promulgated under CAA, sections 111 or 112." Therefore, Santa Barbara's rule would not require all modifications under part 60 to be processed as significant permit revisions. Part 70 requires all modifications under title I of the Act to be processed as significant permit modifications (§ 70.7(e)(2)(i)(A)(5)). The EPA is currently in the process of

determining the proper definition of "title I modification." As further explained below, EPA has solicited public comment on whether the phrase "modification under any provision of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act.

On August 29, 1994, EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to, among other things, allow State programs with a more narrow definition of "title I modification" to receive interim approval (59 FR 44572). The Agency explained its view that the better reading of "title I modification" includes minor NSR, and solicited public comment on the proper interpretation of that term (59 FR 44573). The Agency stated that if, after considering the public comments, it continued to believe that the phrase "title I modification" should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to allow States with a narrower definition to be eligible for interim approval.

Santa Barbara's exclusion of certain types of modifications under part 60 from the definition of "title I (or major) modification" and "significant part 70 permit revision" is an interim approval issue. EPA's initial part 70 proposal (56 FR 21712) identified part 60 modifications as title I modifications. No comment was received on the inclusion of part 60 modifications in the definition of "title I modification," and EPA is not considering modifying the definition to remove modifications under part 60. With respect to minor NSR, the EPA hopes to finalize its rulemaking revising the interim approval criteria under 40 CFR 70.4(d) expeditiously. If EPA establishes in its rulemaking that the definition of "title I modification" can be interpreted to exclude changes reviewed under minor NSR programs, Santa Barbara's exclusion of minor new source review from the definition of "significant part 70 permit modification" and interpretation of "title I (or major) modification" would be consistent with part 70. Conversely, if EPA establishes through the rulemaking that the definition of "title I modification" must include changes reviewed under minor NSR, Santa Barbara's definition and

interpretation will become a basis for interim approval. If the definition and interpretation become a basis for interim approval as a result of EPA's rulemaking, Santa Barbara would be required to revise its definition and interpretation to include minor NSR in addition to revising the definition and interpretation to include all part 60 modifications in order to conform to the requirements of part 70.

Accordingly, today's proposed approval does not identify Santa Barbara's exclusion of minor new source review from the definition of "significant part 70 permit modification" and interpretation of "title I (or major) modification" as necessary grounds for either interim approval or disapproval. EPA does not believe that it is appropriate to determine whether this is a program deficiency until EPA completes its rulemaking on this issue. Santa Barbara submitted a June 15, 1995 letter from Peter Cantle, Engineering Division Manager, Santa Barbara County Air Pollution Control District, committing to revise the definitions of "title I (or major) modification" and "significant part 70 permit revision" to include all modifications under 40 CFR part 60. EPA has therefore identified Santa Barbara's definitions of "signification part 70 permit modification" and "title I (or major) modification" as an interim approval issue on the basis that the definitions do not adequately include modifications under part 60.

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)).

Santa Barbara has opted to make a presumptive minimum fee demonstration. The fees collected under Santa Barbara's existing fee schedule in Rule 210 results in title V facilities paying an average of \$112.20 per permitted ton in permitting and emissions fees. Santa Barbara calculated its fee level at \$112.20 per ton by adding up the annual permit equipment and

emissions fees paid by sources identified as title V facilities (\$2,373,000), and dividing that number by the permitted emissions (tons per year of regulated air pollutants) from those facilities.

In addition, Santa Barbara's title V fee rule (Rule 1304.D.11) requires that all costs incurred by the District for issuance of Part 70 permits be "reimbursable costs." This will result in additional fees of \$119,000 per year, an additional \$20.65 per ton of actual emissions, as calculated by the District. Based on a conservative billing rate of \$80 per hour, the District expects revenues of \$119,000 annually. These fees combined result in collection of an amount that is well above the presumptive minimum. The District does not specifically require this emissions-based fee to be adjusted annually based upon the CPI. However, the District meets this requirement as a practical matter, because Santa Barbara's fees are significantly above the presumptive minimum. Santa Barbara's fee schedule was developed based on an estimation of workload associated with administration of the title V program. For more information, see Section III.C of Santa Barbara's Title V Operating Permit Program Description, and Appendix B-10 of the program submittal, available in the docket.

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

a. Authority and Commitments for Section 112 Implementation—Santa Barbara 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 "federally enforceable requirements" and requiring each permit to incorporate conditions that assure compliance with all such federally enforceable requirements. EPA has determined that this legal authority is sufficient to allow Santa Barbara to issue permits that assure compliance with all Section 112 requirements.

EPA is interpreting the above legal authority to mean that Santa Barbara is able to carry out all Section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz, Director of the Office of Air Quality Planning and Standards, U.S. EPA.

b. Authority and Commitments for Title IV Implementation—Santa Barbara certified in a letter from Peter Cantle, Engineering Division Manager, Santa Barbara County Air Pollution Control District, dated March 2, 1994, that there are no acid rain sources in the District. Santa Barbara committed in the March 2, 1994 letter to expeditiously adopt the appropriate legal authority necessary to issue timely Title IV permits to new or existing sources that become subject to or opt into Title IV.

B. Proposed Interim Approval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by CARB on behalf of the Santa Barbara County Air Pollution Control District on November 15, 1993, and supplemented on March 2, 1994, August 8, 1994, December 8, 1994, and June 15, 1995. If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, Santa Barbara would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a federal permits program for 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 interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim approval, if the District failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If Santa Barbara then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the District had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In any case, if, six months after application of the first sanction, the District still had not submitted a corrective program that

EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove Santa Barbara's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In all cases, if, six months after EPA applied the first sanction, Santa Barbara had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a district has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a district title V operating permits program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for that district upon interim approval expiration.

1. Santa Barbara's Title V Operating Permits Program

If EPA finalizes this interim approval, Santa Barbara must make the following changes, or changes that have the same effect, to receive full approval (all required revisions are to District Rule XIII unless otherwise noted):

a. Variances—Revise Rule 1305.G(1) to read "The terms and conditions of any variance or abatement order that would prescribe a compliance schedule shall be incorporated into the permit as a compliance schedule, to the extent required by Part 70 rules."

b. Permit Content—Revise Rule 1303.D.1.f. permit content requirements to provide adequate specificity with regard to the applicable recordkeeping requirements. See § 70.6(a)(3)(ii)(A) and (B).

c. Insignificant Activities—Provide a demonstration that activities that are exempt from permitting under Rule XIII, (pursuant to rule 202, the District's permit exemption list) are truly

insignificant and are not likely to be subject to an applicable requirement. Alternatively, Rule XIII may restrict the exemptions to activities that are not likely to be subject to an applicable requirement and emit less than District-established emission levels. The District should establish separate emission levels for HAP and for other regulated pollutants and demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements. See § 70.4(b)(2).

Additionally, Revise Rule XIII to require that insignificant activities that are exempted because of size or production rate be listed in the permit application. See § 70.5(c). See 1302.D.1.f., Definition of insignificant activities.

Additionally, Revise Rule 1301 definition of "Insignificant Activities" to delete the last sentence, which contradicts the requirement that applications may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required. See § 70.5(c).

d. Definition of Administrative Permit Amendment—Revise 1301, definition of "Administrative Permit Amendment" part 6. Santa Barbara must define by rule what "other changes" will be determined to be administrative permit amendments. In order for "other changes" to qualify as an administrative permit amendment, the specific changes must be approved by the Administrator as part of the part 70 program. See § 70.7(d)(1)(iv).

e. Operational Flexibility Notification—Rule 1304.E.2 and E.3 must be revised to incorporate a requirement that sources notify EPA of changes made under the operational flexibility provisions. See § 70.4(b)(12).

f. Public Notification Requirement—Revise Rule 1304.D.6 to include notice "by other means if necessary to assure adequate notice to the affected public." See § 70.7(h)(1).

g. Significant Changes to Monitoring Requirements—Revise Rule 1301, definition of "Minor Permit Modification" part (4) to read "The modification does not involve any relaxation of any existing reporting or recordkeeping requirements in the permit, or any significant changes to existing monitoring requirements in the permit." See § 70.7(e)(2)(i)(2) and § 70.7(e)(4)(i).

h. Form of Applicable Requirement—The rule does not require the identification of any difference in form from the applicable requirement upon

which the term or condition is based. Regulation XIII must be revised to include this requirement. This requirement is included in the Standard Permit Format. EPA is specifically approving the Standard Permit Format that was submitted as part of Santa Barbara's part 70 program (Appendix B-1, Section C, November 15, 1993 submittal). Any modifications to the standard permit format must be approved by EPA. Failure to include these conditions in part 70 permits will be cause for EPA to object to a District operating permit. See § 70.6(a)(1)(i).

i. Applicable Requirement Trading—Add emissions trading provisions consistent with § 70.6(a)(10), which require that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval.

j. Prompt Reporting of Deviations—Santa Barbara has not defined "prompt" in their program with respect to reporting of all deviations. Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Santa Barbara's requirement for reporting of deviations is limited to deviations due to emergency upset conditions. Under part 70, deviations include, but are not limited to, upset conditions. Santa Barbara must revise rule 1303.D.1.g to be consistent with the more inclusive part 70 requirement. To make Rule XIII more inclusive, Rule 1303.D.1.g could be revised to read "* * * Deviations shall be reported within 72 hours of the occurrence * * *."

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. Therefore, as an alternative to the revision to Rule 1303.D.1.g above, Rule XIII could be revised to require prompt reporting of all deviations, and to require that prompt be defined in each permit. Rule 1303.D.1.g could be revised to read "Conditions establishing all applicable reporting requirements; conditions establishing prompt reporting of any deviations from permit-stipulated requirement, including definition(s) of 'prompt' for all deviations. All applicable reports shall be submitted every 6 months and shall be certified by a responsible official. Deviations due to emergency upset conditions shall be reported within 72

hours of the occurrence. *All other deviations shall be reported promptly, as defined in the permittee's permit.* The probable cause of deviations and remedial measure taken to correct this shall also be reported at this time." 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 § 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.

As a third alternative, Santa Barbara could revise Rule XIII to include definitions of "prompt" for other types of deviations in addition to those caused by emergency upset conditions. Part 70 allows the permitting authority to define "prompt" in relation to the degree and type of deviation. Therefore, Santa Barbara may also revise Rule XIII to define reporting times for other types of deviations, if the types of deviations and their related reporting times are specifically defined in Santa Barbara's rule.

Meeting the requirements of § 70.6(a)(3)(iii)(B) through one of the three methods outlined above is a requirement for full approval of Santa Barbara's part 70 program.

k. Exemptions—Delete Rule 1301.B.4. Section 70.3(b) requires that major sources, affected sources (acid rain sources), and solid waste incinerators regulated pursuant to section 129(e) of the CAA may not be exempted from the program. Although section 129(g)(1)(3) of the CAA exempts solid waste incineration units subject to section 3005 of the Solid Waste Disposal Act, part 70 does not exempt these units. Any solid waste incineration unit that meets the definition of "major source" under part 70 would be subject to the requirement to obtain a part 70 permit regardless of the unit's applicability under section 129.

l. Recordkeeping for off-permit changes—Santa Barbara's rule does not require that the permittee keep records describing off-permit changes and the emissions resulting from these changes. Santa Barbara's rule must be revised to be consistent with the requirements of § 70.4(b)(14)(iv).

m. Definition of Title I Modifications and Significant Part 70 Permit Modifications—Rule 1301 defines "modification" to include all modifications under 40 CFR part 60. However, the definitions of "title I (or major) modification" and "significant part 70 permit modification" do not clearly define all modifications under part 60 as title I modifications and do not clearly ensure they will be treated as significant permit modifications. See discussion in Section II.A.2.d of this notice. Santa Barbara submitted a June 15, 1995 letter from Peter Cattle, Engineering Division Manager, Santa Barbara County Air Pollution Control District, committing to provide interpretive guidance demonstrating that all modifications under 40 CFR part 60 will be treated as significant permit modifications. In order to receive final interim approval, Santa Barbara must finalize and submit to EPA interpretive guidance demonstrating that all modifications under 40 CFR part 60 will be treated as significant permit modifications. In order to receive full approval, Santa Barbara must clarify the definitions of "title I (or major) modification" and "significant part 70 permit modification" to include all modifications under 40 CFR part 60.

n. Reporting of an Emergency—In order to obtain an affirmative defense in an emergency, Santa Barbara requires in Rule 1303.F.d., among other things, that the permittee submit a description of the emergency within 4 days of the emergency. Santa Barbara must revise 1303.F.d to require submittal of notice of emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency, to be consistent with § 70.6(g)(3)(iv) and in order to maintain the affirmative defense of emergency. Prior to amending the rule, Santa Barbara should insure that sources are aware that this 2 day notice is necessary in order to maintain the affirmative defense. This could be accomplished by including a permit condition in all permits issued that requires notice of emergency to be submitted within 2 days.

2. California Enabling Legislation—Legislative Source Category Limited Interim Approval Issue

Because California State law currently exempts agricultural production sources from permit requirements, the California Air Resources Board has requested source category-limited interim approval for all California districts. The EPA is proposing to grant source category-limited interim approval to the operating permits program submitted by

the California Air Resources Board on behalf of Santa Barbara on November 15, 1993. In order for this 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.

The above described program and legislative deficiencies must be corrected before Santa Barbara can receive full program approval. For additional information, please refer to the TSD, which contains a detailed analysis of Santa Barbara's operating permits program and California's enabling legislation.

3. District 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). The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice 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), Santa Barbara must be able to implement section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing District regulations.

For this reason, EPA is proposing to approve the use of Santa Barbara'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 Santa Barbara 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 proposed approval to 12 months following promulgation by EPA of the section 112(g) rule.

4. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that 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 proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of Santa Barbara'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, Santa Barbara 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 a Memorandum of Agreement between Santa Barbara and EPA, expected to be completed prior to approval of Santa Barbara's section 112(l) program for delegation of unchanged federal standards. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the District's submittal and other information relied upon for the proposed interim approval are contained in a docket 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 proposed interim approval. The principal purposes of the docket are:

- (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and
- (2) To serve as the record in case of judicial review. The EPA will consider any comments received by August 9, 1995.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy 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.

D. Unfunded Mandates Act

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 proposed 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.

List of Subjects in 40 CFR Part 70

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

Authority: 42 U.S.C. 7401-7671q.

Dated: June 30, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95-16827 Filed 7-7-95; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BPO-121-P]

RIN 0938-AG48

Medicare Program; Telephone and Electronic Requests for Review of Part B Initial Claim Determinations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would allow beneficiaries, providers, and physicians (and other suppliers), who are entitled to appeal Medicare Part B initial claim determinations, to request a review of the carrier's initial determination by telephone or electronic transmission. (Currently, a request for review may be made only in writing.) Allowing the use of telephone and electronic requests would expedite the review process by supplementing, *not replacing*, the current review procedures. It would also improve carrier relationships with the provider and beneficiary communities by providing quick and easy access to the appeals process. (This rule would not provide for telephone or electronic requests for review of Part B initial determinations made by Peer Review Organizations and Health Maintenance Organizations.)

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 8, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-121-P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPO-121-P. Comments received timely will be available for public inspection as they are received, generally beginning