Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this proposal in accordance with the principles and criteria of Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, as revised by 59 FR 38654; July 29, 1994, this proposal is categorically excluded from further environmental documentation as an action required to protect the public and the environment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Records and recordkeeping, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, The Coast Guard proposes to amend Subpart F of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.205 is added to read as follows:

§ 165.205 Ohio River at Cincinnati, OH; regulated navigation area.

(a) *Location.* The following is a regulated navigation area (RNA): The waters of the Ohio River between mile 466.0 and mile 473.0.

(b) *Activation.* The restrictions in paragraphs (c) (1) through (4) of this section are in effect from one-half hour before sunset to one-half hour after sunrise when the Cincinnati, Ohio, Ohio River Gauge is at or above the 45 foot level. The Captain of the Port, Louisville, Kentucky will publish a notice in the Local Notice to Mariners and will make announcements by Coast Guard Marine Information Broadcasts whenever the river level measured at the gauge activates or terminates the navigation restrictions in this section.

(c) *Regulations.* (1) Transit through the RNA by all downbound vessels towing cargoes regulated by Title 46 Code of Federal Regulations Subchapters D and O with a tow length exceeding 600 feet excluding the tow boat is prohibited.

(2) No vessel shall loiter, anchor, stop, remain or drift without power at anytime within the navigation channel of the RNA.

(3) All commercial vessels shall continually monitor VHF–FM channel 13 on their radiotelephone while in or approaching the RNA.

(4) Between Ohio River miles 466.0 and 467.0, downbound vessels shall make a broadcast in the blind, on VHF–FM channel 13 announcing their presence in the RNA.

Dated: April 14, 1995.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District, St. Louis, MO.

[FR Doc. 95–11890 Filed 5–15–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5206–3]

Clean Air Act Proposed Interim Approval of the Operating Permits Program; Monterey Bay Unified 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 Monterey Bay Unified Air Pollution Control District (Monterey 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 June 15, 1995.

ADDRESSES: Comments should be addressed to Regina Spindler, 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: Regina Spindler (telephone: 415/744–1251), 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 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 Monterey'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

Monterey's original title V program was submitted by the California Air Resources Board (CARB) on December 6, 1993. Additional material was submitted on February 2, 1994 and April 7, 1994. The submittal was found to be complete on February 4, 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 Monterey's submittal. The Monterey 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 Monterey and EPA.

The EPA determined in its evaluation of Monterey's program that Rule 218, the District's permitting regulation, contained several deficiencies that were cause for disapproval of the program. The EPA described these deficiencies and the corrections necessary to make the program eligible for interim approval in a letter from Felicia Marcus, EPA Region IX Administrator, to Abra Bennett, Monterey Air Pollution Control Officer (APCO), dated July 22, 1994. In response, Monterey adopted a revised regulation which was submitted by CARB on the District's behalf on October 13, 1994. Section 70.4(e)(2) gives EPA the option of extending the review period for a title V program submission if the program is materially changed during the initial one-year review. Because the revisions to Monterey's program were regulatory and affect critical elements of part 70, such as applicability, permit applications, and permit content, the program required additional review and analysis. The EPA considered the program to be materially changed and therefore decided to exercise the § 70.4(e)(2) option and extend its review period by six months. This extension moves the deadline for EPA's final action on Monterey's title V operating permits program from December 6, 1994, which is one year after receipt of the original program submittal, to June 6, 1995.

2. Title V Operating Permit Regulations and Program Implementation

Monterey's regulations adopted or revised to implement title V include Rule 218, Title V: Federal Operating Permits, adopted November 17, 1993 and revised on September 21, 1994; Rule 308, Title V: Federal Operating Permit Fees, adopted November 17, 1993; and Rule 201, Sources Not Requiring Permits, adopted September 1, 1974, as revised on April 21, 1993. 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; section 70.7 for public participation and minor 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 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. Applicability and Duty To Apply

While the ''major source'' definition in Monterey's title V program meets the applicability requirements of part 70, the District rule provides that sources with actual emissions below certain thresholds are exempt from the obligation to obtain a title V permit until three years after program approval (Rule 218, section 1.3.3). Ordinarily, part 70 requires that sources apply within one year of program approval. A District may, however, request interim approval of a source category-limited program that defers the obligation to obtain a permit for a certain category or categories of sources. Monterey's source category-limited program defers sources with actual emissions below 60% of the criteria pollutant and 10 ton per year hazardous air pollutant (HAP) major source thresholds and 72% of the 25 ton per year HAP threshold. Two years after EPA grants interim approval to the source category-limited program, these deferred sources must either have federally enforceable conditions that limit their potential to emit to below major source thresholds or will be required to apply for a title V permit.

The EPA's policy on source category-limited interim approval is set forth in a document entitled, ''Interim Title V Program Approvals,'' signed on August 2, 1993 by John Seitz, Director of the Office of Air Quality Planning and Standards. This policy requires that a district that requests interim approval of a source category-limited program demonstrate that there are compelling reasons why the district cannot address all sources in the interim. Additionally, the district must demonstrate that the source category-limited program will apply to at least 60 percent of all part 70 sources and cover sources that are responsible for at least 80 percent of the aggregate emissions from part 70 sources (60/80 test).

In an addendum to Monterey's revised title V program submittal, dated October 25, 1994, from Fred Thoits, Engineering Division Chief to Felicia Marcus, Region IX Administrator, Monterey demonstrated to EPA's satisfaction that it meets this 60/80 test. With regard to the demonstration of compelling reasons, the District asserts that while many small sources in the District meet title V applicability criteria based on their potential emissions, these sources' actual emissions are well below the major source threshold. The District reasons that it is a more productive use of its limited resources during the initial three year transition period to issue title V permits to the larger sources that are clearly intended to be permitted under title V and to establish a prohibitory rule and synthetic minor permit program that sources with lower actual emissions may use to establish federally enforceable limits on their potential emissions. The EPA believes that these are compelling reasons for implementing a source category-limited interim program.

b. 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.

Monterey submitted District Rule 201, its current permit exemption rule, as its list of insignificant activities. It is clear that Rule 201 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 200, the District requirements for obtaining Authority to Construct permits and non-federally enforceable Permits to Operate. Monterey 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 Monterey. This request for comment is not intended to restrict the ability of other states and districts 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.

c. Variances

Monterey 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 VI, Article 2 allow the District to grant relief from enforcement action for permit violations. The EPA regards these 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.''

d. Definition of Title I Modification

Among the several criteria that Monterey includes in its definition of ''Significant Permit Modification'' is the provision that it involve any ''significant change as specified in the EPA's title I regulations in 40 CFR parts 51, 52, 50, 61 and 63.'' The EPA might interpret the reference to title I regulations in part 51 to include changes reviewed under a minor source preconstruction review program (''minor NSR changes''). However, Monterey's inclusion of the term ''significant change'' as well as the statement in its program description that title I modifications include modifications that are ''major under federal NSR, * * * major under PSD resulting in a 'significant' net emissions increase, or a modification at a major HAPs source resulting in a 'de minimis' increase of HAPs'' clearly indicates that Monterey does not interpret ''title I modification'' to include ''minor NSR changes.'' 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.

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, Monterey's definition of ''significant permit modification'' and interpretation of ''title I modification'' would be fully 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, Monterey'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, Monterey would be required to revise its definition and interpretation to conform to the requirements of part 70.

Accordingly, today's proposed approval does not identify Monterey's definition of ''significant permit modification'' and interpretation of ''title I modification'' as necessary grounds for either interim approval or disapproval. Again, although EPA has reasons for believing that the better interpretation of ''title I modification'' is the broader one, EPA does not believe that it is appropriate to determine whether this is a program deficiency until EPA completes its rulemaking on this issue.

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)).

Monterey's title V fee rule (Rule 308) requires all title V sources to pay an application fee, an evaluation fee of $80.00 per hour for every District staff hour necessary to complete the title V permit evaluation, and an emissions-based fee of $14.44 per ton of emissions, as calculated by the District. This emissions-based fee will be adjusted annually based upon the CPI. In addition to these title V fees, title V sources must continue to pay existing District permit fees. These fees combined result in collection of an average of $92.00 per ton per year, an amount that is well above the presumptive minimum. Monterey expects revenues of $73,600 in the first year of the program and revenues of $200,000 in the second and ensuing years. Monterey's fee schedule was developed based on an estimation of workload associated with administration of the title V program.

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

a. Authority and Commitments for Section 112 Implementation

Monterey 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. Monterey has supplemented this legal authority with a commitment to implement and enforce section 112 requirements and to adopt additional regulations as needed to issue permits that implement and enforce the requirements of section 112. This commitment is contained in a letter from Abra Bennett, Air Pollution Control Officer to Debbie Jordan, Chief of the Operating Permits Section at EPA, Region IX, dated April 7, 1994. The EPA has determined that the legal authority and commitments are sufficient to allow Monterey to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the Technical Support Document 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 and Commitments for Title IV Implementation

Monterey committed in a letter from Abra Bennett, Air Pollution Control Officer, dated April 7, 1994, to submit a complete acid rain program to EPA by January 1, 1995. The letter stated the District's intentions to adopt part 72, EPA's acid rain regulation, by reference; to use EPA acid rain application forms; to revise District regulations as necessary to accommodate federal revisions; and to meet all acid rain deadlines contained in part 72. Monterey incorporated part 72 (except provisions applicable to phase I units and permitting of acid rain units by EPA) by reference into District Regulation II, Rule 219 on November 23, 1994. Rule 219 was subsequently submitted to EPA along with proof of board adoption.

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 Monterey Bay Unified Air Pollution Control District on December 6, 1993, supplemented on February 2, 1994 and April 7, 1994, and revised by the submittal made on October 13, 1994. 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, Monterey 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 Monterey 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 Monterey'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, Monterey 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 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. Monterey's Title V Operating Permits Program

If EPA finalizes this interim approval, Monterey must make the following changes, or changes that have the same effect, to receive full approval (all required revisions are to District Rule 218 unless otherwise noted):

(1) Revise section 1.3 to require that, regardless of the source's actual or potential emissions, acid rain sources and solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act may not be exempted from the requirement to

obtain a permit pursuant to Rule 218. Section 70.3(b) requires that major sources, affected sources (acid rain sources), and solid waste incinerators may not be exempted from the program. Monterey's deferral for certain major sources other than acid rain sources and solid waste incinerators is allowable under John Seitz's ''Interim Approval Guidance,'' dated August 2, 1993.

(2) Revise section 2.1.4 of the definition of ''Administrative Permit Amendments'' as follows:

''*requires more frequent* monitoring or reporting for the stationary source; or''

Increasing monitoring requirements could be a significant change to these requirements. Significant changes in monitoring must be processed as significant permit modifications. (§ 70.7(d)(1)(iii), § 70.7(e)(4))

(3) Revise the definition of ''Federally Enforceable Requirement'' in section 2.12 to include any standard or other requirement provided for in the State Implementation Plan approved or promulgated by EPA. This revision is necessary to make the section 2.12 definition consistent with the part 70 definition of ''Applicable requirement'' and with the Rule 218, section 4.2.4 requirement that each permit require compliance with any standard or requirement set forth in the applicable implementation plan.

(4) Revise section 2.18.4 of the definition of ''Minor Permit Modification'' to require that a minor permit modification may not *establish* or change a permit condition used to avoid a federally enforceable requirement to which the source would otherwise be subject. (§ 70.7(e)(2)(i)(A)(4))

(5) Revise section 3.1.6.12 to require that the compliance certification within the permit application include a statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act. (§ 70.5(c)(9)(iv))

(6) Revise section 3.1.6.13 as follows to be consistent with § 70.5(c)(8)(iii)(C):

* * * a schedule of compliance approved by the District hearing board that identifies remedial measures, *including an enforceable sequence of actions,* with specific increments of progress, a final compliance date, testing and monitoring methods, recordkeeping requirements, and a schedule for submission of certified progress reports to the USEPA and the APCO at least every 6 months. *This schedule of compliance shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject*; and * * *

(7) Provide a demonstration that activities that are exempt from permitting under Rule 218 (pursuant to Rule 201, the District's permit exemption list) are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, Rule 218 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. Revise Rule 218 to require that insignificant activities that are exempted because of size or production rate be listed in the permit application. Revise Rule 218 to require that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required. (§ 70.5(c), § 70.4(b)(2))

(8) Revise section 3.5.3 to provide that the APCO shall also give public notice ''by other means if necessary to assure adequate notice to the affected public.'' (§ 70.7(h)(1))

(9) Revise Rule 218 to include the contents of the public notice as specified by § 70.7(h)(2).

(10) Revise Rule 218 to provide that the District shall keep a record of the commenters and of the issues raised during the public participation process so that the Administrator may fulfill her obligation to determine whether a citizen petition may be granted. (§ 70.7(h)(5))

(11) The EPA must be provided with 45 days to review the version of the permit that incorporates any public comments and that the District proposes to issue. Rule 218 indicates that the District intends to provide for concurrent public and EPA review of the draft permit. Therefore, the District must revise the rule to provide that EPA will have an additional 45 days to review the proposed permit if it is revised as a result of comments received from the public. (§ 70.8(a)(1))

(12) Revise Rule 218 to define and provide for giving notice to affected states per §§ 70.2 and 70.8(b). Although emissions from Monterey may not currently be affecting any neighboring states, Native American tribes may in the future apply for treatment as states for air program purposes and if granted such status would be entitled to affected state review under title V. (See EPA's proposed Tribal Air Rule at 59 FR 43956, August 25, 1995.)

(13) Revise section 3.7.1 to require that the permit *shall* be reopened under the circumstances listed in sections 3.7.1.1 to 3.7.1.3. (§ 70.7(f)(1))

(14) Revise section 3.8.2 to provide, consistent with section 70.7(e)(2)(iv), that the District shall take action on a minor permit modification application within 90 days of receipt of the application or 15 days after the end of the 45-day EPA review period, whichever is later. Currently, the District rule provides that the permit be issued within 90 days after the application is deemed complete (section 3.3.2 provides 30 days from receipt for a completeness determination) or 60 days after written notice and concurrence from EPA, whichever is later. The EPA will not necessarily provide written notice and concurrence on minor permit modifications and the District rule does not address what action is taken should EPA not provide written notice. (§ 70.7(e)(2)(iv))

(15) Revise section 3.8.2 to provide that the action taken on a minor permit modification application in the timeframes discussed above in (14) shall be one of the following:

(a) Issue the permit modification as proposed;

(b) Deny the permit modification application;

(c) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(d) Revise the draft permit modification and transmit to the Administrator the new proposed permit modification.

The current District rule states that the minor permit modification shall be completed within the timeframes discussed above in (14), but does not specify that the District must take one of the actions listed above. (§ 70.7(e)(2)(iv))

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 Monterey on December 6, 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 Monterey can receive full program approval. For additional information, please refer to the TSD, which contains a detailed analysis of Monterey'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 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), Monterey 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 Monterey'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 Monterey 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 Monterey'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, Monterey 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 Monterey and EPA, expected to be completed prior to approval of Monterey'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 June 15, 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, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 2, 1995.

John Wise,

Acting Regional Administrator.

[FR Doc. 95–11794 Filed 5–15–95; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–62, RM–8601]

Radio Broadcasting Services; Linden, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Cass