has been withdrawn, discovery has been stayed; or

(ii) Where the Postal Service will present a legal objection to furnishing the requested information or testimony.

(i) *Inspection Service employees as expert or opinion witnesses.* No Inspection Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's duties or functions at the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the Counsel, Office of the Chief Postal Inspector, may approve such testimony in private litigation. An Inspection Service employee may not testify as such an expert or opinion witness without the express authorization of the Counsel, Office of the Chief Postal Inspector. A litigant must first obtain authorization of the Counsel, Office of the Chief Postal Inspector, before designating an Inspection Service employee as an expert or opinion witness.

(j) *Postal liability.* This section is intended to provide instructions to Inspection Service employees and does not create any right or benefit, substantive or procedural, enforceable by any party against the Postal Service.

(k) *Fees.* (1) Unless determined by 28 U.S.C. 1821 or other applicable statute, the costs of providing testimony, including transcripts, shall be borne by the requesting party.

(2) Unless limited by statute, such costs shall also include reimbursement to the Postal Service for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges, and any necessary travel expenses as follows:

(i) The Inspection Service is authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the Postal Service for the cost of responding to a demand, may include the costs of time expended by Inspection Service employees, including attorneys, to process and respond to the demand; attorney time for reviewing the demand and for legal work in connection with the demand; expenses generated by equipment used to search for, produce, and copy the requested information; travel costs of the employee and the agency attorney, including lodging and per diem where appropriate. Such fees shall be assessed at the rates and in the manner specified in § 265.9.

(ii) At the discretion of the Inspection Service where appropriate, fees and costs may be estimated and collected before testimony is given.

(iii) These provisions do not affect rights and procedures governing public access to official documents pursuant to the Freedom of Information Act, 5 U.S.C 552a.

(k) *Acceptance of Service.* These rules in no way modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–13252 Filed 6–5–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–5217–1]

Determination of Attainment of Ozone Standard for Lewiston-Auburn and Knox and Lincoln Counties, Maine Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to determine that the Lewiston-Auburn, Maine and the Knox and Lincoln Counties, Maine ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone and that certain reasonable further progress and attainment demonstration requirements, along with certain related requirements, of Part D of Title I of the Clean Air Act are not applicable for so long as the areas continue to attain the ozone standard. In the Final Rules section of this **Federal Register**, EPA is making these determinations without prior proposal. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and address the comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this action must be received by July 6, 1995.

ADDRESSES: Written comments should be mailed to Susan Studlien, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the relevant material for this notice are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Phone: 617–565–3244.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Dated: May 22, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–13813 Filed 6–5–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5216–8]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by the Sacramento Metropolitan Air Quality Management District (''Sacramento'' 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 July 6, 1995.

ADDRESSES: Comments should be addressed to Ed Pike at the Region IX address. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection

during normal business hours at the following location: Air and Toxics Division, US EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Ed Pike (telephone 415/744–1248), Operating Permits Section, A–5–2, Air and Toxics Division, US EPA–Region IX, 75 Hawthorne Street, San Francisco, California 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the 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 Code of Federal Regulations (CFR) 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 these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one 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 two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

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, the District 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 one year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three 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 six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the District 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 the District'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, the District 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.

II. Proposed Action and Implications

A. Analysis of State Submission

EPA is proposing to grant interim approval to the District's part 70 operating permit program. The program qualifies for interim approval because it substantially, but not fully, meets the requirements of part 70 and meets the requirements for interim approval in 40 CFR 70.4(d). The Technical Support Document (''TSD''), which is included in the docket, includes a detailed analysis of the program elements that meet the requirements of part 70 and the program elements that must be revised to qualify for full approval.

1. Support Materials

The California Air Resources Board (''ARB'') submitted an administratively complete part 70 permitting program on behalf of the District on August 1, 1994 with a letter requesting source-category limited interim approval. California law currently exempts agricultural sources from permitting requirements, including title V. The ARB submitted a statement from the California Attorney General and copies of state enabling legislation on behalf of all California air districts on November 16, 1993. The Attorney General stated that California law provides air districts with sufficient authority, including enforcement authority, to implement title V except for permitting agricultural sources.

Sacramento's program includes a description of the permitting program, permitting rules, permit forms, and the District requirements for permit applications (which are contained in Sacramento's ''List and Criteria''). EPA intends to finalize an implementation agreement prior to final interim approval of the program. The implementation agreement will address data management, a mechanism for straight delegation of section 112 standards under section 112(1) of the Act, and other implementation details.

2. Regulations and Program Implementation

Sacramento's submittal contains three rules with part 70 requirements. District rule 207 (adopted June 7, 1994) contains most permit program requirements. Rule 201 (as amended June 7, 1994) contains permit exemptions and rule 301 (as amended June 7, 1994) contains fee requirements. The District also submitted its ''List and Criteria'' and permit application forms to specify the permit application requirements. The program substantially meets part 70

requirements as described below and in the TSD.

a. *Applicability.* The District's regulation requires that all part 70 sources, except agricultural sources exempted under state law, apply for a part 70 permit (rule 207 section 102). Initial applications are due within one year of EPA's approval of the program, except that sources with actual emissions below certain levels are given three years from the date of EPA's approval of the program to apply for permits. The program does not require non-major sources subject to New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP) to obtain permits except as required by EPA.

Sacramento opted for source category limited interim approval. In addition to agricultural sources exempted under state law, the District temporarily excluded sources with the potential to emit at major source levels but actual emissions below certain levels. During the initial three years, Sacramento will defer permitting sources with actual emissions less than fifty percent of the major source threshold for criteria pollutants. The deferred sources must also have hazardous air pollutant (HAP) emissions of less than seven tons per year of each HAP and fifteen tons per year of total HAPs. The District submitted a demonstration that sixty percent of all major sources and eighty percent of the title V emissions inventory will be permitted within the first three years after the program is approved. The District intends to use this time to create federally-enforceable potential to emit limits. These deferred sources must be permitted within the first five years of the program if they do not obtain federally enforceable limits on their potential to emit. The program is consistent with EPA's August 2, 1993 guidance on source-category limited interim approval (memorandum signed by John Seitz, Director of the Office of Air Quality Planning and Standards) except for the District permit issuance deadlines, which must be revised as described under Requirements for Full Approval.

EPA is in the process of changing the District's attainment status for ozone from serious to severe. The redesignation will reduce the major source potential to emit threshold from 50 tons per year to 25 tons per year for nitrogen oxides and volatile organic compounds. EPA expects that this change will be promulgated and effective by June 1, 1995, which is prior to EPA's deadline for final action on the District's title V permitting program. The District's major stationary source definition (District rule 207 section 219) references the title I major source definitions and will automatically incorporate this change.

b. *Permit applications.* The program meets the part 70 requirements for permit application deadlines and permit application content. Rule 207 contains the correct permit application deadlines and requires that sources submit a complete permit application (section 301). The ''List and Criteria'' and the permit application forms meet the requirements for permit application content and require that sources submit information to verify all applicable requirements and fees. Rule 207 section 208 states that a complete application must contain the requirements in the ''List and Criteria'' and section 401 states that the District will use the ''List and Criteria'' to determine whether the application is complete. Rule 207 requires complete applications but does not contain the specific permit application content requirements. EPA is approving the ''List and Criteria'' and the permit application forms as part of the title V permitting program to ensure that the permit application content requirements are met.

c. *Permit content.* Each part 70 permit must contain emission limitations and standards that assure compliance with all applicable requirements (rule 207 section 305.1). The permit must also contain monitoring, recordkeeping, and other compliance terms sufficient to ensure compliance with the permit terms. The program allows alternative operating scenarios and operational flexibility (rule 207 sections 305 and 308.1).

d. *Public participation and EPA oversight.* The District will provide the public with notice of and an opportunity to comment on all initial permits, permit renewals, reopenings, and significant modifications. Each initial permit, renewal, and significant and minor modification is subject to EPA oversight and veto (rule 207 sections 403 through 406).

e. *Variances.* The District has the authority to issue a variance from requirements (except the requirement to obtain a permit to construct or operate) imposed by state and local law. (See California Health and Safety Code sections 42350–42364 and Sacramento rule 601.) 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 the 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 law that are inconsistent with the CAA. 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 revision 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.''

f. Title I modification definition. Sacramento's rule requires a significant permit modification for a permit change that involves a ''title I modification'' but does not explicitly define the term (rule 207 section 233). The significant modification definition explicitly states that title I modification includes modifications under 40 CFR parts 61 and 63 and case-by-case determinations of emissions limits and standards, but does not explicitly include changes reviewed under the District's minor new source review program (''minor NSR changes''). 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, including the District's, 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 modifications'' to receive interim approval (59 FR 44572). The Agency explained its view that the better reading of ''title I modifications'' 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 modifications'' 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 modifications'' can be interpreted to exclude changes reviewed under minor NSR programs, Sacramento's definition of ''title I modification'' would be fully consistent with part 70. Conversely, if EPA establishes through the rulemaking that the definition must include changes reviewed under minor NSR, Sacramento's lack of a ''title I modifications'' definition that explicitly includes minor NSR will become a basis for interim approval. If the definition becomes a basis for interim approval as a result of EPA's rulemaking, Sacramento would be required to revise its definition to conform to the requirements of part 70.

Accordingly, today's proposed approval does not identify Sacramento's lack of a ''title I modification'' definition that explicitly includes minor NSR as necessary grounds for either interim approval or disapproval. For similar reasons, the EPA will not construe 40 CFR 70.7(e)(2)(i)(A)(3) to prohibit Sacramento from allowing minor NSR changes to be processed as minor permit modifications. See 59 FR 44573–44574. Again, although EPA has reasons for believing that the better interpretation of ''title I modifications'' 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.

g. Insignificant activities. Section 70.4(b)(2) requires that States include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purposes 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. Instead, the rule requires a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

Sacramento provided its current permit exemption lists as its list of insignificant activities. The District did not provide criteria or information on the level of emissions of activities, did not demonstrate that these activities are not likely to be subject to an applicable requirement or fees, and did not explain the basis for determining that these activities are insignificant. Therefore, EPA cannot propose full approval of the program without additional information and/or revisions to the list of insignificant activities.

h. Enhanced new source review changes. New source review modifications that undergo ''enhanced'' NSR may be administratively incorporated into title V permits to avoid a second review process. Rule 207 section 202.5 requires that enhanced NSR modifications meet the NSR requirements of rule 202, the title V procedural requirements of rule 207 (sections 401 through 408), and the compliance requirements of rule 207 (section 305).

3. Permit Fee Demonstration

The District assesses three types of fees. The District collects equipment fees and emissions fees based on actual emissions. The District stated that at least one quarter of these fees will be used for title V activities. The District also collects separate fees based on the amount of staff time required to issue a title V permit. The District stated that a total of $744,722 will be collected for implementing the title V program during the first three years and that an average of $97 per ton of regulated pollutant (for fee purposes) will be collected. These fees are above the presumptive minimum ($25 adjusted by the Consumer Price Index since 1989) in § 70.9. Therefore, EPA believes that these fees are sufficient to fund the program.

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

a. Authority and commitments for section 112 implementation. Sacramento 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 rule 207 provisions defining ''applicable federal requirements'' (section 206) and stating that the permit must incorporate all applicable federal requirements (see section 305). EPA has determined that this legal authority is sufficient to allow Sacramento to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that Sacramento 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. *District preconstruction permit program to implement 112(g).* Sacramento will be required to implement the Maximum Achievable Control Technology requirements of section 112(g) of the Act as a component of the part 70 program. Under the interpretive notice EPA has published in the **Federal Register**, State and local agencies may delay implementing 112(g) of the Act until EPA promulgates a final 112(g) rule. Alternatively, State and local agencies may implement the requirements of 112(g) prior to EPA promulgation of the 112(g) rule as a matter of State or local law. See 60 FR 8333 (February 14, 1995). The notice also states that EPA is considering whether to further delay the effective date of section 112(g) beyond the date of promulgation of the Federal rule so as to allow State and local agencies time to adopt rules implementing the Federal rule. 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), the District 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 and may choose to implement section 112(g) sooner as a matter of local law.

For this reason, EPA is proposing to approve the use of the District's preconstruction review program (District rule 202) and the District's New Source Guidelines for Toxics (Appendix B–6 of submittal) solely as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and District adoption of rules specifically designed to implement section 112(g). However, since approval is intended soley to confirm that State and local agencies have 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 proposing that twelve months will be adequate for the District to adopt implementing regulations but solicits comments on whether this timeframe will be adequate.

c. *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 District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 to Sacramento's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Sacramento can accept delegation of section 112 standards through automatic delegation, as provided for by sections 39658 and 42301.10 of the California Health and Safety Code. The details of this delegation mechanism will be set forth in an implementation agreement between Sacramento and EPA, and EPA expects to complete this agreement prior to approval of Sacramento's section 112(l) program for straight delegations. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

d. *Commitments for title IV implementation.* Sacramento stated in the program description that no title IV affected sources are located in the District. Therefore, EPA is not requiring that the District adopt an acid rain program prior to receiving interim approval. If acid rain sources are constructed in the District or existing sources become subject to the program, the District will be required to adopt an acid rain program expeditiously.

B. Requirements for Full Approval

The EPA is proposing to grant interim approval to the operating permits program submitted by Sacramento on August 1, 1994. If this interim approval is promulgated, the State and the District must make the following changes to receive full approval:

1. Necessary Change to California Enabling Legislation

a. *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 air districts. 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 the District on August 1, 1994. 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.

2. Necessary Changes to Sacramento's Rule

a. *Agricultural exemption.* The District permit exemption rule also contains a blanket exemption for agricultural operations. The District must also remove the agricultural permit exemption to qualify for full approval.

b. *Insignificant activities.* EPA cannot propose full approval of the District's list of permit exemptions under the insignificant activities provisions of § 70.5(c) because the District did not submit information justifying these exemptions. In addition, EPA has noted several types of activities in rule 201 that are likely to be subject to applicable requirements. For instance, the exemption for internal combustion engines (rule 201 section 112) could apply to a source near the major source threshold. The exemption for cooling systems (rule 201 section 115) will apply to large systems subject to emission standards under title VI. Therefore, the District must revise the list of insignificant activities and provide criteria for determining insignificant activities. The District must also show that information omitted from permit applications will not be necessary to determine the applicability of, or to impose, any applicable requirement or fee.

For other State and local programs, EPA has proposed to accept, as sufficient for full approval, emission levels for insignificant activities of two tons per year and the lesser of 1000 pounds per year, section 112(g) de minimis levels, or other title I significant modification levels for HAPs and other toxics (40 CFR 52.21(b)(23)(i)). EPA believes that these levels, or lower levels for non-attainment pollutants, are sufficiently below applicability thresholds for many applicable requirements to assure that it is unlikely that a unit potentially subject to an applicable requirement will be left off a title V application. EPA is requesting comments on whether these thresholds are appropriate. This request for comment is not intended to restrict Sacramento's ability to propose other emission levels for EPA approval if Sacramento demonstrates that such alternative emission levels are insignificant compared to the types of units that are permitted or subject to applicable requirements and the level of emissions from these units.

c. *Operational flexibility.* The District's limits on operational flexibility are not as explicitly restrictive as the limits in part 70. Section 308.3 of rule 207 does not allow operational flexibility for title I modifications, which is consistent with 70.4(b)(12)(i); however, the reference to ''title I modification'' is unclear. EPA has interpreted the term title I modification to include all modifications under title I of the Act, and has specifically determined that the term includes section 111 modifications (New Source Performance Standards) and section 112(g) modifications. See 56 FR 21746. Sacramento's use of the term ''title I modification'' should also be read to include these requirements. Therefore, the District must clarify the rule through guidance or rulemaking changes to explicitly restrict operational flexibility for NSPS and section 112(g) modifications.

On August 29, 1994 (59 FR 44573), EPA requested public comment on whether the definition of title I modification should include other section 112 modifications and minor NSR modifications. EPA may require that the District explicitly add additional restrictions based on the outcome of this rulemaking. EPA believes that other restrictions in section 308.8 of rule 207 are sufficiently clear to prohibit this type of operational flexibility for major NSR modifications.

Sacramento's rule also allows sources to accept a federally enforceable

emissions cap and trade emissions increases and decreases within the facility to meet this cap but does not prohibit this trading if it involves a title I modification. This restriction must be added to the rule along with the correct definition of title I modification (§ 70.4(b)(12)).

d. *Permit issuance deadlines.* The District must change rule 207 and adopt appropriate permit issuance deadlines for sources that are initially deferred from the program due to their actual emissions but do not obtain federally enforceable limits on their potential to emit. These deadlines must ensure that all permits are issued by December 15, 1999, which is required by EPA's August 2, 1993 guidance on source-category limited interim approval.

e. *Emissions trading under applicable requirements.* Sacramento must add emissions trading provisions consistent with § 70.6(a)(10). The permit content section of the rule must allow provisions for trading within the permitted facility where an applicable requirement provides for trading increases and decreases without case-by-case approval.

f. *Inclusion of fugitive emissions in the permit.* The rule must explicitly require that the permit include fugitive emissions in the same manner as stack emissions (§ 70.3(d)).

g. *Public participation.* The District rule must state that the District will provide public notice by means other than newspaper notice and a mailing list when necessary to ensure that adequate notice is given (§ 70.7(h)).

C. Effect of Interim Approval

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the District is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70. The one year time period for submittal of permit applications by subject sources and the three year time period for processing the initial permit applications begin upon interim approval.

The scope of the part 70 program EPA is proposing to approve in this notice applies to all part 70 sources (as defined in the approved program) within the Sacramento Metropolitan Air Quality Management District except any sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

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 District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State'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 July 6, 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

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

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 23, 1995.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 95–13788 Filed 6–5–95; 8:45 am]

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40 CFR Part 300

[FRL–5216–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Action Anodizing, Plating and Polishing Superfund site from the National Priorities List; Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Action Anodizing, Plating and Polishing (AAPP) site from the National Priorities List (NPL) and