List of Subjects

40 CFR Part 52

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

40 CFR Part 70

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

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

Dated: May 25, 1995.

David P. Howekamp,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

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

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(216) * * *

(i) * * *

(B) Bay Area Air Quality Management District.

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

* * * * *

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by revising paragraph (b) to the entry for California to read as follows:

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

* * * * *

(b) Bay Area Air Quality Management District: submitted on November 16, 1993, amended on October 27, 1994, and effective as an interim program on July 24, 1995. Revisions to interim program submitted on March 23, 1995 and effective on August 22, 1995 unless adverse or critical comments are received by July 24, 1995. Approval of interim program, including March 23, 1995 revisions, expires July 23, 1997.

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

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 70

[CA 77–1–6996; AD–FRL–5216–5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

EFFECTIVE DATE: July 24, 1995.

ADDRESSES: Copies of Bay Area's submittals and other supporting information used in developing the final approvals are available for inspection (docket number CA-BA–94–1–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the regulations being incorporated by reference in today's rule are also available for inspection at the following location: Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

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

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

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

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

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

federally enforceable for criteria pollutants. The synthetic minor mechanism may also be used to create federally enforceable limits for emissions of hazardous air pollutants (HAP) if it is approved pursuant to section 112(l) of the Act.

In the November 29, 1994 **Federal Register** document, EPA also proposed approval of Bay Area's synthetic minor program for creating federally enforceable limits in District operating permits. In this notice, EPA is promulgating approval of the synthetic minor program for the Bay Area as a revision to Bay Area's SIP and pursuant to section 112(l) of the Act.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

On November 29, 1994, EPA proposed interim approval of Bay Area's title V operating permits program as it was submitted on November 16, 1993 and amended on October 27, 1994. Since the time that EPA proposed interim approval, Bay Area adopted regulations to implement title IV of the Act. On September 21, 1994, Bay Area incorporated part 72 by reference into District Regulation 2, Rule 7. Regulation 2, Rule 7 was submitted to EPA on December 29, 1994, and it corrects the first program deficiency (i.e., acid rain definitions) identified in the proposed interim approval notice by incorporating the federal acid rain definitions by reference and by stating that ''if the provisions or requirements of 40 CFR Part 72 are determined to conflict with Regulation 2, Rule 6, the provisions and requirements of Part 72 shall apply and take precedence.''

EPA recently became aware that the November 29, 1994 proposal incorrectly identified District Regulation 1, sections 431–433. Those regulations are SIP-approved District breakdown provisions (September 2, 1981, 46 FR 43968) and are recognized by EPA.

EPA received comments on the proposed interim approval of the Bay Area program from three public commenters: New United Motor Manufacturing Inc. (NUMMI), BAAQMD, and the National Stone Association (NSA). Several interim approval issues set forth in the November 29, 1994 proposal were modified as a result of public comment. These changes are discussed below along with other issues raised during the public comment period. EPA's final action, as set forth in section II.B. below, is being revised from the proposed notice in response to public comment. EPA received no adverse public comment on the proposed approval of Bay Area's synthetic minor program or program for receiving section 112(l) standards as promulgated.

1. Section 112(g) Implementation

One commenter stated that in the absence of a final section 112(g) regulation, Bay Area should be allowed to use its existing air toxics program and de minimis levels to determine case-by-case Maximum Achievable Control Technology (MACT) for new, reconstructed, and modified sources. The commenter further stated that the broad statutory requirements of section 112(g) should not supersede Bay Area's existing toxics program.

EPA has received many comments on various state part 70 programs concerning this issue and agrees that it is not reasonable to expect the states and districts to implement section 112(g) before a rule is issued. EPA has therefore published an interpretive notice in the **Federal Register** regarding section 112(g) of the Act: 60 FR 8333 (February 14, 1995). This notice outlines EPA's revised interpretation of section 112(g) applicability prior to EPA's issuing the final section 112(g) rule. The notice states that major source modifications, constructions, and reconstructions will not be subject to section 112(g) requirements until the final rule is promulgated. EPA expects to issue the final section 112(g) rule in September 1995.

The interpretative notice further 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), Bay Area 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.

In the November 29, 1994 **Federal Register** notice proposing interim approval for the Bay Area's title V program, EPA also proposed to approve the use of Bay Area'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 the Bay Area of rules specifically designed to implement section 112(g). Since approval is intended solely 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.

Bay Area commented that EPA should allow California districts 18 months, rather than 12 months, to develop section 112(g) regulations following EPA's promulgation of the federal section 112(g) rule. Bay Area stated that 12 months is not sufficient time to both undergo the regulatory development process and prepare a section 112(l) equivalency package for approval of the District's regulation to be used in lieu of the federal section 112(g) rule.

EPA has approved an 18-month transition period in other states and does not see a unique reason to limit the Bay Area to 12 months. Therefore, EPA will allow Bay Area 18 months from the date of EPA's final section 112(g) rule to develop and submit district regulations for the implementation of section 112(g). If the final section 112(g) rule, however, eliminates the transition period, Bay Area must follow the implementation time lines set out in that rulemaking.

2. Certification by a Responsible Official

One commenter objected to EPA's statement, under program deficiencies, that any document submitted in conjunction with a title V permit must be certified by a responsible official. The commenter stated that part 70 specifies which documents must be certified and that requiring ''any document'' to be certified represents an overly strict interpretation of section 70.6(c)(1).

EPA disagrees that the requirement to certify ''any document'' required by the permit is either redundant or unwarranted. The use of the term ''any document'' is necessary to ensure that all documents required to be certified under part 70 will be certified. Including the language in section 70.6(c)(1) should not create any additional burden than if the documents were all specifically listed. As the Bay Area's program is currently written, only semiannual reports and annual compliance certifications need to be certified by a responsible official. The Bay Area's program fails to specify certification of other required documents such as progress reports associated with a compliance schedule (section 70.6(c)(4)) or prompt reports of permit deviations (section 70.6(a)(3)(iii)(B)). Adding a requirement consistent with section 70.6(c)(1) would correct such omissions.

On a related note, EPA believes that, in one respect, the language suggested

in the November 29, 1994 **Federal Register** proposal may have been an overly inclusive interpretation of section 70.6(c)(1). Section 70.6(c)(1) reads, ''Any document (including reports) required by a part 70 permit shall contain a certification by a responsible official * * *'' While the commenter focused on the words ''any document,'' EPA believes that the overly inclusive language in the proposed interim approval is the reference to any document submitted ''in conjunction with'' a permit. Therefore, Bay Area may substitute the phrase ''required by,'' rather than ''in conjunction with,'' when correcting the above deficiency.

3. Insignificant Activities

Two commenters responded to EPA's identification of deficiencies regarding Bay Area's insignificant activities list and significance thresholds. The commenters raised several points, the first being that EPA's recommended insignificance levels would impose unnecessary administrative burdens.

EPA does not agree that the cut-off levels proposed in the November 29, 1994 notice of 2 tons per year (tpy) for criteria pollutants and the lesser of 1000 pounds per year or the section 112(g) de minimis levels for hazardous air pollutants (HAP) would create an unreasonable administrative burden. Insignificant activities are relevant only during the initial application phase when the source has to determine what information must be included in its permit application. Regardless of the list of insignificant activities or the cut-off emissions levels, the source may not omit from its application any information that is necessary to determine applicability, impose an applicable requirement, or assess fees (section 70.5(c)).

EPA also disagrees that the requirement to describe emissions from activities not qualifying as insignificant is overly burdensome. First, sources can use reliable emissions factors rather than extensive testing and monitoring. Second, the source descriptions required by section 70.5(c)(3)(ii) need only include sufficient detail to determine fees and the applicability of requirements of the Act. Finally, in many cases, smaller units can be aggregated and described in general terms if such an approach would not interfere with determining whether and how an applicable requirement applies at a source.

A second point raised in comment was that the redesignation of Bay Area to attainment status for ozone justifies a higher insignificance threshold for criteria pollutants. EPA agrees that emissions cut-offs for insignificant activities should be based on area-specific circumstances and analysis. The proposed notice recommended a 2 tpy cut-off for criteria pollutants for the Bay Area because of the large number of sources and emissions in the District, the high population density, and the distinct relationship between regulatory compliance and air quality improvement in the Bay Area. While EPA is open to evaluating alternative emissions cut-offs, such a proposal must clearly demonstrate that the higher level of emissions are insignificant for the Bay Area.

An industry commenter also requested that EPA accept Bay Area's categorical permit exemption list as its list of insignificant activities. While part 70 allows state and local agencies to submit a list of insignificant activities and emissions levels for approval, this list must be accompanied by selection criteria that will assure insignificance with respect to federal applicable requirements (sections 70.4(b)(2) and 70.5(c)). The fact that the District has a preexisting exemption list does not constitute sufficient justification of insignificance. Because Bay Area has not provided EPA with justification for each categorical exemption, EPA does not have adequate information on which to evaluate the activities.

A fourth point raised in response to EPA's recommended insignificance thresholds was the suggestion that a single emissions cut-off be used to define insignificant activities for HAP-emitting sources. The commenter suggested that a single threshold would be more appropriate than the section 112(g) de minimis values since the Act uses a broad 10 tpy applicability threshold.

EPA recommended using the proposed section 112(g) de minimis levels because they define what EPA, through research and science, has determined to be significant enough to warrant review by the public and EPA on a facility-wide basis. EPA believes that the section 112(g) de minimis levels would more easily allow the permitting authority to verify independently the applicability of requirements and should serve as an upper bound on which activities may be excluded from permit applications. The same result may be achieved, however, with a single cut-off of 1000 pounds per year if the threshold is accompanied by a caveat that activities and emissions necessary for determining the applicability of, or imposing an applicable requirement on, the source may not be omitted from the permit application.

A fifth comment regarding insignificant activities was Bay Area's objection to adding an ''applicable requirement gatekeeper'' that excludes activities subject to an applicable requirement from classification as insignificant. Bay Area asserted that the applicable requirement gatekeeper for insignificant activities is too stringent since some state implementation plans (SIPs) contain requirements such as opacity limits that would generally apply to all activities at the facility regardless of size.

EPA understands Bay Area's concerns and believes that the applicable requirement gatekeeper can be added to Bay Area's program without nullifying the usefulness of insignificant activities. EPA recognizes that certain requirements approved into the SIP, such as opacity standards, are applicable not to specific emissions units, but instead to the facility as a whole. Therefore, the presence of an applicable opacity limit does not mean that every emissions unit at the facility must be described in the application since the applicability of the requirement is clear.

4. Notice to the Public and Affected States

Bay Area disagreed with the public and affected state notice deficiencies identified by EPA in the proposed interim approval notice. First, Bay Area objected to revising its program to include affected state notice provisions for Native American tribes since there is not currently a potentially affected tribe that is eligible for treatment as a state.

EPA is concerned about Bay Area's proposal to delay adoption of affected state notice provisions until tribes apply for state status. Although the federal rule that will enable tribes to apply for treatment as states has not yet been finalized, and there are no tribes currently eligible for treatment as a state under the Act, EPA believes that the likelihood of Native American tribes qualifying as affected states under part 70 is great and that Bay Area will ultimately need to revise its rule to address this outcome. Nonetheless, as an alternative to up-front adoption of affected state notice provisions, EPA will accept a commitment from Bay Area to: (1) initiate rule revisions upon notification from EPA that an affected tribe has applied for state status, and (2) provide affected state notice to tribes upon their filing for state status, that is, prior to the District's adoption of affected state notice rules. Second, Bay Area also objected to adding the phrase ''by other means if necessary to assure adequate notice to the affected public''

to the District's public notice procedures. Bay Area claimed that its existing public notice procedures already assure adequate notice to the affected public.

EPA acknowledges that the Bay Area has an extensive public notice process and that it is adequate in most circumstances. However, EPA also realizes that the United States, in general, and the Bay Area, in particular, consist of diverse communities with varying ties to the publications used for public notification. EPA proposed adding the phrase ''by other means if necessary to assure adequate notice to the affected public * * *'' to Bay Area's public notice provisions to give Bay Area the legal authority to expand its notification procedures if notice under existing procedures is ever inadequate. The additional language is not intended to require the Bay Area to expand its routine notification procedures, but rather to allow the District to take extra steps when circumstances dictate.

5. Alternative Emission Limits

Bay Area believes that EPA's concerns regarding alternative emission limits can be handled on a permit-by-permit basis rather than by revising the District's Manual of Procedures (MOP). Bay Area's MOP states that alternative emission control plans issued pursuant to District Regulation 8 may be incorporated into title V permits. In the proposed interim approval notice, EPA stated that the permit may contain an alternative emission limit only if it has been approved into Bay Area's SIP. The MOP provides no assurance that an alternative emission control plan in District Regulation 8 is SIP-approved before it is incorporated into a title V permit. In response, Bay Area commented that if the alternative emission control plan in District Regulation 8 has been approved into the SIP, it will become part of the federally enforceable portion of the permit; if it has not been approved into the SIP, it will become part of the state-only portion of the permit.

EPA finds this permit-by-permit approach acceptable. However, the current language in the MOP does not distinguish between alternative emission control plans in District Regulation 8 that have been approved into the SIP and alternative emission control plans in Regulation 8 that have not been approved into the SIP. Therefore, in order to correct this deficiency, the District must add a provision to the MOP (section 4.1) stating that only alternative emission control plans that have been approved into the SIP may be incorporated into the federally enforceable portion of the permit.

6. Emissions Trading

Bay Area commented that the emissions trading provisions of section 70.6(a)(10) should not be required for the Bay Area since the District's new source review program prohibits emissions increases at a facility without a case-by-case approval. EPA does not support Bay Area's position on this matter. Bay Area must include a provision consistent with section 70.6(a)(10) to ensure that the District can implement mandatory trading opportunities that may arise in specific federal requirements.

7. Particulate Matter (PM) Issues

The National Stone Association raised several issues regarding PM that were not relevant to EPA's proposed interim approval of Bay Area's operating permits program. Therefore, EPA is addressing these comments in the Response to Comments Document (located in the docket at the Regional Office) and not in this final interim approval notice.

B. Final Action

1. Title V Operating Permits Program

The EPA is promulgating interim approval of Bay Area's title V operating permits program as submitted on November 16, 1993 and amended on October 27, 1994. Bay Area must make the following changes to receive full approval:

(1) Provide a demonstration that each activity on Bay Area's insignificant activities list (See p. II–3 of program description, 2–6–405.4, and list in Appendix B.) is truly insignificant and is not likely to be subject to an applicable requirement. Alternatively, the District may establish emissions level cut-offs, in which activities emitting below the cut-offs would qualify as insignificant. In the latter case, the District must demonstrate that the cut-off emissions 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. In addition, Bay Area must revise Regulation 2, Rule 6 to state that activities needed to determine the applicability of, or impose applicable requirements on, the facility may not qualify as insignificant activities. (§§ 70.5(c) and 70.4(b)(2))

(2) Include a term consistent with the part 70 definition of ''applicable requirement,'' and use that term consistently in rules 2–6–409.1, 2–6–409.2 and throughout the regulation. As currently written, Bay Area's regulation requires that ''all federal * * * air quality requirements'' be incorporated into permits (2–6–409.1); yet, the term is never defined. Bay Area's program does define ''applicable requirement'' (2–6–202), but the definition deviates from the part 70 definition and includes non-federally enforceable District and State requirements. Bay Area's definition of ''federally enforceable'' (2–6–207) appears to address the federal definition of ''applicable requirement''; however, it does not include the entire list of applicable requirements, and it is not clearly used in the permit content section of Regulation 2–6.

(3) Rule 2–6–409 must be revised to require that permit terms and conditions *assure compliance with all applicable requirements* (§ 70.7(a)(1)(iv)) and that permits contain emission limitations and standards (§ 70.6(a)(1)) and compliance certification requirements (§ 70.6(c)(1)) that assure compliance with all applicable requirements. As Regulation 2–6 is currently written, the District's title V permits only have to include requirements for testing, monitoring, reporting, and recordkeeping sufficient to assure compliance with the terms and conditions of the permit and the applicable requirements themselves. (2–6–409.1 and 2–6–409.2)

(4) Require that certifications by the responsible official affirmatively state that they are based on truth, accuracy, and completeness and that they are based on information and belief formed after reasonable inquiry. Bay Area must revise 2–6–405.9, 2–6–502, MOP (4.5 and 4.7), and any other certification provisions to ensure that both elements are explicitly required. (§ 70.5(d))

(5) Revise Regulation 2–6 to define and require notice to, affected states. Alternatively, Bay Area may make a commitment to: (1) Initiate rule revisions upon being notified by EPA of an application by an affected tribe for state status, and (2) provide affected state notice to tribes upon their filing for state status (i.e., prior to Bay Area's adopting affected state notice rules).

(6) Eliminate the phrase ''but not limited to'' from the definition of ''administrative permit amendment'' (2–6–201). Only changes identified in the rule and approved as part of Bay Area's program may be processed as administrative amendments. (§ 70.7(d)(1)(vi))

(7) Revise 2–6–404.3 to limit the universe of significant permit modification applications due 12 months after commencing operations to only those applications for revisions pursuant to section 112(g) and title I,

parts C and D of the Act that are not prohibited by an existing part 70 permit. Except in the above circumstances, a source is not allowed to operate the proposed change until the permitting authority has revised the source's part 70 permit. (§ 70.5(a)(1)(ii))

(8) In minor permit modification procedures, eliminate the extended review period (2–6–414.2) that is inconsistent with 2–6–410.2 and § 70.7(e)(2)(iv). This extension inappropriately lengthens the time that the source can operate under new conditions without a formal permit revision.

(9) Revise 2–6–412.1 to include notice ''by other means if necessary to assure adequate notice to the affected public.'' (§ 70.7(h)(1))

(10) Add a provision to the Manual of Procedures (section 4.1) stating that only alternative emission control plans that have been approved into the SIP may be incorporated into the federally enforceable portion of the permit. (§ 70.6(a)(1)(iii))

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

(12) Add a requirement to Regulation 2–6 that any document required by a part 70 permit must be certified by a responsible official. (§ 70.6(c)(1))

(13) Revise 2–6–224 and 2–6–409.10 to specify that all progress reports must include: (1) Dates when activities, milestones, or compliance required in the schedule of compliance were achieved; and (2) an explanation of why any dates in the schedule of compliance were not or will not be met and any preventive or corrective measures adopted. (§ 70.6(c)(4) (i) and (ii))

(14) Revise section 4.5 of the MOP and add a provision to 2–6–409 to require that compliance certifications be submitted more frequently than annually if specified in an underlying applicable requirement. (§ 70.6(c)(4))

(15) Bay Area has indicated in its program description that it intends to process new units that do not affect any federally enforceable permit condition ''off-permit'' (Section II, p. 21 and Staff Report, pp. 3–4). However, Regulation 2–6 does not include any of the off-permit provisions required by §§ 70.4(b)(14) and (15). The part 70 off-permit provisions provide several safeguards such as notice to EPA and recordkeeping requirements that must be incorporated into Bay Area's program. In order to receive full approval in this regard, Bay Area may submit a letter revising its program description to indicate that it will not process new units ''off-permit'' or it may revise its rule to include the part 70 off-permit provisions.

(16) Revise 2–6–222 defining ''regulated air pollutant'' to be consistent with the federal definition (§ 70.2) and include pollutants subject to *any requirement* established under section 112 of the Act, including sections 112 (g), (j), and (r).

(17) In addition to the District-specific issues arising from Bay Area's program submittal and locally adopted regulations, California state law currently exempts agricultural production sources from permit requirements. In order for this program to receive full approval (and 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 scope of the Bay Area's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the Bay Area, California, 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 Act; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until July 23, 1997. During this interim approval period, the Bay Area is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in the Bay Area. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the Bay Area fails to submit a complete corrective program for full approval by January 23, 1997, EPA will start an 18-month clock for mandatory sanctions. If the Bay Area then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the Bay Area has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the Bay Area, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the Bay Area has come into compliance. In any case, if, six months after application of the first sanction, the Bay Area still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the Bay Area's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the Bay Area has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the Bay Area, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the Bay Area has come into compliance. In all cases, if, six months after EPA applies the first sanction, the Bay Area has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

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

2. District Preconstruction Permit Program Implementing Section 112(g)

EPA is approving the use of Bay Area's preconstruction review program found in Regulation 2, Rule 2 as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and adoption by the Bay Area of rules specifically designed to implement section 112(g). EPA is limiting the

duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for part 70 program approval, specified in 40 CFR section 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR section 63.91 of Bay Area's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. This program for delegations applies to both existing and future standards but is limited to sources covered by the part 70 program.

4. State Operating Permit Program for Synthetic Minors

EPA is promulgating full approval of Bay Area's synthetic minor operating permit program submitted to EPA by the California Air Resources Board, on behalf of the Bay Area, on February 28, 1994 (supplemented April 29, 1994). The synthetic minor operating permit program is being approved into Bay Area's SIP pursuant to part 52 and the five approval criteria set out in the June 28, 1989 **Federal Register** document (54 FR 27282). EPA is also promulgating full approval pursuant to section 112(l)(5) of the Act so that HAP emission limits in synthetic minor operating permits may be deemed federally enforceable.

Bay Area has already begun to issue permits containing voluntarily accepted limits pursuant to the District's synthetic minor regulations. If the District followed its own procedures, each of those permits was subject to public notice and prior EPA review. Therefore, EPA will consider all operating permits issued pursuant to Bay Area's synthetic minor regulations being approved in today's notice to be federally enforceable with the promulgation of this approval provided that Bay Area submit any permits that it wishes to make federally enforceable to EPA, accompanied by documentation that the procedures approved today have been followed. EPA will expeditiously review any individual permits so submitted to ensure their conformity to the program requirements. (See 57 FR 59931.)

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

III. Administrative Requirements

A. Docket

Copies of Bay Area's submittal and other information relied upon for the final interim approval, including the three public comment letters received and reviewed by EPA on the proposal, are contained in docket number CA–BA–94–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

The EPA's actions under sections 502, 110, and 112 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because these actions do not impose any new requirements, they do 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

40 CFR Part 52

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

40 CFR Part 70

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

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

Dated: May 25, 1995.

David P. Howekamp,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (217) and (218) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(217) New and amended regulations for the following APCDs were submitted on February 28, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Amended Regulation 2, Rule 1, Sections 102, 129, 204, 213, 214, 215, 216, 217, 218, 219, 302, 408, 411 adopted November 3, 1993; and New Regulation 2, Rule 6, Sections 206, 207, 210, 212, 213, 214, 218, 222, 230, 231,

301, 311, 401, 402, 403, 404, 420, 421, 422, 602 adopted November 3, 1993.

(218) New and amended regulations for the Bay Area Air Quality Management District were submitted on April 29, 1994 by the Governor's designee.

(i) Incorporation by reference.

(A) New Regulation 2, Rule 6, Sections 310 and 423 adopted November 3, 1993.

* * * * *

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (b) to the entry for California to read as follows:

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

* * * * *

(b) *Bay Area Air Quality Management District:* submitted on November 16, 1993 and amended on October 27, 1994; interim approval effective on July 24, 1995, interim approval expires July 23, 1997.

* * * * *

[FR Doc. 95–15038 Filed 6–22–95; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

Evaporative Emission Enclosure Calibrations

CFR Correction

In title 40 of the Code of Federal Regulations, parts 86 to 99, revised as of July 1, 1994, in § 86.1217–90 the first paragraph (c) and the second paragraph (b) appearing on pages 909 and 910 should be removed.

BILLING CODE 1505–01–D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7619]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows: