

Court of Appeals for the appropriate circuit by September 11, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Hydrocarbons, Incorporation by reference, Volatile organic compounds.

Dated: June 14, 1995.

David Kee,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(112) to read as follows:

§ 52.720 Identification of plan.

(c) * * *

(112) On March 28, 1995, the State of Illinois submitted a revision to its ozone State Implementation Plan for P & S, Incorporated's facility located in Wood Dale, Du Page County, Illinois. It grants a compliance date extension from Stage II vapor control requirements (35 Ill. Adm. Code 218.586) from November 1, 1994 until April 1, 1996, or 60 days after notification to P & S, Incorporated that the roadway construction complicating the installation of Stage II equipment will be abandoned for any reason, whichever is sooner.

(i) Incorporation by reference.

(A) Illinois Pollution Control Board Final Opinion and Order, PCB 94-299, adopted on February 16, 1995, and effective on February 16, 1995. Certification dated March 1, 1995 of Acceptance by P & S, Incorporated.

[FR Doc. 95-17219 Filed 7-12-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 52 and 70

[CA77-2-7058; AD-FRL-5227-7]

Clean Air Act Final Interim Approval of Operating Permits Program for Glenn County, Lake County, Shasta County and Tehama County, California; Final Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable State Operating Permits, Lake County, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Programs submitted by the California Air Resources Board (CARB) on behalf of Glenn County Air Pollution Control District (APCD), Lake County Air Quality Management District (AQMD), Shasta County AQMD, and Tehama County APCD, California (the four districts) 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. In addition, EPA is promulgating final approval of a revision to Lake County's portion of the California State Implementation Plan (SIP) regarding synthetic minor regulations for the issuance of federally enforceable state operating permits (FESOP) limiting emissions of criteria pollutants. In order to extend the federal enforceability of state operating permits to hazardous air pollutants (HAP), EPA is also finalizing approval of Lake County's synthetic minor regulations pursuant to section 112(l) of the Clean Air Act (CAA or Act).

EFFECTIVE DATE: August 14, 1995.

ADDRESSES: Copies of the four districts' submittals and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Operating Permits Section, A-5-2, Air and Toxics Division, U.S. EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: For information on the Lake County program and SIP, please contact: Ed Pike, (415) 744-1248. For information on the programs for the other districts, please contact: Sara Bartholomew, (415) 744-1170.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the

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 disapproval, or in the alternative, interim approval of the operating permits program for Glenn County, Lake County, Shasta County and Tehama County, California. See 54 FR 60931. The proposed disapproval was due to deficiencies in the districts' upset/breakdown rules. The 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. The EPA also compiled a Technical Support Document (TSD) for each of the four districts, which describes the operating permits program in greater detail.

In this notice EPA is taking final action to promulgate interim approval of the operating permits program for Glenn County APCD, Lake County AQMD, Shasta County AQMD, and Tehama County APCD, California.

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 an operating permit program meeting these 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**, EPA also proposed approval of Lake County'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 Lake County as a revision to Lake County's SIP.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

EPA received two comment letters on the proposed rulemaking for the four districts, one from the National Environmental Development Associations Clean Air Regulatory Project ("NEDA/CARP"), and one from the American Forest & Paper Association ("AF&PA"). The issues discussed in the November 29, 1994 proposal were not changed as a result of public comment with the exception of the implementation of section 112(g) from the effective date of the title V program. EPA's final action is being revised from the proposed notice with respect to this issue. This change is discussed below along with other issues raised during the public comment period.

1. Section 112(g) Implementation

NEDA/CARP and AF&PA both submitted comments regarding EPA's proposed use of the four California districts' preconstruction permitting program for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a District rule implementing EPA's section 112(g) regulations. In opposition to the proposed action, the commenters argued that the four districts should not, and cannot, implement section 112(g) until: (1) EPA has promulgated a section 112(g) regulation; and (2) the District has a section 112(g) program in place.

EPA received many comments nationally on 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 document outlines EPA's revised interpretation of 112(g) applicability prior to EPA's issuing the final 112(g) rule. The action states that major source modifications, constructions, and reconstructions will not be subject to 112(g) requirements until the final rule is promulgated. EPA expects to issue the 112(g) final rule in September 1995.

The action 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), the four districts must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is proposing to approve the use of the four districts' preconstruction review programs as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by the four districts of rules specifically designed to implement section 112(g). However, since approval is intended solely to confirm that the districts have mechanisms 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 proposal to 12 months following promulgation by EPA of the section 112(g) rule.

2. Insignificant Activities

NEDA/CARP and AF&PA both assert that EPA lacks the legal footing for rejecting the districts' present "insignificant levels," and that EPA has no authority to hold out "suggested" emission levels as a threshold for receiving full approval.

EPA disagrees that it lacks authority to reject inappropriate or unsupported insignificance levels, or to articulate on a program-by-program basis levels that it definitely would accept. Part 70 allows States to deem certain activities or emission levels insignificant if they are listed in the program submitted to EPA and approved by EPA, but does not grant States authority to create new exemptions without EPA approval. Section 70.4(b)(2) requires the submittal of criteria used to determine insignificant activities, and § 70.5(c) does not allow States to create an insignificant activities permit exemption if the exemption will interfere with the imposition of applicable requirements or the collection of fees. In addition, part 70 explicitly authorizes EPA to approve insignificant activities based on an emission level (§ 70.5(c)). EPA has the legal authority to reject district provisions that contravene these part 70 requirements.

As stated in the proposal, the four districts provided EPA with no criteria or information on the level of emissions of activities on the districts' exemption lists. In addition, the specific insignificant activities provisions submitted by the districts have raised concerns with EPA regarding the districts' ability to ensure that

applicable requirements are included in permits. None of the four districts provided EPA with a demonstration to the contrary. For these reasons, the four districts' lists of insignificant activities are not acceptable.

In the proposed rulemaking EPA suggested insignificance levels that the Agency would find acceptable even without a further demonstration. Neither of the commenters specifically addressed these suggested insignificance levels. EPA would like to note that the four districts have the flexibility to modify their regulations and submit criteria for EPA approval of new exemptions, as long as each district demonstrates, or EPA is otherwise satisfied, that such alternative emission levels are insignificant compared to the level of emissions and types of units that are permitted or subject to applicable requirements.

3. Public Petitions to EPA

NEDA/CARP and AF&PA both registered their concern regarding the public petition requirements, notification and other procedural requirements, stating that they believe these requirements will thwart efforts in California to develop market incentive approaches to emissions reductions.

Provisions for public participation, notification and public petitions are required under title V of the Clean Air Act (CAA 502(b)(6) for public participation, and CAA 505(b)(2) for public petitions), and are therefore included in part 70, the regulations that implement title V. EPA believes public participation does not preclude a district from developing market based incentive programs.

4. Enforcement Authorities

NEDA/CARP and AF&PA both contend that EPA should provide specific modifications to the districts' equipment breakdown/upset rules necessary to assure consistency with the intent and the operation of the part 70 rules, instead of proposing disapproval of the programs on this issue.

EPA recommended changes concerning the breakdown/upset rules of the four districts in the TSDs accompanying the proposed rulemaking. Since the proposed rulemaking, EPA has worked with the districts to correct the provisions in the districts' equipment breakdown/upset rules which stood in the way of interim approval. At this time, Glenn and Tehama have corrected these rules satisfactorily, and Lake and Shasta have corrected their rules sufficiently to receive interim approval on this issue. EPA proposed disapproval originally,

however, because the previous exemptions in the rules potentially allowed permitted sources to avoid compliance with certain applicable requirements.

A permitting program that includes rules specifically stating that excess emissions during malfunctions or shutdowns are not violations cannot meet the minimum requirements of § 70.11 (Requirements for enforcement authority). These rules may also compromise the ability of the Districts to issue permits that assure compliance with all applicable requirements. The ability to enforce permits as specified in § 70.11 and issue permits that assure compliance with all applicable requirements are identified as minimum elements for interim approval of title V programs in § 70.4 (d)(3). Programs that do not have the minimum requirements listed in § 70.4 (d)(3) and otherwise do not substantially meet the requirements of part 70 are subject to disapproval.

5. Compliance Certification

NEDA/CARP and AF&PA both contend that EPA has misread its own rule in requiring that the full text of the responsible official's certification be included in both the application content and permit content. They argue that the provision of § 70.5 (d) sets out the *terms and conditions* for any certification of an application form, report or compliance made pursuant to the rules, but does not establish a *signatory statement* that must be attested to by the responsible official to the exclusion of all other statements (emphasis in comment letters).

EPA disagrees with the above comment. Section 70.5 requires that: "This certification . . . shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete." (emphasis added) This indicates that it is not sufficient merely for the responsible official to sign the certification; the certificate must state that he or she considered the issue carefully. The statement must contain the essential elements of § 70.5 (d), and include the words quoted above. EPA does not rule out having a pre-printed statement on the certificate for convenience.

6. Deviation Reporting

NEDA/CARP and AF&PA both contend that it is necessary for EPA to revise several of its earlier interim approval notices, in which the Agency conditioned final approval on including a definition of "prompt" in the state operating permits program, in order to

provide a consistent application of the appropriate interpretation of its rules.

In the proposed interim approval notice EPA stated that the four districts' regulations should define the meaning of "prompt" as used in the requirement found at 40 CFR 70.6(a)(3)(iii)(B), which requires "prompt" reporting of deviations from applicable requirements. The Agency indicated that an acceptable alternative to defining in the regulation what constitutes "prompt" is to define "prompt" in each individual permit.

NEDA/CARP and AF&PA both support this approach. EPA has consistently asserted that this is an acceptable alternative to defining "prompt" in the body of the permitting regulations, and sees no need to revisit past interim approval actions to clarify this interpretation of the definition of what constitutes "prompt" reporting of deviations from applicable requirements.

B. Final Action

1. Title V Operating Permits Program

Since the time that EPA proposed disapproval (or interim approval in the alternative), the four districts have each adopted regulations to correct identified disapproval issues based on deficiencies in their enforcement authorities. The primary deficiency lay in provisions in the four districts' equipment breakdown/upset rules that stated that excess emissions during equipment breakdowns or upsets were not violations. This amounted to an *a priori* exemption that eliminated the districts' authority to enforce against certain violations of permit terms or conditions. Section 70.11 requires that districts must have the authority to enforce against all violations of permit terms and conditions. In addition, the Glenn, Lake, and Shasta Districts had rules that stated that excess emissions during equipment shutdown for maintenance were not violations. There is a more detailed discussion of the deficiencies in these rules in the proposed notice. See 54 FR 60931.

In the alternative, EPA proposed to grant source-category limited interim approval to any of these four programs for which, prior to the final disapproval action, the district adopted and CARB submitted to EPA, revisions to the breakdown/shutdown rules that removed the "no violation" language. For the breakdown rules, EPA stated that the four districts could either adopt the language of § 70.6 (g) that an emergency constitutes an affirmative defense to noncompliance with technology-based emission limitations,

or revise the rules to provide that emissions exceeding emission limitations during equipment breakdowns constitute a violation of district rules.

CARB submitted revisions to each of the four districts' upset/breakdown rules and, except for Tehama County, equipment shutdown rules. Glenn County APCD and Tehama County APCD have removed the "no violation" language and adequately corrected the deficiencies. Shasta County and Lake County must each make the additional changes to their rules, as discussed below, before full approval can be granted.

Shasta County AQMD's Excess Emissions Rule. On January 3, 1995 Shasta County adopted revisions to Rule 3:10 to substantially meet EPA's objections. Under the new rule, changed from "Excusable Malfunctions" to "Excess Emissions," the "no violation" language was removed, as EPA requested. A new paragraph (g) was added to the rule, however, which says that "Excess emissions during start-up and shutdown shall be considered a violation... if the owner or operator cannot demonstrate that the excess emissions are unavoidable when requested to do so by the APCO." It is inaccurate to say that only the APCO can request such a demonstration, since EPA also has enforcement authority over these sources. In addition, 3:10(g) states that the "APCO may specify for a particular source the amount, time, duration, and under what circumstances excess emissions are allowed during start-up and shut-down." The rule is not clear, however, as to where these conditions will be specified, which is not acceptable to EPA because the establishment of such conditions must be subject to a public review process.

EPA is promulgating interim approval of Shasta's program but is requiring additional changes for full approval because the district has substantially, but not fully, revised their rule to meet EPA's objection, as stated in the November 29, 1994 proposal. The changes described below will therefore be necessary for full approval:

Shasta County AQMD must revise paragraph (g) of Rule 3:10 (Excess Emissions) to include a provision that EPA, as well as the APCO, can request a demonstration that the excess emissions are unavoidable. In addition, the rule must clarify that the APCO will specify in the permit the amount, time, duration, and under what circumstances excess emissions are allowed during start-up and shut-down.

Lake County Upset/Breakdown Rule. On November 8, 1994 Lake County

adopted revisions to sections 500 and 510, and added section 512. These changes substantially meet EPA's objection, as set out in the November 29, 1994 notice of proposed rulemaking. Under the revised section 510, the Director will determine whether an enforcement action for an upset or breakdown condition can be pursued based on a number of circumstances. The requirements on sources include, but are not limited to, the following: prompt reporting, minimizing emissions, following good operating practices, shutting down the facility within 24 hours, and not threatening air quality standards or public health. In addition, the maintenance exemption no longer applies if a source violates permitted emission limits.

EPA is promulgating interim approval of Lake's program but is requiring additional changes for full approval because the district has substantially, but not fully, revised their rule to meet EPA's objection, as stated in the November 29, 1994 proposal. The changes described below will therefore be necessary for full approval:

a. Maintenance Exemption. The District's maintenance exemption in section 500 was substantially narrowed by eliminating exemptions for equipment shut-downs that cause violations of permit emission limits. The rule no longer excuses a source that shuts down control equipment for maintenance and violates a numerical emission limit in a part 70 permit. However, the rule does not prohibit sources from violating other types of permit terms (including those that limit emissions, such as a work practice standard or a requirement to continuously apply a control technology) while shutting down control equipment for maintenance. Therefore, the current rule does not allow the District the authority to enforce against all types of violations, as required under § 70.11. The District must further narrow the maintenance exemption in section 500 to state that violations of applicable federal requirements including part 70 permit terms may not be automatically exempted.

b. Citizen Relief. Section 304 of the Clean Air Act expressly provides citizens with enforcement authority for Clean Air Act requirements. Therefore, the District rule must clarify that citizen enforcement, as well as EPA enforcement, of Clean Air Act requirements is not affected by APCO discretion, as expressed in sections 500 and 510, to not pursue an enforcement action.

c. Clarifying Restrictions on Upset/Maintenance Exemption. Section 510 must be clarified because the first and second sentences could be interpreted as expressing two distinct and possibly conflicting options for qualifying for an exemption. The best reading of the District's rule is that conditions "beyond the reasonable control of the source operator" must also meet the nine criteria for qualifying for an exemption. EPA believes that these nine criteria are necessary to appropriately limit the scope of the upset/breakdown provisions. For instance, sources should not escape liability for violations due to improper operation or maintenance or that create a public health threat. Therefore, the rule must clearly state that actions that are "beyond the reasonable control of the source operator" must also meet the nine criteria for qualifying for an exemption.

The EPA is promulgating interim approval of the operating permits program submitted by CARB on behalf of Glenn County APCD (complete submittal received on December 27, 1993), Lake County AQMD (complete submittal received on March 15, 1994), Shasta County AQMD (complete submittal received on November 16, 1993), and Tehama County APCD (complete submittal received on December 6, 1993), California.

The four districts must make the changes that were specified in the proposed rulemaking, under II.C. *District Title V Interim Approval Issues Common to All Four Districts* and Section III. *Individual District Title V Interim Approval Issues* of the November 29, 1994 FR notice in order to be granted full approval. In addition, Lake County and Shasta County must make the changes specified above.

The part 70 programs submitted by Glenn County, Lake County, Shasta County and Tehama County and approved in this notice apply to all part 70 sources (as defined in the approved program) within the four districts, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-55818 (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).

This interim approval, which may not be renewed, extends until August 13,

1997. During this interim approval period, Glenn County, Lake County, Shasta County and Tehama County, California are protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the four districts. 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 Glenn County, Lake County, Shasta County or Tehama County, California fails to submit a complete corrective program for full approval by February 13, 1997, EPA will start an 18-month clock for mandatory sanctions. If any of the four districts then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will apply sanctions to that district as required by section 502(d)(2) of the Act, which will remain in effect until EPA determines that the district has corrected the deficiency by submitting a complete corrective program.

If EPA disapproves a complete corrective program submitted by either Glenn County, Lake County, Shasta County or Tehama County, EPA will apply sanctions to that district as required by section 502(d)(2) on the date 18 months after the effective date of the disapproval, unless prior to that date the district or districts has submitted a revised program and EPA has determined that the district or districts corrected the deficiencies that prompted the disapproval.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Glenn County, Lake County, Shasta County or Tehama County has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to all of the four districts' programs 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 those districts lacking full approval, upon interim approval expiration.

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, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the four districts' programs 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.

2. State Operating Permit Program for Synthetic Minors

EPA is promulgating full approval of Lake County AQMD's synthetic minor operating permit program submitted to EPA by the California Air Resources Board, on behalf of Lake County AQMD. The synthetic minor operating permit program is being approved into Lake County's SIP pursuant to part 52 and the approval criteria set out in the June 28, 1989 Federal Register document (54 FR 27282). EPA considers the changes to Lake County's enforcement authority sufficient to grant approval, and expects future changes to clarify this authority under part 70 to also clarify this authority for synthetic minor permits.

EPA will consider all operating permits processed pursuant to Lake County's synthetic minor regulations and consistent with the five approval criteria set out in the June, 1989 document to be federally enforceable with the promulgation of this approval, provided that Lake County 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 the four districts' submittals and other information relied upon for the final interim approval, including two public comments received and reviewed by EPA on the proposal, are contained in docket number CA-NONGR4-94-01-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 Executive Order 12866 review.

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.

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

Environmental protection, 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

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

Dated: June 19, 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)(217)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *
 (c) * * *
 (217) * * *
 (i) Incorporation by reference.
 (B) Lake County Air Pollution Control District.
 (1) New Regulation 12, section 12.200 (a4), (c2), (d1), (d2), (d3), (e3), (f1), (f2), (m1), (o1), (p1), (p2), (s3), and sections 12.800-12.850, adopted October 19, 1993.
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PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by adding paragraphs (h), (l), (bb), and (ee) to the entry for California to read as follows:

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

California
 * * * * *
 (h) Glenn County APCD (complete submittal received on December 27, 1993); interim approval effective on August 14,

1995; interim approval expires August 13, 1997.

* * * * *

(l) *Lake County AQMD* (complete submittal received on March 15, 1994); interim approval effective on August 14, 1995; interim approval expires August 13, 1997.

* * * * *

(bb) *Shasta County AQMD* (complete submittal received on November 16, 1993); interim approval effective on August 14, 1995; interim approval expires August 13, 1997.

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(ee) *Tehama County APCD* (complete submittal received on December 6, 1993); interim approval effective on August 14, 1995; interim approval expires August 13, 1997.

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[FR Doc. 95-17218 Filed 7-12-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 70

[AD-FRL-5258-3]

Clean Air Act Final Interim Approval of the Operating Permits Program for Clark County, Nevada

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 Clark County Health District (Clark County) 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, today's action grants final approval to Clark County's mechanism for receiving delegation of section 112 standards as promulgated.

EFFECTIVE DATE: August 14, 1995.

ADDRESSES: Copies of Clark County's submittals and other supporting information used in developing the final approvals are available for inspection (docket number NV-Clark-95-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.

FOR FURTHER INFORMATION CONTACT: Ed Pike (telephone 415/744-1248), 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 March 14, 1995, EPA proposed interim approval of the operating permits program for Clark County or, if specified changes were made, full approval. See 60 FR 13683. The County has not modified the program and EPA is promulgating interim approval. The March 14, 1995 **Federal Register** also proposed approval of Clark County's interim mechanism for implementing section 112(g) and program for delegation of section 112 standards as promulgated. EPA requested public comment on the proposals and received one comment letter. In this notice, EPA is promulgating interim approval of Clark County's operating permits program, approving the section 112(g) and section 112(l) mechanisms noted above, and responding to the public comment.

II. Final Action and Implications

A. Response to Public Comment on Proposal

EPA received one public comment letter from the National Environmental Development Association's Clean Air Regulatory Project ("NEDA/CARP"). The letter opposed EPA's proposed approval of the County's preconstruction permitting program as a transitional mechanism for preconstruction review of major air toxics sources under section 112(g) of the Act. The letter also requested that EPA issue an interpretation of the County rule to reduce the number of significant permit modifications that are required by the County. EPA did not receive any other comments on the proposal.

1. Section 112(g) Implementation

The commenter stated that Clark County should not be allowed to use its existing preconstruction program to determine case-by-case maximum achievable control technology (MACT) for new, reconstructed, and modified sources if a transitional program is necessary during an interim period between promulgation of EPA's 112(g) rule and local adoption of a 112(g) rule. The commenter stated that Clark County's preconstruction program may not appropriately address the de minimis levels and offset requirements in the 112(g) rule.

Section 112(g)(2) of the Clean Air Act prohibits the construction, reconstruction, and modification of any major source of hazardous air pollutants after the effective date of a title V program unless the source meets MACT. EPA has published an interpretive notice in the **Federal Register** that interprets section 112(g) to allow State and local agencies to decide whether to delay implementing 112(g) of the Act until EPA promulgates a final 112(g) rule unless they choose to implement the requirements of 112(g) as a matter of state or local law prior to EPA promulgation of the 112(g) rule. In addition, EPA will consider whether an additional delay in the effective date of 112(g) is necessary in the final 112(g) rulemaking. 60 FR 8333 (February 14, 1995). Unless and until EPA provides for such an additional postponement of section 112(g), however, Clark County must be able to implement section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing County regulation. Therefore, EPA is approving the use of the County's preconstruction program as an interim mechanism.

Clark County's preconstruction program will allow the County to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit, if necessary during a transition period. EPA believes that the promulgated 112(g) rule will offer the County sufficient guidance for implementing the requirements of 112(g) prior to local adoption of the 112(g) rule. EPA believes that, although Clark County currently lacks a program designed specifically to implement section 112(g), Clark County's preconstruction review program will serve as an adequate implementation vehicle during a transition period.

One consequence of the fact that Clark County lacks a program designed