that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to 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 does not include a Federal mandate that may result in estimated annual 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 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 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 17, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–7993 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[AD–FRL–6569–2]

Clean Air Act Proposed Interim Approval of the Operating Permits Program; Proposed Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable State Operating Permits; Antelope Valley Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the title V operating permits program submitted by the Antelope Valley Air Pollution Control District (Antelope Valley, 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. There are two deficiencies in Antelope Valley's program, as specified in the Technical Support Document and outlined below, that must be corrected before the program can be fully approved. EPA is also proposing to approve a revision to Antelope Valley'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 (HAPs), EPA is also proposing approval of Antelope Valley's synthetic minor regulations pursuant to section 112 of the Clean Air Act (''Act''). Today's action also proposes approval of Antelope Valley's mechanism for receiving straight delegation of section 112 standards.

DATES: Comments on these proposed actions must be received in writing May 1, 2000.

ADDRESSES: Comments should be addressed to Duong Nguyen, Mail Code Air-3, U.S. Environmental Protection Agency, Region IX, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District'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: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Duong Nguyen (telephone 415/744–1142), Mail Code Air-3, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act (Act) as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which 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 CFR part 70 (part 70). Title V requires states to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit title V programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by the end of an interim program, it must establish and implement a federal program.

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. EPA has encouraged states to consider developing such programs in conjunction with title V operating permit programs for the purpose of creating federally enforceable limits on a source's potential to emit. This mechanism would enable sources to reduce their potential to emit to below the title V applicability thresholds and avoid being subject to title V. (See the guidance document entitled, ''Limitation of Potential to Emit with Respect to Title V Applicability Thresholds'', dated September 18, 1992, from John Calcagni, Director of EPA's Air Quality Management Division.) On November 3, 1993, EPA announced in a guidance document entitled, ''Approaches to Creating Federally Enforceable Emissions Limits,'' signed by John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards (OAQPS), that this mechanism could be extended to create federally enforceable limits for emissions of hazardous air pollutants (HAPs) if the program were approved pursuant to section 112(l) of the Act.

II. Proposed Action and Implications

Antelope Valley is a new air district created by the state legislature in 1997. Sources in Antelope Valley were previously under the jurisdiction of the South Coast Air Quality Management District. This document focuses on specific elements of Antelope Valley's title V operating permits program submittal that must be corrected to meet the minimum requirements of 40 CFR part 70. The full program submittal, the Technical Support Document containing a detailed analysis of the full

program, and other relevant materials are available as part of the public docket.

A. Analysis of State Submission

1. Title V Support Materials

Antelope Valley's title V program was submitted by the California Air Resources Board (CARB) on January 26, 1999 and found by EPA to be complete on March 26, 1999. The Governor's letter requesting source category-limited interim approval, California enabling legislation, and Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in Antelope Valley's submittal. The Antelope Valley submission does contain a complete program description, District implementing and supporting regulations, and all other program documentation required by § 70.4.

2. Title V Operating Permit Regulations and Program Implementation

The Antelope Valley's title V regulations were adopted on March 17, 1998. They consist of Regulation XXX (Federal Operating Permits). The District also submitted supporting materials including the following rules: Rule 219 (Equipment Not Requiring a Permit, adopted July 21, 1998), Rule 225 (Federal Operating Permit Requirement, adopted March 17, 1998), Rule 226 (Limitation on Potential to Emit, adopted July 21, 1998), Rule 301 (Permit Fees, adopted March 17, 1998), Rule 312 (Fees for Federal Operating Permits, adopted May 19, 1998), and Rule 430 (Breakdown Provisions, adopted March 17, 1998). These regulations ''substantially meet'' the requirements of 40 CFR 70.2 and 70.3 for applicability; §§ 70.4, 70.5, and 70.6 for permit content, including operational flexibility; § 70.7 for public participation and minor permit modifications; § 70.5 for complete application forms; and § 70.11 for enforcement authority. While the regulations substantially meet part 70 requirements, there are several program deficiencies, or interim approval issues. These issues are outlined below. Recommended changes are detailed further in the Technical Support Document.

Variances—Antelope Valley has authority under State and local law to issue a variance from State and local requirements. Sections 42350 *et seq*. of the California Health and Safety Code and District Regulation 1, sections 431–433 allow the District to grant relief from enforcement action for permit violations. The EPA regards these provisions as wholly external to the program submitted for approval under part 70, and consequently, is proposing to take no action on these provisions of State and local law.

The EPA has no authority to approve provisions of state or local law, such as the variance provisions referred to, that are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

Insignificant Activities—§ 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state must request and EPA must approve as part of that state's program any activity or emission level that the state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

In Rule 219 (Equipment Not Requiring a Permit) Antelope Valley provided both threshold emissions levels and a list of specific equipment which would not require a permit. This rule also clearly states that equipment need not be listed in a permit application for a federal operating permit if it falls below the threshold, is on the list of equipment in the rule, is not subject to an applicable requirement, and is not included in the equipment list solely due to size or production rate.

Rule 219 set the threshold criteria for equipment to be exempt from a federal operating permit as 10% of the applicable threshold for determination of a major source, or 5 tons per year of any regulated air pollutant (whichever is less), and for HAPs any *de minimis* level, any significance level, or 0.5 tons per year (whichever is less). The levels established by Rule 219 exceed levels EPA has accepted for other state and district programs: 2 tons per year for criteria pollutants and the lesser of 1000 pounds per year, section 112(g) *de minimis* levels, or other title I significant modification levels for HAPs and other toxics (40 CFR 52.21(b)(23)(i)).

During discussions between Antelope Valley and EPA staff on this issue, the District stated that the District would wait for a CAPCOA/EPA Workgroup on insignificant activities to publish its recommendations, before revising Rule 219 to address EPA's concerns. On February 19, 1999, the Workgroup issued the ''Model List of Insignificant Activities for Title V Permit Program.'' In this document, the general insignificant activity criteria for emissions were set as: no more than 0.5 ton/year of a federal HAP and no more than 2 tons/year of a regulated pollutant that is not a HAP. Consequently, the District stated that Rule 219 will be amended to lower the insignificant activity threshold to 2 tons per year for a regulated air pollutant. This issue is identified below as an interim approval deficiency.

3. Title V Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $33.82 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $33.82 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum.'' See § 70.9(b)(2)(i).

Antelope Valley has opted to make a presumptive minimum fee demonstration. Antelope Valley's existing fee schedule (Element 7)

requires title V facilities to pay an amount approximately equal to $217 per ton in annual operating fees. This amount meets EPA's presumptive minimum (CPI adjusted). The $217 per ton amount is based on dividing the current fee revenues for title V work (40% of the total permit fees) plus a flat annual surcharge that covers the additional costs posed by title V by the total emissions (based on the 1996 inventory). It should be noted that the $217 per ton figure may change as Antelope Valley is a new district with no prior operating history and a fee structure inherited from the South Coast Air Quality Management District, from which it separated in 1997. The annual fee number will be adjusted to reflect actual and more accurate operating data as it becomes available. Antelope Valley will maintain an accounting system and is prepared to increase fees, as needed, to reflect actual program implementation costs.

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

a. Section 112—Antelope Valley has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining ''applicable requirements'' and ''federally enforceable'' and mandating that all federal air quality requirements must be incorporated into permits. EPA has determined that this legal authority is sufficient to allow Antelope Valley to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the Technical Support Document accompanying this action and the April 13, 1993 guidance memorandum entitled, ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz.

b. Title IV—Antelope Valley Governing Board adopted Rule 3010 (Acid Rain Provision of Federal Operating Permits) on March 17, 1998, which incorporates the pertinent provisions of part 72, either by reference or in specific language in the rule. EPA interprets ''pertinent provisions'' to include all provisions necessary for the permitting of affected sources.

B. Proposal for and Implications of Interim Approval

1. Title V Operating Permits Program

a. *Proposed Interim Approval*—The EPA is proposing to grant interim approval to the operating permits program submitted by CARB on behalf of Antelope Valley on January 26, 1999. Following interim approval, Antelope Valley must make the following changes to receive full approval:

(1) Section 70.7(f)(1)(i) provides that no reopening of the permit is required if the effective date of a new, applicable requirement is later than the permit expiration date, unless the original permit or any of its terms and conditions has been extended per § 70.4(b)(10). Section 70.4(b)(10) provides that the original permit shall remain in effect until the renewal permit has been issued or denied, if a timely and complete application is submitted for a permit renewal.

Antelope Valley's Rule 3006(A)(1)(a)(i) states that no reopening is required if an additional requirement's effective date is later than the permit's expiration date, unless the permit or any of its terms has been extended per Rule 3002(E)(2)(b). However, Rule 3002(E)(2)(b) only provides that all terms and conditions in the original permit shall remain in effect, until a permit renewal has been issued, denied, or the original permit has been terminated for cause. This provision did not address the important § 70.4(b)(10) requirement that the original permit can only remain in effect, if a timely and complete application is submitted for a permit renewal. Still, a broader examination of Rule 3002(E)(2) reveals that the timely application requirement is covered in 3002(E)(2)(a). Therefore, in order to ensure complete compliance with § 70.4(b)(10) requirements, Antelope Valley must revise Rule 3006(A)(1)(a)(i) to state that no reopening is required if an additional requirement's effective date is later than the permit's expiration date, unless the permit or any of its terms has been extended per Rule 3002(E)(2). (Antelope Valley indicated that this was an oversight and will be corrected at the earliest opportunity to revise Rule 3002.)

(2) Revise Antelope Valley's Rule 219 to lower the insignificant activity emission cutoff for a regulated pollutant that is not a HAPs to 2 tons/year, as recommended by EPA and the CAPCOA/EPA Workgroup on Insignificant Activities.

b. *Legislative Source Category—Limited Interim Approval Issue*—In addition to the District-specific issues arising from Antelope Valley's program submittal and locally adopted regulations, California State law currently exempts agricultural production sources from permit requirements. Because of this exemption, California programs are only eligible for source category-limited interim approval. 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.

c. *Implications of Interim Approval*—The above described program and legislative deficiencies must be corrected before Antelope Valley can receive full program approval. For additional information, please refer to the Technical Support Document, which contains a detailed analysis of Antelope Valley's operating permits program, and California's enabling legislation.

Interim approval, which may not be renewed, would extend for a period of 2 years. During the interim approval period, the District would be protected from sanctions, and EPA would not be obligated to promulgate a federal permits program in Antelope Valley. Permits issued under a program with interim approval would have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources would begin upon EPA's final rulemaking granting interim approval, as would the 3-year time period for processing initial permit applications.

Following final interim approval, if Antelope Valley should fail to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. Then, if Antelope Valley should fail 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 has corrected the deficiency by submitting a complete corrective program. If, six months after application of the first sanction, the Antelope Valley 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 Antelope Valley'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 submitted a revised program and EPA determined that it corrected the deficiencies that prompted the disapproval. Again, if, six months after EPA applied the first sanction, Antelope

Valley had not submitted a revised program that EPA determined corrected the deficiencies, 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 state or district has not submitted a timely and complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a state or district program by the expiration of an interim approval, EPA must promulgate, administer and enforce a federal permits program for that state or district upon interim approval expiration.

2. Section 112(g) Implementation

EPA has decided that it is not reasonable to expect the states and districts to implement section 112(g) before a rule is issued. EPA therefore published an interpretive document 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 document states that major source modifications, constructions, and reconstructions will not be subject to 112(g) requirements until the final rule is promulgated.

The document 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 and Districts 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), Antelope Valley must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing District regulations. For this reason, EPA is proposing to approve the use of Antelope Valley's 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 nineteen districts of rules specifically designed to implement section 112(g). However, since approval is intended solely to confirm that Antelope Valley has a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is limiting the duration of its approval of the use of preconstruction programs to implement 112(g) to 12 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 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 Antelope Valley's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. California Health and Safety Code section 39658 provides for automatic adoption by CARB of section 112 standards upon promulgation by EPA. Section 39666 of the Health and Safety Code requires that districts then implement and enforce these standards. Thus, when section 112 standards are automatically adopted pursuant to section 39658, Antelope Valley will have the authority necessary to accept delegation of these standards without further regulatory action by the District.

4. State Operating Permit Program for Synthetic Minors

On March 31, 1995, CARB submitted for approval into the Antelope Valley's portion of the California State Implementation Plan (SIP) a local operating permit program designed to create federally enforceable limits on a source's potential to emit. This District program is referred to as a synthetic minor operating permit program, and it consists of regulations that will be integrated with the District's existing, non-federally enforceable, operating permit program. Such programs are also referred to as federally enforceable state operating permit (FESOP) programs. This synthetic minor or FESOP mechanism will allow sources to reduce their potential to emit to below the title V applicability thresholds and avoid being subject to title V.

Antelope Valley's synthetic minor regulations were adopted on March 17, 1998 and codified in Rule 225 (Federal Operating Permit Requirement). EPA found the initial SIP submittal administratively complete by default.

The five criteria for approving a state operating permit program into a SIP were set forth in the June 28, 1989 **Federal Register** notice (54 FR 27282): (1) The program must be submitted to and approved by EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989 criteria shall be deemed not federally enforceable; (3) the program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP or enforceable under the SIP or any other section 112 or other Clean Air Act standard or requirement; (4) permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) permits issued under the program must be subject to public participation.

Permits issued under an approved program are federally enforceable and may be used to limit the potential to emit of sources of criteria pollutants. Antelope Valley's synthetic minor provisions of Rule 225 meet the June 28, 1989 criteria by ensuring that the limits will be permanent, quantifiable, and practically enforceable and by providing adequate notice and comment to EPA and the public. Therefore, EPA is proposing to approve, pursuant to part 52 and the approval criteria specified in the June 28, 1989 **Federal Register** notice, Rule 225 (Federal Operating Permit Requirement), which was submitted to create the synthetic minor operating permit program. Please refer to the Technical Support Document for a thorough analysis of the June 28, 1989 criteria as applied to the Antelope Valley's syntheticminor program.

On November 10, 1999, Antelope Valley requested approval of its synthetic minor program, consisting of the rule specified above, under section 112(l) of the Act for the purpose of creating federally enforceable limitations on the potential to emit of hazardous air pollutants (HAPs). The separate request for approval under section 112(l) is necessary because the proposed SIP approval discussed above only provides a mechanism for controlling criteria pollutants. While federally enforceable limits on criteria pollutants (*i.e.,* VOCs or PM–10) may have the incidental effect of limiting certain HAPs listed pursuant to section 112(b),[1] section 112 of the Act provides the underlying authority for controlling HAPs emissions that are not criteria pollutants. As a legal matter, no

[1] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAPs to below section 112 major source levels.

additional program approval by EPA is required in order for these criteria pollutant limits to be recognized as federally enforceable. EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989 notice does not address HAPs because it was written prior to the 1990 amendments to section 112 (which injected the concept of major HAPs sources versus non-major or area HAPs sources into the permit) and not because it establishes requirements unique to criteria pollutants. Hence, the five criteria outlined above are applicable to FESOP approvals under section 112(l).

In addition to meeting the criteria in the June 28, 1989 notice, a FESOP program that will control HAPs emissions must meet the statutory criteria for approval under section 112(l)(5). Section 112(l)(5) allows EPA to approve a program only if it: (l) contains adequate authority to assure compliance with any section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting potential to emit of HAPs in subpart E of part 63 (subpart E), the regulations promulgated to implement section 112(l) of the Act. The EPA currently anticipates that these criteria, as they apply to FESOP programs controlling HAPs, will mirror those set forth in the June 28, 1989 document, with the addition that the state's authority must extend to all HAPs, instead of, or in addition to, VOCs and PM–10. The EPA currently anticipates that FESOP programs that are approved pursuant to section 112(l) prior to the subpart E revisions will have had to meet these criteria, and hence, will not be subject to any further approval action.

The EPA believes it has authority under section 112(l) to approve programs to limit potential to emit of HAPs directly under section 112(l) prior to this revision to subpart E. Section 112(l)(5) requires EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, the EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address all instances of approval under section 112(l). Given the severe timing problems posed by impending deadlines set forth in MACT standards and for submittal of title V applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to issuance of a rule specifically addressing this issue.

EPA proposes approval of Antelope Valley's synthetic minor program pursuant to section 112(l) because the program meets all of the approval criteria specified in the June 28, 1989 **Federal Register** notice and in section 112(l)(5) of the Act. Please refer to the Technical Support Document for a complete discussion of how the June 28, 1989 criteria are met by Antelope Valley. Regarding the statutory criteria of section 112(l)(5) referred to above, the EPA believes Antelope Valley's synthetic minor program contains adequate authority to assure compliance with section 112 requirements since the third criterion of the June 28, 1989 notice is met: The program does not provide for waiving any section 112 requirement. Sources would still be required to meet section 112 requirements applicable to non-major sources. Furthermore, EPA believes that Antelope Valley's synthetic minor program provides for an expeditious schedule for assuring compliance because it allows a source to establish a voluntary limit on potential to emit and avoid being subject to a federal Clean Air Act requirement applicable on a particular date. Nothing in Antelope Valley's program would allow a source to avoid or delay compliance with a federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. Finally, Antelope Valley's synthetic minor program is consistent with the objectives of the section 112 program because its purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. The EPA believes this purpose is consistent with the overall intent of section 112, which is to decrease the amount of HAPs being emitted; by committing to stay below a certain emission level for HAPs, a source with a synthetic minor permit is achieving this goal.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of Antelope Valley'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 May 1, 2000.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612, Federalism, and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255,

August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

E. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. 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 annual costs to State, local, or tribal governments in the aggregate; or to 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 does not include a Federal mandate that may result in estimated annual 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 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

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

Authority: 42 U.S.C. 7401–7671q.

Dated: March 17, 2000.

Laura Yoshii,

Acting Regional Administrator, Acting Region IX.

[FR Doc. 00–7999 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300985; FRL–6497–7]

RIN 2070–AB78

Fenthion, Methidathion, Naled, Phorate, and Profenofos; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke 67 meat, milk, poultry, and egg tolerances for residues of the organophosphate pesticides fenthion, methidathion, naled, phorate, and profenofos. EPA determined that there are no reasonable expectations of finite residues in or on meat, milk, poultry, or eggs for the aforementioned organophosphate pesticides and announced on August 2, 1999, that those tolerances were reassessed under the Federal Food, Drug, and Cosmetic Act (FFDCA). The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the FFDCA. By law, EPA is required to