ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA051–OPP; FRL–7087–2]

Clean Air Act Proposed Full Approval of Operating Permit Program; Sacramento Metropolitan Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to fully approve Rule 207 (Title V—Federal Operating Permit Program) and the District requirements for permit applications (''List and Criteria'') which are part of the operating permit program of the Sacramento Metropolitan Air Quality Management District (''Sacramento'' or ''District''). The District operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdictions. EPA granted interim approval to the District operating permit program on August 4, 1995, but listed certain deficiencies in the program preventing full approval. The District has revised Rule 207 and the ''List and Criteria'' to correct the deficiencies of the interim approval and this action proposes full approval of those revisions.

DATES: Comments on this proposed rule must be received in writing by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105 (Attention: Mark Sims). You can inspect copies of the Sacramento submittals, and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. You may also see copies of the District's submitted operating permit program at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

The Sacramento Air Quality Management District, 777 12th Street, 3rd Floor, Sacramento, California, 95814–1908.

An electronic copy of Sacramento's operating permit program (rules 201, 207, and List and Criteria) may be available via the Internet at *http://www.arb.ca.gov/drdb/sac/cur.htm.* However, the versions of District rule 207 and the List and Criteria at the above internet address may be different from the versions submitted to EPA for approval. Readers are cautioned to verify that the adoption date of rule 207 and the List and Criteria listed is the same date as the rule 207 and List and Criteria submitted to EPA for approval. The official submittal is available only at the three addresses listed above.

FOR FURTHER INFORMATION CONTACT: Mark Sims, EPA Region IX, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1229 or *sims.mark@epa.gov*.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
Are there other issues with the program?
What are the program changes that EPA is approving?
What is involved in this proposed action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. A goal of the operating permit program is to improve compliance by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''severe,'' major sources include those with the potential of emitting 25 tons per year or more of volatile organic compounds or nitrogen oxides. EPA has classified the Sacramento Metropolitan Area as a severe nonattainment area for ozone (40 CFR 81.305).

What Is Being Addressed in This Document?

The California Air Resources Board submitted an administratively complete permitting program on behalf of the District on August 1, 1994. Because the District's operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval of the program, and conditioned full approval on the District revising its program to correct the deficiencies. Thus, EPA granted interim approval to the District's program in a rulemaking published on August 4, 1995 (60 FR 39862). The interim approval notice described the program deficiencies and revisions that had to be made in order for the District program to receive full approval. Since that time, the District has revised and the California Air Resources Board, on behalf of the District, has submitted a revision to the District's operating permit program by letter dated June 1, 2001. This **Federal Register** document describes the changes that have been made to the Sacramento operating permit program as submitted on June 1, 2001, and the basis for EPA proposing full approval of the program.

Are There Other Issues With the Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a document in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or

implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** document.

EPA received a comment letter from one organization on what they believe to be deficiencies with respect to Title V programs in California. EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** document published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. A NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

What Are the Program Changes That EPA Is Approving?

As discussed in the August 4, 1995 (60 FR 39862) rulemaking, full approval of the Sacramento operating permit program was made contingent upon satisfaction of the following conditions:

Issue (1): One of EPA's conditions for full title V program approval was the California Legislature's revision of the Health and Safety Code to eliminate the provision that exempts ''any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals'' from the requirement to obtain a permit. *See* California Health and Safety Code section 42310(e). Even though the local Districts have, in many cases, removed the title V exemption for agricultural sources from their own rules, the Health and Safety Code has not been revised to eliminate this provision.

In evaluating the impact of the Health and Safety Code exemption, EPA believes there are a couple of key factors to consider. First, many post-harvest activities are not covered by the exemption and, thus, are still subject to title V permitting. For example, according to the California Air Resources Board (CARB), the Health and Safety Code exemption does not include activities such as milling and crushing, or canning or cotton ginning operations. Activities such as these are subject to review under the State's title V programs. *See* letter from Michael P. Kenny, Executive Officer, California Air Resources Board, to Jack Broadbent, Director, Air Division, U.S. EPA Region 9, dated September 19, 2001. In addition, since the granting of interim approval, the EPA has discovered that, in general, there is not a reliable or complete inventory of emissions associated with agricultural operations in California that are subject to the exemption. Although further research on this issue is needed, many sources with activities covered by the exemption may not have emission levels that would subject them to title V, and the State and/or individual Districts may be able to demonstrate that none of the sources that are exempt under the State law are subject to title V.

Based, in part, on these factors, EPA has tentatively concluded that requiring the immediate commencement of title V permitting of the limited types of agricultural activities presently subject to the exemption, without a better understanding of the sources and their emissions, would not be an appropriate utilization of limited local, state and federal resources. As a result, despite the State of California's failure to eliminate the agricultural permitting exemption, EPA is proposing to grant full approval to local Air District operating permit programs and allow a deferral of title V permitting of agricultural operations involved in the growing of crops or the raising of fowl or animals for a further brief period, not to exceed three years. During the deferral period, we expect to develop the program infrastructure and experience necessary for effective implementation of the title V permitting program to this limited category of sources.

EPA believes it is appropriate to defer permitting for this limited category of agricultural sources because the currently available techniques for determining emissions inventories and for monitoring emissions (e.g., from irrigation pumps and feeding operations) are problematic and will be dramatically enhanced by several efforts currently being undertaken with the cooperation and participation of the operators and agricultural organizations, as well as EPA, other federal agencies, and the State and local air pollution agencies. For example, the National Academy of Sciences is undertaking a study addressing emissions from animal feeding operations. Their report is due next year. In addition, EPA's Office of Air and Radiation is working with the U.S. Department of Agriculture to better address the impact of agricultural operations on air quality. We consider the effort to evaluate the existing science, improve on assessment tools, collect additional data, remove any remaining legal obstacles, and issue any necessary guidance within the three year deferral time frame to be ambitious. We welcome comments on other areas that might also warrant study, as well as ways that this work might be done more quickly.

During the interim deferral period, EPA will continue to work with the agricultural industry and our state and federal regulatory partners to pursue, wherever possible, voluntary emission reduction strategies. At the end of this period, EPA will, taking into consideration the results of these studies, make a determination as to how the title V operating permit program will be implemented for any potential major agricultural stationary sources.

Issue (2): The District was required to revise its insignificant activities permit exemption list or submit information or criteria justifying these exemptions. (40 CFR 70.5(c)).

Rule or Program Change: The District corrected this deficiency by revising its List and Criteria to incorporate the insignificant activities developed by the EPA–ARB–CAPCOA Insignificant Activities Workgroup. The District included justifications for each of the identified activities. The District also revised the List and Criteria in order to clarify that insignificant emission units are not exempt from Title V.

Issue (3): The District's limits on operational flexibility were not as explicitly restrictive as the limits contained in 40 CFR 70.4(b)(12) concerning Title I modifications.

Rule or Program Change: The District corrected this deficiency by revising Rule 207, section 308.3.b., to not allow owners and operators to make operational changes that are significant Title V permit or Title I modifications.

Issue (4): The District was required to change its rule to adopt appropriate permit issuance deadlines for sources that were initially deferred from the program due to their actual emissions but did not obtain federally enforceable limits on their potential to emit.

Rule or Program Change: The District corrected this deficiency by revising Rule 207, section 301.1, to require owners and operators of stationary sources with a potential to emit at or above major source trigger levels but with actual emissions below levels stated in section 301 to submit complete Title V permit applications by no later than June 30, 2001.

Issue (5): The District was required to add emissions trading provisions to the rule consistent with 40 CFR 70.6(a)(10). The permit content section of the rule

must allow provisions for trading within the facility where an applicable requirement provides for trading increases and decreases without case-by-case approval.

Rule or Program Change: The District did not make any rule changes to address this deficiency. However, the District believes that Rule 207 contains the necessary language to ensure permits will include terms and conditions to allow emissions trading without case-by-case approval if allowed by an applicable requirement. EPA now agrees that Rule 207 contains language consistent with 40 CFR 70.6(a)(10). See Rule 207, section 308.

Issue (6): The District rule was to explicitly require that the permit include fugitive emissions in the same manner as stack emissions (40 CFR 70.3(d)).

Rule or Program Change: The District corrected this deficiency by revising Rule 207, section 305.1, to require that fugitive emissions shall be included in the Title V permit in the same manner as stack emissions. The District also revised its List and Criteria to require sources to characterize fugitive emissions in the Title V permit application.

Issue (7): The District rule was required to state that the District will provide public notice by means other than newspaper notice and a mailing list when necessary to ensure that adequate notice is given (40 CFR 70.7(h)).

Rule or Program Change: The District corrected this deficiency by revising Rule 207, section 403.1, to match the language in 40 CFR 70.7(h). The rule now requires for public notice that notice also be given by other means such as the District Website, community groups, and public meetings when necessary to ensure that adequate notice is given.

What Is Involved in This Proposed Action?

Sacramento has corrected the deficiencies cited in the interim approval on August 4, 1995 (60 FR 39862), and EPA proposes full approval the Sacramento operating permit program Rule 207. Sacramento made two additional changes to Rule 207 that were not necessary to correct interim approval issues. EPA is acting to approve a rule change concerning potential to emit and is not acting on a rule change concerning the effective date of the rule.

EPA proposes to approve a revision to the Rule 207, Section 226, definition of ''potential to emit.'' The District revised the definition of potential to emit to state that limitations on the physical or operational design capacity, including emissions control devices and limitations on hours of operation, may be considered only if such limitations are federally enforceable *or legally and practicably enforceable by the District* (emphasis added). This change is consistent with litigation affecting EPA's consideration of the potential to emit issue. In *Clean Air Implementation Project* v. *EPA,* No. 96–1224 (D.C. Cir. June 28, 1996), the court remanded and vacated the requirement for federal enforceability for potential to emit limits under part 70. Even though part 70 has not been revised it should be read to mean, ''federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.'' [1]

EPA proposes to approve this revision because Sacramento's rule is consistent with the current meaning of potential to emit at 40 CFR 70.2. EPA has issued several guidance memoranda that discuss how the court rulings affect the definition of potential to emit under CAA section 112, New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs, and title V.[2] In particular, the memoranda reiterate the Agency's earlier requirements for practicable enforceability for purposes of effectively limiting a source's potential to emit.[3] For example, practicable enforceability for a source-specific permit means that the permit's provisions must, at a minimum: (1) Be technically accurate and identify which portions of the source are subject to the limitation; (2) specify the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); (3) be independently enforceable and describe the method to determine compliance including appropriate monitoring, recordkeeping and reporting; (4) be permanent; and (5) include a legal obligation to comply with the limit.

EPA will rely on Sacramento implementing this new definition in a manner that is consistent with the court's decisions and EPA policies. In addition, EPA wants to be certain that absent federal and citizen's enforceability, Sacramento's enforcement program still provides sufficient incentive for sources to comply with permit limits. This proposal provides notice to Sacramento on our expectations for ensuring the permit limits they impose are enforceable as a practical matter (i.e., practicably enforceable) and that its enforcement program will still provide sufficient compliance incentive. In the future, if Sacramento does not implement the new definition consistent with our guidance, and/or has not established a sufficient compliance incentive absent Federal and citizen's enforceability, EPA could find that the District has failed to administer or enforce its program and may take action to notify the District of such a finding as authorized by 40 CFR 70.10(b)(1).

Sacramento deleted the effective date provision of Rule 207 which stated that the rule becomes effective on the date it is approved by EPA. EPA is currently evaluating the approvability of this change to Rule 207. Because EPA has not yet determined whether this change is approvable under the requirements of 40 CFR part 70, and since this change was not required by EPA for Sacramento to receive full program approval, EPA is taking no action on this change at this time.

Request for Public Comment

EPA requests comments on the program revisions discussed in this proposed action. Copies of the Sacramento submittal and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region IX 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 full approval. The primary purposes of the

[1] See also, *National Mining Association (NMA)* v. *EPA,* 59 F. 3d 1351 (D.C. Cir. July 21, 1995) (Title III) and *Chemical Manufacturing Ass'n (CMA)* v. *EPA,* No. 89–1514 (D.C. Cir. Sept. 15, 1995) (Title I).

[2] *See*, e.g., January 22, 1996, Memorandum entitled, ''Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit'' from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement to EPA Regional Offices; January 31, 1996 paper to the Members of the Subcommittee on Permit, New Source Review and Toxics Integration from Steve Herman, OECA, and Mary Nichols, Assistant Administrator of Air and Radiation; and the August 27, 1996 Memorandum entitled, ''Extension of January 25, 1995 Potential to Emit Transition Policy'' from John Seitz, Director, OAQPS and Robert Van Heuvelen, Director, Office of Regulatory Enforcement.

[3] *See,* e.g., June 13, 1989 Memorandum entitled, ''Guidance on Limiting Potential to Emit in new Source Permitting, from Terrell F. Hunt, Associate Enforcement Counsel, OECA, and John Seitz, Director, OAQPS, to EPA Regional Offices. This guidance is still the most comprehensive statement from EPA on this subject. Further guidance was provided on January 25, 1995 in a memorandum entitled ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act),'' from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, director, ORE to Regional Air Directors. Also please refer to the EPA Region 7 database at *http://www.epa.gov/region07/programs/artd/air/policy/policy.htm* for more information.

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. EPA will consider any comments received in writing by November 19, 2001.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves State law as meeting federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), because it proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it 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, ''Federalism'' (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 on May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply.

List of Subjects in 40 CFR Part 70

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

Dated: October 11, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA052–OPP; FRL–7086–8]

Clean Air Act Proposed Full Approval of Operating Permit Program; South Coast Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve certain revisions of Rule 3000 (General), Rule 3002 (Requirements), Rule 3004 (Permit Types and Content), and Rule 3005 (Permit Revisions), which are part of the operating permit program of the South Coast Air Quality Management District (''South Coast'' or ''District''). The District operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdictions. EPA granted interim approval to the District operating permit program on August 29, 1996, but listed certain deficiencies in the program preventing full approval. The District has revised Rules 3000, 3002, 3004, and 3005 to correct the deficiencies of the interim approval and this action proposes full approval of those revisions. South Coast has made other changes to its part 70 program since EPA granted interim approval to the program. EPA is not taking action on these other changes at this time.

DATES: Comments on this proposed rule must be received in writing by November 19, 2001.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. You can inspect copies of the South Coast submittals, and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. You may also see copies of the District's submitted operating permit program at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

The South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California 91765–4182.

An electronic copy of South Coast's operating permit program (Regulation XXX, rules 3000–3007, Title V Permits) may be available via the Internet at *http://www.arb.ca.gov/drdb/sc/cur.htm.* However, the versions of District rules 3000, 3002, 3004, and 3005 may be different from the versions submitted to EPA for approval. Readers are cautioned to verify that the adoption dates of rules 3000, 3002, 3004, and 3005 are the same