Standard mail letters	ECR rate	Next higher non-auto rate	Difference
Saturation	0.160	$0.194 (Basic ECR nonletter)	0.034
Periodicals (Outside-County)	**CR rates**	**Next higher rate**	**Difference**
Basic	$0.163	$0.256 (5-digit nonauto) [3]	$0.093
High Density	0.131	$0.163 (Basic CR rate)	0.032
Saturation	0.112	$0.163 (Basic CR rate)	0.051
Periodicals (In-County)	**CR rates**	**Next higher rate**	**Difference**
Basic	$0.050	$0.087 (5-digit nonauto) [3]	$0.037
High Density	0.034	$0.050 (Basic CR rate)	0.016
Saturation	0.028	$0.050 (Basic CR rate)	0.022

[1] For ECR basic rate pieces, the next higher rate may also be the Presorted basic rate or an automation rate for which the mail qualifies.
[2] Standard Mail letters and nonletters weighing more than 3.3 ounces are subject to both a per-piece charge and a pound rate. The cost differential between the applicable carrier route rate and the applicable next higher rate for pieces weighing more than 3.3 ounces is not shown on this chart.
[3] For Periodicals carrier route basic rate pieces, the next higher rate may also be the 3-digit rate or an applicable automation rate for which the mail qualifies.
[4] The nonmachinable surcharge that is assessed on Standard Mail letter-size pieces meeting the criteria in DMM C050.2.2 does not apply to pieces mailed at the ECR or automation letter rates. When pieces claimed at the ECR basic rates are found to be ineligible for that rate, the pieces may be subject to the nonmachinable surcharge in addition to the applicable presort rate, depending upon the physical characteristics of the pieces. The nonmachinable surcharge is $0.04 per piece for Standard Mail regular Presorted rate pieces and $0.02 for nonprofit Presorted rate pieces.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following section of the Domestic Mail Manual (DMM) as set forth below:

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M050 Delivery Sequence

* * * * *

2.0 ACCURACY

[Delete 2.0 in its entirety; renumber 3.0 and 4.0 as 2.0 and 3.0.]

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–26162 Filed 10–11–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA085–WDL; FRL–7393–6]

Partial Withdrawal of Approval of 34 Clean Air Act Part 70 Operating Permits Programs in California; Announcement of a Part 71 Federal Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to our authority under the federal operating permits program regulations, EPA is taking final action to withdraw, in part, approval of the following 34 Clean Air Act title V operating permits programs in the State of California: Amador County Air Pollution Control District (APCD), Bay Area Air Quality Management District (AQMD), Butte County AQMD, Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Glenn County APCD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lake County AQMD, Lassen County APCD, Mariposa County APCD, Mendocino County APCD, Modoc County APCD, Mojave Desert AQMD, Monterey Bay Unified APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Sacramento Metro AQMD, San Diego County APCD, San Joaquin Valley Unified APCD, San Luis Obispo County APCD, Santa Barbara County APCD, Shasta County APCD, Siskiyou County APCD, South Coast AQMD, Tehama County APCD, Tuolumne County APCD, Ventura County APCD, and Yolo-Solano AQMD. Our partial withdrawal of title V program approval is based upon EPA's finding that the State's agricultural permitting exemption at Health and Safety Code 42310(e) unduly restricts the 34 local districts' ability to adequately administer and enforce their title V programs, which have previously been granted full approval status. Therefore, EPA is withdrawing approval of those portions of the 34 district title V programs that relate to sources that are subject to title V but are not being permitted because of the state's agricultural permitting exemption (''state-exempt major stationary agricultural sources''). This notice also fulfills EPA's obligation to inform the public of the implementation of a part 71 federal operating permits program (''part 71 program'') for state-exempt major stationary agricultural sources in California.

EFFECTIVE DATE: This action will become effective on November 14, 2002.

ADDRESSES: Copies of the documentation in the administrative record for this action are available for inspection during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region 9, Air Division, Permits Office (AIR–3), at (415) 972–3974 or *rios.gerardo@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our'' means EPA.

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I. Background

Title V of the CAA Amendments of 1990 required all state permitting authorities to develop operating permits programs that met certain federal criteria codified at 40 Code of Federal Regulations (CFR) part 70. On November 30, 2001, we promulgated final full approval of 34 California districts' title V operating permits programs. *See* 66 FR 63503 (December 7, 2001).[1] Our final rulemaking was challenged by several environmental and community groups alleging that the full approval was unlawful based, in part, on an exemption in section 42310(e) of the California Health and Safety Code of major agricultural sources from title V permitting. EPA entered into a settlement of this litigation which required, in part, that the Agency propose to partially withdraw approval of the 34 fully approved title V programs in California.

Sections 70.10(b) and 70.10(c) provide that EPA may withdraw a 40 CFR part 70 program approval, in whole or in part, whenever the permitting authority's legal authority does not meet the requirements of part 70 and the permitting authority fails to take corrective action. To commence regulatory action to partially withdraw title V program approval, EPA's part 70 regulations require as a prerequisite that the affected permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the **Federal Register**. Our determination regarding the inadequacy of the 34 districts' title V programs was published in a Notice of Deficiency (NOD). *See* 67 FR 35990 (May 22, 2002). Publication of the NOD fulfilled our obligation under part 70 to provide notice to the title V permitting authorities in the State that they are not adequately administering or enforcing their title V operating permits programs. Pursuant to 40 CFR 70.10(b)(2), publication of the NOD commenced a 90-day period during which the State of California had to take significant action to assure adequate administration and enforcement of the local districts' programs. As described in EPA's NOD, the Agency determined that ''significant action'' in this instance meant the revision or removal of California Health and Safety Code 42310(e), so that the local air pollution control districts could adequately administer and enforce the title V permitting program for stationary agricultural sources that are major sources of air pollution.

During the 90-day period that the State was provided to take the necessary corrective action, EPA proposed to partially withdraw title V program approval in each of the 34 California districts with full program approval. *See* 67 FR 48426 (July 24, 2002). Our notice indicated that we were proposing the partial withdrawal of program approval in anticipation that the State of California would not effect the necessary change in state law prior to the end of the 90-day period on August 19, 2002, but that the Agency's final action on the proposal would only occur after the 90 days for the State to take significant action had fully elapsed. Since the State did not take the necessary action to assure adequate administration and enforcement of the title V program within the required time frame, EPA is now taking final action, pursuant to our authority at 40 CFR 70.10(b)(2)(i), to partially withdraw approval of the title V programs for the 34 local air districts listed above.

II. Comments Received by EPA on Our Proposed Rulemaking and EPA's Responses

EPA received ten sets of comments on our proposal to partially withdraw approval of the 34 local districts' title V programs. Copies of these comments are available for inspection during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. A summary of the significant comments, and our response thereto, follow.

Comment 1: One commenter argues that EPA's proposed partial withdrawal exceeded the Agency's authority because, although the Act authorizes partial state programs, the Act does not authorize ''hybrid'' programs. The commenter claims that ''partial'' in the context of part 70 has a ''solely geographic meaning.'' Thus, the commenter continues, a permissible partial withdrawal of approval of California's part 70 program would be one in which EPA withdrew approval for some but not all of California district title V programs. The commenter concludes that title V allows only geographic partial programs because simultaneous operation of federal and state permitting programs in a single geographic area could lead to confusion, inconsistency and inefficiency.

Response: The Act does allow for a partial part 70 program that is not based on geographic distinctions. The Act grants EPA broad discretion to withdraw approval of a title V program, without regard to whether the basis for withdrawal is geographic or not. Section 502(i) states: ''Whenever the Administrator makes a determination that a permitting authority is not adequately administering or enforcing a program, or portion thereof * * * the Administrator shall provide notice to the State. * * * [U]nless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall * * * promulgate, administer, and enforce a program under this subchapter for that State.'' The statute does not impose a geographic limitation on partial withdrawal of approval of a title V program.

EPA's title V regulations also do not limit the Agency's ability to *withdraw approval* of a state's title V program according to non-geographic criteria. Unlike partial approvals, which EPA did limit to geographic areas per regulation, partial withdrawals are not so limited. The commenter refers to EPA's authority *to approve* state program submittals under 40 CFR 70.4 for its position that 'a partial part 70 program is one that applies to ''all part 70 sources within a limited geographic area.' '' As the full context of this provision makes clear, 40 CFR 70.4(c) sets forth EPA's authority to grant *approval* to a part 70 program based on geographic criteria. This provision is distinct from the authority under which we are acting today. California has had interim approval for its title V programs since 1995 and final approval of its programs since December 2001; thus, we are not partially approving programs under 40 CFR 70.4, but rather partially withdrawing approval under 40 CFR 70.10.

Section 70.10(b), which authorizes EPA to ''withdraw approval of the program *or portion thereof* * * *'' does not limit EPA's authority to partially withdraw approval of approved title V programs to geographic boundaries. We therefore, interpret part 70 as allowing us the discretion to partially withdraw approval of an approved title V program in a manner that is appropriate to the scope and scale of the determination of inadequate administration or enforcement. The approach EPA has taken here is more appropriate than the

[1] Although there are 35 separate permitting authorities in California, one permitting authority, Antelope Valley APCD, was not included in our final action because it only recently obtained its authority to issue part 70 permits and is still under its initial interim approval status granted on December 19, 2000 (65 FR 79314).

full withdrawal of the 34 part 70 programs supported by commenters. The commenters' approach would require EPA to assume full responsibility from California's local air agencies for permitting all types of sources in the title V program, from refineries to power plants to wood products manufacturers, because of a state law problem that pertains only to the agricultural sector. Today's action is appropriately tailored to the problem it has identified—the inability of California's air districts to require major stationary agricultural sources of air pollution to apply for and obtain title V permits because of an exemption in state law. To subject all major sources within California to part 71 without regard to a problem that is actually narrow in scope would be an overly broad remedy that could also entail substantial confusion and inefficiency. Such disruption to the programs that the California air districts have been implementing for approximately 7 years is unwarranted.

We also do not agree with the comment that having some sources subject to a local part 70 program and other sources subject to a federal part 71 program would lead to confusion. First, many sources already successfully comply with multiple permitting schemes; for instance, a new or modified major source may have to comply with both nonattainment New Source Review and Prevention of Significant Deterioration (''PSD'') permitting programs. In fact, in some locations in California, the nonattainment program is administered by the local agency and the PSD program is administered by EPA. Second, EPA does not anticipate that major agricultural sources covered by the federal part 71 program will also be subject to a local part 70 program.

Finally, we note that it is EPA's preference for the State and the local air districts to be the permitting authorities for the agricultural sources affected by today's rule. If and when these agencies have the ability to administer and enforce the title V program as required by the Act and its implementing regulations, EPA intends to take the actions necessary to hand regulatory authority over these sources to the State and local air agencies.

Comment 2: One commenter claims that EPA's proposed action is inconsistent with 40 CFR § 71.4(f). According to the commenter, section 71.4(f) does not authorize a permitting authority to be subject to portions of a part 71 program. This commenter also states that section 71.4(f) contemplates borrowing from a state program to implement a federal program, not vice versa. To be lawful, the commenter continues, EPA's action should completely withdraw approval of the California air districts' part 70 programs and implement a part 71 program covering all sources within the air districts' geographic area; EPA could then borrow portions of California's former part 70 program to help implement the new federal part 71 program.

Response: We disagree with the commenter's statement, as our action is consistent with our authority in part 71. Section 71.4(f) describes EPA's discretionary authority for issuing permits to individual sources, which we may do under ''any or all of the provisions of [part 71] * * * or [after appropriate rulemaking, under] * * * portions of a state or Tribal permit program in combination with the provisions of [part 71].'' By our action today, EPA intends to issue permits to state-exempt major stationary agricultural sources under the provisions of part 71. We do not believe at this time that additional rulemaking to adopt portions of the California programs will be necessary to complete this process. In addition, contrary to the comment, our action today does not require us to ''borrow'' from a federal program to implement a state program. As explained elsewhere in this notice, we are not implementing a state program; rather, we are using our authority under section 502(i) of the Act and 40 CFR 71.4(c) to implement a Federal operating permits program where a state has failed to adequately administer and enforce its own state operating permits program.

Comment 3: One commenter notes that EPA's action is inconsistent with the timing requirements of title V. The commenter contends that EPA's action should be governed by 40 CFR 70.10(a) (''Failure to submit an approvable program''), not, as EPA has proposed, 40 CFR 70.10(b) (''Failure to adequately administer or enforce'') and (c) (''Criteria for withdrawal of State programs''). The commenter claims that if EPA were proceeding under 40 CFR 70.10(a), rather than 70.10(b) and (c), California would have had 18 months to correct the deficiency before mandatory sanctions would apply, and a part 71 program for California would not be effective until June 1, 2003. The commenter states that according to EPA's current view of section 42310(e), California never submitted an approvable program; therefore, EPA should have disapproved the programs and allowed California's interim approvals to expire.

Response: We disagree with the comment and believe that today's action is an appropriate exercise of our authority under 40 CFR 70.10(b) and (c) and that the timing of sanctions and a federal program are consistent with the Act and our regulations. The provisions of 40 CFR 71.4(a)(2) explain that the effective date of a federal operating permit program will be the date of expiration of interim approval of a state program. The expiration date of the interim approvals for California's title V programs was December 1, 2001; therefore, if EPA had allowed the interim approvals to expire, the effective date of a federal operating permits program would have been December 1, 2001 (not, as the commenter suggests, June 1, 2003), and EPA would have been required to set the due date for applications no later than December 1, 2002.

To the extent the comment should be read as stating that EPA should have made a finding that the California air districts had failed to submit fully-approvable programs or required revisions thereto, we believe that such a comment would have been more appropriately raised during the rulemaking we took approximately one year ago in which we proposed and finalized action on the submitted programs by granting them full approval. *See e.g.*, 66 FR 53354; 66 FR 63503. In that rulemaking, EPA allowed the public an adequate opportunity to comment on our action with respect to the California air districts' submittals. After we took action granting full approval, several entities challenged our action by filing petitions for review with the U.S. Court of Appeals for the Ninth Circuit. This particular commenter, however, did not petition the court for review of our action to approve the submitted programs rather than making a finding of failure to submit an approvable program.

Comment 4: One commenter claims that the timeline in 40 CFR 70.4(i)(1) should govern EPA's action because the agricultural permitting exemption is actually an issue of adequate legal authority. The commenter contends that if a permitting authority lacks legal authority to make a necessary revision, 40 CFR 70.4(i)(1) gives a permitting authority two years to make the revisions.

Response: We disagree with the commenter because we believe that our action is an appropriate exercise of our authority under 40 CFR 70.10(b) and (c). Section 70.4(i)(1) states, in part: ''The program shall be revised * * * within 2 years if the State demonstrates that additional legal authority is necessary to

make the program revision.'' Thus, this section allows, but does not require, EPA to grant a State up to two years to revise the deficient part 70 program. *See, e.g.*, Part 70 NPRM, 56 FR 21712, 21731 (May 10, 1991) (''The Agency *might set a longer time up to 2 years* where legislative action is required at the State level to address problems'') (emphasis added); Part 70 NFRM, 57 FR 32250, 32271 (July 21, 1992) (''If the State demonstrates that additional legal authority is necessary to correct the deficiency, the period *may be extended up to 2 years.*'') (emphasis added).

Moreover, this provision must be read in conjunction with 40 CFR 70.10, which allows EPA to withdraw approval of the program (or a portion of the program) 90 days after issuing a Notice of Deficiency to the state, if the state fails to take significant action to correct the deficiency within that 90-day period. EPA interprets 40 CFR 70.4(i)(1) as placing an outer limit on the amount of time that EPA may give to a state to take the necessary steps to supply additional legal authority. EPA does not agree with the commenter that 40 CFR 70.4(i)(1) demands that EPA allow any state a full two years to correct a legal deficiency without regard to the facts and circumstances surrounding the issue.

In addition, it would not be appropriate to give the State another full two years in this instance. First, we note that the State of California has made no demonstration to EPA that two years is necessary to correct the deficiency we have identified. In certain instances, two years might be necessary for a state to address a shortcoming in the legislation relied upon for administration or enforcement of a state's title V program. For example, EPA is aware that some state legislatures meet only every other year. States with such a legislative calendar might be able to demonstrate to EPA that two years is necessary to provide additional legal authority. California's legislature, however, is in session throughout the year, except for various relatively limited periods of recess.[2] EPA's Notice of Deficiency was issued in May 2002 and efforts were under way to repeal the agricultural permitting exemption before August 31, which was the last day for each house to pass bills for the 2002 legislative session. The commenter did not provide a reason why the State might require a full two years to correct the problem we identified in our Notice of Deficiency. Given the state's legislative calendar, we believe that it is feasible for the California Legislature to supply the additional authority in a time frame less than two years.

Second, we informed California more than six years ago that the agricultural exemption (which has existed in the Health and Safety Code since the late 1970's) was a defect in the program that required correction. Indeed, the California Attorney General identified the exemption as defect in the state's legal authority in the legal opinion the State submitted with the original programs in the early 1990's. In addition, EPA's proposed and final interim approval notices in the mid-1990's confirmed that the defect would have to be corrected in order for the state's programs to secure full approval. Thus, the State's long-standing awareness of this issue also weighs in favor of our invoking our discretion inherent in the part 70 regulations to establish a time frame for legislative action that is less than two years.

Comment 5: One commenter argues that EPA has overreached in defining ''significant action'' by requiring action that must be taken within 90 days to avoid 40 CFR 70.10(b)(2) sanctions. The commenter contends that 40 CFR 70.10(b) allows California 18 months to revise or repeal the agricultural exemption before sanctions or implementation of a part 71 program may occur. The commenter continues that EPA's NOD and proposed rule, however, improperly treat complete correction of the identified deficiency as the ''significant action'' that California must take within 90 days. The commenter notes that other EPA NODs have distinguished between the ''significant action'' and actual correction of the identified deficiencies. Finally, the commenter states that EPA is also unreasonable to expect a state law to be revised or repealed in 90 days because generally, the legislative process required to revise or repeal a statute under California law cannot be completed in 90 days.

Response: We disagree with the comment for several reasons. First, EPA is not aware of any significant action taken by the State of California to assure adequate administration and enforcement of the title V program during the 90-day period provided, and none of the commenters provided any evidence that the State took a ''significant action'' within that time frame that EPA should consider as such. Thus, even if we had not specifically identified removal of the exemption as the necessary ''significant action,'' no ''significant action'' occurred within the 90 days provided for in the regulations.

Morever, the Clean Air Act and EPA's regulations do not require us to distinguish the ''significant action'' a state must take within 90 days from the actual correction that must occur. The fact that we may have given a different State with different deficiencies and facts a different timeline does not indicate that our actions here were unlawful. In fact, the existence of statutory and regulatory authorities for discretionary sanctions demonstrate that no such distinction is required. For the reasons stated earlier (*e.g.*, the State's longstanding knowledge the exemption was a problem; the legislature's calendar), we believe it was reasonable for us to identify removal of the exemption as the significant action in the NOD.

The comment suggests that a distinction is essential because it entitles the state to an 18-month period following the issuance of an NOD to completely correct the issue during which time the state is insulated from the imposition of sanctions. However, section 502(i)(1) of the Act and our implementing regulations authorize us to impose discretionary sanctions earlier than 18 months after notifying the state of the deficiency. 42 U.S.C. 7661a(i)(1); 40 CFR 70.10(b)(2)(ii) and (iii). Thus, the suggestion that the State automatically has 18 months during which it is ''insulated'' from sanctions before it must correct the deficiency is premised on a false assumption, since the State enjoys no 18-month period of insulation. Finally, we note that EPA has not imposed discretionary sanctions against California; rather, our NOD started an 18-month clock, expiration of which would result in mandatory sanctions if the State has not corrected the deficiency we identified. *See* 67 FR 35990 (May 22, 2002).

Comment 6: One commenter contends that in a variety of prior correspondence, EPA has acknowledged that there are unique issues regarding the application of title V to agricultural operations and claims that the proposed rule ignores these previously acknowledged positions regarding agriculture's unique position. The commenter also claims that EPA's proposed action breaches our 1998 Memorandum of Understanding (MOU) with the U.S. Department of Agriculture (USDA) where the agencies agreed to confer on agricultural air quality issues.

Response: EPA agrees that agriculture is a unique industry and that the application of title V for this industry poses some special challenges. Section 502(a) of the Clean Air Act (CAA or the Act), however, requires that a title V permitting program apply to every major

[2] The California Legislature's calendar may be consulted at *http://www.leginfo.ca.gov/legislative_calendar.html.*

source; it does not provide for an exemption based on the unique characteristics of the agricultural industry. As discussed in more detail below, the unique aspects of the agricultural industry can and will be addressed in how the title V program is implemented.

With respect to the correspondence from Agency officials submitted by the commenter, we believe that in some cases the commenter misunderstood the meaning of the letters cited, and in other instances EPA's position has evolved from the time the letter was written. For example, the commenter references several EPA letters from the mid-1990s explaining that a source's fugitive criteria pollutant emissions (such as fugitive dust) do not count when determining whether a source is subject to title V permitting requirements. Although EPA has not changed its position on this issue, the commenter appears to have misinterpreted these letters as assurances from EPA that agricultural sources would not be subject to title V *at all.* Non-fugitive emissions from stationary agricultural sources, however, do count toward title V applicability determinations. Thus, putting into place a title V program that considers non-fugitive emissions for applicability purposes is consistent with the correspondence cited by the commenter.

In other letters referenced by the commenter, EPA officials committed to working with the USDA on agricultural emissions issues and acknowledged the lack of sound emission factors for animal agriculture. EPA disagrees that our proposed rule somehow negates the MOU between our Agency and the USDA. EPA has conferred, and continues to confer, with USDA in an effort to develop a reasonable approach for implementing the title V program for major agricultural sources. We will continue to work with USDA on a host of issues related to the identification of major agricultural sources and the appropriate permitting of these sources under title V of the CAA.

Comment 7: Several commenters argue that emission factors and other data used by environmental groups to argue that there are major agricultural sources in California are outdated and inaccurate. They contend that there is very little data on emissions from agricultural practices and those data are unreliable; therefore, they conclude, it is inappropriate to regulate these sources under title V at this time. Commenters state that, in December 2001, EPA admitted that reliable data and a complete inventory of emissions from agricultural operations were not available and supported deferred implementation for a three-year period. They argue that this three-year deferral period is necessary to make informed and scientifically sound determinations as to agricultural emission inventories.

Response: As noted above, section 502(a) of the Clean Air Act specifically prohibits EPA from exempting major sources of air pollution from title V. California has had numerous opportunities over several years to demonstrate that there are no major agricultural sources in California and has failed to do so. Thus, EPA's final action today is necessary to lay the legal groundwork for the permitting of major stationary agricultural sources in California, where the local permitting authorities are restricted by State law from issuing permits to such sources. Thus, while we may agree that data regarding emission factors could be better in three years, implementation of the title V permitting program for major stationary agricultural sources must move ahead based on the best data available at this time.

Nonetheless, EPA's approach for implementing the title V program for major agricultural sources does, and will continue to, address concerns regarding emissions data. For example, today's action calls for applications from state-exempt stationary agricultural sources that are major due to emissions from diesel-powered engines first, to be followed approximately 3 months later by applications from any other state-exempt major stationary agricultural sources. This staggered application deadline is based, in part, upon the fact that more and better data are available with respect to emissions from agricultural engines than are available for other potentially major agricultural sources, such as Concentrated Animal Feeding Operations (CAFOs). Agricultural sources using stationary diesel engines have more than enough information available to them to determine whether they are subject to title V based on emissions from these engines. Both EPA and the State of California have valid emission factors that can be used to calculate diesel engine emissions based on such considerations as the engine age, size, load factor, and annual hours of operation or fuel usage.

With respect to other potential major agricultural sources of air pollution, EPA agrees that the level of information available is not as robust as it is for agricultural engines. For example, emissions from large animal feeding operations (*e.g.*, dairies, poultry operations, swine facilities) are not as well characterized as are those from diesel agricultural engines. Although we acknowledge that implementation of title V must commence before concerns regarding data are fully resolved, we anticipate that the results of a study by the National Academy of Sciences (NAS), ''The Scientific Basis for Estimating Emissions from Animal Feeding Operations'' will be instrumental to the Agency in making the necessary implementation policy decisions. This study, which has received funding and support from both the EPA and USDA, is intended to assess ''the scientific issues involved in estimating air emissions from individual animal feeding operations (swine, beef, dairy, and poultry) as related to current animal production systems and practices in the United States.'' The Agency will continue its commitment to working closely with our sister federal agency, USDA, as we evaluate the NAS findings and results from other ongoing research efforts, and develop specific guidance for the implementation of the title V permitting program for animal agriculture. The additional guidance, which EPA will make widely available through direct outreach to potentially subject sources and through other means, will provide clearer direction as to the types and sizes of operations that are presumptively major under the title V program.

Comment 8: One commenter stated that there is a lack of clarity in EPA's proposed rule as to which operations or agricultural activities meet the definition of ''major source.'' Specifically regarding dairies, the commenter argued that there is no reliable scientific basis at present for determining air emissions from these operations, and that California's estimates for ROGs/VOCs from dairies have been thoroughly discounted in the regulatory and scientific community.

Response: This comment is similar to Comment 7 in that it, in part, argues that scientific information is not available to determine whether agricultural sources are major sources under title V. To the extent the comment is raising this concern, please see our response to Comment 7.

As a general matter, it is a source's responsibility to determine whether it is a major source subject to permitting requirements. Nonetheless, we agree that agricultural sources in California may not be familiar with this process and we intend to provide additional guidance over the next several months.

As for the comment that the proposed withdrawal notice was unclear in explaining which sources may be subject to title V, EPA disagrees. EPA

has provided information regarding the types of agricultural sources that may be subject to title V requirements, as well as information about certain activities that are not subject to the program. For example, stationary diesel irrigation engines are subject to title V permitting if their emissions alone, or in combination with other stationary source emissions at the same contiguous or adjacent site, rise above the title V threshold for the area in which they are located. In addition, EPA has made clear that, pursuant to our existing regulations, nonroad engines are not required to be permitted, and fugitive emissions of criteria pollutants (such as fugitive dust) are not considered in determining a source's title V applicability.

In addition, a September 2001 letter submitted to EPA by CARB Executive Officer Michael P. Kenny describes numerous agricultural emission sources in California that are already subject to permitting. Post-harvest, out-of-field agricultural activities such as fumigation, ginning, milling, drying, and refining are not exempt under California law and are subject to permitting requirements, including title V. These sources are not, therefore, subject to part 71 permitting by EPA.

Moreover, we also note that the part 71 program that applies once the partial withdrawal takes effect applies only to sources that were exempt under the state agricultural exemption. Thus, it is likely that sources know whether they were covered by the state exemption in the past and, therefore, that they may need to determine whether they are a major source for the part 71 program.

With respect to the ROG emission factor currently used by the State of California to estimate dairy emissions, we acknowledge that there have been a number of concerns recently raised regarding the validity of the factor and the appropriateness of its use to characterize emissions from dairies. However, this factor has been relied upon for regulatory analysis by the State and EPA considers it to be part of the existing data that are currently under review by the NAS. Also, as we previously noted, EPA expects to take into account the final NAS report, as well as the results of other relevant research efforts, in making determinations regarding the appropriate emission factors for various types of animal agriculture, including dairies, sufficiently far in advance of the permit application deadline for subject sources.

Comment 9: One commenter argues that multiple agricultural sources should not be grouped together as one source. The commenter contends that irrigation pumps should be classified separately from other farming activities because ''water mining'' has a distinct standard industrial classification (SIC) code. Another commenter urges EPA to develop a definition of ''source'' for title V that results in each individual diesel pump engine being a separate source.

Response: These issues all address how EPA should implement the part 71 program that will become effective once the partial withdrawal occurs. They do not address the issue before EPA in this action, which is whether to partially withdraw approval of the California part 70 programs and impose a federal part 71 program for state-exempt major stationary agricultural sources at this time.

EPA is working with the USDA to determine how to best implement the part 71 program for agricultural sources. We will consider these comments as we move forward and develop our implementation strategy. The Agency will be providing more specific guidance on this subject sufficiently far in advance of the permit application deadlines to allow sources to determine and meet their permitting obligations.

Comment 10: Some commenters note that many irrigation pumps are non-road engines and are therefore excluded from the definition of stationary source. Another commenter asserts that many potential emission sources at dairies should be considered mobile sources, and thus not counted for major source applicability purposes.

Response: EPA agrees that emissions from engines that meet the ''nonroad engine'' definition at 40 CFR 89.2 are not considered stationary source emissions and would not be regulated by title V. Irrigation pumps that meet the 40 CFR 89.2 definition of a nonroad engine would be those internal combustion engines that are ''portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.'' EPA's regulations further clarify that portable or transportable engines would be considered stationary (as opposed to nonroad) if the engine remains at a location (*i.e.*, any single site at a building, structure, facility, or installation) ''for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source.'' Although EPA agrees that some irrigation pumps would meet the 40 CFR 89.2 nonroad engine definition, others would not meet this definition under the current rules.

The commenter that asserts that many potential emission sources at dairies should be considered mobile did not provide any specific examples of the types of emission sources at dairies that they consider to be ''mobile sources.'' This term is typically used to describe a wide variety of vehicles, engines, and equipment that generate air pollution and that move, or can be moved, from place to place. ''On-road,'' or highway, sources include vehicles used on roads for transportation of passengers or freight. ''Nonroad,'' (also called ''off-road'') sources include vehicles, engines, and equipment used for construction, agriculture, transportation, recreation, and many other purposes. The title V program is a stationary source permitting program and does not, therefore, require the permitting of mobile sources. Emissions from any mobile source at dairies (or at any other potentially major agricultural facility) are not regulated by title V.

Comment 11: One commenter argues that CAFOs are indirect sources of emissions, rather than stationary sources, and thus are not subject to title V permitting requirements. The commenter notes that the Clean Air Act defines an indirect source as ''a facility, building, structure, installation, real property, road or highway which attracts, or may attract, mobile sources of pollution.'' Thus, the commenter continues, similar to a highway or a parking lot, a CAFO itself emits nothing; rather, it is the cows that are housed in barns and other structures that create organic emissions, not the facility itself. Furthermore, the commenter argues, the cattle located in a CAFO may be analogized to the automobiles on a highway or in a parking lot; their emissions potentially make the CAFO an indirect source of emissions.

Response: EPA disagrees that CAFOs are indirect, as opposed to stationary, sources. The definition of ''indirect source'' cited by the commenter is located in section 110(a)(5)(C) of the Act and applies only to that paragraph, which addresses State Implementation Plans for indirect source review programs. The appropriate portion of the statute to consult for title V purposes is section 302(z) of the Act, which defines the term ''stationary source'' as ''generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle.'' Section 71.2 defines ''stationary source'' as ''any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under

section 112(b) of the Act.'' CAFOs plainly fit the definition of stationary source under section 302(z) of the CAA and the title V regulations.

EPA also disagrees with the commenter's assertion that ''a CAFO itself emits nothing.'' CAFOs directly emit a variety of air pollutants from waste storage lagoons, barns, and other buildings, structures, and facilities where animals are confined. Moreover, we note that cows are not mobile sources regulated under title II of the Act.

Comment 12: One commenter argues that the emissions from many operational practices and components of dairies *are* fugitive emissions and thus not subject to title V. Another commenter argues that emissions from certain CAFO sources (*e.g.*, waste lagoons, hog barns, and poultry houses) *are not* fugitive and should be included in determining major source status. The commenter submitted several Agency documents discussing precedents and existing guidance relevant to the definition of ''fugitive emissions'' for purposes of title V.[3]

Response: EPA agrees that any criteria pollutant emissions that are fugitive, even if emitted by a stationary source, would not count toward determination of major source status. See 40 CFR 71.2 (definition of ''major source''). Thus, fugitive dust emissions from a dairy (or other livestock or crop-producing operation) are not counted for title V applicability.

Section 71.2 defines ''fugitive emissions'' as ''those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.'' Some of the concepts regarding fugitive emissions articulated in the EPA documents cited by commenters are: (1) Emissions which are actually collected are not fugitive emissions; (2) where emissions are not actually collected at a particular site, the determination as to whether emissions are fugitive or not should be made by the permitting authority on a case-by-case basis, depending on the specific factual circumstances present; (3) in determining whether emissions could ''reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening,'' reasonableness should be construed broadly and ''the existence of collection technology in use by other sources in a source category creates a presumption that collection is reasonable;'' and (4) where a source is not actually collecting its emissions but there is a presumption that it is reasonable for them to do so (based on such collection at other, similar sources), a permitting authority could consider costs in determining the validity of the presumption.

While EPA believes that these concepts are important guideposts for determining the presumptive fugitive and non-fugitive emission sources at CAFOs, EPA is not making such policy decisions in this rulemaking. As noted above, EPA intends to provide more detailed guidance on the implementation of the title V permitting program for CAFOs and other potential major stationary agricultural sources.

Comment 13: One commenter asserts that EPA is unfairly applying title V to agricultural sources only in California. The commenter argues that if the Agency is going to focus on permitting agricultural sources, then it should adopt a comprehensive approach that applies this program nationally, not just in one state.

Response: EPA does not agree that we are unfairly applying the title V permitting program requirements to agricultural sources in California. The reason EPA is taking action to withdraw approval of the portions of the California title V programs that relate to state-exempt major stationary agricultural sources, thereby obligating the Agency to implement a part 71 federal operating permits program for these sources, is that California state law exempts these sources from permitting by state and local authorities. Since other states do not have such an exemption, title V permitting requirements already apply to any major stationary agricultural sources in other states.[4] In addition, as noted in the September 2001 letter from CARB Executive Officer Michael P. Kenny, many agricultural emission sources in California are already subject to permitting. Post-harvest, out-of-field agricultural activities such as fumigation, ginning, milling, drying, and refining are not exempt under California law and are subject to permitting requirements, including title V. EPA's final rule merely extends the title V permitting requirements to all major sources of air pollution in California, as required by the Clean Air Act.

Comment 14: One commenter suggests that, although EPA's regulations authorize the Agency to establish an accelerated schedule for submittal of part 71 permit applications, the accelerated schedule is not realistic or supportable in this instance because of the difficulty in estimating emissions from agricultural sources. The commenter believes that EPA should have granted all sources the full 12 months to apply for a part 71 permit.

Response: EPA does not agree that the application schedule established in our final rule is ''accelerated.'' As the commenter notes, 40 CFR 71.5(a)(1)(i) provides that major stationary sources which do not have an existing operating permit issued by a State (or local permitting authority) under an approved part 70 program, and which are applying for a part 71 permit for the first time, must submit an application within 12 months after becoming subject to the permit program *or on or before such earlier date as the permitting authority may establish.* Section 71.5(a)(1)(i) further provides that sources required to submit permit applications earlier than 12 months after becoming subject to part 71 must be notified of the earlier submittal date at least 6 months in advance of the date. With EPA's final rule, we are notifying state-exempt major stationary agricultural sources that they are subject to part 71 permitting requirements as of the effective date of this final rule, which provides these sources at least 6 months notice from the effective date. In fact, EPA is establishing a longer application period than the minimum required by our regulations for some agricultural sources (*i.e.*, those that are major due to emissions other than from stationary diesel engines).[5]

Moreover, 40 CFR 71.4(i) requires EPA to take action on one-third of all applications annually over a period not to exceed three years after the effective date of the part 71 program. If we did not require any applications until the end of the first year, we would not be able to take action on one-third of them

[3] *See, e.g.*, memorandum from Thomas C. Curran, Director, Information Transfer and Program Integration Division, to Judith M. Katz, Director, Air Protection Division, EPA Region III, entitled ''Interpretation of the Definition of Fugitive Emissions in Parts 70 and 71,'' dated February 10, 1999, memorandum from Lydia Wegman, Deputy Director, OAQPS, to EPA Regional Air Directors, entitled ''Consideration of Fugitive Emissions in Major Source Determinations,'' dated March 8, 1994, and memorandum from John S. Seitz, Director, OAQPS, to EPA Regional Air Directors, entitled ''Classification of Emissions from Landfills for NSR Applicability Purposes,'' dated October 21, 1994.

[4] The one exception that EPA is aware of is the State of Oregon, which has a similar permitting exemption in their state law. However, the Oregon Attorney General issued a letter confirming that none of the state-exempt agricultural operations are subject to title V (*i.e.*, none of these operations are major sources of air pollution). EPA Region X granted the Oregon title V program full approval in 1995.

[5] In addition, we note that if we had allowed the interim approval to lapse due to the state agricultural exemption, all part 71 permit applications would have been due no later than December 1, 2002, less than two months away.

annually over a three-year period and still have all permits issued within three years of the effective date of the part 71 program. Rather, we would only have taken action on two-thirds of the applications at the end of three years because we would not have been able to take any actions during the first year. Thus, it was appropriate to require some applications early enough into the first year to ensure we could take action on one-third within 12 months of the effective date of the program.

Finally, EPA is committing to provide additional guidance regarding applicability and implementation of the title V permitting program for major stationary agricultural sources well in advance of the actual permit application deadlines. This guidance will assist individual sources in determining their permitting obligations, and will help ensure that all sources that are required to obtain a part 71 permit are able to submit their applications by the appropriate deadline.

Comment 15: One commenter claims that EPA should not have created two separate categories for permit applications. In particular, the commenter finds EPA's reference to any ''remaining'' sources (other than stationary diesel-powered engines) to be unclear.

Response: The Agency does not agree that the part 71 permitting strategy for major agricultural sources is unclear or that we erred in establishing two separate categories for permit application. EPA's final rule establishes a clear obligation for sources with stationary diesel engine emissions above the major source threshold to apply for a part 71 permit by the earlier deadline (May 2003). State-exempt stationary agricultural sources which do not have such emissions above the major source threshold, but which are otherwise major sources of air pollution, would need to apply by the later application deadline (August 2003). The specific guidance that EPA will be providing in the coming months on applicability and implementation of the title V permitting program for major stationary agricultural sources will further assist individual sources in determining their permitting obligations, as well as the appropriate deadline they must meet. As noted above, EPA's staggered application deadlines are based, in part, upon the fact that more and better data are available with respect to emissions from agricultural engines than are available for other potentially major stationary agricultural sources (such as CAFOs). Given this situation, it is appropriate to provide some additional time for the submittal of applications from sources which are major due to emissions other than from stationary diesel engines.

Comment 16: One commenter cites several passages from the June 2002 Interim Report of the NAS Committee on Air Emissions from Animal Feeding Operations and suggests that given the scientific uncertainty and lack of established emission factors for certain agricultural emission sources, EPA should provide a definitive exemption, by regulation, for certain categories of agricultural sources until such time as EPA has established emission factors.

Response: As previously noted, the NAS study of air emissions from animal feeding operations, which is expected to be issued in final form by the end of 2002, will be instrumental to the Agency in making the necessary policy decisions (such as identifying appropriate emission factors or alternative approaches for estimating emissions for various animal agricultural operations) for implementing the title V permitting program in this sector. EPA does not agree that the NAS' interim report provides the basis to exempt any category of agricultural source from the requirements of title V. Also, as noted by other commenters, the Clean Air Act does not authorize any exemption from title V for major sources.

Once the final report is released, the Agency intends to carefully evaluate the NAS findings and results, as well as the results of any other relevant research, and develop specific guidance for the implementation of the title V permitting program for animal agriculture.

Comment 17: Two commenters note that title V must apply to all major sources, with one commenter specifically citing section 502(a) of the Act as explicitly prohibiting the Administrator from exempting any major source from the title V permitting requirements.

Response: We agree that the Clean Air Act does not provide for any exemption from title V permitting for major sources. This clear prohibition compelled the Agency to find the California title V programs, which exempt certain major stationary agricultural sources, deficient, and to take action to partially withdraw title V program approval in the State.

Comment 18: One commenter argues that dairy, chicken, and swine CAFOs all emit significant amounts of criteria air pollutants, including ozone precursor (VOC) emissions. The commenter further argues that the fact that many sources of agricultural emissions have not historically been quantified because of the State's exemption does not justify continued regulatory exemption of the agricultural industry. The commenter believes there should be a title V program implemented for CAFOs in California using currently available data, even while more research is conducted to develop a more rigorous model. Finally, the commenter notes that the title V permitting process itself is an important vehicle by which information on agricultural source emissions can be gathered.

Response: EPA agrees that dairy, poultry, and swine CAFOs are all sources of criteria pollutant emissions. The NAS' Interim Report on air emissions from animal feeding operations (AFOs) notes that, ''substantial emission of nitrogen, sulfur, carbon, particulate matter, and other substances from AFOs do occur.'' However, as we stated above, emissions from large animal feeding operations (*e.g.*, dairies, poultry operations, swine facilities) are not as well characterized as are those from diesel agricultural engines. While EPA expects that the state of CAFO emission data will improve in the future, the implementation of the title V permitting program for state-exempt major stationary agricultural sources must move ahead based on the best data available at this time.

Comment 19: Two commenters state that EPA should review its action in more detail for consistency with the Regulatory Flexibility Act (RFA). One commenter notes that EPA's proposed action inappropriately relied on previous analyses conducted in connection with the original rulemakings for parts 70 and 71. Commenters also challenged EPA's certification that the action would not have a significant impact on a substantial number of small entities for various reasons. For example, one commenter notes that the agricultural industry has unique needs for expediency and variability that will be affected by part 71 requirements for public notification and permit issuance. These commenters also note that the lack of certainty surrounding emissions from agricultural sources will affect numerous small operations that must determine whether they need to submit applications for part 71 permits. One commenter also states that although EPA's proposed rule stated that sources can become synthetic minors, this process is not necessarily simple.

Response: The Regulatory Flexibility Act 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. For the following reasons, EPA believes that its certification that this action will not result in a significant impact on a substantial number of small entities (SISNOSE) is appropriate; therefore, we disagree with the commenters.

First, this action is a partial withdrawal of the part 70 program in 34 California air districts. It does not entail any substantive change to part 70. Rather, it merely revises Appendix A, which sets forth the status of state program approvals. Moreover, it involves no changes to part 71. Our action today withdraws part 70 approval for state-exempt major stationary agricultural sources; as a consequence of that partial withdrawal, the separate, existing part 71 program applies by operation of law. Because our action involves no revision to the regulations themselves, it is appropriate for EPA to rely on the RFA certifications of no SISNOSE made for those regulations.[6] To the extent the comments reflect a concern that these 1992 and 1996 RFA certifications inadequately addressed small entities in the agricultural industry, these concerns would have been more appropriately raised during the comment period for the part 70 and part 71 rulemakings, and in any challenges to those rulemakings. The part 71 program, which becomes effective in California for state-exempt major stationary agricultural sources as a result of this action, was not challenged in the courts for any reason, let alone the RFA certification.

Moreover, EPA continues to believe that any ''impact'' on the few small businesses that also are state-exempt major stationary agricultural sources potentially subject to part 71 would not be significant. Briefly, the primary, and in many cases only, impact will be the annual costs of applying for and maintaining the part 71 permit. State-exempt major stationary agricultural sources will not be required to purchase and install air pollution control equipment or purchase offsets under title V as at least one commenter alleged. It appears that this commenter was confusing the requirements of the New Source Review program with the requirements of title V.

With regard to comments discussing the burdens small entities may face in evaluating their emissions to determine whether they must submit applications, these comments do not take into account a number of important factors. According to CARB, the state's agricultural permitting exemption does not apply to post-harvest, out-of-field activities; because the scope of today's action is limited to state-exempt sources, it should have no effect on small businesses engaged in these non-exempt activities. In addition, as stated elsewhere in today's action, reliable data are available with respect to emissions from diesel engines used in agriculture. Sources with such units should be able to determine whether they must submit a part 71 application without a significant expenditure of resources. Finally, EPA and the local air districts will be working with the agricultural community to provide guidance for those state-exempt major stationary agricultural sources that may have to apply for a permit in order to minimize any burden associated with the applicability determination and permit application processes.

In addition, although EPA recognizes that the agricultural industry desires flexibility in the timing and implementation of a permit program, EPA believes that such needs are compatible with an operating permit program and, thus, implementation of the part 71 program will not have a significant impact. Many manufacturing and industrial operations also desire a regulatory system that is flexible and adaptable to changes in market supply and demand. In response to a mandate from Congress in this regard (see, *e.g.*, section 502(b)(10) of the Clean Air Act), EPA developed its title V regulations to allow for streamlined and flexible implementation of the state and federal operating permits programs. The part 71 program provisions for timely applications, application and permit shields, permit revisions, and operational flexibility are intended to allow any type of industry sector, including the agricultural industry, the ability to add or change equipment with minimal, if any, interference in daily operations. For example, part 71's application shield allows a source that submits a complete application for its initial part 71 permit to operate in compliance with that application until it receives its permit, which should address any concerns regarding the timing of actual permit issuance. *See* 40 CFR 71.5(a)(2). In addition, part 71's permit revision procedures do not require public notification for many types of changes at a facility and allow a facility to make these changes upon submittal of its application. *See,* 40 CFR 71.7(e)(1).

Moreover, any impact should occur at only a few state-exempt major stationary agricultural sources that are small businesses for several reasons. Those reasons, discussed in more detail in the Administrative Requirements section of this notice, include (1) the monetary threshold for small agricultural businesses; (2) the fact that part 71 applies only to major sources of air pollution, which tend to be larger operations; and (3) the fact that fugitive emissions from farming operations (*e.g.*, harvesting) are not counted towards major source applicability, reducing the number of agricultural sources likely to be subject to the program.

With respect to the option of becoming a synthetic minor source, there are many other mechanisms available to limit potential emissions from a farm, including prohibitory rules and general permits. We note that USDA's comments to our proposed action observed that there are ''relatively few'' small business farms that have actual emissions above the applicable major source thresholds. We intend to work with the USDA and local air districts to implement mechanisms for limiting potential emissions in time for the title V permit application deadlines and thereby appropriately limit the number of sources subject to the part 71 program.

Comment 20: One commenter takes issue with EPA's view that E.O. 13045 does not apply to the proposed rule because ''it does not involve decisions intended to mitigate environmental health or safety risks.'' This commenter states that it does not seem reasonable for EPA to include major stationary agricultural sources in part 71 if no mitigation of environmental health risks is expected.

Response: Executive Order 13045, entitled 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. Today's action involves the exercise of our authority under part 70 and the implementation of part 71, which are title V operating permit programs that basically record and assure compliance with already-existing applicable requirements; they do not require new

[6] Indeed, it is questionable whether today's action has any direct impact on state-exempt agricultural sources because it is, in essence, a withdrawal of regulatory authority—we are partially withdrawing approval of the existing state program. That a federal program is automatically put into place upon such withdrawal is a requirement of the existing part 70 and part 71 regulations and not a new requirement established by today's actions.

reductions in emissions or other emissions restrictions. Therefore, it does not involve any major new decisions directed towards the mitigation of environmental health or safety risks. Likewise we do not believe that today's decision will have a disproportional adverse effect on children. In addition, as discussed above, the regulation of state-exempt major stationary agricultural sources is required by title V of the Act. Finally, the thrust of commenter's claim that is that we should not apply part 71 to agricultural sources absent mitigation of environmental risks. By helping to assure compliance with applicable requirements, the application of part 71 to agricultural sources moves in the direction of reducing environmental risks to children (as well as adults). Thus, today's decision would be consistent with the purposes of Executive Order 13045 if it applied.

III. Description of EPA's Final Action

After thorough consideration of the comments submitted in response to our proposed rule, EPA is taking action to withdraw, in part, approval of the 34 fully approved Clean Air Act title V (part 70) Operating Permits Programs in the State of California. We are only withdrawing approval of the portions of the programs that relate to state-exempt major stationary agricultural sources; because they have the ability to adequately administer and enforce their part 70 programs for non-exempt major stationary sources, each of the 34 local air districts will continue to administer their existing title V program for all other title V sources. As described more fully in the sections above and in our proposed rule, EPA's action is necessary because the local air districts in the State cannot issue, administer or enforce operating permits for certain major stationary agricultural sources, which are required to obtain permits under title V of the Act.

IV. Effect of EPA's Rulemaking

As a result of the partial withdrawal of part 70 program approval effected by today's action, EPA will be implementing (as of the effective date of today's final rule) a federal operating permits program under 40 CFR part 71 (''part 71 program'') for state-exempt major stationary agricultural sources within the jurisdiction of the 34 California air districts listed at the beginning of this notice. EPA is not promulgating a part 71 program with today's action, since such a program has already been promulgated by the Agency. See 61 FR 34202 (July 1, 1996). Today's action to partially withdraw approval of the fully approved part 70 programs in the State merely establishes the effective date of the Agency's implementation of this existing part 71 program for state-exempt major stationary agricultural sources.

Pursuant to 40 CFR 71.5(a)(1)(i), major stationary sources which do not have an existing operating permit issued by a State (or local permitting authority) under an approved part 70 program, and which are applying for a part 71 permit for the first time, must submit an application within 12 months after becoming subject to the permit program or on or before such earlier date as the permitting authority may establish. Section 71.5(a)(1)(i) further provides that sources required to submit permit applications earlier than 12 months after becoming subject to part 71 shall be notified of the earlier submittal date at least 6 months in advance of the deadline. We are today notifying state-exempt major stationary agricultural sources within the jurisdiction of the 34 California air districts that they are subject to part 71 permitting requirements as of the effective date of this final rule. We are also notifying these sources of the following permit application deadlines: (1) State-exempt stationary agricultural sources that are major sources, as defined in 40 CFR 71.2, due to emissions from diesel-powered engines must submit part 71 permit applications to the EPA Region IX Permits Office no later than May 14, 2003; and (2) any remaining state-exempt major stationary agricultural sources must submit part 71 permit applications to the EPA Region IX Permits Office no later than August 1, 2003.

As we noted above in our response to comments, EPA is committing to provide additional guidance on the implementation of the part 71 program for state-exempt major stationary agricultural sources. The additional guidance, which EPA will make widely available through direct outreach to potentially subject sources and through other means, will provide clearer direction as to the types and sizes of operations that are presumptively major under the title V program. It is also EPA's intention to develop, as part of this guidance, streamlined application forms, user-friendly instructions, and general permit templates and to disseminate these documents for use by subject sources.[7] However, it is ultimately the responsibility of the source to submit a permit application if it is subject to the part 71 program, regardless of whether contact is initiated by EPA or any other regulatory authority. An owner or operator of a source may choose to submit a written request to EPA for a part 71 applicability determination. Pursuant to 40 CFR 71.3(e), the written request shall be made by the source's responsible official to the EPA Region IX Regional Administrator, shall include identification of the source and relevant facts about the source, and shall meet the certification requirements of 40 CFR 71.5(d).

V. Notification of Part 71 Program Effectiveness

Section 71.4(g) requires that, in taking action to implement and enforce a part 71 program, EPA shall publish a notice in the **Federal Register** informing the public of such action and the effective date of any part 71 program. By this notice, EPA is informing the public of the Agency's implementation of a part 71 federal operating permits program for state-exempt major stationary agricultural sources located within the jurisdiction of the 34 California air districts listed at the beginning of this notice. The effective date of this program is November 14, 2002.

In addition to the requirement to publish notice of the effectiveness of a part 71 program in the **Federal Register**, 40 CFR 71.4(g) also requires that the Agency, ''to the extent practicable, publish notice in a newspaper of general circulation within the area subject to the part 71 program effectiveness.'' EPA will, to the extent practicable, publish notice in one or more newspapers of general circulation within the areas subject to the part 71 program effectiveness. Finally, in accordance with 40 CFR 71.4(g), EPA will be providing a letter to Winston H. Hickox, Secretary, California Environmental Protection Agency, as California Governor Gray Davis' designee, to provide notice of the effectiveness of EPA's part 71 program for state-exempt major stationary agricultural sources.

VI. Administrative Requirements

A. Executive Order 12866

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

[7] If an owner or operator of a subject source prefers to use the standard part 71 permit application, those forms, as well as instructions for completing the forms, are available electronically at *www.epa.gov/air/oaqps/permits/p71forms.html.* Part 71 permit applicants may also contact the EPA Region IX Air Permits Office as described in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

B. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled 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 does not involve decisions intended to mitigate environmental health or safety risks.

D. 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 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, because it 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.

E. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. Moreover, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited comment on the proposed rule from tribal officials.

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. In developing the original part 70 regulations and the proposed revisions to part 70, the Agency determined that they would not have a significant economic impact on a substantial number of small entities. *See* 57 FR 32250, 32294 (July 21, 1992), and 60 FR 45530, 45563 (August 31, 1995). Similarly, the same conclusion was reached in an initial regulatory flexibility analysis performed in support of the 1996 part 71 rulemaking. *See* 61 FR 34202, 34227 (July 1, 1996); see also 64 FR 8262 (Feb. 19, 1999). Only a small subset of sources subject to the part 71 rule would be affected by today's action. The prior screening analyses for the part 70 and part 71 rules were done on a nationwide basis without regard to whether sources were located within California and are, therefore, applicable to sources in California. Accordingly, EPA believes that the screening analyses are valid for purposes of today's action. And since the screening analyses for the prior rules found that the part 70 and 71 rules as a whole would not have a significant impact on a substantial number of small entities, today's action, which would affect a much smaller number of entities than affected by the earlier rules, also will not have a significant impact on a substantial number of small entities.

EPA believes that few if any small businesses involved in the production of crops or animals in California would be subject to part 71 as a result of this rule. First, EPA notes that the Small Business Administration, pursuant to its authority under 15 U.S.C. 632(a) and 634(b)(6), has established thresholds for various business sectors to be used in the determination of whether a business is ''small.'' *See,* 13 CFR part 121. For most businesses involved in the production of crops or animals (those that would most likely be subject to part 71 because of this rule), the SBA has set the ''small business'' threshold as $750,000 in annual receipts. (The threshold for cattle feedlots is $1.5 million; the threshold for chicken egg production is $10.5 million.) *See* 13 CFR 121.201; *see* also, 13 CFR 121.104. Businesses that have annual receipts in excess of that threshold are not ''small businesses.'' Second, EPA's rule would require only major sources of air pollution to obtain a part 71 operating permit. For instance, in the San Joaquin Valley, the threshold for major sources of oxides of nitrogen or volatile organic compounds is 25 tons per year; the threshold for major sources of particulate matter is 70 tons per year.

Most other air districts in California have higher thresholds and consequently fewer sources in those districts would be subject to part 71. Furthermore, EPA does not include a source's fugitive emissions of criteria pollutants in determining whether part 71 applies to it. In addition, for sources that might have the potential to emit above the major source threshold, but have actual emissions below the threshold, the Agency has issued several policy memoranda explaining mechanisms for these sources to become ''synthetic minors.'' These sources are recognized as not emitting pollutants in major quantities and may avoid the requirement to apply for a part 71 permit. Moreover, to the extent there is any impact, it will not be significant because part 71 imposes few if any additional substantive requirements. EPA intends to provide assistance to all sources that would become subject to part 71 as a result of this rulemaking.

Consequently, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

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 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 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.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this action under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0336. The information is planned to be collected to enable EPA to carry out its obligations under the Act to determine which sources are subject to the Federal Operating Permits Program and what requirements should be included in permits for sources subject to the program. Responses to the collection of information will be mandatory under 40 CFR 71.5(a) which requires owners or operators of sources subject to the program to submit a timely and complete permit application and under 40 CFR 71.6 (a) and (c) which require that permits include requirements related to recordkeeping and reporting. As provided in 42 U.S.C. 7661b(e), sources may assert a business confidentiality claim for the information collected under section 114(c) of the Act.

In the Information Collection Request (ICR) document for the July 1996 final part 71 rule (ICR Number 1713.02), EPA estimated that 1,980 sources in 8 states would potentially be subject to part 71. EPA also estimated that the annual burden per source would be 329 hours, and the annual burden to the Federal government is 243 hours per source. EPA believes that these burden estimates are significantly higher than the burdens associated with today's rule. First, EPA estimates that the number of agricultural sources in California will be significantly less than the number on which the July 1996 estimates were based. In addition, State and local laws have traditionally exempted agricultural sources from many air pollution regulations. Therefore, agricultural sources will have fewer applicable requirements than the average part 71 source; accordingly, the burdens associated with permit applications and recordkeeping and reporting requirements should be minimal and far less than those for the typical part 71 source. Today's action would impose no burden on State or local governments and no burden on Tribal agencies. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. 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. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

J. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 16, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes 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 70

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

Dated: October 2, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

40 CFR part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by revising paragraphs (a) through (hh) under California to read as follows:

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

* * * * *

California

The following district programs were submitted by the California Air Resources Board on behalf of:

(a) *Amador County Air Pollution Control District (APCD):*

(1) Complete submittal received on September 30, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on April 10, 2001. Amador County Air Pollution Control District was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(b) *Bay Area Air Quality Management District (AQMD):*

(1) Submitted on November 16, 1993, amended on October 27, 1994, and effective as an interim program on July 24, 1995. Revisions to interim program submitted on March 23, 1995, and effective on August 22, 1995, unless adverse or critical comments are received by July 24, 1995. Approval of interim program, including March 23, 1995, revisions, expires December 1, 2001.

(2) Revisions were submitted on May 30, 2001. Bay Area Air Quality Management District was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(c) *Butte County APCD:*

(1) Complete submittal received on December 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 17, 2001. Butte County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(d) *Calaveras County APCD:*

(1) Complete submittal received on October 31, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on July 27, 2001. Calaveras County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(e) *Colusa County APCD:*

(1) Complete submittal received on February 24, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 22, 2001 and October 10, 2001. Colusa County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(f) *El Dorado County APCD:*

(1) Complete submittal received on November 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 16, 2001. El Dorado County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(g) *Feather River AQMD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 22, 2001. Feather River AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(h) *Glenn County APCD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on September 13, 2001. Glenn County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(i) *Great Basin Unified APCD:*

(1) Complete submittal received on January 12, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 18, 2001. Great Basin Unified APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(j) *Imperial County APCD:*

(1) Complete submittal received on March 24, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 2, 2001. Imperial County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(k) *Kern County APCD:*

(1) Complete submittal received on November 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 24, 2001. Kern County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(l) *Lake County AQMD:*

(1) Complete submittal received on March 15, 1994; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on June 1, 2001. Lake County AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(m) *Lassen County APCD:*

(1) Complete submittal received on January 12, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on August 2, 2001. Lassen County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(n) *Mariposa County APCD:*

(1) Submitted on March 8, 1995; approval effective on February 5, 1996 unless adverse or critical comments are received by January 8, 1996. Interim approval expires on December 1, 2001.

(2) Revisions were submitted on September 20, 2001. Mariposa County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(o) *Mendocino County APCD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on April 13, 2001. Mendocino County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(p) *Modoc County APCD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on September 12, 2001. Modoc County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(q) *Mojave Desert AQMD:*

(1) Complete submittal received on March 10, 1995; interim approval effective on March 6, 1996; interim approval expires December 1, 2001.

(2) Revisions were submitted on June 4, 2001 and July 11, 2001. Mojave Desert AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(r) *Monterey Bay Unified Air Pollution Control District:*

(1) Submitted on December 6, 1993, supplemented on February 2, 1994 and April 7, 1994, and revised by the submittal made on October 13, 1994; interim approval effective on November 6, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 9, 2001. Monterey Bay Unified Air Pollution Control District was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(s) *North Coast Unified AQMD:*

(1) Complete submittal received on February 24, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 24, 2001. North Coast Unified AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(t) *Northern Sierra AQMD:*

(1) Complete submittal received on June 6, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 24, 2001. Northern Sierra AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(u) *Northern Sonoma County APCD:*

(1) Complete submittal received on January 12, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 21, 2001. Northern Sonoma APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(v) *Placer County APCD:*

(1) Complete submittal received on December 27, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 4, 2001. Placer County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(w) *The Sacramento Metropolitan Air Quality Management District:*

(1) Complete submittal received on August 1, 1994; interim approval effective on September 5, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on June 1, 2001. The Sacramento Metropolitan Air Quality Management District was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(x) *San Diego County Air Pollution Control District:*

(1) Submitted on April 22, 1994 and amended on April 4, 1995 and October 10, 1995; approval effective on February 5, 1996, unless adverse or critical comments are received by January 8, 1996. Interim approval expires on December 1, 2001.

(2) Revisions were submitted on June 4, 2001. The San Diego County Air Pollution Control District was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(y) *San Joaquin Valley Unified APCD:*

(1) Complete submittal received on July 5 and August 18, 1995; interim approval effective on May 24, 1996; interim approval expires May 25, 1998. Interim approval expires on December 1, 2001.

(2) Revisions were submitted on June 29, 2001. San Joaquin Valley Unified APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(z) *San Luis Obispo County APCD:*

(1) Complete submittal received on November 16, 1995; interim approval effective on December 1, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 18, 2001. San Luis Obispo County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(aa) *Santa Barbara County APCD:*

(1) Submitted on November 15, 1993, as amended March 2, 1994, August 8, 1994, December 8, 1994, June 15, 1995, and September 18, 1997; interim approval effective on December 1, 1995; interim approval expires on December 1, 2001.

(2) Revisions were submitted on April 5, 2001. Santa Barbara County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(bb) *Shasta County AQMD:*

(1) Complete submittal received on November 16, 1993; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 18, 2001. Shasta County AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(cc) *Siskiyou County APCD:*

(1) Complete submittal received on December 6, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on September 28, 2001. Siskiyou County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(dd) *South Coast Air Quality Management District:*

(1) Submitted on December 27, 1993 and amended on March 6, 1995, April 11, 1995, September 26, 1995, April 24, 1996, May 6, 1996, May 23, 1996, June 5, 1996 and July 29, 1996; approval effective on March 31, 1997. Interim approval expires on December 1, 2001.

(2) Revisions were submitted on August 2, 2001 and October 2, 2001. South Coast AQMD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(ee) *Tehama County APCD:*

(1) Complete submittal received on December 6, 1993; interim approval effective on August 14, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on June 4, 2001. Tehama County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(ff) *Tuolumne County APCD:*

(1) Complete submittal received on November 16, 1993; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on July 18, 2001. Tuolumne County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(gg) *Ventura County APCD:*

(1) Submitted on November 16, 1993, as amended December 6, 1993; interim approval effective on December 1, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 21, 2001. Ventura County APCD was granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

(hh) *Yolo-Solano AQMD:*

(1) Complete submittal received on October 14, 1994; interim approval effective on June 2, 1995; interim approval expires December 1, 2001.

(2) Revisions were submitted on May 9, 2001. Yolo-Solano AQMD is hereby granted final full approval effective on November 30, 2001.

(3) Approval is withdrawn for state-exempt major stationary agricultural sources, effective on November 14, 2002.

* * * * *

[FR Doc. 02–26174 Filed 10–11–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3430 and 3470

[WO–320–1430–PB–24 1A]

RIN 1004–AD43

Coal Management: Noncompetitive Leases; Coal Management Provisions and Limitations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule corrects a technical error relating to coal lease modifications made in a 1999 final rule. It also amends the regulations to reflect the statutory increase in the maximum acreage of Federal leases for coal that an individual or entity may hold in any one state and nationally.

EFFECTIVE DATE: November 14, 2002.

ADDRESSES: You may send inquiries or suggestions to Director (320), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, VA 22153. We will maintain the administrative record for this rule at the Bureau of Land Management, Regulatory Affairs Group (630), Room 401, 1620 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Mary Linda Ponticelli at (202) 452–0350.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments
III. Discussion of the Rule
IV. Procedural Matters

I. Background

A. Lease Modifications

This rule amends the regulations of the Bureau of Land Management (BLM) to reflect correction of a technical error regarding the requirement of a public hearing and publication in the **Federal Register** and a general circulation newspaper of a notice of availability of environmental analysis documents for coal lease modifications. This error was made in conjunction with the BLM's September 1999 regulatory revisions incorporating public participation procedures into the competitive coal leasing regulations. For a detailed discussion of how the error occurred and its effects, see the proposed rule published January 18, 2002 (67 FR 2618).

B. Acreage Limitation

This final rule also changes the regulations on coal lease acreage limitations to conform them to a recent statutory change. On October 23, 2000, the United States Senate passed S. 2300, which became Public Law 106–463 on November 7, 2000. This law, known as the Coal Competition Act of 2000, amended Section 27(a) of the Mineral Leasing Act (30 U.S.C. 184(a)) to increase the amount of acreage of Federal coal leases, or permits that an individual or entity may hold in a single state from 46,080 acres to 75,000 acres and raised the national acreage limit from 100,000 acres to 150,000 acres. This final rule changes the acreage limitations in the regulations to conform to those in the statute. For a complete discussion of the reasons for the statutory changes and their effects, see the preamble of the proposed rule (67 FR 2618).

II. Discussion of Comments

Three letters, one from a law firm and two from state government agencies, addressed the proposed rule. All of the comment writers either supported the proposed rule generally or stated that they had no comment on it.

III. Discussion of the Rule

In light of the lack of substantive comments suggesting changes in the regulations, we are publishing the rule as it was proposed in the correction and extension document published April 12, 2002 (67 FR 17962), without change. That document corrected a drafting error in the original proposed rule published on January 18, 2002 (67 FR 2618).

IV. Procedural Matters

National Environmental Policy Act

BLM prepared an environmental assessment (EA) and found that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). As discussed fully in the proposed rule, this rule implements a technical correction to the public participation rule completed on September 28, 1999 (64 FR 52239) and a change to the Mineral Leasing Act which was made by Congress. The Mineral Leasing Act amendment changed the acreage limitations for coal leases. As stated in the EA, the final rule should lead to more efficient production and economic recovery of the coal resource. However, it should not in and of itself lead to new mining. While more efficient mining may have environmental consequences, BLM will consider these consequences on a case-by-case basis in preparing environmental analyses before issuing a new coal lease or modifying an existing one. Therefore, a detailed statement under NEPA is not required. We have placed the EA and the Finding of No Significant Impact (FONSI) on file in our Administrative Record at the address specified in the **ADDRESSES** section.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action and was not subject to review by the Office of Management and Budget under Executive Order 12866. This rule will not have an annual effect of $100 million or more on the economy. The rule affects coal leasing in only two ways: shortening the lease modification procedure, and increasing lease acreage limitations.

Further, historically, lease modifications have not had significant economic effects on the economy. In Fiscal Year 2001, there were 317 coal leases of various kinds, generating royalties of $337,750,444 on production of 393,509,351 tons of Federal coal, with an average market value of $7.85 per ton, from 473,303 acres of public lands. Of these leases, in FY 2001, only 2 leases were subjects of lease modification. Since a lessee can only add maximum of 160 acres by lease modification over the entire term of the lease, it is clear that the economic effect of lease modifications is tiny compared with the coal program as a whole. The largest number of lease modifications that BLM has processed in the past few years has been 6, in FY 1998, affecting a total of 733 acres. Analyzing this strictly from averages, and using the value from FY 2001, the market value of coal affected by these modifications should have been about $4,784,701 in FY 1998, assuming, of course, that it all would have been immediately available for mining in that year. Total value for other recent years, based on the lower numbers and acreages of lease modifications shown in the accompanying chart, should have been only a fraction of this value. The following table summarizes lease modifications over the past few years.