

40 CFR Part 70**[AD-FRL-5559-1]****Clean Air Act Interim Approval of Operating Permits Program; South Coast Air Quality Management District, California****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: The EPA is promulgating direct final interim approval of the title V operating permits program submitted by the California Air Resources Board, on behalf of the South Coast Air Quality Management District (South Coast or District), for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources. Today's action also promulgates direct final approval of South Coast's mechanism for receiving delegation of section 112 standards as promulgated.

EFFECTIVE DATE: This direct final rule is effective on October 28, 1996 unless adverse or critical comments are received by September 30, 1996. If the effective date is changed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the District's submittal and other supporting information used in developing this direct final rule are available for public inspection (docket number CA-SC-96-1-OPS) during normal business hours at the following location: Operating Permits Section (A-5-2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas (telephone 415/744-1252), Operating Permits Section (A-5-2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:**I. Background and Purpose****A. Introduction**

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act (Act)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70), require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review

occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing interim approval of the operating permit program submitted by South Coast should adverse or critical comments be filed.

If EPA receives adverse or critical comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 28, 1996.

B. Federal Oversight and Sanctions

This interim approval, which may not be renewed, extends until October 29, 1998. During this interim approval period, South Coast is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If South Coast fails to submit a complete corrective program for full approval by April 29, 1998, EPA will start an 18-month clock for mandatory sanctions. If South Coast then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that South Coast has corrected the

deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that South Coast has come into compliance. In any case, if, six months after application of the first sanction, the District still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

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

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

II. Direct Final Action and Implications**A. Analysis of State Submission**

The analysis contained in this notice focuses on specific elements of South Coast's title V operating permits program that must be corrected to meet the minimum requirements of part 70. The full program submittal; the Technical Support Document (TSD), which contains a detailed analysis of the submittal; and other relevant materials are available for inspection as part of the public docket (CA-SC-96-1-OPS). The docket may be viewed during regular business hours at the address listed above.

1. Support Materials

South Coast's title V program was submitted by the California Air Resources Board (CARB) on December 27, 1993. The South Coast submittal included the following implementing and supporting regulations: Regulation XXX—Title V Permits; Rule 204—Permit Conditions; Rule 206—Posting of Permit to Operate; Rule 210—Applications; Rule 301—Permit Fees; Rule 518—Hearing Board Procedures for Title V Facilities; and Rule 219—Equipment not Requiring a Written Permit Pursuant to Regulation II. The EPA found the program to be incomplete on March 4, 1994 because it lacked permit application forms. On March 6, 1995, the District submitted its forms and EPA deemed the program complete on March 30, 1995. On February 10, 1995, the District adopted a rule to implement title IV. EPA deemed the South Coast acid rain program acceptable on March 29, 1995 (see 60 FR 16127) and on April 11, 1995, it was submitted to EPA as part of the District's title V program. On August 11, 1995, the District amended the regulatory portion of its submittal. On September 26, 1995, EPA received from CARB, on behalf of the District, the revised Regulation XXX, revised Rule 518—Variance Procedures for Title V Facilities, and a new rule, Rule 518.1—Permit Appeal Procedures for Title V Facilities. Additional materials were received on April 24, 1996, including draft revised application forms, a demonstration of adequacy of the District's group processing provisions, and several additional rules, including the following, which are relied upon to implement the title V program: Rule 219—Equipment not Requiring a Written Permit Pursuant to Regulation II, adopted August 12, 1994 (supersedes previously submitted version); Rule 301—Permit Fees, adopted October 13, 1995 (supersedes previously submitted version); and Rule 441—Research Operations, adopted May 5, 1976. In conjunction with its evaluation of the South Coast's title V operating permits program, EPA reviewed all of the rules, including Regulations XX and XIII, submitted by the District. While EPA is not specifically approving rules not directly relied upon to implement part 70 as part of the District's operating permits program, changes to these rules will be reviewed by EPA to ensure implementation of the part 70 program is not compromised. See the TSD for a complete listing of rules submitted by the District. Rule 518.2, Federal Alternative Operating Conditions, adopted January 12, 1996, was also

submitted and is discussed below under II.A.2.g.

On May 6, 1996 application completeness criteria were received and on June 5, 1996 revised application forms were received. The District submitted a demonstration that shows South Coast will permit 60% of its title V sources and 80% of emissions attributable to title V sources within three years of program approval (see section II.A.2.d. below) along with a sample of facility permit application on May 23, 1996. Finally, on July 29, 1996, the District submitted revised application forms and completeness criteria.

Enabling legislation for the State of California and the Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in South Coast's submittal. The South Coast submission now contains a Governor's letter requesting source category-limited interim approval, District implementing and supporting regulations, and all other program documentation required by section 70.4. An implementation agreement is currently being developed between South Coast and EPA.

2. Regulations and Program Implementation

South Coast's title V implementing regulation, District Regulation XXX, was first adopted on October 8, 1993. EPA reviewed Regulation XXX both before and after rule adoption and identified numerous regulatory deficiencies. These deficiencies were communicated to South Coast in letters dated October 7, 1993, December 7, 1994, April 6, 1995, April 13, 1995, and May 1, 1995. In response, South Coast revised Regulation XXX and Rule 518. The amended rules were adopted on August 11, 1995 and submitted to EPA by CARB, on behalf of the District, on September 26, 1995. EPA is therefore evaluating and acting on the August 11, 1995 version of Regulation XXX and Rule 518.

South Coast's title V implementing regulations substantially meet the requirements of 40 CFR part 70, sections 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; section 70.7 for public participation and permit modifications; section 70.5 for criteria that define insignificant activities; section 70.5 for complete application forms; and section 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are a few deficiencies in the program that are

outlined under section II.B.1. below as interim approval issues and further described in the TSD.

a. Variances. South Coast's Hearing Board has the authority to issue variances from requirements imposed by State and local law. See California Health and Safety Code sections 42350 *et seq.* In the legal opinion submitted for California operating permit programs, California's Attorney General states that "[t]he variance process is *not* part of the Title V permitting process and does not affect federal enforcement for violations of the requirements set forth in a Title V permit." (Emphasis in original.)

EPA regards the State and District variance provisions as wholly external to the program submitted for approval under part 70, and consequently, is not taking action on those provisions of State and local law. EPA has no authority to approve provisions of state or local law, such as the variance provisions referred to, that are inconsistent with the Act.

A part 70 permit may incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR § 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised to incorporate those terms of a variance that are consistent with applicable requirements.

b. Group Processing Provisions. Part 70 provides for the group processing of minor permit modifications, providing the cumulative emissions increases from the pending changes do not exceed 10% of allowable emissions for the unit, 20% of the major source threshold, or 5 tons per year (tpy), whichever is lower. Section 70.7(e)(3)(i)(B) allows the District to establish and EPA to approve alternative levels, if such alternative levels would reasonably alleviate severe administrative burdens and the individual processing of changes below the levels would yield trivial environmental benefits.

South Coast allows cumulative emissions increases of up to 5 tons per year under its group processing

provisions. This will in some cases exceed the levels set out in part 70. For example, 20% of the major source threshold for NO_x and VOC in the South Coast is 2 tons per year. Appendix C of the South Coast's April 24, 1996 submittal contains a demonstration that supports the use of a 5 ton per year cut-off for group processing. The District notes that its requirement that sources obtain a permit revision prior to making a change eliminates any environmental risk associated with delays allowed by group processing. It also points out that the ability to group several changes into one permit action alleviates the administrative burden of multiple rounds of processing and provides for a shorter period of time when a facility permit is in flux. EPA believes the District has met the requirements of 70.7(e)(3)(i)(B) and is therefore approving the alternative group processing level in the South Coast regulation.

c. Provisions for Processing Certain Modifications Subject to Major NSR Via the Minor Permit Revision Track. The South Coast Air Quality Management District is the only extreme ozone nonattainment area in the country. Because of its nonattainment status, any increase of emissions of NO_x or VOC from a discrete operation, unit or other pollutant emitting activity is a modification subject to major NSR. Such modifications are generally required by part 70 to undergo public review. Potentially several hundred to several thousand major NSR modifications can occur each year in the South Coast under applicable definitions of major source (10 tons per year) and major modification (any emissions increase). For perspective, a major modification in serious or severe ozone nonattainment areas is triggered by 25 tons of emissions accumulated over a five year period, and in most areas in the country, a major modification does not occur unless there is an emissions increase of 40 tons per year (tpy).

The District has included in its rule provisions allowing modifications that result in cumulative (over the 5 year term of the permit) emissions increases of up to 40 pounds per day (about 7.3 tpy) of NO_x and 30 pounds per day (about 5.5 tpy) of VOC to be processed via its minor permit revision procedures. South Coast does not allow applicants to implement minor permit revisions prior to final action by the District on the revision. Therefore, what distinguishes this treatment from the significant permit revision procedure that would otherwise be required is that there would be no public comment

period during the permit issuance process. The public does have the opportunity, however, to review the revision after it is issued and to petition EPA to object to the permit. (See 70.8 and 3003(l).)

EPA believes that this aspect of the South Coast program is approvable. Requiring full public participation procedures for modifications that result in emissions increases below the levels specified in the District's operating permits rule would be unworkable in the South Coast. The sheer number of notices that would be required if all major modifications were handled in this way would dilute attention that should be focused on the more significant of the changes that qualify as "major." Although it makes sense that the scope of changes subject to prior public review should be broadest in areas with the greatest nonattainment problems, EPA believes that such a notice requirement ceases to yield a benefit, and may in fact be damaging to the purpose of a public review requirement, if applied to the smallest changes that would qualify as "major" in an extreme area. EPA further believes that the threshold levels for prior public review found in the South Coast program are reasonable, and will strike an appropriate balance between the need for broad public review on the one hand, and on the other, the administrative burden on the District and the quantitative limits on the public's ability to provide review that is meaningful. EPA notes that it has previously considered these "triggers" for public notice in the context of the District's new source review program, and believes them to be adequate.

EPA wishes to emphasize that this finding is unique to the South Coast. As the only extreme area in the nation, the South Coast District is subject to statutory constraints referred to above that affect NSR and title V. These constraints, which flow directly from the provisions of the CAA, result in both a volume and proportion of changes classified as "major" that distinguish the South Coast from all other title V programs.

See section II.B.1.(3) below for a discussion of aspects of the South Coast permit modification procedures that are proposed for interim approval.

d. Applicability and Duty to Apply: Two Phases of Permitting. While the "title V facility" definition in South Coast's title V program fully meets the applicability requirements of part 70, the District has allowed sources with actual emissions below certain thresholds to defer the obligation to apply for title V permits until no later

than three and a half years after the program effective date (3000(b)(28), 3001(b), and 3003(a)(3)). Ordinarily, part 70 requires sources to apply within one year of the program effective date. This deferral is effectively a request for source category-limited interim approval for sources with actual emissions below the given thresholds.

EPA's policy on source category-limited interim approval is set forth in a document entitled, "Interim Title V Program Approvals," signed on August 2, 1993 by John Seitz. In order to meet the interim approval criteria described in that memorandum, South Coast demonstrated that it would permit, during the first phase of the program, more than 60% of the District's title V sources and more than 80% of the pollutants emitted by title V sources. This requirement is addressed in a letter from Pang Mueller, Senior Manager of Stationary Source Compliance, dated May 16, 1996. South Coast estimated that there are more than 1600 title V facilities located in the District and that the workload to permit all of those sources in the initial three year period would be "excessively burdensome." The EPA believes that South Coast has demonstrated compelling reasons for a source category-limited interim approval. The Seitz memo also requires that source category-limited interim approval be granted only if all sources will be permitted within five years of the date required for EPA final action. Because the South Coast program guarantees that all title V sources will be permitted within five years following program approval, and because South Coast has satisfied the criteria set forth in the August 2, 1993 memorandum, EPA finds the District's program to be eligible for source category-limited interim approval.

e. Enhanced New Source Review. South Coast's title V permit program provides for enhanced preconstruction review, an optional process that allows sources to satisfy both new source review and title V permit modification requirements at the same time. Any modification processed pursuant to South Coast's enhanced preconstruction review procedures may be incorporated into the title V permit as an administrative permit amendment. These enhanced procedures obviate the need to undergo two application, public notice, and permit issuance/revision processes for the same change. (See 3000(b)(1)(D).)

f. Regional Clean Air Incentives Market (RECLAIM). RECLAIM is the South Coast's emissions-limiting economic incentives program. It targets facilities with four or more tons of NO_x

or SO_x emissions per year from permitted equipment for participation in a pollutant-specific market with the goal of reducing emissions at a significantly lower cost. The program subsumes fourteen SCAQMD Air Quality Management Plan (AQMP) control measures and is projected to reduce emissions by an equivalent amount. Sources are not, however, relieved from the duty to comply with new source review requirements and must comply with best available control technology requirements established pursuant to the District's new source review process.

For the most part, RECLAIM facilities that are subject to Regulation XXX are treated the same as non-RECLAIM facilities. Certain aspects of the permit modification provisions do, however, set out different treatment for RECLAIM and non-RECLAIM facilities, and the regulation sets out different means for establishing applicability. EPA has evaluated the procedures for modifying part 70 operating permits that are issued to RECLAIM facilities along with the means for determining the applicability of Regulation XXX to RECLAIM facilities and has found them to be adequate for approval. For additional background and analysis, see Attachment J of the TSD.

g. *Alternative Operating Conditions.* EPA has no authority to approve provisions of state or local law, such as the variance provisions discussed above, that are inconsistent with the Act. Districts, however, have always had the ability to make the terms of a variance federally enforceable by submitting a source-specific SIP revision to EPA that demonstrates, pursuant to section 110(l) of the Clean Air Act, that the proposed change will not interfere with any applicable requirement concerning attainment of the ambient air quality standards and reasonable further progress.

As noted above, it is possible for a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, where such relief is granted through procedures allowed by part 70 and is consistent with applicable requirements, including section 110(l) of the Act. South Coast has adopted and submitted Rule 518.2—Federal Alternative Operating Conditions which, if approved, will enable the District to incorporate alternative operating conditions for certain requirements into part 70 permits. Alternative operating conditions are not available for federally promulgated rules, regulations, or permit conditions, including standards promulgated pursuant to section 111 or

112 of the Clean Air Act, title IV or title VI requirements, or requirements to obtain an operating permit or an authority to construct.

Rule 518.2 is based on two fundamental concepts. First, in order to preserve the opportunity for public and EPA review, the SIP will be revised to incorporate Rule 518.2, which combines district variance procedures with the significant permit revision procedures of part 70. Second, to ensure that a federally enforceable alternative operating condition does not interfere with Clean Air Act progress or attainment requirements, the rule establishes an emissions bank. This bank provides the District with the ability to offset excess emissions resulting from the granting of an alternative operating condition.

EPA believes Rule 518.2 meets the requirements of sections 110(l) and 193 of the Clean Air Act for approval in the SIP and is not inconsistent with the requirement under part 70 that operating permits must assure compliance with applicable requirements. EPA therefore will propose approval of this revision to the South Coast portion of the California State Implementation Plan in the near future.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed \$25 per ton per year (adjusted annually based on the Consumer Price Index (CPI), relative to 1989 CPI). The \$25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum" (40 CFR 70.9(b)(2)(i)).

South Coast has opted to make a presumptive minimum fee demonstration. By dividing the fees charged to facilities it believes will be subject to its title V program by those facilities' emissions, the District calculates its effective fee rate is \$323 per ton of emissions. This amount is appreciably higher than the current presumptive minimum of \$30.93.

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

a. *Authority and Commitments for Section 112 Implementation.* South Coast has demonstrated in its title V

program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining federal "applicable requirements" and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. EPA has determined that this legal authority is sufficient to allow South Coast to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the TSD accompanying this action and the April 13, 1993 guidance memorandum entitled, "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. *Authority for Title IV Implementation.* On February 11, 1995, South Coast incorporated by reference part 72, the federal acid rain permitting regulations. The incorporation by reference was codified in Regulation XXXI. EPA determined Regulation XXXI to be acceptable on March 29, 1995 (See 60 FR 16127).

B. Proposed Interim Approval and Implications

1. Title V Operating Permits Program

The EPA is promulgating direct final interim approval of the operating permits program submitted by the California Air Resources Board, on behalf of the South Coast Air Quality Management District, 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. Areas in which South Coast's program is deficient and requires corrective action prior to full approval are as follows:

(1) California State law currently exempts agricultural production sources from permit requirements. CARB has requested source category-limited interim approval for all California districts. In order for South Coast's program to receive full approval (and to avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

(2) Section 70.5(c) states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Section 70.5(c) also states that an application for a part 70 permit may not omit information needed to determine the

applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications.

Under part 70, a state must request and EPA may approve as part of that state's program the activity or emission level that the state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review. South Coast submitted an extensive list of insignificant activities in the form of Rule 219—Equipment Not Requiring a Written Permit Pursuant to Regulation II. The District did not provide criteria that were used to determine that the listed activities are appropriately treated as insignificant. The regulation does not ensure that activities to which non-general applicable requirements apply are excluded from the list of insignificant activities, nor does the program demonstrate that emissions from the listed activities are truly insignificant.

While many of the listed activities do appear to be reasonable candidates for such treatment, some do not. For instance, paragraph (d)(2) of Rule 219 exempts most refrigeration units regardless of size. Such units, if they have a charge rate of 50 pounds or more of a Class I or II ozone-depleting compound, may be subject to unit-specific applicable requirements and could not, therefore, be considered insignificant. EPA believes that, for the insignificant activities provisions to be fully approvable, the list must not create confusion regarding the regulated community's obligation to provide all information needed to determine the applicability of, or to impose, any applicable requirement, nor may the list interfere with the permitting authority's obligation to issue permits that assure compliance with all applicable requirements.

For interim approval, EPA is relying on certain provisions in Regulation XXX that affect the scope and usage of insignificant activities. Specifically, paragraph (b) of Rule 3003 requires that applicants shall submit “* * * all information necessary to evaluate the subject facility and the application, including all information specified in 40 CFR 70.5(c), to determine the applicability of and to impose any regulatory requirement * * *.” The

application forms require the listing of all equipment that is exempt from permitting. In addition, Rule 3001(b), (c) and (d), and Rule 3000(b)(15) ensure that the source's potential to emit, which does not exclude unpermitted activities, will generally determine title V applicability.

For full approval, South Coast must provide supporting criteria and revise its list of insignificant activities, as appropriate. The District must remove any activities from its list of insignificant activities that are subject to a unit-specific applicable requirement and adjust or add size cut-offs to ensure that the listed activities are truly insignificant. (See sections 70.4(b)(2) and 70.5(c).)

(3) The South Coast rule (3005(b)(1)) allows the following types of changes, which are required under part 70 to be processed as significant permit modifications, to be processed under minor modification procedures:

(1) NSPS and NESHAP (parts 60 and 61) modifications that result in emissions increases up to “de minimis” emissions thresholds (the de minimis levels are: HAP, VOC and PM₁₀—5.5 tpy; NO_x—7.3 tpy; SO_x—11 tpy; and CO—40 tpy). (Any emissions increase resulting from an NSPS or NESHAP modification should be processed under the significant modification procedures);

(2) Establishment of or changes to case-by-case emissions limitations, providing the changes do not result in emissions increases above the *de minimis* thresholds. (Part 70 requires that such actions must be processed as significant modifications, regardless of any resulting changes in emissions); and

(3) Changes to permit conditions that the facility has assumed to avoid an applicable requirement, providing the changes do not result in emissions increases above the *de minimis* thresholds. (Part 70 requires that all such changes must be processed as significant modifications, regardless of any resulting changes in emissions.)

The District must modify its program so that these changes will be subject to the procedural requirements of the significant modification track. (See 70.7(e)(2)(i)(3), (4), and (4)(A).)

(4) Because the initial implementation of the South Coast program will not include all title V sources (see section II.A.2.d. above), the District is receiving a source category limited interim approval. The District's regulation, however, does include language that expands the applicability of the program after three years and ensures that all title V sources will be permitted within five years. Although this phase-in is

considered to be an interim approval issue, no change to the regulation is required to resolve it.

(5) The South Coast's group processing provisions are set out in paragraph (c) of Rule 3005. Subparagraph (c)(1)(B) provides that when emissions increases resulting from pending revisions exceed 5 tons per year for a given pollutant, the pending revisions must be processed. Rule 3005(c)(2), however, references 3000(b)(6) (South Coast's higher de minimis significant permit revision levels) when instructing the applicant of its responsibilities. This reference conflicts with 3005(c)(1)(B) and must be amended. In order to properly implement its program, South Coast must adhere to the levels specified in 3005(c)(1)(B).

(6) The language in rule 3004(a)(3)(C) must be amended to conform with the part 70 language. It currently requires that the permit include “periodic monitoring or recordkeeping * * * representative of the source's compliance for the term of the permit” rather than “with the terms of the permit.” (See 70.6(a)(3)(i)(B).)

(7) Rule 3004(a)(9) must be revised to specify that any trading of emissions increases and decreases allowed without changes to the permit must meet the requirements of the part 70 program. (See 70.6(a)(10)(iii).)

(8) The South Coast program must be amended to provide that a source that is granted a general permit shall be subject to enforcement action for operating without a permit if the source is later determined not to qualify for the conditions and terms of the general permit, regardless of any application shield provisions. (See 70.6(d)(1).)

(9) 3002(g)(1) allows an emergency to constitute an affirmative defense if “properly signed, contemporaneous operating logs or other credible evidence are kept at the facility.” The rule must be amended to require that the logs or other evidence demonstrate that the conditions set out in the rule were met by the facility. (See 70.6(g)(3).)

(10) The definition of “renewal” in 3000(b)(22) must be modified to clarify that permits will be renewed at least every 5 years, regardless of whether renewal is necessary to incorporate new regulatory requirements.

(11) Paragraph (g)(1) of Rule 3005 provides for Section 502(b)(10) changes (changes that violate an express permit term or condition). The South Coast rule appropriately limits the types of changes that can qualify for this treatment, except 3005(g)(1)(C)(i) excludes compliance plan requirements instead of compliance certification

requirements. The rule must be revised to state that changes that would violate compliance certification requirements are not allowed.

(12) Paragraph (g) of Rule 3005 must be amended to specify that the District and the source must attach a copy of any notice of 502(b)(10) changes to the permit. (See 70.4(b)(12).)

(13) Provisions must be added to Rule 3005(i) that specify the following: (1) Any change allowed under this section must meet all applicable requirements and shall not violate existing permit terms; (2) the source must provide contemporaneous notice to the District and EPA; and (3) the source must keep a record of the change. (See 70.4(b)(14).)

(14) Rule 3002(g) provides that, in addition to meeting the Regulation XXX requirements implementing 70.6(g), a source must comply with District Rule 430—Breakdown Provisions in order to avail itself of the affirmative defense set out in 70.6(g). Paragraph (5) of 70.6(g) states that the provisions of 70.6(g) are in addition to any emergency or upset provisions contained in any applicable requirement. Because Rule 430 is not SIP approved, however, it is not an applicable requirement. In order to resolve this issue, South Coast is required to either submit an approvable version of Rule 430 to EPA for inclusion in the SIP or to delete the reference to Rule 430. Note that the cross reference to Rule 430 included in 3002(g) does not alter the provisions of 70.6(g) and that Rule 430 is wholly external to the part 70 program.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, South Coast is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a federal permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of South Coast's part 70 program that EPA is acting on in this notice applies to all part 70 sources (as defined in the approved program) within South Coast's jurisdiction. The approved program does not apply to any part 70 sources over which an Indian tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village,

which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

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

The EPA has published an interpretive notice in the Federal Register regarding section 112(g) of the Act (60 FR 8333; February 14, 1995) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice also explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), South Coast must be able to implement section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is approving the use of South Coast's preconstruction review program as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by South Coast of rules specifically designed to implement section 112(g). However, since the sole purpose of this approval is to confirm that the District has a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that a state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of South Coast's program for

receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. California Health and Safety Code section 39658 provides for automatic adoption by CARB of section 112 standards upon promulgation by EPA. Section 39666 of the Health and Safety Code requires that districts then implement and enforce these standards. Thus, when section 112 standards are automatically adopted pursuant to section 39658, South Coast will have the authority necessary to accept delegation of these standards without further regulatory action by the District. The details of this mechanism and the means for finalizing delegation of standards will be set forth in an implementation agreement between South Coast and EPA. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Docket

Copies of South Coast's submittal and other information relied upon for this direct final action is contained in docket number CA-SC-96-1-OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this direct final rulemaking. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with

statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Executive Order 12866

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

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: August 9, 1996.

Felicia Marcus,

Regional Administrator.

Part 70, 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 adding paragraph (dd) to the entry for California to read as follows:

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

* * * * *

(dd) *South Coast Air Quality Management District*: 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 October 28, 1996 unless adverse or critical comments are received by September 30, 1996.

* * * * *

[FR Doc. 96-21950 Filed 8-28-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 300

[FRL-5560-6]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Leetown Pesticide Site in Leetown, Jefferson County, West Virginia, from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces the deletion of the Leetown Pesticide site (Site) located in Jefferson County, West Virginia, from the National Priorities List (NPL). The NPL constitutes Appendix B to 40 CFR Part 300. Part 300 comprises the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the West Virginia Division of Environmental Protection have determined that all appropriate CERCLA actions have been implemented and that the Site poses no significant threat to public health or the environment. Therefore, further remedial measures pursuant to CERCLA are not needed.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Melissa Whittington (3HW23), Remedial Project Manager, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA, 19107, (215) 566-3235.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: the Leetown Pesticide Site, Leetown, Jefferson County, West Virginia.

A Notice of Intent to Delete this Site was published on June 14, 1996 in the Federal Register (56 FR 11597). The closing date for comments on the Notice of Intent to Delete was July 15, 1996. EPA did not receive any comments on the proposed deletion.

EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those

sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to 40 CFR 300.425(e)(3), any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 20, 1996.

W. Michael McCabe,

Regional Administrator, U.S. EPA Region 3.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Leetown Pesticide site, Leetown, West Virginia.

[FR Doc. 96-21824 Filed 8-28-96; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, 24, and 90

[WT Docket No. 96-6; FCC 96-283]

Flexible Service Offerings in the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this First Report and Order in WT Docket No. 96-6, the Commission amends its rules to allow providers of narrowband and broadband Personal Communications Services (PCS), cellular, CMRS Specialized Mobile Radio (SMR), and CMRS paging, CMRS 220 MHz service, and for-profit interconnected business radio services to offer fixed wireless services on their