has not established a sufficient compliance incentive absent Federal and citizen's enforceability, EPA could find that the District has failed to administer or enforce its program and may take action to notify the District of such a finding as authorized by 40 CFR 70.10(b)(1).

*E. What Is Involved in This Action?*

We have determined that the District has addressed our specific concerns identified as interim approval issues. Therefore, we are now proposing to fully approve the District's Operating Permit Program. We are also proposing to approve two additional changes that were made beyond those necessary to correct interim approval issues.

**II. Request for Public Comment**

EPA requests comments on the program revisions discussed in this proposed action. Copies of the District submittal and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 19, 2001.

**Administrative Requirements**

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer.

**List of Subjects in 40 CFR Part 70**

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

Dated: October 11, 2001.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 01–26419 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 70

**[CA 046–OPP; FRL–7087–3]**

## Clean Air Act Proposed Full Approval of Operating Permit Program; Mojave Desert Air Quality Management District, CA

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to fully approve the operating permit program of the Mojave Desert Air Quality Management District (''Mojave'' or ''District''). The Mojave operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to the Mojave operating permit program on February 5, 1996, but listed conditions that Mojave's program would be required to meet for full approval. Mojave has revised its program to satisfy the conditions of the interim approval. Thus, this action proposes full approval of the Mojave operating permit program as a result of those revisions.

**DATES:** Comments on the proposed full approval discussed in this proposed action must be received in writing by November 19, 2001.

**ADDRESSES:** Written comments on this action should be addressed to Gerardo Rios, Acting Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. You can inspect copies of Mojave's submittals, and other supporting documentation relevant to

this action, during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105.

You may also see copies of the submitted operating permit program at the following locations:

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

The Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392.

A electronic copy of Mojave's operating permit program rules may be available via the Internet at *http://www.arb.ca.gov/drdb/moj/cur.htm.* However, the online version of these rules may be different from the version submitted to EPA for approval. Readers are cautioned to verify that the amended dates of the rules listed are the same as those for the rules submitted to EPA for approval (June 4, 2001). The official submittal is available only at the three addresses listed above.

**FOR FURTHER INFORMATION CONTACT:** Roger Kohn, EPA Region IX, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1238 or kohn.roger@epa.gov.

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

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

## What Is the Operating Permit Program?

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

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

## What Is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct the deficiencies. Because the Mojave operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to its program in a rulemaking published on February 5, 1996 (61 FR 4217). The interim approval rulemaking incorporated by reference the conditions described in the July 3, 1995 (60 FR 34488) proposed rulemaking for interim approval that had to be met in order for the Mojave program to receive full approval. On June 4, 2001, the California Air Resources Board, on behalf of Mojave, submitted the District's revised operating permit program that contains the needed changes for full approval identified in the interim approval rulemaking. This document describes these changes.

## Are There Other Issues With the Program?

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** document.

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

## What Are the Program Changes That EPA Is Proposing To Approve?

As stipulated in the February 5, 1996 (61 FR 4217) rulemaking, full approval of the Mojave operating permit program was made contingent upon satisfaction of the following conditions:

(1) Mojave must revise Rule 1203(G)(3)(g), which prohibits the permit shield from applying to administrative permit amendments and significant permit modifications, to include a reference to minor permit modifications as well. In accordance with 40 CFR 70.7(e)(2)(vi), the permit shield cannot apply to minor permit modifications, and the rule must state this clearly.

The District revised Rule 1203(G)(3)(g) to prohibit the permit shield from applying to minor permit modifications as well.

(2) Mojave must add a provision for sending the final permit to EPA, in accordance with 40 CFR 70.8(a)(1). Mojave's Rule 1203(B)(1)(c) only provides for sending the proposed permit to EPA.

The District added provision 1203(B)(1)(e) to specifically require that the final permit be provided to EPA.

(3) Mojave must adopt Rule 1210 (Acid Rain Provisions of Federal Operating Permits), in accordance with 40 CFR 70.4(b)(11)(iv).

The District adopted Rule 1210 on June 28, 1995.

(4) Mojave must amend Rule 1206(A)(1)(a)(i), which provides that no reopening is required if the effective date of the additional applicable requirement is later than the date on which the permit is due to expire. However, if the original permit or any of its terms and conditions are extended pursuant to 40 CFR 70.4(b)(10), the permit must be reopened to include a new applicable requirement, and a statement must be made to this effect in Mojave's rule, in accordance with 40 CFR. 70.7(f)(1)(i).

The District added a provision Rule 1206(A)(1)(a)(i) to require the permit to be reopened if a new applicable requirement's effective date falls during an extension of a Title V permit's expiration date pursuant to Rule 1202(E)(2).

(5) Mojave must clarify in Rule 1203(G)(3)(b) that the permit shield shall not limit liability for violations which occurred prior to or at the time of the issuance of the federal operating permit. This is so that violations which are continuing at the time of permit issuance will not be shielded from potential enforcement action, in accordance with 40 CFR 70.6(f)(3)(ii).

The District modified Rule 1203(G)(3)(b) to clarify that the permit shield would not limit liability for violations which occurred prior to or which were ongoing at the time of the issuance of the Federal Operating Permit.

(6) In accordance with 40 CFR 70.5(c), Mojave must provide a demonstration that activities that are exempt from part 70 permitting are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, Mojave may restrict the exemptions (including any director's discretion provisions) to activities that are not likely to be subject to an applicable requirement and emit less than District-established emission levels. The District should establish separate emission levels for HAPs and for other regulated pollutants and demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements.

Instead of demonstrating that each activity on Mojave's insignificant activity list is truly insignificant, the District elected to establish significant source emissions level cut-offs below which activities would presumably be insignificant. To implement this, the District amended Rule 219(D)(1)(a) to lower the cut-off threshold from five to two tons per year of any regulated air pollutant or 10% of the applicable threshold for determination of a major facility, whichever is less. For a Hazardous Air Pollutant (HAP), the cut-off threshold is any de minimis level promulgated pursuant to CAA section 112(g), any significance level defined in 40 CFR 52.21(b)(23)(i), or 0.5 ton per year of any such HAP, whichever is less.

(7) Mojave must add the word ''and'' at the end of sections (b) and (c) in Rule 219(B)(2), in order to clarify that the four gatekeepers must all apply in order for equipment to be exempt from getting a federal operating permit, in accordance with 40 CFR 70.5(c).

The District made the required change to Rule 219(B)(2).

(8) Mojave must add to Rule 1203(D)(1)(e)(i) a reference to the requirement for the clear identification of all deviations with respect to reporting, in accordance with 40 CFR 70.6(a)(3)(iii)(A).

The District modified Rule 1203(D)(1)(e) to require the identification of all instances of deviations in monitoring reports.

(9) Mojave must add to Rule 1203(D)(1)(e)(ii) a reference to the requirement to specify the probable cause and corrective actions or preventive measures taken with regard to reporting a deviation, in accordance with 40 CFR 70.6(a)(3)(iii)(B).

The District modified Rule 1203(D)(1)(e)(ii) to require prompt and adequate reporting pursuant to requirements in Rule 430, which specify that cause and corrective actions must be identified in reporting deviations .

(10) In addition to the District-specific issues arising from Mojave's program submittal and locally adopted regulations, California state law currently exempts agricultural production sources from permit requirements. In order for this program to receive full approval (and avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

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

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

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

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

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

**What Is Involved in This Proposed Action?**

The EPA proposes full approval of the operating permits program submitted by Mojave based on the revisions submitted on June 4, 2001, which satisfactorily address the program deficiencies identified in EPA's February 5, 1996 Interim Approval Rulemaking. See 61 FR 4217.

**Request for Public Comment**

EPA requests comments on the program revisions discussed in this proposed action. Copies of the MDAQMD submittal and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 9 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by November 19, 2001.

**Administrative Requirements**

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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

**List of Subjects in 40 CFR Part 70**

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

Dated: October 11, 2001.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 01–26417 Filed 10–18–01; 8:45 am]

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