under the APA because the IRA does not preclude judicial review and the agency action is not committed to agency discretion by law within the meaning of the APA.

While the Eighth Circuit decision precludes the Secretary from taking into trust the land at issue in that particular case, new trust acquisitions will be made on a case-by-case basis. The procedure announced in today's rule, however, will apply to all pending and future trust acquisitions.

The Department certifies that this procedural rule meets the standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

The Department has determined that this rule:

—Does not have significant federalism effects.
—Will not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).
—Does not have significant takings implications under E.O. 12630.
—Does not have significant effects on the economy, nor will it result in increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographical regions.
—Does not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.
—Is categorically excluded from the National Environmental Policy Act of 1969 because it is of an administrative, technical, and procedural nature. Therefore, neither an environmental assessment nor an environmental impact statement is warranted.

This rule is not a significant rule under E.O. 12866 and does not require approval by the Office of Management and Budget.

This rule is not a major rule as defined in 5 U.S.C. 804. The annual number of tribal requests to place lands in trust is small. There will be costs incurred by a party seeking judicial review. The author of this rule is: Mary Jane Sheppard, Office of the Solicitor, U.S. Department of the Interior.

Because this is a procedural rule under Section 553(b)(3)(A) of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, it is exempt from requirements for notice and comment rulemaking.

List of Subjects in 25 CFR Part 151

Indians—lands.

For reasons set out in the preamble, Part 151 of Title 25, Chapter I of the Code of Federal Regulations is amended as set forth below.

PART 151—LAND ACQUISITIONS (NONGAMING)

1. The authority for part 151 continues to read as follows:

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

2. Section 151.12, Action on requests, is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 151.12 Title examination.

* * * * *

(b) Following completion of the Title Examination provided in § 151.13 of this part and the exhaustion of any administrative remedies, the Secretary shall publish in the Federal Register, or in a newspaper of general circulation serving the affected area a notice of his/her decision to take land into trust under this part. The notice will state that a final agency determination to take land in trust has been made and that the Secretary shall acquire title in the name of the United States no sooner than 30 days after the notice is published.

Dated: April 17, 1996.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 96–9922 Filed 4–29–96; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 375 and 379

Organizational Charter; Removal of Parts

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes Department of Defense's organizational charters on the Assistant to the Secretary of Defense (Public Affairs) and the Assistant to the Secretary of Defense (Atomic Energy) (ATSD(AE)) codified in the CFR. The parts have served the purpose for which they were intended in the CFR and are no longer necessary.

EFFECTIVE DATE: April 24, 1996.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, 703–697–4111.

SUPPLEMENTARY INFORMATION: DoD Directive 5122.5 (32 CFR part 375) has been revised. A change was issued to DoD Directive 5134.8 (32 CFR part 379), changing the organizational name from ''Assistant to the Secretary of Defense for Atomic Energy (ATSD(AE))'' to ''Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs (ATSD(NSB))''. Copies of the basic Directives and changes thereto may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

List of Subjects in 32 CFR Parts 375 and 379

Organization and functions.

PARTS 375 AND 379—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR parts 375 and 379 are removed.

Dated: April 19, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–9994 Filed 4–23–96; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5460–9]

Clean Air Act Final Interim Approval of the Federal Operating Permits Program; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Interim Approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the California Air Resources Board on behalf of the San Joaquin Valley Unified Air Pollution Control District for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: May 24, 1996.

ADDRESSES: Copies of the District's submittal and other supporting

information used in developing the proposed interim approval including the Technical Support Document with response to comments are available for inspection during normal business hours at the following location: Operating Permits Section, A–5–2, Air and Toxics Division, U.S. EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, (415) 744–1250, Operating Permits Section, A–5–2, Air and Toxics Division, U.S. EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

SUPPLEMENTARY INFORMATION:

I. Background and purpose

A. Introduction

Title V of the Clean Air Act (the Act), and implementing regulations at 40 CFR 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 one 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.

On November 1, 1995, EPA proposed interim approval of the operating permits program for the San Joaquin Valley Unified Air Pollution Control District (San Joaquin Valley or District). See 60 FR 55516. The EPA received comments on the proposal and has summarized its response to the major comments in this notice and has fully responded to all comments in the Technical Support Document (TSD) accompanying this rulemaking. The TSD also describes the operating permits program in greater detail. In this notice, EPA is taking final action to promulgate interim approval of the operating permits program for San Joaquin Valley.

In the November 1, 1995 proposal, EPA also proposed approval of the San Joaquin Valley's Rule 2530 *Federally Enforceable Potential to Emit* as a revision to San Joaquin Valley portion of the California State Implementation Plan and under section 112(l) of the Act. In a separate notice, EPA has taken final action to approve Rule 2530.

II. Final Action and Implications

A. Response to Comments

EPA received comments from four groups during the comment period: Caufield Enterprises (an independent oil producer in the southern San Joaquin Valley), the Western States Petroleum Association (WSPA), Chevron, and the San Joaquin Valley District. EPA's response to the major comments is summarized below. A full response to each comment is in the TSD.

1. Stationary Source Definition

The District's title V program defines stationary source by combining elements of part 70's definitions of ''major source'' and ''stationary source.'' The District's definition of stationary source, which is common to both its title V program and its new source review program, contains a provision applicable to any facility located totally within the Western or Central Kern County Oil Fields or the Fresno County Oil Field that is used for the production of light oil, heavy oil or gas. This provision states that all sources under common control or ownership within each field shall be considered a single stationary source even if they are located on non-contiguous or adjacent properties. This provision is more stringent than part 70; however, the section also states that light oil production, heavy oil production, and gas production shall constitute separate stationary sources. Part 70's definition of ''major source'' requires aggregating all emission points that belong to the same Major Group as described in the Standard Industrial Classification (SIC) Manual. See § 70.2 ''Major source.'' Light oil production, heavy oil production and gas production are all in the same Major Group. EPA proposed as an interim approval issue that the District either revise the SIC code exemption in its definition of stationary source or show that it is as stringent as part 70.

The District stated that changing the definition of stationary source from its historic usage in the new source review (NSR) program would complicate permitting actions under title V. The District also provided data that few emission units (and few emissions) would be added to the program compared to the number of the units and emissions that would be lost from the program if part 70's definition were used to determine applicability. WSPA and Chevron also raised concerns regarding changing from the historic NSR definition of stationary source.

EPA has reviewed the information provided by the San Joaquin District on the number and type of additional emission units that would be included should the District change to EPA's definition of major source. These units are relatively few in number, have insignificant emissions, are attached to otherwise major sources, and would for the most part qualify for treatment as insignificant activities or insignificant emission units. Overall, San Joaquin Valley's definition of stationary source is neither inconsistent with nor less stringent than EPA's definition of major source; therefore, EPA is removing the proposed interim approval issue regarding it.

Caufield Enterprises commented that the District's part 70 program as proposed is in conflict with the Clean Air Act because both section 502 of the Act and § 70.2 define a major source to be a contiguous source while San Joaquin Valley's program combines non-contiguous properties into a single source. The commenter stated that it was immaterial whether this provision is stricter or less strict than federal law since it was the intent of Congress to implement the title V program uniformly throughout the United States and that allowing the District to use a different definition for stationary source and major source for title V permitting is inconsistent with this intent.

EPA believes that it is the intent of Congress to require states to implement operating permit programs that all contain *certain minimum elements.* See section 502(b). EPA also believes that Congress did not intend to bar States from establishing additional permitting requirements provided that those requirements were not inconsistent with the Act. See section 506(a).

While it is true that section 501(2) of the Act defines major source as ''any stationary source (or group of stationary sources located within a contiguous area and under common control) * * *'', this definition serves to define the sources Congress, *at a minimum,* intended to be included in the program. The definition of major source in section 501(2) does not define the *only* sources that a state may include in its operating permit program. Clearly, states are allowed to include a broader range of sources in their programs than the Act nominally requires.

San Joaquin Valley's definition of major source (which encompasses its definition of stationary source in its NSR program) differs from the definition of major source in section 501(2) by grouping all sources within an oil field that are under common control or ownership regardless of whether the sources are on contiguous or adjacent properties. This provision of San

Joaquin's stationary source definition will bring into its part 70 program more sources than EPA's definition. On the other hand, the provision does not effectively exclude any sources subject to title V under the federal definition. As a result, the non-contiguous and non-adjacent requirement in San Joaquin Valley's definition constitutes an additional permitting requirement that is not inconsistent with the Act and is allowed by section 506(a) of the Act.

2. Permit Terms for Model General Permits and Model General Permit Templates

Chevron, WSPA, and the District commented that model general permits and model general permit templates should not be required to have permit terms of five years or less as proposed in interim approval issue 9. All three commenters recommended that these model permits have indefinite terms and require revision only when an applicable requirement changes or needs to be added. WSPA and Chevron noted that if EPA or the District believes that a correction is needed in a model permit/template then they have the ability to effect such a change and modify all associated permits.

Title V and part 70 requires all elements of part 70 permits, whether or not they are based on model permits or permit templates, to undergo public, affected state, and EPA review at least once every five years. Rule 2520 sections 11.3.8, 11.7.6 and 11.7.7 limit public and EPA comment to the applicability of the permit/template to a source and thus prohibit public or EPA comment on the internal elements of a model permit/template after that model permit/template is issued. In effect, these provisions of the Rule bar regular public, affected state, and EPA review of the conditions and terms of a source's part 70 permit that are based on a model permit/template. The ability to comment on the applicability of a model general permit or permit template does not replace the ability to comment on the internal elements of that permit because not all issues will be ones of applicability. Hence there is a need to provide some mechanism to assure regular public, affected state, and EPA review of the model general permits and permit templates. Therefore, EPA is retaining this interim approval issue.

In reviewing this issue, EPA did determine that it is not necessary that the model general permits/permit templates to contain five-year permit terms but rather that the District's part 70 program provide some mechanism that requires regular public, affected state, and EPA review of the internal provisions of each model general permit or permit template at least once every five years. EPA, therefore, has revised the interim approval issue.

EPA does not argue with the commenters that EPA has the ability to reopen model permits/templates when necessary, but this ability does not replace the requirement for regular public and affected state review. EPA would also note that regulatory changes are not the sole reason why model general permits/permit templates may need to be changed.

3. Permit Shield Provision for General Permits and Permit Templates

Proposed interim approval issue 15 required that Rule 2520 be revised to state, as required by § 70.6(d), that, notwithstanding the permit shield provisions, if a source that is operating under a general permit is later determined not to qualify for the terms and conditions of that general permit, then the source is subject to enforcement action for operation without a part 70 permit. The District declined to revise Rule 2520 to add this language arguing it was unnecessary because its general permit provisions are more stringent than part 70. The District noted that any general permit obtained by a source under Rule 2520 would include qualification criteria and the applicable requirements, thus any deviation from the general permit should be treated like any other part 70 permit violation.

EPA agrees that the District's general permit provisions are different from the provisions in part 70 in that the District's program gives each source a part 70 permit derived from the model general permit rather than issuing one permit that applies to multiple sources. EPA, however, is retaining this interim approval issue.

At issue is not whether a source is complying with the terms of its permit but rather whether the permit the source has is the correct permit for that source. A source that applies to use a model general permit and receives a permit based on that model when it does not qualify is not substantially different from a source that fails to apply for and receive any permit because both sources do not have permits applicable to them. The former source may appear to have a permit and may appear to comply with some of the terms of that permit, but, because the permit was not crafted for that source, there is in fact no valid permit with which to comply. The source should be treated as operating without a part 70 permit rather than not operating in compliance with a part 70 permit.

Chevron and WSPA requested clarification that this interim approval issue does not carry over into the application and use of general permit templates. The commenters noted that a general permit template is only a partial coverage for certain emission units. The commenters also recommended extending this concept to general permits in cases where the non-applicability represents failure to properly manage change at the facility, in contrast to a misrepresentation of the source at the time of permit application.

EPA agrees with the commenters and has clarified the interim approval issue. If a general permit template is later determined not to be applicable to the sources then the emission units or the portion of the facility that was covered by the terms of the general permit template would be subject to enforcement action for operating without a title V permit and the balance of the facility, where the permit remains in force, would not be subject to the enforcement action.

EPA does not believe there is any need to extend this concept to general permits where the source modifies so as to no longer qualify for the general permit. EPA interprets the requirement in § 70.6(d) to apply only to sources that misrepresented their qualifications for a general permit at the time of initial issuance or renewal.

4. Other Comments

The District addressed each of EPA's 17 proposed interim approval issues and in most cases stated it would propose language changes to Rule 2520 to address the interim approval issue. EPA appreciates the District's responses on these issues. For several interim approval issues, the District stated that it did not believe Rule revisions were warranted. These issues are discussed below. Please note that the issue numbers reflect those in the proposal and not the revised numbering in this notice.

Interim Approval Issue 9: Clarify minor source applicability. The District believes that section 2.4 of Rule 2520 clearly applies only to area sources and that it is not necessary to clarify the sentence in section 2.4 that ''[o]nly the affected emissions units within the stationary source shall be subject to part 70 permitting requirements'' applies only to stationary sources that are also area sources. The District noted that any major source subject to an NSPS would be subject to title V permitting by its major source status.

EPA agrees with the District that any major source regulated under an NSPS or section 112 standard would be

subject to the District's rule under the major source requirement in section 2.3 of Rule 2520; however, it is also true that such a source would also be subject to Rule 2520 under the ''subject to an NSPS or 112 standard'' requirement in section 2.4. In fact, it will be common for sources to be subject to the District's rule on a number of grounds (e.g., a major source subject to an NSPS). Therefore, the exclusivity of section 2.4 to area sources is not inherent in the rule. In addition, section 2.4 of Rule 2520 parallels the language of § 70.3(a)(3) which reads ''any source, including an area source, subject to a standard * * *''. EPA does not interpret § 70.3(a)(3) to apply only to area sources and would not agree that section 2.4 applies only to area sources. EPA is therefore retaining this interim approval issue.

Interim Approval Issue 10: Review and public notice municipal waste incinerator permits every five years, even in the event that permit expiration may be every 12 years. The District noted that § 70.6(a)(2) does require that the District review permits for municipal waste incinerators every five years, but it does not require public notice and comment.

Part 70 does not fully repeat the Act's requirement that title V permits for municipal waste incinerators be subject to public review every five years. The requirement is a provision of section 129(e) of the Act and not of title V. Section 129(e) of the Act requires that all municipal waste incinerators obtain title V permits and that those permits may have a permit term of up to 12 years, shall be reviewed every 5 years, and shall remain in effect until the date of termination, unless EPA or the permitting authority determines that the unit is not in compliance with all standards and conditions contained in the permit. Under section 129(e), such determination shall be made at regular intervals during the term of the permit, such intervals not to exceed five years, *and only after public comment and public hearing.* Based on the explicit language of section 129(e) requiring public comment and hearing, EPA is retaining this interim approval issue.

Interim Approval Issue 12: Allow trading of emission increases and decreases without a case-by-case review to the extent allowed by an applicable requirement, and not merely those allowed by Rule 2301. The District commented that District Rule 2301, ''Emission Reduction Credit Banking'' states that the rule is applicable to all transfers or uses of emission reduction credits in the San Joaquin Valley, and that the District does not propose to change this provision. The District also commented that the permit terms will identify circumstances under which credits can be transferred without a case-by-case review, that under these circumstances, the language in Rule 2520 which requires that emission reduction transfers be consistent with Rule 2301 is appropriate, and that the District does not propose to change it.

EPA notes that proposed interim approval issue 12 did not address the part of Rule 2520, section 9.12 that restricts the use of emission reduction credits. Rather, this interim approval issue addresses the first provision in section 9.12 that restricted terms and conditions in a permit for the trading of emission increases and decreases in the permitted facility to those allowed by Rule 2201. Section 70.6(a)(10) requires permitting authorities to include terms for emission trading without case-by-case approvals to the extent applicable requirements allow them. EPA's interim approval issue is to remove Rule 2520's restriction to Rule 2201 and expand it to encompass any applicable requirement, such as the Hazardous Organic NESHAP, that allows for emission trading without case-by-case approval. EPA, therefore, is retaining this interim approval issue but is clarifying that it does not affect the emission reduction credit provisions in Rule 2520, section 9.12.

Interim Approval Issue 13: Require a schedule of compliance be included in the permit even if the source is in compliance with all applicable requirements. The District argues, based on language in part 70 and title V, that neither title V nor part 70 requires that each permit issued contain a schedule of compliance unless the source is in non-compliance.

The District is correct in stating that § 70.6(c)(3) merely requires that a permit contain a schedule of compliance consistent with § 70.5(c)(8); that § 70.5(c)(8) requires a compliance plan be submitted with the application, part of which is a compliance schedule; and finally that § 70.5(c)(8)(iii) lists what constitutes a compliance schedule and that for non-complying source, this is the ''schedule of compliance'' in § 70.5(c)(8)(iii)(C).

The District is also correct in stating that section 504 of the Act requires that ''each permit issued under this title shall include * * * a schedule of compliance * * *'' However, the District is not correct in stating that facilities are not required to submit a schedule of compliance with their applications unless they are out of compliance. Section 503 clearly requires all permit applications, without regard to the source's compliance status, to include a ''compliance plan describing how the source will comply with all applicable requirements * * *'' and that the ''[c]ompliance plan shall include a schedule of compliance * * *''.

Part 70 and the Act need to be read with the understanding that the terms ''compliance schedule'' and ''schedule of compliance'' are synonymous. With this understanding, it is clear that all sources, complying and non-complying, must include a schedule of compliance (i.e., a compliance schedule) in their applications and that all permits must have schedules of compliance (i.e., compliance schedules) in them. For complying sources and sources that have future-effective applicable requirements, the compliance schedule is a simple statement that the source will continue to comply or will comply in a timely manner. Only for non-complying sources are there detailed requirements for the contents of a schedule of compliance. Given the requirements of the Act and part 70, EPA is retaining this interim approval issue.

B. Interim Approval

The EPA is promulgating interim approval of the operating permits program submitted by the California Air Resources Board on behalf of the San Joaquin Valley Unified Air Pollution Control District on July 3 and August 17, 1995, and supplemented on September 6 and 21, 1995. The District or the State must make the following changes to receive full approval:

(1) Revise the applicability language in Rule 2520 2.2 and the definitions of Major Air Toxics Source (Rule 2520 3.18) and Major Source (Rule 2520 3.19) to be consistent with the Act and part 70 to cover sources that *emit* at major source levels.

(2) Limit the exemption for non-major sources in Rule 2520 4.1 so that it does not exempt non-major sources that EPA determines, upon promulgation of a section 111 or 112 standard, must obtain title V permits. § 70.3(b)(2)

(3) Revise Rule 2520 7.1.3.2 to eliminate the requirement that fugitive emission estimates need only be submitted in the application if the source is in a source category identified in the major source definition in 40 CFR part 70.2. See § 70.3(d).

(4) Revise Rule 2520 to provide that unless the District requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. See §§ 70.5(a)(2) and 70.7(a)(4).

(5) Revise Rule 2520 sections 11.1.4.2 and 11.3.1.1 and Rule 2201 5.3.1.1.1 to include notice ''by other means if necessary to assure adequate notice to the affected public.'' See § 70.7(h)(1).

(6) Revise Rule 2520's permit issuance procedures to provide for notifying EPA and affected states in writing of any refusal by the District to accept all recommendations for the proposed permit that an affected state submitted during the public/affected state review period. See § 70.8(b)(2).

(7) Either delete section 11.7.5 in Rule 2520 and section 5.3.1.8.5 in Rule 2201, which purport to limit the grounds upon which EPA may object to a permit to compliance with applicable requirements, or revise them to be fully consistent with § 70.8(c).

EPA's authority to object to issuance of permits derives from section 505(b) of the Act. No state or local agency may restrict authorities granted EPA under the Clean Air Act; therefore, EPA views section 11.7.5 of Rule 2520 and Section 5.3.1.8.5 of Rule 2201 as not binding upon its actions. EPA will exercise its authority to object to permits consistent with § 70.8(c) and without regard to the restriction on that authority in San Joaquin's title V program. Should the District issue a permit to which EPA has objected and the District has not revised or reissued to meet the objection, EPA will consider the permit invalid and will require the District to revise and reissue the proposed permit or will revoke, revise, and reissue the permit itself. EPA has made these revisions to Rule 2520 an interim approval issue in order to ensure that the Rule 2520 clearly states EPA's authority to object to permits.

(8) Revise Rule 2520 2.4 to clarify that the sentence in section 2.4 that ''[o]nly the affected emissions units within the stationary source shall be subject to part 70 permitting requirements'' applies only to stationary sources that are also area sources.

(9) Revise Rule 2520 8.1 to provide that each model general permit and model general permit templates will be subject to public, affected state, and EPA review consistent with initial permit issuance at least once every 5 years.

(10) Revise Rule 2520 8.1 to provide that any permit for a solid waste incineration unit that has a permit term of more than 5 years shall be subject to review, including public notice and comment, at least once every five years. See § 70.6(a)(2).

(11) Revise Rule 2520 13.2.3 to state that the permit shield will apply only to requirements addressed in the permit. EPA will not consider a source shielded from an enforcement action for failure to comply with an applicable requirement if that applicable requirement is addressed only in the written reviews supporting permit issuance and not in the permit. Further, EPA will veto any permit that extends the permit shield to conditions, terms, or findings of non-applicability that are not included in the permit.

(12) Revise Rule 2520 9.12 to require the permit contain terms and conditions for the trading of emission increases and decreases in the permitted facility to the extent that *any* applicable requirement provides for such trading without case by case approval. The District may limit transfers of emission reduction credits in accordance with District Rules 2201 and 2301. § 70.6(a)(10)

(13) Revise Rule 2520, Section 9.0 (permit content) to include the § 70.6(c)(3) requirement for schedules of compliance for applicable requirements for which the source is in compliance or that will become effective during the permit term. During the interim period, the District should incorporate compliance schedules, as required by § 70.6(c)(3), into all issued permits.

(14) Revise Rule 2520 to treat changes made under the prevention of significant deterioration (PSD) provisions of the Act and EPA' PSD regulations in the same manner as ''title I modifications'' as that term is defined in Rule 2520 and Rule 2201.

(15) Revise Rule 2520 to state that, notwithstanding the permit shield provisions, if a source that is operating under a general permit or general permit template is later determined not to qualify for the terms and conditions of that general permit or template, then the source is subject to enforcement action for operation without a part 70 permit. For sources operating under a general permit template, if a source is later determined not to qualify for the template, only the portion of the facility covered by the template shall be subject to enforcement action for operation without a part 70 permit. See § 70.6(d).

(16) Because California State law currently exempts agricultural production sources from permit requirements, CARB has requested source category-limited interim approval for all California districts. EPA is granting source category-limited interim approval to the San Joaquin program. In order for this program to receive full approval, the Health and Safety Code must be revised to eliminate the exemption of agricultural production sources from the requirement to obtain a title V permit. Once the California statute has been revised, the District must also revise its permit exemption rules to eliminate any blanket exemption granted agricultural sources.

This interim approval, which may not be renewed, extends until May 25, 1998. During this interim approval period, the State 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 the effective date of interim approval, as does the three-year time period for processing the initial permit applications.

If the District fails to submit a complete program through the State for full approval by November 24, 1997, EPA will start an 18-month clock for mandatory sanctions. If the District fails to submit a complete program before the expiration of that 18-month period, EPA would impose sanctions. If EPA disapproves the District's corrective program, and has not granted full approval within 18 months after the disapproval, then EPA must impose mandatory sanctions. In both cases, if the District has not come into compliance within 6 months after EPA applies the first sanction, a second sanction is required. In addition, discretionary sanctions may be applied where warranted any time after the end of the interim approval period. If the EPA has not granted full approval to the District program by May 25, 1998, EPA must promulgate, administer, and enforce a Federal permits program for San Joaquin Valley.

C. District Program Implementing Section 112(g)

EPA is approving the use of San Joaquin Valley's preconstruction review program (Rule 2201) as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and adoption by San Joaquin Valley of rules specifically designed to implement section 112(g). EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

D. Program for Delegation of Section 112 Standards as Promulgated

Requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5)

requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of San Joaquin Valley's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. This program for delegations 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 the District's submittal and other information relied upon for the final interim approval, including all comments received on the proposal and EPA's responses to those comments, are contained in docket number CA–SJV–95–001 maintained at the EPA Regional Office. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

The EPA's action under section 502 of the Act does not create any new requirements but simply addresses the operating permits program developed and submitted by the San Joaquin Valley District to meet the requirements of 40 CFR part 70. EPA evaluated the impact on small businesses of the title V operating permit program as part of its promulgation of part 70 and determined that operating permit programs required by part 70 would not have a significant economic impact on a substantial number of small business and no Regulatory Flexibility Act analysis was necessary.

D. Unfunded Mandates Act

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 and therefore, no budgetary impact statement is necessary.

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: April 10, 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 (y) to the entry for California to read as follows:

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

* * * * *

California

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(y) *San Joaquin Valley Unified APCD* (complete submittal received on July 5 and August 18, 1995); interim approval effective on May 24, 1996; interim approval expires May 25, 1998.

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[FR Doc. 96–10094 Filed 4–23–96; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 261

[SW–FRL–5461–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by Bethlehem Steel Corporation (''BSC''), Lackawanna, New York, to exclude (or ''delist''), on a one-time basis, certain solid wastes contained in a landfill from being listed hazardous wastes. This action responds to BSC's petition to delist these wastes on a ''generator-specific'' basis from the hazardous waste lists. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency has concluded that BSC's petitioned waste will not adversely affect human health and the environment. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

EFFECTIVE DATE: April 24, 1996.

ADDRESSES: The RCRA regulatory docket for this final rule is located at Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (703) 603–9230 for appointments. The reference number for this docket is F–96–B5EF–FFFFF. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Chichang Chen, Waste Identification Branch, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow the Agency to determine that the waste to be excluded does not meet any of the