programs. We have, therefore, amended this provision to allow a United States Consular Officer from another country to authenticate the signature.

Paragraph (c) of proposed § 3.2420 lists categories of evidence from foreign countries that do not require authentication of signature. This is a restatement of paragraph (b) of current § 3.202.

Paragraph (d) of proposed § 3.2420 explains that photocopies of original documents are acceptable to VA when they are genuine and free from alteration. This is a restatement of paragraph (c) of current § 3.202.

This rulemaking reflects VA's goal of making government more responsive, accessible, and comprehensible to the public. The Plain Language Regulations Project was developed as a long-term comprehensive project to reorganize and rewrite in plain language the adjudication regulations in part 3 of title 38, Code of Federal Regulations. This proposed rule is one of a series of proposed revisions to those regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies assess anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule does not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(B), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The catalog of Federal Domestic Assistance Program numbers for this proposal are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, 64.100, and 64.127. 1

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: October 11, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.202 [Removed]

2. § 3.202 is removed.

Subpart D—Universal Adjudication Rules that Apply to Benefit Claims Governed by Part 3 of This Title

3. The authority citation for part 3, subpart D continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

4. § 3.2420 is added under the undesignated center heading ''EVIDENCE REQUIREMENTS'' to read as follows:

Evidence Requirements

§ 3.2420 Evidence from foreign countries.

(a) *Authentication of signature.* When the signature on an affidavit or other document signed under oath is authenticated by a government official of a foreign country, the signature of that official must in turn be authenticated by either:

(1) A United States Consular Officer in that jurisdiction, or

(2) The State Department (See § 3.108).

(b) *When there is no United States Consular Officer in that country.* If there is no United States Consular Officer in that country, the government official's signature may be authenticated by either:

(1) A consular agent of a friendly government whose signature and seal can be verified by the State Department, or

(2) A United States Consular Officer in another country who certifies that the signature was investigated and is authentic.

(c) *Authentication of signature not required.* Authentication of signature is not required for the following types of evidence:

(1) Documents approved by the Deputy Minister of Veterans Affairs, Department of Veterans Affairs, Ottawa, Canada,

(2) Documents that have the signature and seal of an officer authorized to administer oaths for general purposes,

(3) Documents signed before a VA employee authorized to administer oaths,

(4) Affidavits prepared in the Republic of the Philippines that are certified by a VA representative who is located there and has authority to administer oaths,

(5) Copies of public or church records from any foreign country used to establish birth, adoption, marriage, annulment, divorce, or death, if:

(i) The records have the signature and seal of the custodian of such records, and

(ii) There is no conflicting evidence on file, or

(6) Copies of public or church records from England, Scotland, Wales, or Northern Ireland used to establish birth, marriage, or death, when:

(i) The records have the signature or seal or stamp of the custodian of such records, and

(ii) There is no conflicting evidence on file.

(d) *Photocopies of documents acceptable.* Photocopies of original documents described in this section are acceptable to establish birth, death, marriage or relationship if VA is satisfied that they are genuine and free from alteration.

(Authority: 22 U.S.C. 4221; 38 U.S.C. 5712)

[FR Doc. 01–26382 Filed 10–18–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 055–OPP; FRL–7086–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to approve the operating permit program of the Bay Area Air Quality Management District (''Bay Area'' or ''District''). The Bay

Area operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdictions. EPA granted interim approval to the Bay Area operating permit program on June 23, 1995 but listed certain deficiencies in the program preventing full approval. Bay Area has revised its program to correct the deficiencies of the interim approval and this action proposes full approval of those revisions. The District has also made other revisions to its program since interim approval was granted and EPA is also proposing to approve most of those revisions in this action.

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

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Acting Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. Attention: David Wampler. You can inspect copies of the Bay Area'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 District's submitted operating permits program at the following locations:

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

The Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109–7799.

An electronic copy of Bay Area's operating permit program (Regulation 2, Rule 6) rules may be available via the Internet at *http://www.arb.ca.gov/drdb/ba/cur.htm.* However, the version of District Regulation 2, Rule 6 at the above internet address may be different from the version submitted to EPA for approval. Readers are cautioned to verify that the adoption date of Regulation 2, Rule 6 listed is the same as the rule submitted to EPA for approval. The official submittal is available only at the three addresses listed above.

FOR FURTHER INFORMATION CONTACT: David Wampler, EPA Region IX, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1256 or *wampler.david@epa.gov.*

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

I. What Is the Operating Permit Program?

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. One goal of the operating permit program is to improve compliance by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

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

II. What Is Being Addressed in This Document?

Bay Area submitted, via the California Air Resources Board (CARB) its initial operating permits program to EPA on March 23, 1995. Because the Bay Area's operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval of the program, and conditioned full approval on the District revising its program to correct the deficiencies. The interim approval notice published on June 23, 1995 [60 FR 32606], described the program deficiencies and revisions that had to be made in order for the Bay Area's program to receive full approval. Since that time, the Bay Area has revised, and the California Air Resources Board, on behalf of the Bay Area, has submitted a revision to the Bay Area's operating permit program; this revision was submitted May 30, 2001. This **Federal Register** notice describes the changes that have been made to the Bay Area operating permit program as submitted on May 30, 2001, and the basis for EPA proposing full approval of the program.

III. Impact of Today's Proposed Full Approval on the District's SIP-Approved Federally-Enforceable State Operating Permits Program

Concurrent with our action on June 23, 1995 to grant final interim approval to the Bay Area's title V program, EPA granted, pursuant to 40 CFR part 52, final approval to the District's Federally-Enforceable State Operating Permit Program (FESOP) which is contained in portions of Regulation 2, Rule 6, and the District's Manual of Procedures, Volume II, Part 3 (MOP) thereby incorporating the FESOP into the California SIP. In the process of correcting cited deficiencies in its operating permit program, the District also revised language in Regulation 2, Rule 6 related to its FESOP rule. Even though this proposed rulemaking action discusses the District's FESOP program, today's proposed approval is for part 70 purposes only. EPA is not proposing to approve, for SIP purposes under 40 CFR part 52, those portions of Regulation 2 Rule 6 that involve the FESOP program. We can only take action on the Regulation 2, Rule 6 for SIP purposes only after the State submits it to us.

IV. 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** notice.

EPA received a comment letter from one organization on what they believe to be deficiencies with respect to Title V programs in California. EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** notice 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.

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

As discussed in the June 23, 1995 [60 FR 32606] rulemaking, full approval of the Bay Area operating permit program was made contingent upon satisfaction of the following conditions:

Issue (1): Bay Area was required to provide a demonstration that each activity on its insignificant activities list is truly insignificant and is not likely to be subject to an applicable requirement. Alternatively, the District may establish emissions level cut-offs, in which activities emitting below the cut-offs would qualify as insignificant. In the latter case, the District must demonstrate that the cut-off emissions 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. In addition, Bay Area must revise Regulation 2, Rule 6 to state that activities needed to determine the applicability of, or impose applicable requirements on, the facility may not qualify as insignificant activities. (§§ 70.5(c) and 70.4(b))

Rule Change: Instead of demonstrating that each activity on the Bay Area's insignificant activity list is truly insignificant, the District corrected this deficiency by establishing significant source emissions cut-offs below which activities would be insignificant. To implement this correction, the District amended Regulation 2, Rule 6, section 239 to define ''significant source'' as a source that has a potential to emit of more than 2 tons per year of any regulated air pollutant, or more than 400 lbs per year of any hazardous air pollutant. In addition, the application content section of rule 2–6–405 requires operating permit applications to identify and describe each permitted source at the facility and each source or other activity that is exempt from the requirements to obtain a permit or excluded from District rules or regulations under Regulation 2, Rule 1. Furthermore, all part 70 permit applications are required to contain a list of all applicable requirements that apply to each source (Rule 2–6–405.5). Finally, Section 2.1.2 of the Manual of Procedures (''MOP'') requires applications to include other information necessary to implement and enforce other applicable requirements or determine the applicability of any such requirement on any source (whether permitted, exempt, or excluded) or any other activity.

Issue (2): Bay Area was required to include a term consistent with the Part 70 definition of ''applicable requirement,'' and use that term consistently in rules 2–6–409.1, 2–6–409.2 and throughout the regulation.

Rule Change: The District corrected this deficiency by revising the definition of ''applicable requirement'' at 2–6–202 to include a reference to the federal definition of ''applicable requirement'' as defined in 40 CFR 70.2. They have also added the term to 2–6–409.1 and 409.2.

Issue (3): Bay Area rule 2–6–409 was required to be revised to ensure that permit terms and conditions assure compliance with all applicable requirements (§ 70.7(a)(1)(iv)) and that permits contain emission limitations and standards (§ 70.6(a)(1)) and compliance certification requirements (§ 70.6(c)(1)) that assure compliance with all applicable requirements. Prior to being revised, the rule only required the District's operating permits to include requirements for testing, monitoring, reporting, and recordkeeping sufficient to assure compliance with the terms and conditions of the permit and the applicable requirements themselves.

Rule Changes: The District corrected this deficiency by revising the permit content section of Rule 2–6–409, to: (1) Require that all applicable requirements be included in the permit; and (2) add requirements to the compliance schedule section of permit content requirements (see 2–6–409.10.3). Furthermore, Rule 2–6–409.7 already required that the permit contain a statement that the owner or operator must comply with all permit conditions and limitations set forth in the permit. These additions will ensure that the permits contain all necessary requirements to assure compliance with applicable requirements.

Issue (4): Bay Area was required to show that certifications signed by the responsible official affirmatively state that they are based on truth, accuracy, and completeness, and that the certifications be based on information and belief formed after reasonable inquiry. Bay Area needed to revise Rules 2–6–405.9, 2–6–502, and the MOP (Sections 4.5 and 4.7), and any other certification provisions to ensure that both elements are explicitly required. (§ 70.5(d))

Rule Change: The District corrected this deficiency by revising several parts of the rule. First, the District added the following to the permit content section at 409.20: ''A certification requirement for all documents submitted pursuant to a major facility review permit. For applications, compliance certifications, and reports, the certification shall state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. The certifications shall be signed by a responsible official for the facility.'' Second, the District revised the application content requirements at Rule 2–6–405.9 to state that applications must contain: ''A compliance certification by a responsible official of the facility that the application forms and all accompanying reports and other required compliance certifications are true, accurate, and complete based on information and belief formed after reasonable inquiry; and* * *.'' Third, the District revised the Monitoring and Records section at Rule 2–6–502 to state that: ''A responsible official shall certify that all such reports are true, accurate, and complete based on information and belief formed after reasonable inquiry.'' Finally, the MOP Sections 4.5 and 4.7, were revised to include these provisions and section 2–6–426 was added and requires compliance certifications consistent with Part 70. (See § 70.5(d)).

Issue (5): Bay Area was required to revise Regulation 2–6 to define and require notice to affected states. Alternatively, Bay Area could have made a commitment to: (1) Initiate rule revisions upon being notified by EPA of an application by an affected tribe for state status, and (2) provide affected state notice to tribes upon their filing for state status (i.e., prior to Bay Area's adopting affected state notice rules). (§§ 70.2 and 70.8(b)

Rule Change: The District corrected this deficiency by adding the term ''Affected State'' at Rule 2–6–242 to provide: ''A State whose air quality may be affected by a facility and that is contiguous to the State of California or a state that is within 50 miles of a permitted source within the District.'' In addition, the District added notification requirements for affected states consistent with 40 CFR 70.8(b)(1) to Rule 2–6–412. The District also revised Rule 2–6–412.6, consistent with 40 CFR 70.8(b)(2), to require written notification to EPA and affected states of any refusal to accept all recommendations from an affected state received during the public comment period for a draft permit.

Issue (6): The District was required to eliminate the phrase ''but not limited to'' from the definition of ''administrative permit amendment.'' (§ 70.7(d)(1)(iv))

Rule Change: The District corrected this deficiency by revising the definition at 2–6–201 to eliminate the problematic phrase.

Issue (7): The District was required to revise Rule 2–6–404.3 to limit the universe of significant permit modification applications due 12 months after commencing operations to only those applications for revisions pursuant to section 112(g) and title I, parts C and D of the Act that are not prohibited by an existing operating permit. Except in the above circumstances, a source is not allowed to operate the proposed change until the permitting authority has revised the source's operating permit. (§ 70.5(a)(1)(ii)).

Rule Change: Bay Area corrected this deficiency by revising Rule 2–6–404.3 to be consistent with federal regulations at 40 CFR Part 70. The definition now reads: ''An application for a significant permit revision shall be submitted by the applicant prior to commencing an operation associated with a significant permit revision. Where an existing federally enforceable major facility review permit condition would prohibit such change in operation, the responsible official must request preconstruction review and obtain a major facility review permit revision before commencing the change.''

Issue (8): Bay Area was required to eliminate the extended review period from the minor permit modification procedures at Rule 2–6–414.2 because it is inconsistent with Rules 2–6–410.2 and 40 CFR 70.7(e)(2)(iv).

Rule Change: The District corrected this deficiency by revising Rule 2–6–414.2 to read: ''The APCO shall act on the proposed minor revision within 15 days after the end of EPA's 45-day review period or within 90 days of receipt of the permit application whichever is later.'' This is now consistent with part 70 and 2–6–410.2.

Issue (9): The District was required to revise 2–6–412.1 to include notice ''by other means if necessary to assure adequate notice to the affected public.'' (§ 70.7(h)(1)) Rule Change: The District corrected this deficiency by adding the suggested language to Rule 2–6–412.1.

Issue (10): Bay Area was required to add a provision to the MOP (section 4.1) to state that only alternative emission control plans (AECPs) that have been approved into the SIP may be incorporated into the federally enforceable portion of the permit. (§ 70.6(a)(1)(iii))

Rule Change: The District has not revised the MOP as specified in our final interim approval. However, the District has corrected this deficiency by stating in a letter dated July 7, 2000 that there are no general AECP provisions in District rules. The only specific AECP provisions in the District rules are contained in the District coating rules, all of which have been SIP approved. Therefore, it is not possible for non-SIP-approved AECP provisions to be incorporated into the federally enforceable portion of an operating permit. Further, the language in the MOP is not inconsistent with federal regulations at Part 70, which is silent on how the District must treat AECPs. EPA understands that the District will identify only SIP-approved AECP provisions, as federally enforceable in operating permits.

Issue (11): Bay Area was required to add emissions trading provisions consistent with 40 CFR 70.6(a)(10), which requires that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval.

Rule Change: The District corrected this deficiency by revising Rule 2–6–306—''Emissions Trading'' to be consistent with 40 CFR Part 70 as follows: ''The APCO shall allow emissions trading within a facility that has a major facility review permit in accordance with the procedures and restrictions set forth in Rule 2–6–418. This provision shall not apply to the phase II acid rain portion of any facility subject to this Rule.''

Issue (12): Bay Area was required to add a requirement to Regulation 2–6 that any document required by an operating permit must be certified by a responsible official. (§ 70.6(c)(1))

Rule Change: The District has added the required language at the end of Rule 2–6–409.20 which now states, ''[t]he certifications shall be signed by a responsible official for the facility.''

Issue (13): Bay Area was required to revise Rule 2–6–224 and Rule 2–6–409.10 to specify that all progress reports must include: (1) Dates when activities, milestones, or compliance required in the schedule of compliance were achieved; and (2) an explanation of why any dates in the schedule of compliance were not or will not be met and any preventive or corrective measures adopted. (§ 70.6(c)(4)(i and ii))

Rule Change: Bay Area responded and revised Section 2–6–409.10 to include a requirement that compliance plans must include deadlines for achieving each item in the plan, and a requirement that progress reports must be submitted every 6 months. Also, Section 409.10.3 now includes the statement that, ''[p]rogress reports shall contain the dates by which each item in the plan was achieved, and an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventative or corrective measure adopted.'' No changes have been made or are necessary to District Rule 2–6–224 because such changes would be redundant with the changes already made in 2–6–409.

Issue (14): Bay Area was required to revise Section 4.5 of the MOP and add a provision to Rule 2–6–409 to require that compliance certifications be submitted more frequently than annually if specified in an underlying applicable requirement. (§ 70.6(c)(4))

Rule Change: The District corrected this deficiency by adding new Section 2–6–409.17 that requires permits to include, ''a requirement for annual compliance certifications, unless compliance certifications are required more frequently than annually in an applicable requirement or by the APCO.''

Issue (15): At the time of the interim approval, Bay Area indicated in its program description that it intended to process new units that do not affect any federally enforceable permit condition as ''off-permit'' (see Section II, p. 21 and Staff Report, pp. 3–4). Bay Area was required to submit a letter revising its

program description to indicate that it will not process new units as ''off-permit'' or it could have revised its rule to include the part 70 off-permit provisions as defined in federal regulations at 40 CFR 70.4(b)(14) and 70.4(b)(15).

Rule Change: Bay Area corrected this deficiency by providing a letter to Jack Broadbent, Director, Region IX, Air Division, dated May 24, 2001, from the Bay Area APCO, Ellen Garvey that stated: ''The District has decided not to incorporate the 'off-permit' provisions into its current program submittal.'' Therefore, no off-permit changes will be allowed under the Bay Area program.

Issue (16): Bay Area was required to revise 2–6–222 defining ''regulated air pollutant'' to be consistent with the Federal definition (§ 70.2) and include pollutants subject to any requirement established under section 112 of the Act, including sections 112(g), (j), and (r).

Rule Change: The District corrected this deficiency by revising the definition of regulated air pollutant at Rule 2–6–222.5 to state, ''* * * any pollutant that is subject to any standard or requirement promulgated under Section 112 of the Clean Air Act, including sections 112(g), (j) and (r).''

Issue (17): 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.

Rule Change: In addition to the statutory exemption in the Health and Safety Code, Bay Area's regulations contained an exemption; however, the District has since revised its regulations to allow for permitting once state law provides for it. Specifically, Regulation 1, Section 110 and Regulation 2, Rule 1 were revised to allow for permitting pursuant to the California Health and Safety Code.

VI. What Is Involved in This Proposed Action?

The Bay Area has corrected the deficiencies cited in the interim approval on June 23, 1995 [60 FR 32606]. Thus, EPA is proposing full approval of the Bay Area operating permit program. In addition, Bay Area has made other changes to its operating permit program since we granted interim approval. These changes were not required by EPA to correct interim approval deficiencies cited in our June 23, 1995 **Federal Register**. EPA has reviewed the additional changes and proposes to approve most of the changes. Table 1a and 1b, respectively, list which rule and MOP subsections we are proposing to approve.

EPA is not acting on some changes that the District made to its rules; these changes were not required to correct interim approval issues and may not be approvable. See Table 2 below for a list of the rule (and MOP) sections of Bay Area's program on which EPA is not taking action. Please refer to the TSD for additional information on the basis for our decision to either approve or not act on those other changes. If a section is not listed in any of the tables below, it means that there has been no change to that section since interim approval.

TABLE 1A.—APPROVABLE RULE SUBSECTIONS THAT HAVE BEEN CHANGED SINCE INTERIM APPROVAL

Approvable rule section and name	Adoption date
2–6–101, Description	5/2/01
2–6–114, Exemption, Non-Road Engines	10/20/99
2–6–201, Administrative Permit Amendment	10/20/99
2–6–202, Applicable Requirements	5/2/01
2–6–204, Designated Facility	10/20/99
2–6–206, Facility	5/2/01
2–6–207, Federally Enforceable	5/2/01
2–6–211, Independent Power-Production Facility	5/2/01
2–6–212, Major Facility	10/20/99
2–6–215, Minor Permit Revision	10/20/99
2–6–217, Phase II Acid Rain Facility	5/2/01
2–6–218, Potential to Emit (see discussion below and in the TSD)	10/20/99
2–6–219, Preconstruction Permit or Review	10/20/99
2–6–222, Regulated Air Pollutant	5/2/01
2–6–226, Significant Permit Revision	10/20/99
2–6–229, Subject Solid Waste Incinerator Facility	10/2099
2–6–230, Synthetic Minor Facility	10/20/99
2–6–231, Synthetic Minor Operating Permit	10/20/99
2–6–232, Synthetic Minor Operating Permit Revision	10/20/99
2–6–233, Permit Shield	5/2/01
2–6–235, Actual Emissions	5/2/01
2–6–236, Modified Source or Facility	5/2/01
2–6–237, Potential to Emit Demonstration	10/20/99
2–6–238, Process Statement	10/20/99
2–6–239, Significant Source	10/20/99
2–6–240, State Implementation Plan	10/20/99
2–6–241, 12-month Period	10/20/99
2–6–242, Affected State	5/2/01
2–6–243, Final Action	5/2/01
2–6–244, CFR	5/2/01
2–6–303, Major Facility Review Requirement for Subject Solid Waste Incinerator Facilities	10/20/99
2–6–304 and 2–6–302: Major Facility Review Requirements for Designated Facilities: and Major Facility Review for Phase II Acid Rain Facilities:	10/20/99
2–6–306, Emissions Trading	5/2/01
2–6–307, Non-compliance, Major Facility Review	10/20/99
2–6–310, Synthetic Minor Operating Permit Requirement	10/20/99
2–6–311, Non-compliance, Synthetic Minor Facilities	5/2/01
2–6–312, Major Facility Review, Smaller Facilities	5/2/01
2–6–314, Revocation	5/2/01
2–6–401, Facilities Affected (Deleted 10/20/99)	10/20/99
2–6–403, Application for Major Facility Review Permit, Permit Renewal, or Permit Revision	2/1/95
2–6–404, Timely Application for Major Facility Review Permit	10/20/99
2–6–405, Complete Application for a Major Facility Review Permit	5/2/01
2–6–406, Application for Minor Permit Revision	10/20/99
2–6–407, Application Shield	10/20/99
2–6–408, Completeness Determination	10/20/99
2–6–409, Permit Content	5/2/01
2–6–410, Final Action for Initial Permit Issuance, Five-Year Renewal, Reopenings, and Revisions	10/20/99
2–6–411, Reports to EPA and Public Petitions for Major Facility Review Permits	5/2/01
2–6–412, Public Participation, Major Facility Review Permit Issuance	5/2/01
2–6–413, Administrative Permit Amendment Procedures	10/20/99
2–6–414.2 and 414.3, Minor Permit Revision Procedures. (Note: EPA is not acting on subsection 414.1. See table 2, below)	5/2/01
2–6–416, Term for Major Facility Review	5/2/01
2–6–418, Emissions Trading Procedures	5/2/01
2–6–420, Application for a Synthetic Minor Operating Permit	5/2/01
2–6–421, Timely Application for a Synthetic Minor Operating Permit	5/2/01
2–6–422, Complete Application for a Synthetic Minor Operating Permit	10/20/99
2–6–423, District Procedures for Synthetic Minor Operating Permits	5/2/01
2–6–424, Applicability	10/20/99
2–6–425, Facility List	10/20/99
2–6–426, Compliance Certification Procedures	5/2/01
2–6–502, Monitoring Reports, Major Facility Review Permit	5/2/01
2–6–503, Monitoring	5/2/01

TABLE 1B.—APPROVABLE MANUAL OF PROCEDURES (MOP) SUBSECTIONS THAT HAVE BEEN CHANGED SINCE INTERIM APPROVAL

Approvable Manual of Procedures Section Number and Title
Adoption Date was May 2, 2001

1. Introduction (every paragraph except the second)
2. Applications:
   - 2.1 Major Facility Review Permits
   - 2.2 Synthetic Minor Operating Permits
   - 2.3 Potential to Emit Demonstrations
3. Fees
4. Permit Content:
   - 4.1 Applicable Requirements
   - 4.2 Permit Duration
   - 4.3 Terms and Conditions for Reasonably Anticipated Operating Scenarios
   - 4.4 Terms and Conditions for Emissions Trading
   - 4.5 Compliance
   - 4.6 Monitoring Requirements
   - 4.7 Recordkeeping and Reporting Requirements
   - 4.8 Emergency Provisions
   - 4.9 Acid Rain Provisions
   - 4.10 Severability Clause
   - 4.11 Standard Conditions to Implement EPA Title V Regulations and 40 CFR 70
   - 4.12 Requirement to Pay Fees
   - 4.13 Provisions Regarding the Federal Enforceability of Conditions
   - 4.14 Inspection and Entry Requirements
   - 4.15 Requirements for Compliance Certification
   - 4.16 Permit Shield
5. Trade Secret and Availability of Information
6. Public Participation & EPA Review:
   - 6.1 Major Facility Review Permits
   - 6.2 Synthetic Minor Operating Permits
   - 6.3 Appeals and Objections
7. District Permitting Procedures:
   - 7.1 Major Facility Review Permits (all paragraphs except the three paragraphs that precede the last paragraph in the section)
   - 7.2 Synthetic Minor Operating Permits
8. Title IV: Applicability

TABLE 2.—LIST OF RULE AND MOP SECTIONS THAT EPA IS NOT ACTING ON AS PART OF TODAY'S PROPOSED APPROVAL

Rule or MOP section and title	Adoption date
2–6–113, Exemption, Registered Portable Engines	10/20/99
2–6–234, Program Effective Date	10/20/99
2–6–313, Denial, Failure to Comply	5/2/01
2–6–414.1, Minor Permit Revision Procedures	5/2/01
MOP—Section 1—Introduction Only the second paragraph regarding the Program Effective Date	5/2/01
MOP—Section 7.1—Major Facility Review Permits. Only the three paragraphs that precede the last paragraph in section 7.1	5/2/01

VII. Discussion on the Revision to the Definition of Potential To Emit

Although not required to make the change for full approval, the District has revised its definition of ''Potential to Emit'' (2–6–218) (''PTE'') and the discussion of it in the MOP (page 3–2). The revised language no longer requires that permit limits be only ''federally enforceable.'' The definition now allows a permit limitation or the effect it would have on emissions, to be ''enforceable by the District or EPA.'' Although Bay Area's definition is different from the current definition in 40 CFR 70.2, litigation has occurred since we granted interim approval to Bay Area's rule that has affected EPA's consideration of this issue. In *Clean Air Implementation Project* v. *EPA,* No. 96–1224 (D.C. Cir. June 28, 1996), the court remanded and vacated the requirement for federal enforceability for potential to emit limits under part 70. Therefore, even though part 70 has not been revised it should be read to mean, ''federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.'' [1]

EPA proposes to approve this revision because the Bay Area rule is consistent with the current meaning of potential to emit as described above in the court's interpretation. EPA has issued several guidance memoranda that discuss how the court rulings affect the definition of potential to emit under CAA § 112, New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs, and title V.[2] In particular, the

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

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

memoranda reiterate the Agency's earlier requirements for practicable enforceability for purposes of effectively limiting a source's potential to emit.[3] For example, practicable enforceability for a source-specific permit means that the permit's provisions must, at a minimum: (1) Be technically accurate and identify which portions of the source are subject to the limitation; (2) specify the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); (3) be independently enforceable and describe the method to determine compliance including appropriate monitoring, recordkeeping and reporting; (4) be permanent; and (5) include a legal obligation to comply with the limit.

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

VIII. Public Comments

EPA requests comments on the program revisions discussed in this proposed action. Copies of the Bay Area 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. 01–26407 Filed 10–18–01; 8:45 am]

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OAQPS and Robert Van Heuvelen, Director, Office of Regulatory Enforcement.

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