

Regulations (CFR) part 70. On November 30, 2001, we promulgated final full approval of 34 California districts' title V operating permits programs. See 66 FR 63503 (December 7, 2001). Our final rulemaking was challenged by several environmental and community groups alleging that the full approval was unlawfully based, in part, on an exemption in section 42310(e) of the California Health and Safety Code of major agricultural sources from title V permitting. EPA entered into a settlement of this litigation which required, in part, that the Agency propose to partially withdraw approval of the 34 fully approved title V programs in California.

Sections 70.10(b) and 70.10(c) provide that EPA may withdraw a 40 CFR part 70 program approval, in whole or in part, whenever the permitting authority's legal authority does not meet the requirements of part 70 and the permitting authority fails to take corrective action. To commence regulatory action to partially withdraw title V program approval, EPA published the NOD in the **Federal Register**. Pursuant to 40 CFR 70.10(b)(2), publication of the NOD commenced a 90-day period during which the State of California had to take significant action to assure adequate administration and enforcement of the local districts' programs. As described in EPA's NOD, the Agency determined that "significant action" in this instance meant the revision or removal of California Health and Safety Code 42310(e), so that the local air pollution control districts could adequately administer and enforce the title V permitting program for stationary agricultural sources that are major sources of air pollution.

During the 90-day period that the State was provided to take the necessary corrective action, EPA proposed to partially withdraw title V program approval in each of the 34 California districts with full program approval. See 67 FR 48426 (July 24, 2002). Since the State did not take the necessary action to assure adequate administration and enforcement of the title V program within the required time frame, EPA took final action, pursuant to our authority at 40 CFR 70.10(b)(2)(i), to partially withdraw approval of the title V programs for the 34 local air districts listed above.

## II. Description of Proposed Action

We are proposing to approve the program revision of the 34 Clean Air Act title V Operating Permits programs in the State of California. However, finalization of this proposed rulemaking

is contingent upon our receipt of a legal opinion from the California Attorney General that confirms that the elimination of the agricultural permitting exemption from State law provides the 34 districts with authority to issue title V permits to major stationary agricultural sources. EPA will not promulgate final approval of the program revision until this legal opinion has been received.

## III. Effect of EPA's Rulemaking

Our proposal, if finalized, would result in the 34 districts having title V programs that require all major stationary sources to obtain title V operating permits. It would also terminate EPA's implementation of a part 71 Federal operating permit program for State-exempt major stationary agricultural sources within the jurisdiction of the 34 California air districts listed at the beginning of this proposal. If EPA finalizes this rule, EPA would not issue any permits to these sources, since the 34 districts would have the authority to issue title V permits to major agricultural stationary sources beginning on January 1, 2004. Therefore, if EPA finalizes this rule, EPA will no longer require major stationary agricultural sources to submit part 71 permit applications and will suspend any outstanding application deadlines.

The May 22, 2002, NOD started an 18 month sanctions clock pursuant to CAA section 179(b). CAA Sec. 502(i)(1) and (2), 40 CFR 70.4(k) and 70.10(b)(2)–(4). Finalization of today's proposal would terminate this sanctions clock.

## IV. Request for Public Comment

We are soliciting public comment on all aspects of this proposal. Written comments will be considered before taking final action. To comment on today's proposal, you should submit comments by mail (in triplicate if possible) as described in the **ADDRESSES** section listed in the front of this document. We will consider any written comments received by November 7, 2003.

## V. Administrative Requirements

Under Executive Order 12866 (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. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as

meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed 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 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve an existing requirement under state law, and does not alter the relationship or the distribution of power and responsibilities 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), because it is not economically significant.

In reviewing revisions to state operating permit programs submitted pursuant to Title V of the CAA, EPA will approve such revisions provided that they meet the criteria 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 part 70 program revision for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a part 70 program revision, to use VCS in place of a part 70 program revision that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology