

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 provided to the State 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 specified 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. See 67 FR 63551 (October 15, 2002).

On September 22, 2003, the Governor of California signed SB 700, which revised State law to remove the agricultural permitting exemption. The legislation eliminated the exemption and therefore corrected the deficiency we identified in the May 22, 2002 NOD. Therefore, on October 8, 2003, EPA proposed to approve a revision to the 34 district title V programs because districts now have the authority to permit all major stationary sources, including those agricultural sources that were formerly exempt from title V under State law (68 FR 58055). Based on this change in state law and 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, we are finalizing the program revision today.

II. Comments Received by EPA on Our Proposed Rulemaking and EPA's Responses

EPA received one set of comments. Copies of these comments are available for inspection during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105.

A summary of the significant comments, and our response thereto, follow.

Comment: The commenter alleges that the proposed rule requires review by the Office of Management and Budget (OMB), and alleges that "farmers were

not included" in the OMB review of the proposed part 70 rule in 1992. In addition, the commenter claims that regulation of stationary agricultural sources by California air pollution control districts will result in economic hardship for California farmers.

Response: It is difficult to determine the legal requirement that the commenter alleges EPA violated because the comment does not cite to any particular statutory, regulatory or executive requirement. To the extent the comment asserts that the rule must undergo OMB review, EPA disagrees. As we stated in the proposed rule, under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action", and therefore not subject to OMB review. With regard to OMB review in 1992, it is not clear which rulemaking the commenter is referring to. If he is referring to the final part 70 rule, his statement is incorrect because the part 70 rule did undergo OMB review. The rule was judged to be "major" under Executive Order 12291, and a Regulatory Impact Analysis (RIA) was prepared and made available for public comment as part of EPA's May 10, 1991 proposal of part 70 [56 FR 21712]. All interested parties, including farmers, had access to the RIA and an opportunity to comment on it. If the commenter is referring to EPA's rulemaking actions to grant interim approval to individual district title V programs in California, he is incorrect because OMB exempted those state-specific actions from review. See, for example, EPA's April 24, 1996 final rule granting interim approval of the San Joaquin Valley Unified APCD title V operating permit program [61 FR 18083].

EPA also disagrees with the commenter's claim that approval of this program revision for 34 title V Operating Permits Programs will result in economic hardship for California farmers. Today's action affects only major agricultural stationary sources that already are subject to EPA's part 71 title V permitting program, and will not result in regulation of the majority of farms which are not subject to title V. The title V program revision EPA is approving, and EPA's termination of its implementation of a part 71 federal operating permit program for State-exempt major stationary agricultural sources, merely transfers the authority to permit such sources from EPA to the 34 districts. As stated in the Administrative Requirements section of this notice, this action merely approves state law as meeting Federal requirements and imposes no additional

requirements beyond those imposed by state law. Accordingly, the Administrator has certified that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). In making this certification, we note that the Regulatory Flexibility Act requires a certification only as to entities directly regulated by a rulemaking (e.g., farms that are major stationary sources under the Clean Air Act); it does not require us to look at small farms not subject to the final rule, or to downstream businesses or consumers that deal with the larger farms. See *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855 (D.C. Cir. 2001).

III. Description of EPA's Final Action

We are approving the program revision of the 34 Clean Air Act title V Operating Permits programs in the State of California. Our action is based on 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.

IV. Effect of EPA's Rulemaking

Our final action means that the 34 districts have title V programs that require all major stationary sources to obtain title V operating permits. It also terminates EPA's implementation of a part 71 federal operating permit program for formerly State-exempt major stationary agricultural sources within the jurisdiction of the 34 California air districts listed at the beginning of this final rule. EPA will not issue any permits to these sources, since the 34 districts will have the authority to issue title V permits to major agricultural stationary sources beginning on January 1, 2004. Therefore, EPA is no longer requiring major stationary agricultural sources to submit part 71 permit applications and suspends 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). California has undertaken all of the required corrections in response to the NOD. Therefore, the sanctions clock is terminated as of November 13, 2003, even though EPA's implementation of the Part 71 program will not be terminated until January 1, 2004.