available in the docket. The EPA also compiled a Technical Support Document (TSD) for each of the nineteen districts, which describes each operating permits program in greater detail.

In this notice EPA is taking final action to promulgate interim approval of the operating permits program for Amador County APCD, Butte County APCD, Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lassen County APCD, Mendocino County APCD, Modoc County APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Siskiyou County APCD, Tuolumne County APCD, and Yolo-Solano AQMD, California.

### **II. Final Action and Implications**

#### A. Analysis of State Submission

EPA received two comment letters on the proposed rulemaking for the districts, one from the National Environmental Development Associations Clean Air Regulatory Project ("NEDA/CARP"), and one from the American Forest & Paper Association ("AF&PA"), both dated January 9, 1995. The issues discussed in the December 8, 1994 proposal were not changed as a result of public comment with the exception of the implementation of section 112(g) from the effective date of the title V program. EPA's final action is being revised from the proposed notice with respect to this issue. This change is discussed below along with other issues raised during the public comment period.

## 1. 112(g) Implementation

NEDA/CARP and AF&PA both submitted comments regarding EPA's proposed approval of the nineteen California districts' preconstruction permitting programs for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a District rule implementing EPA's section 112(g) regulations. In opposition to the proposed action, the commenters argued that the nineteen districts should not, and cannot, implement section 112(g) until: (1) EPA has promulgated a section 112(g) regulation; and (2) the District has a section 112(g) program in place.

EPA received many comments nationally on this issue, and agrees that it is not reasonable to expect the states and districts to implement section 112(g) before a rule is issued. EPA has therefore published an interpretive notice in the **Federal Register** regarding section 112(g) of the Act: 60 FR 8333 (February 14, 1995). This notice outlines EPA's revised interpretation of 112(g) applicability prior to EPA's issuing the final 112(g) rule. The notice states that major source modifications, constructions, and reconstructions will not be subject to 112(g) requirements until the final rule is promulgated. EPA expects to issue the 112(g) final rule in September 1995.

The notice further explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States and Districts time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), the nineteen districts must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing District regulations.

For this reason, EPA is proposing to approve the nineteen districts' preconstruction review programs as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by the nineteen districts of rules specifically designed to implement section 112(g). However, since approval is intended solely to confirm that the districts have mechanisms to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is limiting the duration of its approval of the use of preconstruction programs to implement 112(g) to 12 months following promulgation by EPA of the section 112(g) rule.

#### 2. Insignificant Activities

NEDA/CARP and AF&PA both assert that EPA lacks the legal footing to reject the districts' present "insignificant levels," and that EPA has no authority to hold out "suggested" emission levels as a threshold for receiving full approval.

EPA disagrees that it lacks authority to reject inappropriate or unsupported insignificance levels, or to articulate on a program-by-program basis levels that it definitely would accept. Part 70 allows States to deem certain activities or emission levels insignificant if they are listed in the program submitted to EPA and approved by EPA, but does not grant States authority to create new

exemptions without EPA approval. Section 70.4(b)(2) requires the submittal of criteria used to determine insignificant activities, and § 70.5(c) does not allow States to create an insignificant activities permit exemption if the exemption will interfere with the imposition of applicable requirements or the collection of fees. In addition, part 70 explicitly authorizes EPA to approve insignificant activities based on emission levels (§ 70.5(c)). EPA has the legal authority to reject district provisions which contravene these part 70 requirements.

As stated in the proposal, most of the nineteen programs provided EPA with no criteria or information on the level of emissions of activities on the districts' exemption lists. In addition, the specific insignificant activities provisions submitted by the districts have raised concerns with EPA regarding the districts' ability to ensure that applicable requirements are included in permits. None of the nineteen districts provided EPA with a demonstration to the contrary. For these reasons, the nineteen districts' lists of insignificant activities are not acceptable.

In the proposed rulemaking EPA suggested insignificance levels that the Agency would find acceptable even without a further demonstration. Neither of the commenters specifically addressed these sugested insignificance levels. EPA would like to note that the nineteen districts have the flexibility to modify their regulations and submit criteria for EPA approval of new exemptions, as long as each district demonstrates, or EPA is otherwise satisfied, that such alternative emission levels are insignificant compared to the level of emissions and types of units that are permitted or subject to applicable requirements.

# 3. Public Petitions to EPA

NEDA/CARP and AF&PA both registered their concern regarding the public petition requirements, notification and other procedural requirements, stating that they believe these requirements will thwart efforts in California to develop market incentive approaches to emissions reductions.

Provisions for public participation, notification and public petitions are required under title V of the Clean Air Act (CAA 502(b)(6) for public participation, and CAA 505(b)(2) for public petitions), and are therefore included in part 70, the regulations that implement title V. EPA believes public participation does not preclude a district from developing market based incentive programs.