in the November 29, 1994 **Federal Register** proposal may have been an overly inclusive interpretation of section 70.6(c)(1). Section 70.6(c)(1) reads, ''Any document (including reports) required by a part 70 permit shall contain a certification by a responsible official * * *'' While the commenter focused on the words ''any document,'' EPA believes that the overly inclusive language in the proposed interim approval is the reference to any document submitted ''in conjunction with'' a permit. Therefore, Bay Area may substitute the phrase ''required by,'' rather than ''in conjunction with,'' when correcting the above deficiency.

3. Insignificant Activities

Two commenters responded to EPA's identification of deficiencies regarding Bay Area's insignificant activities list and significance thresholds. The commenters raised several points, the first being that EPA's recommended insignificance levels would impose unnecessary administrative burdens.

EPA does not agree that the cut-off levels proposed in the November 29, 1994 notice of 2 tons per year (tpy) for criteria pollutants and the lesser of 1000 pounds per year or the section 112(g) de minimis levels for hazardous air pollutants (HAP) would create an unreasonable administrative burden. Insignificant activities are relevant only during the initial application phase when the source has to determine what information must be included in its permit application. Regardless of the list of insignificant activities or the cut-off emissions levels, the source may not omit from its application any information that is necessary to determine applicability, impose an applicable requirement, or assess fees (section 70.5(c)).

EPA also disagrees that the requirement to describe emissions from activities not qualifying as insignificant is overly burdensome. First, sources can use reliable emissions factors rather than extensive testing and monitoring. Second, the source descriptions required by section 70.5(c)(3)(ii) need only include sufficient detail to determine fees and the applicability of requirements of the Act. Finally, in many cases, smaller units can be aggregated and described in general terms if such an approach would not interfere with determining whether and how an applicable requirement applies at a source.

A second point raised in comment was that the redesignation of Bay Area to attainment status for ozone justifies a higher insignificance threshold for criteria pollutants. EPA agrees that emissions cut-offs for insignificant activities should be based on area-specific circumstances and analysis. The proposed notice recommended a 2 tpy cut-off for criteria pollutants for the Bay Area because of the large number of sources and emissions in the District, the high population density, and the distinct relationship between regulatory compliance and air quality improvement in the Bay Area. While EPA is open to evaluating alternative emissions cut-offs, such a proposal must clearly demonstrate that the higher level of emissions are insignificant for the Bay Area.

An industry commenter also requested that EPA accept Bay Area's categorical permit exemption list as its list of insignificant activities. While part 70 allows state and local agencies to submit a list of insignificant activities and emissions levels for approval, this list must be accompanied by selection criteria that will assure insignificance with respect to federal applicable requirements (sections 70.4(b)(2) and 70.5(c)). The fact that the District has a preexisting exemption list does not constitute sufficient justification of insignificance. Because Bay Area has not provided EPA with justification for each categorical exemption, EPA does not have adequate information on which to evaluate the activities.

A fourth point raised in response to EPA's recommended insignificance thresholds was the suggestion that a single emissions cut-off be used to define insignificant activities for HAP-emitting sources. The commenter suggested that a single threshold would be more appropriate than the section 112(g) de minimis values since the Act uses a broad 10 tpy applicability threshold.

EPA recommended using the proposed section 112(g) de minimis levels because they define what EPA, through research and science, has determined to be significant enough to warrant review by the public and EPA on a facility-wide basis. EPA believes that the section 112(g) de minimis levels would more easily allow the permitting authority to verify independently the applicability of requirements and should serve as an upper bound on which activities may be excluded from permit applications. The same result may be achieved, however, with a single cut-off of 1000 pounds per year if the threshold is accompanied by a caveat that activities and emissions necessary for determining the applicability of, or imposing an applicable requirement on, the source may not be omitted from the permit application.

A fifth comment regarding insignificant activities was Bay Area's objection to adding an ''applicable requirement gatekeeper'' that excludes activities subject to an applicable requirement from classification as insignificant. Bay Area asserted that the applicable requirement gatekeeper for insignificant activities is too stringent since some state implementation plans (SIPs) contain requirements such as opacity limits that would generally apply to all activities at the facility regardless of size.

EPA understands Bay Area's concerns and believes that the applicable requirement gatekeeper can be added to Bay Area's program without nullifying the usefulness of insignificant activities. EPA recognizes that certain requirements approved into the SIP, such as opacity standards, are applicable not to specific emissions units, but instead to the facility as a whole. Therefore, the presence of an applicable opacity limit does not mean that every emissions unit at the facility must be described in the application since the applicability of the requirement is clear.

4. Notice to the Public and Affected States

Bay Area disagreed with the public and affected state notice deficiencies identified by EPA in the proposed interim approval notice. First, Bay Area objected to revising its program to include affected state notice provisions for Native American tribes since there is not currently a potentially affected tribe that is eligible for treatment as a state.

EPA is concerned about Bay Area's proposal to delay adoption of affected state notice provisions until tribes apply for state status. Although the federal rule that will enable tribes to apply for treatment as states has not yet been finalized, and there are no tribes currently eligible for treatment as a state under the Act, EPA believes that the likelihood of Native American tribes qualifying as affected states under part 70 is great and that Bay Area will ultimately need to revise its rule to address this outcome. Nonetheless, as an alternative to up-front adoption of affected state notice provisions, EPA will accept a commitment from Bay Area to: (1) initiate rule revisions upon notification from EPA that an affected tribe has applied for state status, and (2) provide affected state notice to tribes upon their filing for state status, that is, prior to the District's adoption of affected state notice rules. Second, Bay Area also objected to adding the phrase ''by other means if necessary to assure adequate notice to the affected public''