

is also proposing approval of Mojave Desert's synthetic minor regulations pursuant to section 112 of the Act. Today's action also proposes approval of Mojave Desert's mechanism for receiving straight delegation of section 112 standards.

DATES: Comments on these proposed actions must be received in writing by August 2, 1995.

ADDRESSES: Comments should be addressed to Sara Bartholomew, Mail Code A-5-2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Sara Bartholomew (telephone 415/744-1170), Mail Code A-5-2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act (Act) as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 CFR part 70 (part 70). Title V requires states to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit title V programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must

establish and implement a federal program.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of federally enforceable state operating permits. Permits issued pursuant to an operating permit program meeting these criteria and approved into the SIP are considered federally enforceable. EPA has encouraged states to consider developing such programs in conjunction with title V operating permit programs for the purpose of creating federally enforceable limits on a source's potential to emit. This mechanism would enable sources to reduce their potential to emit to below the title V applicability thresholds and avoid being subject to title V. (See the guidance document entitled, "Limitation of Potential to Emit with Respect to Title V Applicability Thresholds," dated September 18, 1992, from John Calcagni, Director of EPA's Air Quality Management Division.) On November 3, 1993, EPA announced in a guidance document entitled, "Approaches to Creating Federally Enforceable Emissions Limits," signed by John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards (OAQPS), that this mechanism could be extended to create federally enforceable limits for emissions of hazardous air pollutants (HAP) if the program were approved pursuant to section 112(l) of the Act.

II. Proposed Action and Implications

This document focuses on specific elements of Mojave Desert's title V operating permits program submittal that must be corrected to meet the minimum requirements of 40 CFR part 70. The full program submittal, the Technical Support Document containing a detailed analysis of the full program, and other relevant materials are available as part of the public docket.

A. Analysis of State Submission

1. Title V Support Materials

Mojave Desert's title V program was submitted by the California Air Resources Board (CARB) on November 24, 1993 and found by EPA to be incomplete, due to the lack of Federal Operating Permit regulations. Mojave resubmitted its program on March 10, 1995 and it was found to be complete on May 11, 1995. The Governor's letter requesting source category-limited interim approval, California enabling legislation, and Attorney General's legal opinion were submitted by CARB for all

districts in California and therefore were not included separately in Mojave Desert's submittal. The Mojave Desert submission does contain a complete program description, District implementing and supporting regulations, and all other program documentation required by § 70.4. An implementation agreement between Mojave Desert and EPA is currently being developed.

2. Title V Operating Permit Regulations and Program Implementation

The Mojave Desert's title V regulations were adopted on December 21, 1994. They consist of Regulation XII (Federal Operating Permits). The District also submitted supporting materials including the following rules: Rule 219 (Equipment Not Requiring a Permit, adopted December 21, 1994), 221 (Federal Operating Permit Requirement, adopted November 23, 1994), 301 (Permit Fees, adopted July 9, 1976, amended October 23, 1994), 312 (Fees for Federal Operating Permits, adopted December 21, 1994), and 430 (Breakdown Provisions, adopted May 7, 1976, amended December 21, 1994). These regulations "substantially meet" the requirements of 40 CFR part 70, § 70.2 and § 70.3 for applicability; § 70.4, § 70.5, and § 70.6 for permit content, including operational flexibility; § 70.7 for public participation and minor permit modifications; § 70.5 for complete application forms; and § 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, nine program deficiencies outlined below are interim approval issues. Recommended changes are detailed further in the Technical Support Document.

Variances—Mojave Desert has authority under State and local law to issue a variance from State and local requirements. Sections 42350 *et seq.* of the California Health and Safety Code and District Regulation 1, sections 431-433 allow the District to grant relief from enforcement action for permit violations. The EPA regards these provisions as wholly external to the program submitted for approval under part 70, and consequently, is proposing to take no action on these provisions of State and local law.

The EPA has no authority to approve provisions of state or local law, such as the variance provisions referred to, that are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through