procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

*Insignificant Activities*—Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state must request and EPA must approve as part of that state's program any activity or emission level that the state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

In Rule 219 (Equipment Not Requiring a Permit) Mojave Desert provided both threshold emissions levels and a list of specific equipment which would not require a permit. This rule also clearly states that equipment need not be listed in a permit application for a federal operating permit if it falls below the threshold, is on the list of equipment in the rule, is not subject to an applicable requirement, and is not included in the equipment list solely due to size or production rate. The only weakness in these gatekeepers is that the word ''and'' is missing between sections (B)(1)(b) and (c), and (B)(1)(c) and (d) of Rule 219. Adding ''and'' in these two places would clarify that all of the four gatekeepers must apply for equipment to be exempt, not just one. These corrections must be made in order to receive full approval.

Rule 219 set the threshold criteria for equipment to be exempt from a federal operating permit as 10% of the applicable threshold for determination of a major source, or 5 tons per year of any regulated air pollutant (whichever is less), and for HAP any de minimus level, any significance level, or 0.5 tons per year (whichever is less). For other state and district programs, EPA has proposed to accept, as sufficient for full approval, emission levels for insignificant activities of 2 tons per year for criteria pollutants and the lesser of 1000 pounds per year, section 112(g) de minimis levels, or other title I significant modification levels for HAP and other toxics (40 CFR 52.21(b)(23)(i)). EPA believes that these levels are sufficiently below the applicability thresholds of many applicable requirements to assure that no unit potentially subject to an applicable requirement is left off a title V application.

Mojave Desert did not describe the criteria used to determine the insignificant activities or emission levels outlined in Rule 219. In addition, Mojave's threshold levels as described above are higher than those EPA has proposed to accept. Because of this, EPA is requesting comment on the appropriateness of these emission levels for determining insignificant activities in Mojave Desert. This request for comment is not intended to restrict the ability of other states and districts to propose, and EPA to approve, different emission levels if the state or district demonstrates that such alternative emission levels are insignificant compared to the level of emissions from and types of units that are permitted or subject to applicable requirements.

3. Title V Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum.'' See § 70.9(b)(2)(i).

Mojave Desert has opted to make a presumptive minimum fee demonstration. Mojave Desert's existing fee schedule (Element 7) requires title V facilities to pay an amount equivalent to $48.76 per ton in annual operating fees. This amount meets EPA's presumptive minimum (CPI adjusted). The $48.76 per ton amount is based on a calculation of 1993/94 fee revenues per ton of emissions plus a supplemental title V fee of 14.3% that covers the additional costs posed by title V. Mojave Desert will maintain an accounting system and is prepared to increase fees, as needed, to reflect actual program implementation costs.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Section 112—Mojave Desert has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining ''applicable requirements'' and ''federally enforceable'' and mandating that all federal air quality requirements must be incorporated into permits. EPA has determined that this legal authority is sufficient to allow Mojave Desert to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the Technical Support Document accompanying this action and the April 13, 1993 guidance memorandum entitled, ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz.

b. Title IV—Mojave Desert is submitting proposed Rule 1210 (Acid Rain Provisions of Federal Operating Permits) to its Board in June, 1995, which incorporates the pertinent provisions of part 72, either by reference or in specific language in the rule. EPA interprets ''pertinent provisions'' to include all provisions necessary for the permitting of affected sources.

*B. Proposal for and Implications of Interim Approval*

1. Title V Operating Permits Program

*a. Proposed Interim Approval*—The EPA is proposing to grant interim approval to the operating permits program submitted by CARB on behalf of Mojave Desert on March 10, 1995. Following interim approval, Mojave Desert must make the following changes to receive full approval:

(1) Revise Rule 1203(G)(3)(g), which prohibits the permit shield from applying to Administrative Permit Amendments and Significant Permit Modifications, to include a reference to