programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Under part 70, a state must request and EPA may 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.

San Diego submitted an extensive list of insignificant activities that the District determined to be insignificant based on having ''relatively low potential to emit'' (Regulation XIV, Appendix A). While the potential to emit criterion is an acceptable mechanism for identifying insignificant units, the District did not provide emissions level cut-offs for many of the listed units. For instance, Regulation XIV, Appendix A(p)(17) exempts most refrigeration units regardless of size. Such units, if they have a charge rate of 50 pounds or more of a Class I or II ozone-depleting compound, would be subject to applicable requirements and could not be considered insignificant. EPA believes that in order to have fully approvable insignificant activities provisions, the listed units should not confuse the regulated community's obligation to provide all information needed to determine the applicability of, or to impose, any applicable requirement.

For interim approval, EPA is relying on several rules in Regulation XIV that affect the scope and usage of insignificant activities. Specifically, Rule 1401(a) ensures that the District's permit exemption rule, Rule 11, will not interfere with title V applicability determinations. Similarly, Rule 1401(b)(4) ensures that emissions from insignificant units will be included in all title V applicability determinations. In addition, Rules 1411, 1414(f)(1), 1414(f)(3)(iii) (A)&(B), 1414(f)(4) and the application ''Completeness Criteria'' guidance document require the permit application to include all information necessary to determine whether and how an applicable requirement applies at a source, regardless if a unit qualifies as insignificant. Finally, Rules 1401(b)(4) and 1401(c)(24) prohibit activities that are subject to an applicable requirement (other than two specified generic facility-wide requirements) from qualifying as an insignificant activity. For full approval, San Diego must revise its list of insignificant activities for title V permitting as discussed in section II.B.1.5. of this notice.

b. Variances

San Diego's Hearing Board has the authority to issue variances from requirements imposed by State and local law. *See* California Health and Safety Code sections 42350 *et seq.* In the legal opinion submitted for California operating permit programs, California's Attorney General states that ''[t]he variance process is not part of the Title V permitting process and does not affect federal enforcement for violations of the requirements set forth in a Title V permit.'' (Emphasis in original.)

EPA regards the State and District variance provisions as wholly external to the program submitted for approval under part 70, and consequently, is not taking action on those provisions of State and local law. 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. 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 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.''

c. Reporting of Permit Deviations

Part 70 requires prompt reporting of deviations from permit requirements, and San Diego has not defined ''prompt'' in its program. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviations likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

d. Temporary Authorization

San Diego's title V regulation provides for the issuance of a ''temporary authorization'' which allows a source to operate without an operating permit. Temporary authorizations are not required by part 70, but they exist in San Diego's title V program in order to maintain consistency with the District's existing local permitting program. San Diego structured its temporary authorization mechanism to ensure that the issuance of temporary authorizations would not interfere with any of the requirements established under part 70. Specifically, temporary authorizations may only be issued to sources that have met the requirements of section 112(g) or the preconstruction permitting requirements under parts C or D of title I; i.e., the same scope of sources that do not have to submit applications for title V permits or title V permit modifications until 12 months after commencing operation (section 70.5(a)(1)(ii)). Furthermore, possession of a temporary authorization does not affect a source's obligation to submit a title V permit application, and the temporary authorization expires on the date that a complete title V permit application is due.

e. Enhanced New Source Review

San Diego's title V permit program provides for enhanced preconstruction review, an optional process that allows sources to satisfy both new source review and title V permit modification requirements at the same time. Any modification processed pursuant to San Diego's enhanced preconstruction review procedures may be incorporated into the title V permit as an administrative permit amendment. These enhanced procedures obviate the need to undergo two application, public notice, and permit issuance/revision processes for the same change.