this action and the April 13, 1993 guidance memorandum entitled, "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Authority for Title IV Implementation

On March 7, 1995, San Diego incorporated by reference part 72, the federal acid rain permitting regulations. The incorporation by reference was codified in Rule 1412 of Regulation XIV and submitted to EPA on April 4, 1995.

B. Proposed Interim Approval and **Implications**

1. Title V Operating Permits Program

The EPA is promulgating direct final interim approval to the operating permits program submitted by the California Air Resources Board, on behalf of the San Diego Air Pollution Control District, on April 22, 1994 and amended on April 4, 1995 and October 10, 1995. Areas in which San Diego's program is deficient and requires corrective action prior to full approval are as follows:

(1) California State law currently exempts agricultural production sources from permit requirements. CARB has requested source category-limited interim approval for all California districts. In order for San Diego's program to receive full approval (and to avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

(2) Part 70 requires that any significant change in monitoring permit terms or conditions be processed as a significant permit modification. Rule 1401(c)(43), definition of "Significant Permit Modification," must be revised accordingly. (See section 70.7(e)(4).)

(3) San Diego's treatment of affected state notification is unclear in the program submittal. Part 70 requires that air permitting authorities provide notice to all affected states of all proposed permits, minor and significant permit modifications, and renewals (section 70.8(b)(1)). The term "affected state" is defined in section 70.2 as a contiguous state whose air quality may be affected or a state within 50 miles of a permitted source. EPA is also undergoing a rulemaking action that will allow Native American lands to be treated as a state. (See 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).)

San Diego's program does not define "affected state," and it does not specify any affected state notification procedures. It does provide, however, the requirement to notify affected states

in the case of minor or significant permit modifications. In addition, San Diego has indicated that it currently has cooperative permitting agreements with Native American tribes.

EPA is not concerned about the notice deficiencies with respect to states that border California because of San Diego's coastal location. On the other hand, in order to receive full approval on this issue, San Diego's program must ensure that Native American tribes will be adequately notified and consulted once such tribes apply for treatment as affected states. If San Diego's existing cooperative permitting practices meet the affected state notification requirements set out in section 70.8(b), the District may submit them to EPA for incorporation into its title V program to satisfy the affected state notice requirements. As an alternative to upfront adoption of affected state notice provisions or incorporation of existing practices, EPA will accept a commitment from San Diego 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 a tribe's filing for state status, that is, prior to the District's adoption of affected state notice rules.

(4) Revise Rule 1410(h)(7), paragraph 2 to require permit reopening procedures for any inactive status permit that is modified to reflect new applicable requirements upon being converted to active status if there are 3 years or more remaining on the term of its 5-year permit. (See section $70.7(\hat{f})(1)(\hat{i}).)$

(5) Remove any activities from the District's list of insignificant activities that are subject to a unit-specific applicable requirement and adjust/add size cut-offs to ensure that the listed activities are truly insignificant. (See sections 70.4(b)(2) and 70.5(c).)

(6) Remove the reference to Rules 1401 (j) and (k) in Rule 1401(i). This reference to minor and significant permit modifications in the provisions for administrative permit amendments could be read to be inconsistent with the definition of "significant permit modification" (Rule 1401(c)(43)), which correctly defaults unspecified changes to the significant permit modification process. In addition, the phrase "These shall include the following" in the administrative permit amendment section (Rule 1410(i)) creates ambiguity about whether the list of administrative permit amendments is exhaustive or open ended. Because part 70, section 70.7(d)(vi) requires that administrative permit amendments be specifically approved as part of the title V program,

the word "include" in the above phrase must also be removed.

(7) The District must revise either the definition of "federally mandated new source review" or the definition of "federally enforceable requirement" to clearly include minor new source review as an applicable requirement under title V.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, San Diego is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a federal permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of San Diego's part 70 program that EPA is acting on in this notice applies to all part 70 sources (as defined in the approved program) within San Diego's jurisdiction. The approved program does not apply to any part 70 sources over which an Indian tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-18 (Nov. 9, 1994). The term "Indian tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

2. State Preconstruction Permit Program Implementing Section 112(g)

The EPA has published an interpretive notice in the Federal Register regarding section 112(g) of the Act (60 FR 8333; February 14, 1995) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice also 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 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), San Diego must be able to implement section 112(g) during the period between promulgation of the