Issued in Washington, DC on November 29, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Jan. 30, 1997.*

Naples, FL, Naples Muni, VOR or GPS RWY 5, Amdt 5 CANCELLED
Naples, FL, Naples Muni, VOR RWY 5, Amdt 5
Naples, FL, Naples Muni, VOR or GPS RWY 23, Amdt 6 CANCELLED
Naples, FL, Naples Muni, VOR RWY 23, Amdt 6
Taylorville, IL, Taylorville Muni, NDB or GPS RWY 18, Amdt 3 CANCELLED
Taylorville, IL, Taylorville Muni, NDB RWY 18, Amdt 3
Perkasie, PA, Pennridge, VOR or GPS RWY 8, Amdt 1 CANCELLED
Perkasie, PA, Pennridge, VOR RWY 8, Amdt 1
Houston, TX, Ellington Field, VOR/DME or TACAN or GPS RWY 22, Amdt 2 CANCELLED
Houston, TX, Ellington Field, VOR/DME or TACAN RWY 22, Amdt 2

[FR Doc. 96–30998 Field 12–4–96; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61, 63 and 70

[AD–FRL–5658–4]

Clean Air Act Final Interim Approval, Operating Permits Program; State of Alaska and Clean Air Act Final Approval in Part and Disapproval in Part, Section 112(l) Program Submittal; State of Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Interim Approval, and Final Approval in Part and Disapproval in Part.

SUMMARY: EPA grants final interim approval of the operating permits program submitted by the Alaska Department of Environmental Conservation for the purpose of complying with federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EPA also grants final approval in part and disapproval in part of the program submitted by the Alaska Department of Environmental Conservation for the purpose of implementing and enforcing the hazardous air pollutant requirements under section 112 of the Act.

EFFECTIVE DATE: December 5, 1996.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval, and the approval in part and disapproval in part, are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Office of Air Quality, OAQ–107, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; telephone (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Title V—Background

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which 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 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. 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 two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

EPA must apply sanctions to a State 18 months after EPA disapproves the program. In addition, discretionary sanctions may be applied any time during the 18-month period following the date required for program submittal or program revision. If the State has no approved program two years after the date required for submission of the program, EPA will impose additional sanctions, where applicable, and EPA must promulgate, administer, and enforce a federal permits program for the State. EPA has the authority to collect reasonable fees from the permittees to cover the costs of administering the program.

On May 31, 1995, the Alaska Department of Environmental Conservation (referred to herein as ''ADEC,'' ''the Department,'' ''Alaska'' or ''the State'') submitted a title V program for EPA review and approval. EPA notified the State in writing on July 13, 1995, that the submittal was complete. The State submitted additional information to EPA to supplement its May 31, 1995, submittal on August 16, 1995, February 6, 1996, February 27, 1996, July 5, 1996, and August 2, 1996. EPA considered these supplemental submittals to be a material change to ADEC's May 31, 1995, program submittal and extended its official review period by 8 months to January 31, 1997. On September 18, 1996, EPA proposed to grant interim approval to Alaska's title V program. *See* 61 FR 49091. EPA received several comments on its proposal, which are discussed in section II below.

B. Section 112—Background

Section 112(l) of the Act established new, more stringent requirements for a State or local agency that wishes to implement and enforce a hazardous air pollutant program pursuant to section 112 of the Act. Prior to November 15, 1990, delegation of NESHAP regulations to State and local agencies could occur without formal rulemaking by EPA. However, the new section 112(l) of the Act requires EPA to approve State and local hazardous air pollutant rules and programs under section 112 through formal notice and comment rulemaking. Now State and local air agencies that wish to implement and enforce a federally-approved hazardous air pollutant program must make a showing to EPA that they have adequate authorities and resources. Approval is granted by EPA through the authority contained in section 112(l), and implemented through the federal rule found in 40 CFR part 63, subpart E, if the Agency finds that: (1) The State or local program or rule is ''no less stringent'' than the corresponding federal rule or program, (2) adequate authority and resources exist to implement the State or local program or rule, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the State or local program or rule is otherwise in compliance with federal guidance.

On May 17, 1995, the State requested delegation for all existing applicable 40 CFR parts 61 and 63 regulations as adopted by reference into 18 AAC 50.040. The State also requested authority to implement and enforce all future 40 CFR part 61 and 63 regulations which Alaska adopts by reference into State law. Finally, the State requested approval under the authority of 40 CFR 63.93 to substitute its State preconstruction review program regulations for the federal preconstruction review regulations in 40 CFR 63.5(b)(2)–(4) and 63.54, as these rules apply to newly constructed major affected sources or the construction of a new emission unit. The State amended its May 17, 1995 delegation request on February 27, 1996 and July 5, 1996 to include additional part 61 and part 63 regulations adopted by reference into 18 AAC 50.040.

In this notice, EPA is taking final action to promulgate interim approval of the operating permits program for the State of Alaska, and to approve in part and disapprove in part the Alaska program for implementing section 112 of the Act. EPA is also responding to comments received on the September 18, 1996, proposal.

II. Changes to Regulations and Response to Comments

A. Changes to Alaska's Regulations

On October 17, 1996, ADEC submitted a final version of the State's regulations which were adopted on September 17, 1996. These regulations included numerous editorial changes from the version that was submitted on August 2, 1996. EPA has reviewed this final version and finds, with the exceptions noted below in the response to public comment, that the editorial changes do not affect any of the preliminary decisions made in EPA's notice of proposed interim approval.

B. Response to Public Comment on Proposed Interim Approval of Alaska's Title V Program

Most of the comments EPA received on the September 18, 1996, Federal Register notice addressed EPA's proposed interim approval of Alaska's title V program. All of the comments supported interim approval of the program. EPA received comments from four oil and gas companies, two branches of the Department of Defense, a coalition of Alaska industries, and the Alaska Department of Environmental Conservation. The following summarizes the comments received and provides EPA's responses thereto.

1. Comments Relating to the State Implementation Plan

Several comments addressed regulations that do not relate to Alaska's title V program. Two commenters requested that EPA exclude 18 AAC 50.100(b) through (e) from approval under title V. EPA agrees that these provisions, which regulate sulfur dioxide emissions from nonroad engines, are not related to title V operating permits requirements and are not covered under this interim approval. These provisions will be acted on by EPA in a separate rulemaking if they are re-submitted by the State as a revision to the Alaska state implementation plan (SIP).

One commenter voiced opposition to the fuel restrictions for nonroad engines contained in 18 AAC 50.100(b) through (e). As discussed above, these provisions are not title V requirements and have not been proposed for approval by EPA as part of Alaska's title V program. Therefore, the comment is not germane to this action.

Similarly, one commenter voiced concern with respect to a change to the State's opacity standards and the State's new provisions for excess emissions due to routine operations like soot blowing, start-up, or shutdown. Again, these provisions are not title V requirements and have not been proposed for approval by EPA as part of Alaska's title V program. Therefore, the comment is not germane to this action.

2. Sources Subject to the Federally-Approved Program

One commenter requested that EPA clarify in its final action that operating permits required for the Anchorage Terminal bulk loading facility under 18 AAC 50.325(d) would not be considered federal title V operating permits but only State operating permits. EPA disagrees. Part 70 states, ''A State program with whole or partial approval under this part must provide for permitting of *at least* the following sources.'' 40 CFR 70.3(a) (emphasis added). Therefore, a State is authorized to include in its federally-approved title V program more sources than are required to be covered under 40 CFR 70.3. 18 AAC 50.325 sets forth the categories of sources that are required to obtain operating permits under State law and this entire section has been submitted to EPA as part of Alaska's title V submittal. There is nothing in the submittal from the State nor in the State's rules themselves that would distinguish sources listed in 18 AAC 325(d) from other sources required to obtain federal title V permits. (Compare, for example, the language of 18 AAC 50.325(d) to that of 50.325(c), which covers sources subject to parts C and D permits and which are also required to have title V permits under section 502(a) of the Act and 40 CFR 70.3.) Although the State could clearly amend its regulations and program submittal in the future to exempt from its title V program sources that are not required to have title V permits as a matter of federal law, EPA can only act on what has been formally submitted at this time. Therefore, until such time as the Alaska program is revised, all sources required to have operating permits under 18 AAC 50.325 are required to have federal operating permits under title.

3. Definition of ''Regulated Air Contaminant''

In the September 18, 1996, proposal, EPA stated that the Alaska definition of ''regulated air contaminant'' in AS 46.14.990(21) appeared to be narrower in scope than EPA's definition of ''regulated air pollutant'' in 40 CFR 70.2. *See* 61 FR 49094–49095. The State of Alaska questioned whether this issue is an ''applicability'' issue, the heading

EPA used for the discussion in the September proposal. EPA believes the State misunderstood EPA's use of the term ''applicability.'' EPA agrees that the difference in the two definitions does not affect the sources that are required to obtain a title V operating permit. The narrower scope of the Alaska definition, however, does impact the applicability of the requirements of Alaska's title V rules. As the State's own analysis shows, the applicability of certain requirements, specifically requirements for permit applications and off-permit changes, will be affected by the difference in the two definitions. Therefore, as discussed in the proposed interim approval, EPA still believes that the Alaska definition of ''regulated air contaminant'' is inconsistent with EPA's definition of ''regulated air pollutant'' and must be changed to receive full approval. EPA is clarifying, however, that this difference does not affect the sources required to have permits, but rather the applicability of certain requirements of the permitting program to sources required to have title V permits.

4. EPA-Issued Permits

One commenter requested clarification on EPA's discussion of the status of EPA-issued PSD permits. As discussed in the proposed interim approval, terms and conditions of EPA-issued PSD permits are applicable requirements which must be included in title V permits and the Alaska rules include the necessary provisions to ensure this occurs. *See* 61 FR 49093. The commenter expressed concern, however, that many terms and conditions of the old EPA-issued permits are obsolete, environmentally insignificant, or otherwise no longer appropriate, and requested clarification as to how such terms could be excluded from the title V permit or revised through the title V permitting process. EPA agrees that terms and conditions in some EPA-issued PSD permits and old preconstruction permits issued by States may no longer be appropriate or applicable, and therefore need not be included in a source's title V permit. As the commenter noted, EPA has issued guidance with respect to how sources and permitting authorities may utilize the title V permitting process to address this issue. See Section II.B.7 of the ''White Paper for Streamlined Development of Part 70 Permit Applications,'' from Lydia N. Wegman to Air Office Directors, dated July 10, 1995 (White Paper No. 1). This memorandum provides guidance on how to identify and address terms and conditions which are obsolete, environmentally insignificant, or otherwise no longer appropriate. White Paper No. 1 clearly states, however, that the title V permit issuance process cannot be used to revise terms and conditions that still clearly apply to the source. Such revisions must be made using revision procedures under the applicable new source review program, but may be done concurrently with the title V permit issuance process. EPA commits to working with the State and with sources in Alaska to identify provisions of EPA-issued PSD permits that are obsolete, environmentally insignificant, or otherwise no longer appropriate, and to act expeditiously on requests for permit revisions.

5. Authority to Implement Section 112 Requirements

In the September 18, 1996, Federal Register notice, EPA noted that Alaska lacked authority to implement several section 112(l) requirements, but believed that these deficiencies were not so serious as to warrant disapproval. 61 FR 49095. Alaska commented that the September 17, 1996, final version of the adopted State rules included the adoption by reference of 40 CFR 61.150 and 40 CFR 61.154 and asked that EPA remove the specific interim approval conditions related to these provisions. EPA agrees that the adoption of these two provisions remedies the deficiencies regarding implementation and enforcement of the asbestos NESHAP for waste disposal and active waste disposal sites.[1] Alaska has still not adopted, however, the provisions of 40 CFR part 61, subpart I (radionuclide NESHAP for facilities licensed by the Nuclear Regulatory Commission). Therefore, the State still lacks sufficient authority to implement all applicable section 112 requirements for title V sources in Alaska. As such, EPA concludes that the Alaska program must be granted interim rather than full approval because of this deficiency.

6. Insignificant Emission Units.

In the September 18, 1996, Federal Register notice, EPA raised two concerns with respect to Alaska's insignificant source regulations. *See* 18 AAC 50.335(m), 50.335(q)–(v), and 50.335(m). EPA received comments on both issues.

a. ''Director's discretion'' provision. EPA's first concern with Alaska's insignificant source regulations related to 18 AAC 50.335(u), which contains a list of sources that may be determined to be insignificant on a case-by-case basis. EPA stated that, before EPA could approve such a ''director's discretion'' provision, Alaska must demonstrate that each of the sources on the list would qualify as ''insignificant'' in all cases. 61 FR 49095. One commenter objected to this concern, stating that the list of sources in 18 AAC 50.335(u) narrowly defines the type and size of sources eligible for case-by-case exemption and that EPA's concern with over broad delegation was unwarranted. EPA continues to believe for the reasons discussed at 61 FR 49095 that 18 AAC 50.335(u), as submitted at the time of EPA's proposed action, was unapprovable. As the commenter notes, however, Alaska has since revised 18 AAC 50.335(u) and eliminated all but two of the sources eligible for case-by-case treatment as insignificant sources: (1) NPDES permitted ponds and lagoons used solely for settling solids and skimming oil and grease; and (2) coffee roasters with capacity of less than 15 pounds per day of coffee. *See* 18 AAC 50.335(u) (adopted September 17, 1996). EPA agrees that Alaska has adequately demonstrated that these two sources could qualify as insignificant sources in all cases. Therefore, the concern raised by EPA in the proposal regarding the scope of 18 AAC 50.335(u) has been resolved and is no longer a basis for interim approval.

b. Exemption from monitoring, recordkeeping, reporting, and compliance certification requirements. The second concern raised by EPA in the proposed interim approval was Alaska's express exemption of insignificant sources that are subject only to generally applicable requirements from the monitoring, recordkeeping, reporting, and compliance certification requirements set forth in 40 CFR 70.6. *See* 18 AAC 50.350(m)(3). In the proposal, EPA explained why it believes that part 70 does not allow such sources to be exempt from the monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6, but that part 70 instead provides only a limited exemption from some permit application requirements for insignificant sources. 61 FR 49096–49097.

EPA also discussed EPA's March 5, 1996, guidance document entitled ''White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program'' from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, to Regional Air Directors (''White Paper No. 2''), which specifically addresses how title V permits can address

[1] As discussed in section III.B.1. below, however, EPA has continuing concerns regarding the lack of training of ADEC staff who will be performing asbestos inspections.

insignificant emission units and activities subject to generally applicable requirements in a State implementation plan in a manner that minimizes the burden associated with the permitting of such emission units and activities. Briefly summarized, White Paper No. 2 makes clear that it is within the permitting authority's discretion to decide the extent to which additional monitoring (beyond that provided in the applicable requirement itself) will be required in the title V permit for insignificant emission units or activities subject to generally applicable requirements, based on the likelihood that a violation could occur from those emission units or activities. White Paper No. 2, however, in no way suggests that emission units and activities subject to applicable requirements can be exempted from compliance certification, even on a permit-by-permit basis. 61 FR 49096.

EPA also discussed in the September 18, 1996, proposal the effect of the recent Ninth Circuit decision addressing EPA's action on similar insignificant source regulations submitted as part of Washington's title V program. *Western States Petroleum Association* v. *EPA*, 87 F.3d 280 (9th Cir. 1996) (''*WSPA*''). The *WSPA* case concerned EPA's interim approval of the Washington State operating permits program, which also contains an exemption from monitoring, recordkeeping, reporting, and compliance certification requirements for insignificant emission units and activities subject to generally applicable SIP requirements.[2] *See* 60 FR 62992, 62996 (December 5, 1995) (final interim approval of Washington title V program based on exemption of insignificant emission units from certain permit content requirements); 60 FR 50166, 50171 (September 28, 1995) (proposed interim approval of Washington's title V program on same basis). The petitioners in the *WSPA* case challenged EPA's identification of this exemption as grounds for interim approval, asserting that such an exemption was allowed by part 70, and that EPA had acted inconsistently by approving other title V programs with similar exemptions. The Ninth Circuit did not opine on whether EPA's position on Washington's insignificant emission units regulations was consistent with part 70. The Court did, however, find that EPA had acted inconsistently in its title V approvals, and had failed to explain the departure from precedent the Court perceived in the Washington interim approval. The Court then ordered EPA to fully approve Washington's insignificant emission unit regulations. Since the September 18, 1996, proposal, the Ninth Circuit has denied EPA's request for rehearing on the remedy ordered by the Court.

In the Alaska proposal, EPA explained in detail why it believed its inconsistencies in approving State insignificant emission unit provisions in other title V permit programs were minimal. EPA first demonstrated that, of the eight title V programs cited by the *WSPA* Court as inconsistent with EPA's decision on Washington's regulations, four of them (Massachusetts, North Dakota, Knox County, Tennessee, and Florida) were in fact consistent with EPA's position that insignificant sources subject to applicable requirements may not be exempt from permit content requirements. EPA then stated that it was still evaluating for consistency the other four programs cited by the Court as inconsistent with EPA's decision on Washington's program (Hawaii, Ohio, North Carolina, and Jefferson County, Kentucky) and that these four programs may ultimately be determined to impermissibly exempt insignificant emission units from permit content requirements. EPA noted, however, that as of September 1996, EPA had given or proposed to give full or interim approval to 113 State and local title V programs, and that, at most, only Hawaii, Ohio, North Carolina, and Jefferson County, Kentucky, presented inconsistencies with EPA's proposed action on Alaska's insignificant source regulations. EPA concluded that these four potential inconsistencies represented a relatively minor set of deviations from EPA's normal policy as manifested in the vast majority of title V program approvals and in White Paper No. 2. 61 FR 69096–69097.

The commenter raised several issues with respect to EPA's proposal that Alaska eliminate the exemption from monitoring, recordkeeping, reporting, and compliance certification requirements for insignificant sources subject to generally applicable requirements. First, the commenter asserted that the Alaska insignificant source rules satisfy all applicable gatekeepers set forth in part 70 and incorporated by reference the positions stated in petitioners' briefs in the *WSPA* case regarding the criteria for EPA review of State and local title V programs. In essence, the commenter argued that part 70 allows a permitting authority to exempt insignificant sources subject to only generally applicable requirements from the monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6.

EPA has addressed at length its position that part 70 does not allow the exemption of insignificant sources subject to generally applicable requirements from the monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6 in its decisions on the Washington title V program, the Tennessee title V program, the proposal on the Alaska title V program and the United States briefs filed in the *WSPA* case. *See* 61 FR 49091 (proposed interim approval of Alaska title V program); 61 FR 39335 (July 29, 1996) (final interim approval of Tennessee title V program); 61 FR 9661 (March 11, 1996) (proposed interim approval of Tennessee title V program); 60 FR 62992 (final interim approval of Washington title V program); 60 FR 50166, 50171 (September 28, 1995) (proposed interim approval of Washington title V program).[3] EPA incorporates by reference the analysis set forth in those documents. In summary, EPA believes that 40 CFR 70.5 authorizes a permitting authority to grant certain relief for insignificant emission units from title V permit application requirements so long as no application omits any information necessary to determine the applicability of or to impose any applicable requirement or any required fee. Nothing in part 70, however, authorizes a permitting authority to exempt from the title V permit applicable requirements that apply to insignificant emission units; any monitoring, recordkeeping, or reporting necessary to assure compliance with those applicable requirements; and the requirement to certify compliance with all permit terms and conditions, including those that apply to insignificant emission units.

Next, the commenter disagreed with EPA's conclusion that EPA has approved programs that exempt insignificant emission units subject to applicable requirements from some or all permit content requirements in only a handful of cases. Specifically, the commenter argued that the plain language of the Massachusetts and Florida programs exempt insignificant emission units from permit content requirements and that EPA has since taken or proposed action on three additional programs that exempt insignificant emission units from permit content requirements. The commenter also stated that the majority of the 113 programs on which EPA has taken or proposed full or interim approval are silent on whether insignificant emission units must be regulated in title V

[2] The Alaska insignificant source provisions are modeled closely after the Washington provisions.

[3] The briefs filed by the United States in the *WSPA* case are in the docket.

permits and that the decision to exempt such units from monitoring, recordkeeping, reporting, and compliance certification will therefore be made at the time of permit issuance in most of those States.

EPA disagrees with the commenter's assertions. With respect to the Massachusetts and Florida title V programs, EPA acknowledged in the September 18, 1996, Federal Register notice that those programs do appear to exempt insignificant emission units from permit content requirements. That does not end the inquiry, however. In acting on the Massachusetts program, EPA carefully examined the list of exempt activities and determined that the listed activities either named activities that are not subject to applicable requirements or that any applicable requirement implicated by a listed activity was not designed to be implemented by addressing emission units in the permit (such as open burning activities). *See* 61 FR 49096 and ''Addendum to Technical Support Document for Proposed Action on Alaska Title V Program Insignificant Emission Units and Activities,'' dated August 22, 1996. With respect to Florida, EPA explained its view that, in order to remedy the deficiencies identified by EPA in the Florida interim approval notice, which included the State's failure to include gatekeeper language that assured the completeness of permit applications, the State would necessarily have to address the exemption created from permit content requirements. It follows that, to the extent Florida's regulations can be read as creating an exemption from permit content, this should also be considered grounds for EPA's interim approval of Florida's program. 61 FR 49097 and ''Addendum to Technical Support Document for Proposed Action on Alaska Title V Program Insignificant Emission Units and Activities,'' dated August 22, 1996. In short, EPA believes that its decisions on the Massachusetts and Florida title V programs are consistent with its position that part 70 does not allow insignificant emission units subject to applicable requirements to be exempted from monitoring, recordkeeping, reporting, or compliance certification requirements.

EPA also disagrees with the commenter's unsupported and unexplained assertion that EPA's final or proposed actions on the Michigan, New Hampshire, and South Coast Air Quality Management District (South Coast) programs demonstrate that EPA continues to give full approval to title V programs that exempt insignificant emission units from permit content requirements.[4] EPA has carefully reviewed the relevant portions of the regulations, Federal Register notices, and supporting dockets for each these three programs. Each of these programs does contain a limited exemption from certain permit application requirements or the requirement to list certain equipment in the permit. EPA is unaware of any provision in any of these State programs, however, that exempts insignificant emission units subject to applicable requirements from the permit content requirements of 40 CFR 70.6. For a more detailed discussion of EPA's conclusion that the Michigan, New Hampshire, and South Coast programs are consistent with EPA's action on the Alaska program, please refer to the ''Addendum to Technical Support Document for Final Action on Alaska Title V Program Insignificant Emission Units and Activities'' in the docket.

EPA agrees with the commenter that the majority of the 113 title V programs on which EPA has taken or proposed full or interim approval do not expressly state that insignificant emission units subject to applicable requirements are subject to permit content requirements. EPA vigorously disagrees with the inference drawn by the commenter from this fact, namely, that these title V programs implicitly or in practice exempt insignificant emission units from permit content requirements. EPA has made clear in the Federal Register notices acting on the Washington and Tennessee title V programs that part 70 does not allow the exemption of insignificant emission units subject to applicable requirements from the permit content requirements of 40 CFR 70.6. EPA also discussed this position at length in White Paper No. 2. EPA's approval of State and local title V programs has been based on the assumption that the State and local program regulations, which in many cases closely track the language in 40 CFR 70.6, will be interpreted in the same way that EPA has interpreted part 70. In addition, except perhaps in the handful of cases in which EPA may have approved programs which improperly exempt insignificant emission units with applicable requirements from permit content requirements, EPA has required that permits issued for insignificant emission units subject to applicable requirements comply with the requirements of section 70.6.

In short, where a State or local title V program does not specifically exempt insignificant emission units from permit content requirements, EPA has assumed that no such exemption will be inferred and has therefore not objected to this aspect of the program. Where EPA has been concerned that a State or local program could be interpreted to provide such an exemption from permit content requirements, EPA has clarified its expectation in the Federal Register notice acting on such programs that the permitting authorities must ensure that all permits issued ''assure compliance with all applicable requirements at the time of permit issuance.'' *See* 60 FR 32603, 32608 (June 23, 1995); 60 FR 44799, 44801 (August 29, 1995). If, during implementation of such programs, permits are issued which do not comply with the requirements of section 70.6 with respect to insignificant emission units subject to applicable requirements, EPA would consider this grounds for objecting to individual permits, 40 CFR 70.8(c)(1), as well as grounds for withdrawing approval of such State or local programs, 40 CFR 70.10(c)(1)(ii)(B).

In summary, EPA believes that there are only a handful of programs out of the more than 113 that EPA has acted or proposed action on as of this date that either have been confirmed to be inconsistent with part 70 or for which consistency is still an unresolved issue. These are Hawaii, Ohio, North Carolina, and Jefferson County, Kentucky.[5] In other cases, EPA believes that it has been consistent in acting in accordance with the part 70 regulations and EPA's stated policy, as evidenced in the Washington and Tennessee title V interim approvals and White Paper No. 2, of not giving full approval to title V programs that exempt insignificant emission units subject to applicable requirements from some or all permit content requirements.

EPA stated in its September 18, 1996, proposal on Alaska's program that EPA would determine which title V programs are in fact inconsistent with the part 70 requirements regarding inclusion of all applicable requirements in permits, and would act to either bring those programs into consistency with part 70 or to explain any departures. EPA has given further consideration to the treatment of insignificant emission units in title V permits in general since the September 18, 1996, proposal and

[4] The commenter did not explain the assertion that EPA's proposed action on the Alaska program was inconsistent with EPA's proposed or final action on the Michigan, New Hampshire, and South Coast programs. EPA is therefore left to guess at the commenter's concerns.

[5] This list excludes those programs where the inconsistency was identified as an interim approval issue.

plans to address the issue, as well as any potentially inconsistent programs, as follows. EPA intends to publish a notice of proposed rulemaking that will serve two purposes. First, it will propose to add clarifying language to 40 CFR 70.6 that will make clear EPA's position that insignificant emission units that are subject to applicable requirements may not be excluded from part 70 permits and permit content requirements. EPA believes this requirement is clear under the current part 70 regulations, but wishes to put to rest the continuing dispute over the meaning of the current regulations. In this regard, the notice will also reiterate the guidance EPA has provided in White Paper No. 2 regarding possibilities for streamlined treatment of insignificant emission units subject only to generally applicable requirements.

Second, the notice will solicit comment as to whether part 70 should be revised to allow for an approach similar to that taken in the State of Washington and Alaska. EPA believes at this time that it has answered the legitimate implementation concerns associated with this issue. However, some States continue to request additional flexibility. EPA believes these requests deserve a fair hearing, and so will request comments explaining exactly what implementation concerns remain, and how part 70 might be revised to address these concerns. EPA will also request comment on how, if part 70 were to be amended, rule language could be crafted to retain appropriate limitations and safeguards. Specifically, EPA will seek to understand how part 70 could be structured so that (1) excluded units would be truly small and (2) the flexibility to exclude subject units would be limited to requirements that are truly generic, that is, universally applicable.

EPA expects that this rulemaking will result in either the addition of clarifying language that confirms EPA's interpretation of the current part 70 regulations, or in revisions to part 70 that will allow a new level of flexibility for insignificant emission units subject to generally applicable requirements. In either case, programs that are inconsistent with part 70 as it stands at the conclusion of this forthcoming rulemaking will be required to submit program corrections within a specified time period. Although EPA has authority to require inconsistent programs to make corrections more expeditiously, EPA does not wish to make States conduct serial program adjustments on the same issue. Given the narrow scope of the forthcoming rulemaking, EPA believes it can be finalized relatively quickly.

EPA believes that it can best ensure the consistency required by the Ninth Circuit in the *WSPA* case by requiring Alaska to meet the same requirements under the current part 70 regulations that EPA has applied to all but perhaps a handful of title V programs, namely, that insignificant emission units subject to applicable requirements may not be exempted from the monitoring, recordkeeping, reporting or compliance certification requirements of 40 CFR 70.6. As discussed below, Alaska will have 18 months to address this and all other interim approval issues identified in this final interim approval. This should give EPA sufficient time to complete the forthcoming rulemaking discussed above for insignificant emission units and also give Alaska sufficient time to respond to this forthcoming rulemaking before expiration of the two year interim approval period.

c. Additional issues on insignificant emission units. One commenter raised several other concerns regarding EPA's proposed interim approval of Alaska's regulations for insignificant sources. The commenter stated that EPA incorrectly asserted that 18 AAC 50.335(m) requires the inclusion of emission data, such as monitoring data, for insignificant emission units in the final permit. EPA is uncertain of the language in the proposal that led to the commenter's concern. 18 AAC 50.335(m) requires a permit application to contain reasonable documentation consistent with the requirements of Alaska's title V regulations to verify the accuracy and adequacy of the information submitted in the permit application, including calculations on which the information is based. That provision also states that an application may not omit information needed to determine the applicability of or to impose any applicable requirement or to impose any fee, the so-called ''applicable requirements gatekeeper'' required by 40 CFR 70.5. EPA stated that this ''applicable requirements gatekeeper'' applied to insignificant sources, 61 FR 49095, and it is perhaps this language that concerned the commenter. EPA did not intend, by this statement, to imply that a permit application must contain all information identified by 18 AAC 50.335(m), such as emission data, for insignificant sources. Instead, EPA intended to emphasize that the requirement that an application may not omit information necessary to determine the applicability of or to impose an applicable requirement or a fee applies to insignificant sources as well as to other sources. This is made clear in 18 AAC 50.335(q)(2) through (4) as well.

The commenter also asserted that Alaska's regulations for insignificant sources adequately ensure that insignificant sources that increase emissions so as to cause them to fall outside of the regulatory definition of an insignificant source must then be treated as significant and be included in the operating permit. EPA agrees that the Alaska program is adequate to ensure that insignificant sources which increase emissions so as to be considered significant will be appropriately addressed in the operating permit.

The commenter next states that ''EPA's position is that a facility must forever verify that (insignificant sources) do not increase their emissions and violate SIP requirements.'' The commenter suggests that EPA's position that insignificant sources may not be exempt wholesale from monitoring, recordkeeping, reporting and compliance certification requirements means that sources will have to constantly monitor insignificant sources. EPA has never stated or implied that facilities must engage in constant and costly monitoring of insignificant sources. To the contrary, in acknowledgement of the legitimate concern raised by the commenter, EPA has given clear guidance on how insignificant sources subject to applicable requirements can be addressed in title V permits in a manner that minimizes the burden associated with the permitting of such sources. *See* White Paper No. 2.

The commenter next states that ''EPA would be satisfied if Alaska established a regulatory presumption that (insignificant sources) normally maintain emissions that are insignificant.'' The commenter appears to have misinterpreted some language in the September 18, 1996, proposal. EPA stated that a State could meet the monitoring, recordkeeping, and reporting requirements for insignificant sources subject to generally applicable requirements by establishing a regulatory presumption that no additional monitoring, recordkeeping, and reporting is necessary for such sources to assure compliance, so long as the State had the authority to impose such requirements on a case-by-case basis if necessary to ensure compliance. 61 FR 49096 n. 4. This is one method EPA has suggested by which a State can meet the monitoring, recordkeeping, and reporting requirements of 40 CFR 70.6 for insignificant sources in a

manner that imposes minimal burden on sources and the permitting agency.

The commenter also stated that the present Alaska program sufficiently prevents insignificant sources from violating applicable requirements. Enhancing and ensuring compliance is indeed a major goal of the title V program. Congress and EPA insisted on certain program elements, however, to achieve that goal. As discussed above, part 70 requires permits to contain terms and conditions necessary to assure compliance with all applicable requirements and requires sources to certify compliance with all permit terms and conditions. Part 70 contains no exemption for insignificant emission units subject to applicable requirements. The Alaska program contains such an exemption and therefore does not meet the requirements of part 70 for permit content.

7. Inspection and Entry Requirements

One commenter objected to EPA's concern that Alaska's entry and inspection requirements do not appear to meet the requirements of 40 CFR 70.6(c)(2). That provision states that all title V permits must contain ''(i)nspection and entry requirements that require that, upon the presentation of credentials and *other documents as may be required by law*, the permittee shall allow the permitting authority or an authorized representative'' to conduct specified entry, inspection, copying, and sampling functions (emphasis added).

The comparable provision of Alaska law requires title V permits to contain the following provision:

> The permittee shall allow an officer or employee of the department or an inspector authorized by the department, upon presentation of credentials and at reasonable times *with the consent of the owner or operator* to (conduct specified entry, inspection, copying, and sampling functions).

18 AAC 50.345(7) (emphasis added). *See also* AS 46.14.515 (statute authorizing inspections of air emission sources ''upon presentation of credentials and at reasonable times *with the consent of the owner or operator*) (emphasis added); AS 46.03.02(6) (same). Where an owner or operator does not grant consent, the permitting authority must obtain a warrant under AS 46.03.860.

In the September 18, 1996, Federal Register notice, EPA expressed concern that Alaska law explicitly required that owners or operators consent to an inspection or that the Department obtain a warrant. 61 FR 49097. EPA therefore proposed to require, as a condition of full approval, that Alaska demonstrate to EPA's satisfaction that its provisions for entry and inspection meet the requirements of part 70.

In objecting to EPA's proposal, the commenter stated that the ''other documents as may be required by law'' language of 40 CFR 70.6(c)(2) includes ''the requirement under state law to present a warrant prior to entry in cases where consent has been withheld by an owner or operator.'' The commenter further stated that Alaska law simply codifies the fundamental constitutional protections against unreasonable search and seizure.

The language in part 70 concerning authority for inspection and entry is almost identical to the language that has been required in EPA- and State-issued permits under the Clean Water Act, the Resource Conservation and Recovery Act (RCRA), and the Underground Injection Control (UIC) program since 1980. *See* 40 CFR 122.41(i); 144.51(i); 270.30(i); *see also* 45 FR 33290 (May 19, 1980). In responding to commenters' concerns in the promulgation of the Clean Water Act, RCRA, and UIC regulations that this language did not incorporate a requirement for the presentation of a warrant, EPA stated:

> Several commenters stated that the provision should incorporate the legal principles set forth in *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1978), relating to the necessity for presentation of a warrant under appropriate circumstances. Some commenters feared that by including entry and inspection requirements as a permit condition, EPA might be requiring permittees to waive certain rights under the Fourth Amendment to the United States Constitution. It is not EPA's intent to deprive any permittee of its Fourth Amendment rights as interpreted by Supreme Court decisions. However, we have retained the general wording requiring ''presentation of credentials and such other documents as may be required by law'' because of the complexity and changing nature of this area of law, and the possibility that any particular formulation or citation could be inaccurate or inapplicable.

45 FR 33304–33305.

That the ''other documents as required by law'' language is included in EPA-issued permits issued under most EPA programs[6] makes clear that the relevant inquiry is what documents are required as a matter of Federal law as a condition of the right to enter and inspect a title V source and not, as the commenter asserts, what other documents may be required as a matter of State law. This is also clear from EPA's response to comments quoted above. EPA believes the same is true under 40 CFR 70.6(c)(2). The purpose of title V and part 70 is to set forth minimum requirements for approval of State programs. EPA's clear intent to set the Federal requirements for entry and inspection as the minimum standard in order to prevent States from imposing additional restrictions on the permitting authority's right to enter and inspect. Thus, for example, to the extent a State requires a warrant as a condition of entry where none is required as a matter of Federal law, EPA believes the State program would not qualify for full title V approval. Similarly, if a State imposes restrictions on obtaining a warrant that are more burdensome than the requirements for obtaining a warrant under Federal law, the State program would not qualify for full approval.

EPA does not necessarily agree that *Marshall* v. *Barlow's* precludes warrantless inspections under section 114 of the Clean Air Act. *See New York* v. *Burger*, 482 U.S. 691 (1987) (warrantless search of automobile junkyard conducted pursuant to a State statute authorizing inspection of such commercial property falls within exception to the warrant requirement for administrative inspections of pervasively regulated industries). EPA's long-standing policy in conducting inspections under the Clean Air Act, however, is to first seek the consent of the owner or operator before entering and inspecting a facility and, if such consent is denied, to obtain a warrant to confirm EPA's statutory authority to enter and inspect. *See* Memorandum entitled ''Effect of Supreme Court Decision in *Marshall* v. *Barlow's, Inc.*, on EPA Information Gathering Authority,'' from EPA General Counsel to Assistant Administrators, dated June 29, 1978 (hereinafter, ''*Barlow* OGC Memo''); Memorandum entitled ''Conduct of Inspections After the *Barlow's* Decision,'' from EPA Assistant Administrator for Enforcement to Regional Administrators, dated April 11, 1979 (hereinafter, ''*Barlow* OE Memo''). This is based on EPA's belief that it is less resource intensive in the long run to take the precautionary action of obtaining a warrant than it would be to litigate the issue under each of the environmental laws.

Although Alaska law, at first glance, appears consistent with EPA's policy, EPA remains concerned that Alaska law may be more restrictive than federal law. There are several areas where a right of warrantless entry clearly exists under federal law. For example, a warrantless inspection is permissible in emergencies, such as situations involving potential imminent hazards or

[6] The same language is also used in the regulation setting forth the requirements for title V permits issued by EPA under part 71. *See* 40 CFR 71.6(c)(2).

the potential destruction of evidence. *See Camera* v. *Municipal Court,* 387 U.S. 523 (1967); *see also Barlow* OGC Memo, p. 2, n. 4; *Barlow* OE Memo, p. 5. Furthermore, under the ''open fields'' and ''plain view'' doctrines, observations by inspectors of things that are able to be seen by anyone in lawful position or place to make such observations do not require a warrant. *See Dow Chemical Company* v. *United States,* 476 U.S. 227, 238 (1986); *Oliver* v. *United States,* 466 U.S. 170, 179 (1984); *Reeves Brothers, Inc.* v. *EPA,* No. 94–0053–L (W.D. Va. April 11, 1995); *see also Barlow* OE Memo, p. 6. The express requirement in AS 46.14.515 and 18 AAC 50.345(7) that an owner or operator consent to an inspection could be interpreted to constrain these clear exceptions to the warrant requirement. For example, Alaska law could be interpreted to require the consent of an owner or operator before a Department inspector enters property that would otherwise be classified as ''open fields'' and from which an inspector would be authorized under Federal law to gather information and conduct observations without a warrant. Moreover, as discussed above, warrants are not required for administrative searches of pervasively regulated industries under certain circumstances. *See New York* v. *Burger,* 482 U.S. 691. In addition, an Alaska Supreme Court case cited by the Alaska Attorney General as well as the commenter states that the protections afforded by the Alaska Constitution against warrantless entry are greater than provided by the Fourth Amendment. *See Woods and Rhode, Inc.* v. *Department of Labor,* 565 P.2d 138, 148 (Alaska 1977). EPA therefore continues to believe that Alaska must demonstrate to EPA's satisfaction, as a condition of full approval, that the restrictions on its authority to enter, inspect, copy records, and sample do not exceed the restrictions that apply as a matter of federal law under 40 CFR 70.6(c)(2).

8. Compliance Certification

In the proposal, EPA stated that Alaska's provisions regarding compliance certification do not appear to comply with the requirements of 40 CFR 70.6(c)(5), which requires compliance certification ''with terms and conditions contained in the permit, including emission limitations, standards, and work practice requirements.'' The Alaska regulations require compliance certification only with specified requirements. *See* 61 FR 49098. One commenter stated that the phrase ''including emission limitations, standards, or work practices'' in 40 CFR 70.6(c)(5) is an exclusive list of the conditions in a permit that require certification. EPA vigorously disagrees. The phrase must be read in context of the entire provision, which states that a permit shall contain ''Requirements for compliance certification with *terms and conditions contained in the permit,* including emission limitations, standards, or work practices.'' (emphasis added). The phrase ''terms and conditions contained in the permit'' is all inclusive and covers all applicable requirements and other provisions required by part 70 to be contained in a permit, not just emission limitations, standards, or work practices. For example, a requirement in 40 CFR part 60 that a source install, maintain, and operate continuous emission monitors in conformance with certain performance specifications is a monitoring requirement of an applicable requirement that requires a compliance certification. Similarly, compliance with ''gapfilling'' monitoring, recordkeeping, or reporting required under 40 CFR 70.6(a) is a part 70 requirement that requires certification.

In further support of its position, the commenter points to language in 40 CFR 70.6(c)(5)(iii)(A) stating that compliance certifications must include an ''identification of each term or condition of the permit *that is the basis of the certification.*'' The commenter believes this language implies that not all terms and conditions need be identified in the certification. Again, EPA disagrees. It would be both unreasonable and inconsistent with section 504(c) of the Act if a source was not required to certify compliance with otherwise applicable requirements and part 70 requirements contained in a title V permit. Therefore, EPA maintains that the Alaska provisions for compliance certification fail to comply with the requirements of 40 CFR 70.6(c)(5) and must be revised in order to receive full approval.

9. Affirmative Defense for Emergencies

In the proposal, EPA stated that Alaska's affirmative defense for unavoidable emergencies, malfunctions, and nonroutine repairs was broader than the affirmative defense allowed under part 70 for emissions in excess of technology-based standards due to emergencies under 40 CFR 70.6(g) for two reasons, the definition of technology-based standards and the reporting period. *See* 61 FR 49098. One commenter argued that Alaska's emergency provisions are consistent with 40 CFR 70.6(g), although the commenter addressed only one the definition of technology-based standard. Specifically, the commenter stated that the use of the word ''primarily'' in the Alaska definition of ''technology-based emission standard'' is consistent with part 70. EPA disagrees. EPA defines a technology-based standard as one for which the stringency of the standard is not based on considerations of air quality impacts of the source or source category in question, but instead based on a determination of what is technologically feasible. 59 FR 45530, 45559 (August 31, 1995). The Alaska definition, however, could allow many SIP emission limitations to be considered to be technology-based emission standards. The determination of emission limitations needed to ensure attainment and maintenance of NAAQS necessarily includes consideration of what is technologically feasible for sources contributing to the air quality problem, and in many cases the final emission limitations are based entirely on what is technologically feasible. However, such SIP emission limitations are considered to be health-based emission limitations and not technology-based emission standards since they are specifically established to ensure attainment and maintenance of the NAAQS. Furthermore, many emission limitations in PSD permits are set at levels equivalent to that of ''best available control technology'' (BACT) limits. However, emission limits in PSD permits whose purpose is to protect the NAAQS and PSD increments are considered health-based emission limitations, even if they are identical in stringency to the BACT limits. Therefore, EPA continues to believe that the Alaska emergency provisions are inconsistent with the requirements of 40 CFR 70.6(g) and must be revised in order to obtain full approval.[7]

10. Minor Permit Modification Procedures

One commenter requested clarification regarding EPA's finding that the State's provisions for minor permit modifications do not conform to EPA's requirements regarding changes to monitoring, reporting, and recordkeeping terms and conditions. EPA's regulations state that ''*every* relaxation of reporting or recordkeeping permit terms shall be considered significant,'' 40 CFR 70.7(e)(4), and must be processed as a significant permit modification. In contrast, the Alaska regulation requires only changes

[7] The commenter did not address EPA's concern that the Alaska regulations allow sources more time than allowed by part 70 to submit notice of an emergency to the permitting authority. *See* 61 FR 49098. This also remains as an interim approval issue.

that ''materially alter or reduce'' the frequency, accuracy, or precision of existing reporting requirements to be processed as a significant permit modification. EPA expressed concern that the Alaska program would allow a relaxation of reporting or recordkeeping requirements to be processed as a minor permit modification so long as the revision did not ''materially alter or reduce'' the frequency, accuracy, or precision of existing reporting requirements. *See* 61 FR 49099. The commenter asked how reporting or recordkeeping could be relaxed without materially altering or reducing the frequency, accuracy, or precision of existing requirements. The term ''materially'' is defined in the Random House Dictionary of the English Language as ''to an important degree; considerably.'' EPA therefore believes that not every change that alters or reduces the frequency, accuracy, or precision of existing requirements would be required to be processed as a significant permit modification under Alaska law. As a result, EPA continues to maintain that the Alaska procedures for minor permit modifications fail to comply with the provisions of 40 CFR 70.7(e) with respect to changes to reporting or recordkeeping requirements.

C. Response to Public Comment on Proposed Section 112 Approval in Part and Disapproval in Part

The only comments EPA received on its proposed actions under section 112 were from the State of Alaska. The State commented on EPA's belief that sources could ''net out'' of State preconstruction review requirements, but could not avoid preconstruction review under the federal program. *See* 61 FR 49102. The State appeared to agree with EPA's interpretation on ''net outs'' but disagrees with EPA's contention that 40 CFR 63.5(b) could be applicable to a source that does not have the potential to emit hazardous air pollutants (HAPs) in quantities greater than major source levels. Regarding the latter, EPA has reviewed this issue in further detail and has concluded that, at present, Alaska's interpretation is correct in that EPA has not set lower quantity cutoffs for defining a major source. Therefore, EPA believes this is no longer grounds for disapproval.

With respect to the fact that sources could ''net out'' of preconstruction review as a matter of State law, Alaska has requested that EPA grant partial approval under the authority of CAA section 112(l) and 40 CFR 63.93 to its rule substitution request in light of the fact that Alaska does not have adequate authority to administer 18 AAC 50.300 for all potential situations where 40 CFR 63.5(b)(3) is applicable. EPA is denying this request for two reasons: (1) Based on previous experience with partial delegations in the PSD program, EPA has found practical implementation of such a system to be cumbersome and one which may place added liability on a source should it fail to obtain approval from the proper agency. In this regard, in order to obtain approval to substitute its State rule, Alaska must amend 18 AAC 50.300 so that it does not allow newly constructed major HAP sources to ''net out'' of state preconstruction review. (2) EPA does not yet have the authority under section 112(l) of the CAA or 40 CFR part 63, subpart E, to approve partial delegation requests of this nature.

III. Final Action and Implications

A. Title V

EPA is promulgating final interim approval of the operating permits program submitted by Alaska on May 31, 1995, and supplemented on August 16, 1995, February 6, 1996, February 27, 1996, July 5, 1996, August 2, 1996, and October 17, 1996. The State must make the following changes to receive full approval.[8]

1. Applicability of Permit Program Requirements

The Alaska definition of ''regulated air contaminant'' in AS 46.14.990(21) is inconsistent with the EPA definition of the term ''regulated air pollutant'' in 40 CFR 70.2 in that it does not adequately cover pollutants required to be regulated under section 112(j) of the Act. As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its definition of ''regulated air contaminant'' is consistent with EPA's definition of ''regulated air pollutant'' in 40 CFR 70.2.

2. Applicable Requirements

The Alaska definition of ''applicable requirement'' does not include all of the EPA regulations implementing title VI (40 CFR part 82) but only subparts B and F. Although EPA has proposed to revise 40 CFR part 70 to limit the definition of ''applicable requirement'' to only those provisions promulgated under sections 608 and 609 of the Act (which EPA has promulgated in 40 CFR part 82, subparts B and F), this proposed revision is not yet adopted. Should EPA revise part 70 as proposed, Alaska's rules will be consistent and no revisions will be needed. However, if EPA does not revise part 70 as proposed, Alaska must adopt and submit appropriate revisions as a condition of interim approval.

3. Authority to Implement Section 112 Requirements

Alaska has not adopted by the requirements of 40 CFR part 61 subpart I (radionuclide NESHAP for facilities licensed by the Nuclear Regulatory Commission). EPA is requiring, as a condition of full approval, that Alaska update its incorporation by reference to include all of the NESHAP that currently apply to title V sources in Alaska.

4. Insignificant Emission Units

The Alaska program improperly exempts insignificant sources subject to applicable requirements from monitoring, recordkeeping, reporting, and compliance certification requirements. Alaska must eliminate this exemption as a condition of full approval.

5. Emissions Trading Provided for in Applicable Requirements

The Alaska program does not contain a provision implementing the part 70 requirement that the permitting authority must include terms and conditions, if the permit applicant requests them, for trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases without a case-by-case approval of each emissions trade. *See* 40 CFR 70.6(a)(10). As a condition of full approval, Alaska must ensure that its program includes the necessary provisions to meet the requirements of 40 CFR 70.6(a)(10).

6. Inspection and Entry Requirements

Part 70 requires each title V permit to contain a provision allowing the permitting authority or an authorized representative, upon presentation of credentials and other documents as may be required by law, to perform specified inspection and entry functions. *See* 40 CFR 70.6(c)(2). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its inspection and entry authority meets the requirements of 40 CFR 70.6(c)(2) and imposes no greater restrictions on the State's inspection authority than exist under federal law.

[8] See the discussion in EPA's proposed interim approval for a full discussion of EPA's findings as to why the Alaska program does not fully meet EPA's requirements in these respects. *See* 61 FR 49096–49100.

7. Progress Reports

The Alaska program does not require the submission of progress reports, consistent with the applicable schedule of compliance and 40 CFR 70.5(c)(8), to be submitted in accordance with the period specified in an applicable requirement. *See* 40 CFR 70.6(c)(4). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its program complies with the requirements of 40 CFR 70.6(c)(4).

8. Compliance Certification.

The Alaska program does not meet the requirements of part 70 that a permitting program contain requirements for compliance certification with terms and conditions contained in the permit, including emissions limitations, standards or work practices. *See* 40 CFR 70.6(c)(5). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its program complies with the requirements of 40 CFR 70.6(c)(5).

9. General Permits

The Alaska provisions for general permits fail to comply with the requirements of part 70 in one respect. The Alaska provisions do not require that applications for general permits which deviate from the requirements of 40 CFR 70.5 otherwise meet the requirements of title V. *See* 40 CFR 70.6(d)(2). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that applications for general permits meet the requirements of title V.

10. Affirmative Defense for Emergencies

The Alaska program does not comply with the requirement of part 70 with respect to the provisions for an affirmative defense to an action brought for noncompliance with a technology-based limitation in a title V permit. The Alaska regulations include a definition of ''technology-based standard'' which is broader than allowed by part 70 and the Alaska program gives a permittee up to one week after the discovery of an exceedence to provide ADEC with written notice rather than within two working days as required by 40 CFR 70.6(g)(3)(iv). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its emergency provisions are consistent with the requirements of 40 CFR 70.6(g).

11. Off-Permit Provisions

The Alaska program does not comply with the part 70 ''off-permit'' provisions which require the permittee to keep a record at the facility describing each off-permit change and to provide ''contemporaneous'' notice of each off-permit change to EPA and the permitting authority. *See* 40 CFR 70.4(b)(14). Although EPA has proposed to revise 40 CFR part 70 to eliminate the off-permit requirements, this proposed revision is not yet adopted. Should EPA revise part 70 as proposed, Alaska's rules will be consistent with part 70 in this respect and no revisions will be needed. However, if EPA does not revise part 70 as proposed, Alaska must ensure that its program requires notice and records for all off-permit changes as a condition of full approval.

12. Statement of Basis

The Alaska program does not require the permitting authority to provide and send to EPA, and to any other person who requests it, a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). *See* 40 CFR 70.7(a)(5). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its program satisfies the requirements of 40 CFR 70.7(a)(5).

13. Administrative Amendments

The Alaska program, which allows alterations in the identification of equipment or components that have been replaced with equivalent equipment or components to be made by administrative amendment, does not comply with the part 70 provisions which authorize States to allow certain ministerial types of changes to title V permits to be made by administrative amendment. *See* 40 CFR 70.7(d). As a condition of full approval, Alaska must revise 18 AAC 50.370(a)(5)(D) to expand the prohibition to include modifications and reconstructions made pursuant to 40 CFR parts 60, 61 and 63, or to eliminate 18 AAC 50.370(a)(5) from the list of changes that may be made by administrative amendment.

14. Minor Permit Modifications

The Alaska program does not comply with the part 70 provisions which require States to establish procedures for minor permit modifications which are substantially equivalent to those set forth in 40 CFR 70.7(e), for several reasons. First, the Alaska program does not ensure that ''every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms shall be considered significant.'' *See* 40 CFR 70.7(e)(4). Second, the Alaska program does not ensure that an application for a minor permit modification must include a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs. 40 CFR 70.7(e)(2)(ii)(A). Finally, the Alaska program fails to include provisions which allow minor permit modification procedures to be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA. *See* 70.7(e)(2)(B). As a condition of full approval, Alaska must demonstrate to EPA that its program includes the necessary provisions to meet the requirements of 40 CFR 70.7(e)(2)(B).

15. Group Processing of Minor Permit Modifications

The Alaska program does not conform with the provisions of part 70 which allow a permitting authority to process as a group certain categories of applications for minor permit modifications at a single source in that the Alaska program does not contain any thresholds for determining whether minor permit modifications may be processed as a group. *See* 40 CFR 70.7(e)(3). As a condition of full approval, Alaska must demonstrate that its group processing procedures are consistent with the requirements of 40 CFR 70.7(e)(3).

16. Significant Permit Modifications

The Alaska program does not address the part 70 requirement that a State provide for a review process that will assure completion of review of the majority of significant permit modifications within 9 months after receipt of a complete application. 40 CFR 70.7(e)(4)(ii). As a condition of full approval, Alaska must provide assurances that its program is designed and will be implemented so as to complete review on the majority of significant permit modifications within this timeframe.

17. Reopenings

The Alaska program provisions for reopenings fail to comply with part 70 in several respects. First, the Alaska program does not require reopening in the event that the effective date of a new applicable requirement is later than the permit expiration date and the permit has been administratively extended. *See* 40 CFR 70.7(f)(1)(i). Second, the Alaska program does not comply with part 70 in that the Alaska program merely authorizes ADEC to reopen a permit

under specified circumstances, where as part 70 requires that a permit be reopened if ADEC or EPA determine such circumstances exist. *See* 40 CFR 70.7(f)(2)(iii). Third, the Alaska program also fails to contain required procedures in the event of a reopening for cause by EPA. *See* 40 CFR 70.7(g)(2) and (4). Finally, the Alaska program does not include provisions assuring that reopenings are made as expeditiously as practicable. *See* 40 CFR 70.7(f)(2). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its provisions for reopenings comply with the requirements of 40 CFR 70.7(f) and (g).

18. Public Petitions to EPA

The Alaska program does not prohibit issuance of a permit if EPA objects to the permit after EPA's 45-day review period (i.e., in response to a petition). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that Alaska's provisions regarding public petitions to EPA comply with the requirements of 40 CFR 70.8(d).

19. Public Participation

The Alaska program does not conform to the part 70 requirement that the contents of a title V permit not be entitled to confidential treatment. *See* 40 CFR 70.4(b)(3)(viii). As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that nothing in a title V permit will be entitled to confidential treatment.

This interim approval, which may not be renewed, extends until December 7, 1998. During this interim approval period, Alaska is protected from sanctions, and EPA is not obligated to promulgate, administer, and enforce a federal operating permits program in Alaska. Permits issued under a program with interim approval have full standing with respect to title V and part 70. In addition, the 1-year time period under State law for submittal of permit applications by subject sources and the 3-year time period for processing the initial permit applications begin upon the effective date of this interim approval.

If Alaska fails to submit a complete corrective program for full approval by June 5, 1998, EPA will start an 18-month clock for mandatory sanctions. If Alaska then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Alaska has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of Alaska, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Alaska has come into compliance. In any case, if, six months after application of the first sanction, Alaska still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Alaska's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Alaska has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Alaska, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Alaska has come into compliance. In all cases, if, six months after EPA applies the first sanction, Alaska has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Alaska has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to Alaska program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for Alaska upon interim approval expiration.

This final interim approval of the Alaska title V program applies to all title V sources (as defined in the approved program) within all geographic regions of the State of Alaska, except within ''Indian Country'' as defined in 18 U.S.C. section 1151. *See* 61 FR 49092, 49101.

B. Authority for Section 112 Implementation

1. Delegation under Section 112

In its title V program submittal, Alaska has demonstrated adequate legal authority to implement and enforce section 112 (hazardous air pollutants (HAPS)) requirements through its title V operating permit process. All Alaska title V permit applications are required to cite and describe each source regulated by a federal emission standard adopted by reference in 18 AAC 50.040 and the standard that applies to the source (18 AAC 50.335(e)(2) and (6)). In addition, all title V permits issued by the State are required to include terms and conditions that assure compliance with the applicable requirements of 18 AAC 50.040 (18 AAC 50.350(d)(1)(A) and (d)(3)).

However, in regard to the delegation of 40 CFR 61.145, EPA is concerned that Alaska does not currently have inspection personnel trained to perform asbestos inspections. EPA believes that proper training is necessary if Alaska is to properly enforce and assure compliance with 40 CFR 61.145. In this regard EPA has requested Alaska to provide for adequate training of its staff who will be performing asbestos inspections. Although EPA is approving delegation of this portion of the asbestos program to Alaska, EPA plans to continually monitor Alaska's asbestos program to ensure that the staff are properly trained and that the program is being properly implemented and enforced.

2. Substitution of State Preconstruction Review Regulations

As stated above, Alaska seeks to replace the federal preconstruction review regulations of 40 CFR 63.5(b)(3) and 63.54 with comparable State-adopted regulations. Alaska adopted 40 CFR 63.5(b)(3), (d) and (e) into 18 AAC 50.040, but did not adopt 40 CFR 63.54. EPA has determined that the State preconstruction review requirements of AS 46.14.130 and 18 AAC 50.300 through 50.322 are less stringent than 40 CFR 63.5(b)(3) and 40 CFR 63.54 as these rules apply to newly constructed major sources of HAPs in an important respect. Unlike 40 CFR 63.5(b)(3), Alaska preconstruction review procedures allow newly constructed sources at an existing facility to ''net out'' of preconstruction review. *See* 61 FR 49102.

3. Section 112(l) Approval, Disapproval and Implications

In conjunction with the actions being taken in regard to Alaska's title V program submittal, EPA is approving the State of Alaska's delegation request of May 17, 1995, as amended on February 25, 1996, July 5, 1996, October 17, 1996, and November 21, 1996, for all existing applicable 40 CFR parts 61 and 63 regulations adopted by reference in 18 AAC 50.040, specifically, 40 CFR part 61 subparts A (except § 61.16), E, J, V, Y, FF, § 61.154 of subpart M, and § 61.145 of subpart M (along with other sections and appendices which are

referenced in § 61.145, as § 61.145 applies to sources required to obtain an operating permit under AS 46.14.130(b)(1)–(3) and 18 AAC 50.330); and 40 CFR part 63 subparts A (except § 63.6(g) and §§ 63.12 through 63.15), B (except §§ 63.50 and 63.54), D, M, N (as it applies to sources required to obtain an operating permit under AS 46.14.130(b)(1)–(3) and 18 AAC 50.330), R, Q, T, Y, CC, DD, II, JJ, and KK, and Appendices A and B.

EPA is also granting approval under the authority of section 112(l)(5) and 40 CFR 63.91 of a mechanism for receiving delegation of future section 112 standards that Alaska adopts unchanged from the federal standards. *See* section 5.1.2.b of EPA's ''Interim Enabling Guidance for the Implementation of 40 CFR part 63'', subpart E, EPA–453/R–93–040, November 1993. Under this streamlined approach, once Alaska adopts a new or revised NESHAP standard into State law, Alaska will only need to send a letter of request to EPA requesting delegation for the NESHAP standard. EPA would in turn respond to this request by sending a letter back to the State delegating the appropriate NESHAP standards as requested. No further formal response from the State would be necessary at this point, and if a negative response from the State is not received by EPA within 10 days of this letter of delegation, the delegation would then become final. Notice of such delegations will periodically be published in the Federal Register.

EPA is disapproving Alaska's request for delegation of authority for approving alternative non-opacity emission standards under 40 CFR 63.6(g) because such authority is reserved for the EPA Administrator and cannot be delegated to a State or local agency. In addition, because the State's request for approval of authority to implement and enforce 40 CFR parts 61 and 63 does not include implementation and enforcement for part 70 exempted sources, EPA will retain the responsibility for implementing and enforcing 40 CFR part 61, subpart M, for area source asbestos demolition and renovation activities, and 40 CFR part 63, subpart N, for area source chromium electroplating and anodizers operations which have been exempted from part 70 permitting in 40 CFR 63.340(e)(1). *See* 61 FR 27785, 27787 (June 3, 1996).

EPA is denying Alaska's request to implement and enforce its State-adopted preconstruction review regulations in 18 AAC 50.300 through 50.322 in place of 40 CFR 63.5(b)(3). EPA is retaining the authority to administer the federal preconstruction review program under 40 CFR 63.5(b)(3) as this rule applies to the construction of a new major affected source; therefore, owners and operators subject to 40 CFR 63.5(b)(3) are still required to obtain EPA approval prior to commencing construction.

Although EPA is delegating authority to Alaska to enforce the NESHAP regulations as they apply to affected sources, it is important to note that EPA retains oversight authority for all sources subject to these federal requirements. EPA has the authority and responsibility to enforce the federal regulations in those situations where the State is unable to do so or fails to do so.

4. Scope of Approval

This approval of the Alaska section 112(l) programs, as with Alaska's title V program, applies to all sources within all geographic regions of the State of Alaska, except within ''Indian Country,'' as defined in 18 U.S.C. section 1151.

Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval and final partial approval and partial disapproval, including the letters of public comment received and reviewed by EPA on the proposal, are contained in the Alaska title V docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final action. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Similarly, NESHAP rule or program delegations approved under the authority of section 112(l) of the Act do not create any new requirements, but simply confer federal authority for those requirements that Alaska is already imposing. Because this action does not impose any new requirements, EPA has determined it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

EPA has determined that the action promulgated today under section 502 and section 112(l) of the Act does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

F. Effective Date

An administrative agency engaging in rulemaking must comport with the requirement of section 553 of the Administrative Procedures Act. *See* 5 U.S.C. chapter 5. Section 553 requires an agency to allow at least 30 days from the date of publication before the effective date of a substantive rulemaking. If, however, good cause can be shown, then the agency may impose an effective date of less than 30 days after publication. Good cause exists to initiate an effective date of less than 30 days after publication when it is in the public interest and the shorter time period does not cause prejudice to those regulated by the rule. *British American Commodity Options Corp.* v. *Bagley*, 552 F.2d 482, 488–89 (2d Cir. 1977). An immediate effective date is in the public's interest for several reasons.

First, ADEC is statutorily prevented from collecting and expending permit fees until EPA has approved the State title V program. The Alaska Legislature has only authorized ADEC to expend a limited amount of EPA grant monies and other State revenues prior to EPA approval of the State's title V program. These revenues have now run out and the State agency is without funds to continue to pay salaries. Further delay in the effective date of EPA's approval risks the loss of trained air staff necessary to successfully implement the title V program when it is approved.

Second, the federal part 71 permitting program became effective in Alaska on July 31, 1996. 61 FR 34202 (July 1, 1996), *codified* at 40 CFR part 71. Under this federal permitting program, some title V sources are required to submit permit applications and permit fees to EPA by January 31, 1997. *See* 40 CFR 71.5(a) and 71.9(f)(3). EPA understands, however, that sources have not been preparing applications for the federal part 71 program, but have instead been anticipating that the State title V program would be approved prior to the first application submittal deadline of the federal part 71 program. Delaying the effective date of EPA's approval of the Alaska title V program could put sources at risk of having to file applications and pay fees under both the State part 70 and federal part 71 permitting programs. Moreover, the State has advised EPA that sources have delayed filing permit renewal applications under the current State operating permit program in anticipation of the imminent approval of the State's title V program. Such sources will be at risk of being in violation of current State law if interim approval of Alaska's title V program is delayed.

Although it is in the public's interest to make EPA's interim approval of Alaska's title V program effective on the date of publication, EPA must ensure that this action will not have any prejudicial effects upon the regulated community. *Rowell* v. *Andrus*, 631 F.2d 699, 702–703 (10th Cir. 1980). For example, EPA must ensure that the regulated community has sufficient notice of this rulemaking and ample opportunity to comment. EPA believes that all interested parties have had sufficient notice of this rulemaking and ample opportunity to comment. The State has advised EPA that it has contacted each of the parties that commented on the proposal and none object to having this rulemaking effective on the date of publication. The regulated community has worked closely with the State in the development of the State's title V program over the past several years. The State regulations that form the basis of the State's title V program were subject to notice and comment at the State level. EPA's proposed action on the State's title V program was also subject to 30 days public comment. Finally, under Alaska law, the State's operating permit regulations do not become effective until 30 days after the effective date of EPA approval. Because the program itself does not become effective as a matter of State law for 30 days, it can also have no effect as a matter of Federal law until that time. Therefore, the purpose of the 30-day effective date under the Administrative Procedures Act is met since sources will have 30 days notice prior to the Alaska title V program becoming effective as a matter of both State and federal law.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 22, 1996.

Chuck Clarke,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Alaska in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Alaska

(a) Alaska Department of Environmental Conservation: submitted on May 31, 1995, as supplemented by submittals on August 16, 1995, February 6, 1996, February 27, 1996, July 5, 1996, August 2, 1996, and October 17, 1996; interim approval effective on December 5, 1996; interim approval expires December 7, 1998.

(b) (Reserved)

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[FR Doc. 96–30865 Filed 12–4–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Listing Priority Guidance for Fiscal Year 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of final guidance.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces final guidance for assigning relative priorities to listing actions conducted under section 4 of the Endangered Species Act (Act) during fiscal year (FY) 1997. Highest priority will be processing emergency listing rules for any species determined to face a significant risk to its well being. Second priority will be processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority will be processing new proposals to add species to the lists and processing administrative findings on petitions to add species to the lists that are filed under section 4 of the Act. Processing of proposed or final designations of critical habitat and processing of proposed or final delistings and reclassifications from endangered to threatened status will be accorded lowest priority. Effective April 1, 1997, the Service will implement a more balanced listing program nationwide, which means that during the second half of FY 1997 the remaining listing appropriation will be apportioned among the processing of any emergency listing rules, the issuance of final listing determinations, the preparation of proposed listing rules for candidate species, and the processing of listing petitions. However, the lower priority accorded to rulemaking and petition processing activities for critical habitat designations and delisting (or downlisting) actions will be maintained throughout FY 1997.

DATES: The guidance described in this notice is effective December 5, 1996 and will remain in effect until September 30, 1997 unless modified by subsequent notice in the Federal Register.

ADDRESSES: Questions regarding this guidance should be addressed to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mailstop ARLSQ–452, Washington, D.C., 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703–358–2171 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The Service adopted guidelines on September 21, 1983 (48 FR 43098–43105) that govern the assignment of priorities to species under consideration for listing as endangered or threatened under section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Service adopted those guidelines to establish a rational system for allocating available appropriations to the highest priority species when adding species to the lists of endangered or threatened wildlife