approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 18, 2001.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

## Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(266)(i)(B)(*4*) and (c)(279)(i)(A)(*3*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(266) * * *

(i) * * *

(B) * * *

(*4*) Rule 4642, adopted on April 16, 1998.

* * * * *

(279) * * *

(i) * * *

(A) * * *

(*3*) Rule 416, adopted on September 14, 1999.

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[FR Doc. 01–18535 Filed 7–25–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 70

**[FRL–7012–9]**

## Clean Air Act Full Approval of Operating Permits Program in Alaska

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking final action to fully approve the operating permits program submitted by the Alaska Department of Environmental Conservation (Alaska) 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 published final interim approval to Alaska's air operating permit program on December 5, 1996. Alaska has revised its operating permits program to satisfy the conditions of the interim approval and this action approves those revisions.

**DATES:** This direct final rule is effective on September 24, 2001 without further notice, unless EPA receives adverse comment by August 27, 2001. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect. The public comments will be addressed in a subsequent final rule based on the proposed rule published in this **Federal Register**.

**ADDRESSES:** Written comments should be addressed to Denise Baker, Environmental Protection Specialist (OAQ–107), Office of Air Quality, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State of Alaska's submittal and other supporting information used in developing this final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of the State documents relevant to this action are also available for public inspection at Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, Juneau, AK, 99801–1796 and at Alaska Department of Environmental Conservation, 555 Cordova Street, Anchorage, AK, 99501–2617. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** Denise Baker, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

### *A. What Is the Title V Air Operating Permits Program?*

The Clean Air Act (CAA) Amendments of 1990 required all state and local permitting authorities to develop operating permits programs that meet certain Federal criteria. In implementing the operating permits programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permits program is to improve enforcement by issuing each source a permit that consolidates all the applicable CAA requirements into a Federally enforceable document. By consolidating all the applicable requirements for a source in a single document, the source, the public, and regulators can more easily determine what CAA requirements apply to the source and whether the source is in compliance with those requirements.

Sources required to obtain an operating permit under the title V program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter; those that emit 10 tons per year or more of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''serious,'' major sources include those with the potential to emit 50 tons per year or more of volatile organic compounds or nitrogen oxides.

### *B. What Is the Status of Alaska's Title V Air Operating Permits Program?*

The State of Alaska (Alaska or State) originally submitted its application for the title V air operating permits program to EPA in May 1995.

Where an operating permits program substantially, but not fully, meets the criteria outlined in the implementing regulations codified in 40 Code of Federal Regulations (CFR) part 70, EPA is authorized to grant interim approval contingent on the state revising its program to correct the deficiencies. Because the operating permits program originally submitted by Alaska in 1995 substantially, but not fully, met the requirements of part 70, EPA granted interim approval to Alaska's program in an action published on December 5, 1996 (61 FR 64463). The interim approval notice identified the 19 remaining conditions that Alaska must meet in order to receive full approval of its title V air operating permits program.

This document describes the changes Alaska has made to its operating permits program since we granted Alaska's program interim approval and the action EPA is taking in response to those changes.

## II. What Changes Has Alaska Made To Address the Interim Approval Issues?

On June 2, 1998, Alaska sent a letter to EPA addressing all 19 of the interim approval issues and requesting full program approval of the State's air operating permits program. EPA has reviewed the program revisions submitted by Alaska and has determined that its operating permits program now qualifies for full approval. This section describes the interim approval issues identified by EPA in granting the Alaska program interim approval and the changes Alaska has made to address those issues.

### *A. Applicability of Permit Program Requirements*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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.'' Alaska, in its June 2, 1998, submittal stated that ''[a]ll of the provisions of 40 CFR part 63, subpart B which implement section 112(j) and relate to operating permits are either adopted by reference, or included in the adopting language of 18 AAC 50.040(c)(2). 18 AAC 50.040(c)(2)(B) states that the provisions of 40 CFR part 63, subpart B apply to the facility on the same date that a pollutant would become a 'regulated air pollutant' under the federal definition. AS 46.14.280(a)(3)(B) requires a permit to be revised for a 112(j) equivalent emission limitation in the same manner as for any other new federal standard.'' EPA believes that 18 AAC 50.040(c)(2) and AS 46.14.280(a)(3)(B) support Alaska's assertion and resolve this issue.

### *B. Applicable Requirements*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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.'' Alaska, in its June 2, 1998, submittal, provided documentation that its regulations at 18 AAC 50.040(d) had been amended to broaden the adoption by reference to include all of Part 82. The amendment was effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

*C. Authority To Implement Section 112 Requirements*

EPA, in its December 5, 1996, **Federal Register**, stated that ''Alaska has not adopted by [sic] 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.'' This issue was made moot by EPA publication of a rescission of subpart I in the **Federal Register** dated December 30, 1996, 61 FR 68971.

*D. Insignificant Emission Units*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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.'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations to remove the exemption of insignificant sources from these requirements. The revised rules, at 18 AAC 50.335(q)(5) and (6), and 18 AAC 50.350(m), ''specify compliance certification for IEUs based on reasonable inquiry, and, if necessary to assure compliance with air quality control requirements identified in the permit, monitoring, record keeping, or reporting.'' The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

*E. Emissions Trading Provided for in Applicable Requirements*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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).'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.335(h), 18 AAC 50.350(d)(3), and 18 AAC 50.350(e)(4), to allow for such trading. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

*F. Inspection and Entry Requirements*

EPA, in its December 5, 1996, **Federal Register**, stated that ''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.'' Alaska, in its June 2, 1998, submittal, provided an opinion from its Attorney General's Office addressing inspection and entry requirements associated with Alaska's title V program. The opinion notes that ADEC's operating permit regulations, at AS 46.14.140(a)(4)(C), now require the inclusion of a standard permit condition addressing inspection and entry. The opinion states that ''[t]his standard provision, requiring the permittee to consent to entry and inspection for specified purposes will be contained in all operating permits.'' Based on this opinion, EPA concludes that consent to entry for the purposes specified in AS 46.14.140(a)(4)(C) is effectively granted at any source possessing a title V permit issued by Alaska. In addition, Attorney General's opinion states that Alaska's inspection and entry authority is not more restrictive than that under federal law. Specifically, the Attorney General's Office opined that: (1) Under the Alaska program, operating permit holders have no ''reasonable expectation of privacy'' as to regulated subject matter and that warrantless search requirements are permissible; (2) if consent to entry and inspection is denied, a warrant can be easily obtained; and (3) Alaska's consent requirements ''do not constrain traditional exceptions to warrant requirements, and these exceptions are recognized in Alaska.'' EPA is satisfied that Alaska's inspection and entry authority imposes no greater restrictions on the State's inspection authority than exist under federal law.

*G. Progress Reports*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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).'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.335(i) and 18 AAC 50.350(k)(3) to require applicants to submit proposed permit terms that include more frequent progress reports, if required by the applicable requirement, and to require permits to contain a requirement for more frequent progress reports, if required by the applicable requirement. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

*H. Compliance Certification*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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).'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.335(q)(5), 18 AAC 50.350(j), and 18 AAC 50.350(m), to ensure that compliance certifications would be required for all permit terms and conditions. EPA's main concern, as identified in the September 1996 **Federal Register** proposing final interim approval for Alaska's Air Operating Permits Program, had been inclusion of requirements to certify compliance with such terms as monitoring, recordkeeping, reporting and compliance plans. Alaska had already revised its regulations to mostly include these by the time the December 5, 1996, **Federal Register** had been published. The current revisions are mostly fine tuning, including compliance certification for insignificant sources, and accounting for provisions

established through administrative, minor, or major permit revisions. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

*I. General Permits*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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.'' Alaska, in its June 2, 1998, submittal, submitted documentation that it had revised its regulations at 18 AAC 50.380 (most importantly at 50.380(c) and (d)) to identify what information had to be in the applications for General Permits. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this action.

*J. Affirmative Defense for Emergencies*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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 exceedance 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).'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.990(87) to revise its definition of ''technology-based standard'' to be consistent with part 70. Alaska also revised 18 AAC 50.235(a) to require written notice of an exceedance due to an unavoidable emergency, malfunction, or nonroutine repair, within two days, rather than within one week. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's actions resolve these issues.

*K. Off-Permit Provisions*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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.'' EPA has not revised part 70 as proposed with respect to off-permit changes. Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.365(b) to show that the requirements of (b), including the recordkeeping and notification requirements, applied to all ''not insignificant'' sources. 18 AAC 50.365(b), as amended, is consistent with the language of 40 CFR 70.4(b)(14). The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

*L. Statement of Basis*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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).'' This issue was inadvertently identified as an Interim Approval issue in the December 5, 1996, **Federal Register**. Although identified in the September 1996 proposed interim approval of the Alaska Air Operating Permits Program as an approval issue, Alaska revised its regulations at 18 AAC 50.340(j) prior to EPA's final interim approval of the Alaska program. EPA is satisfied that section 340(j) adequately provides for the development of a Statement of Basis.

*M. Administrative Amendments*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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.'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.370(a)(5)(D) to prohibit administrative revisions for equipment which has been reconstructed or modified under 40 CFR parts 60, 61, and 63. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

*N. Minor Permit Modifications*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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 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).'' Alaska, in its June 2, 1998, submittal, provided documentation that: (a) it revised its regulations at 18 AAC 50.375(a)(1)(D) to more closely track part 70 language in excluding from the minor permit revision process new terms or conditions which would involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, or relax an existing reporting or recordkeeping requirement; (b) it revised its regulations at 18 AAC 50.375(b) to clearly identify that the permittee, for minor permit modifications, would describe each change, the emissions resulting from the change, and any new requirements which would apply as a result;'' (c) the third issue was a moot issue because the Alaska program does not include economic incentives, marketable permits, or emissions trading. EPA in its September 1996 **Federal Register** proposing interim approval of the Alaska Air Operating Permits Program, indicated that there were instances where part 63 standards allowed for the minor modification permit procedures involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches. However, on revisiting the issue, EPA was unable to locate any part 63 standards which include such a provision. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's actions resolve these issues.

*O. Group Processing of Minor Permit Modifications*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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).'' Alaska, in its June 2, 1998, submittal, documented its removal of the group processing of minor permit modifications provision from its regulations at 18 AAC 50.375(b)(5), (c), (d), and (e). Group processing of such modifications was optional under at 40 CFR 70.7(e)(3) so this is an acceptable resolution of this issue. These revisions were effective June 14, 1998.

*P. Significant Permit Modifications*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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.'' In the cover letter to the June 2, 1998, Michele Brown, Commissioner of the State of Alaska, Department of Environmental Conservation, committed to ''allocating sufficient resources in the Air Quality Maintenance Section to issue the majority of Significant Permit Revisions within 9 months of receiving complete applications.'' EPA is satisfied that this resolves the issue.

*Q. Reopenings*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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).'' Alaska, in its June 2, 1998, submittal, provided documentation that: (1) It had revised its regulations at 18 AAC 50.341(a), (b), (f), and (g) to provide that Alaska would reopen permits within 18 months after the promulgation by EPA of a new requirement applicable to the facility; (2) it had revised its regulations at 18 AAC 50.341(a), (c), (f), and (g) to provide that Alaska would be required, rather than merely authorized, to reopen permits under specified circumstances; (3) it had revised its regulations at 18 AAC 50.341(a), (d), (e), (f), and (g) to specify procedures in the event of reopening for cause by EPA. To resolve the fourth part of this issue, Michele Brown, in the June 2, 1998, cover letter submitting the program revisions, committed ''to allocating sufficient resources in the Air Quality Maintenance Section to complete required permit re-openings for cause as expeditiously as practicable.'' The revisions were effective June 14, 1998. EPA is satisfied that Alaska's actions resolve these issues.

*R. Public Petitions to EPA*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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).'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations at 18 AAC 50.340(g)(2)(B) adding the appropriate prohibitory language. The revisions were effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

*S. Public Participation*

EPA, in its December 5, 1996, **Federal Register**, stated that ''[t]he 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.'' Alaska, in its June 2, 1998, submittal, provided documentation that it had revised its regulations by adding 18 AAC 50.350(n) which prohibits the inclusion of ''information that is protected as a trade secret under AS 45.50.910–45.50.945.'' The revision was effective June 14, 1998. EPA is satisfied that Alaska's action resolves this issue.

## III. What Other Changes Has Alaska Made to Its Program—Outside of Addressing the Interim Approval Issues?

Subsequent to interim approval of Alaska's title V program, the State

legislature enacted Alaska Statute 09.25.450 (herein ''Audit Law''), which establishes a privilege for certain information contained in environmental audit reports conducted by facilities, and also establishes immunity from enforcement for certain violations that are voluntarily reported. Because some states have enacted audit laws that have significantly altered their enforcement authorities, EPA in 1997 issued a guidance document entitled ''Statement of Principles, Effect of State Audit Immunity/Privilege Laws on Enforcement Authority for Federal Programs'' (February 14, 1997) (''Statement of Principles'') to guide the Agency's review of the impact of such laws for purposes of approval or authorization of federal programs. EPA evaluated Alaska's Audit Law with regard to the Statement of Principles to determine the extent to which the required title V enforcement authorities may be impacted.

As a part of this examination, EPA requested that the State provide an opinion from its Attorney General's Office addressing the interrelationship of the Audit Law and the state's enforcement authorities required for approval under part 70. Alaska provided such an opinion, dated March 14, 2000, signed by Assistant Attorney General Christopher Kennedy (herein ''Kennedy Opinion'').[1] This opinion supplements an April 28, 1997, opinion, signed by Attorney General Bruce Botelho, that addresses the Audit Law more generally. The latter opinion, though a useful interpretation of the Audit Law, was not drafted in response to an EPA request and does not explicitely address EPA program approval requirements. EPA is relying upon both of these opinions in issuing today's full approval action.

EPA finds that the Audit Law, as interpreted by the two Attorney General opinions, does not affect Alaska's enforcement authorities such as to preclude the granting of full approval to the State's Title V program. The major points of EPA's reasoning in making this finding are summarized below.

The Kennedy Opinion adopts an analysis similar to that used by the New Hampshire Attorney General's Office in interpreting that State's audit law as being consistent with the part 70 approval requirements.[2] The Kennedy Opinion addresses each of the points raised in the New Hampshire opinion, and concludes that Alaska's Audit Law is similarly structured so as to not impede the exercise of state enforcement authorities necessary for approval under part 70.

As EPA has noted in the context of its own self-disclosure policy (60 FR 66710, Dec. 22, 1995), the Agency is, as a matter of policy, opposed to the creation of a privilege for information related to violations of federal environmental laws. As a matter of state program approval, EPA's Statement of Principles addresses privileges created under state audit laws and notes that such laws must not impede a state's ability to obtain information needed to identify noncompliance and criminal conduct. Specifically, in the present context, a state must be able to gather information as required under part 70 and must preserve the right of the public to obtain information about noncompliance, report violations, and pursue enforcement under the Clean Air Act's citizen enforcement provisions. Finally, an audit law privilege may not apply in a criminal proceeding.

With regard to the privilege provisions of the Audit Law, the Kennedy Opinion states that the Audit Law would not threaten the State's ability to discover title V permit violations. This is in part because, as required by part 70, Alaska's program requires reporting of title V permit violations. Thus, the Audit Law's privilege and immunity provisions, applying as they do only to ''voluntary'' assessments of compliance, do not extend to title V permit violations uncovered by compliance auditing that is mandated by the Clean Air Act and the Title V regulations. Moreover, the Audit Law privilege does not extend to information required to be collected, developed, maintained, or reported under an environmental law. AS 09.25.460(a)(1). The Audit Law privilege does not apply in criminal proceedings. AS 09.25.450(a).

The Statement of Principles also addresses the possible effects of a state audit law upon a state's required authority to assess civil and criminal penalties. In short, where title V program approval is concerned, a state audit law must not impede the state's authority to recover civil penalties for significant economic benefit, repeat violations, violations of judicial and administrative orders, violations resulting in serious harm, or violations that may present imminent and substantial endangerment. The audit law also must not impede a state's authority to collect criminal fines and/or sanctions for knowing violations.

The Kennedy Opinion explains that the Audit Law excludes from its coverage any violation that result in or poses an imminent and present threat of substantial injury to people, property, or the environment. AS 09.25.465(a)(2), 09.25.475(b). Moreover, as noted above, violations of a title V permit would generally not qualify for coverage under the Audit Law, to the extent they are discovered during the course of an audit mandated by the Clean Air Act or applicable regulations. The Kennedy Opinion notes that the Audit Law expressly excludes from coverage violations of administrative or court orders. AS 09.25.480(b).

Regarding repeat violations and economic benefit, which are not explicitly addressed in the Kennedy Opinion, EPA notes that, for the former, the Audit Law's immunity provisions do not apply where there has been a pattern of same or similar violations by the facility or associated facilities within the 3 years preceding the violation for which the facility seeks coverage under the Audit Law. AS 09.25.480(a)(1)(B). Regarding economic benefit, the Audit Law's immunity provisions do not apply where the facility has realized substantial economic savings as a result of its noncompliance. AS 09.25.480(a)(3).

EPA finds that the Alaska Audit Law, as interpreted by the two Attorney General opinions submitted by the State, is sufficiently limited in scope so as not to preclude full approval of the State's title V program. It is EPA's intent to observe how the Audit Law is implemented in practice and how it is interpreted in state courts and administrative venues. If the evidence suggests that any of the key findings made today are incorrect, EPA may in the future revisit the effect of the Audit Law on the adequacy of Alaska's title V program.

## IV. Final Action

EPA is granting full approval of the State of Alaska's operating permits program. This approval does not extend to ''Indian Country,'' as defined in 18 U.S.C. 1151. *See* 64 FR 8247, 8250–8251 (February 19, 1999); 59 FR 55815–55818; 59 FR 42552, 42554 (August 18, 1994).

## V. What Happens if EPA Gets Comments on This Federal Register?

EPA has reviewed the State of Alaska's submittal and has determined that its operating permits program now qualifies for full approval. Accordingly, EPA is taking final action to fully

[1] EPA accepted the New Hampshire Attorney General's opinion as ensuring that the staet met the minimum requirements necessary for approval of a Title V program. *See* 61 FR 51370 (Oct. 2, 1996).

[2] EPA accepted the New Hampshire Attorney General's opinion as ensuring that the state met the minimum requirements necessary for approval of a Title V program. *See*, 61 FR 51370 (Oct. 2, 1996).

approve Alaska's air operating permits program.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant full approval of the title V operating permits program submitted by the State of Alaska should adverse comments be filed. This rule will be effective September 24, 2001 without further notice unless the Agency receives adverse comments by August 27, 2001.

If EPA receives such comments, then EPA will publish a notice withdrawing this final rule and informing the public that this rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 24, 2001 and no further action will be taken on the proposed rule.

**VI. What Administrative Requirements Apply to This Action?**

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As this is not a ''major'' rule as defined by 5 U.S.C. 804(2), EPA will not submit 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 United States prior to publication of this rule in the **Federal Register**, as specified in the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

**List of Subjects in 40 CFR Part 70**

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

Dated: July 3, 2001.

**Charles Findley,**

*Acting Regional Administrator, Region 10.*

40 CFR part 70, chapter I, 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. In appendix A to part 70, the entry for Alaska in alphabetical order is amended by revising paragraph (a) 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, 1995, February 27, 1996, July 5, 1996, August 2, 1996, and October 17, 1996; interim approval effective on December 5, 1996; revisions submitted on June 2, 1998; full approval effective on September 24, 2001.

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