economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does 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 (65 FR 67249, November 9, 2000), nor will it 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 (64 FR 43255, August 10, 1999), because it merely 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 31, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 01–22908 Filed 9–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[KY–T5–2001–01; FRL–7055–3]

Clean Air Act Proposed Full Approval of Operating Permit Program; KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: EPA proposes to fully approve the operating permit program of the Kentucky Department of Environmental Protection. This program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to Kentucky's operating permit program on November 14, 1995. Kentucky revised its program to satisfy the conditions of the interim approval and this action proposes approval of those revisions and other program changes made since the interim approval was granted.

DATES: Comments on the program revisions discussed in this proposed action must be received in writing by EPA on or before October 12, 2001.

ADDRESSES: Written comments on the program revisions discussed in this action should be addressed to Ms. Kim Pierce, Regional Title V Program Manager, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Copies of the Kentucky submittals and other supporting documentation used in developing the proposed full approval are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Interested persons wanting to examine these documents, which are contained in EPA docket file numbered KY–T5–2001–01, should make an appointment at least 48 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA Region 4, at (404) 562–9124 or pierce.kim@epa.gov/.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
What are the program changes that EPA proposes to approve?
What is involved in this proposed action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the title V operating permit 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 permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

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 (VOCs), carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year 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 of emitting 50 tons per year or more of VOCs or NO_X.

What Is Being Addressed in This Document?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct the deficiencies. Because the Kentucky program substantially, but not fully, met the requirements of part 70, EPA granted interim approval in a rulemaking (60 FR 57186) published on November 14, 1995. The interim approval notice described the conditions that had to be met in order for the Kentucky program to receive full approval. Kentucky submitted a revision to its interimly approved operating permit program on February 13, 2001. This document describes changes that have been made to the Kentucky operating permit program since interim approval was granted.

What Are the Program Changes That EPA Proposes To Approve?

As stipulated in the interim approval notice, full approval of the Kentucky title V operating permit program was made contingent upon the following rule changes:

(1) Revise the definitions of ''emissions unit'' and ''stationary source'' in 401 KAR 52:001 (previously 401 KAR 50:035, Section 1) to include the emissions of all HAPs listed in section 112(b) of the CAA for the purposes of determining title V applicability. Since both definitions reference the term ''regulated air pollutant,'' Kentucky addressed the deficiencies by revising the definition of ''regulated air pollutant'' to include HAPs subject to a standard or other requirement established pursuant to section 112 of the CAA. The state-effective rule change was submitted to EPA on February 13, 2001.

(2) Revise the definition of ''regulated air pollutant'' in 401 KAR 52:001 (previously 401 KAR 50:035, Section 1) to include all HAPs subject to requirements established under section 112 of the CAA in order to ensure permit issuance to all major sources. As indicated above, Kentucky revised the definition to include HAPs subject to a standard or other requirement established pursuant to section 112. The state-effective rule change was submitted to EPA on February 13, 2001.

(3) Revise Rule 401 KAR 52:020, Section 13(1)(e) (previously 401 KAR 50:035 Section 5(2)(a)) to provide for EPA review of administrative permit amendments incorporating requirements from preconstruction review permits, as required by 40 CFR 70.8. Kentucky responded by revising its rules to allow for EPA review of administrative permit amendments that incorporate preconstruction review permits. The state-effective rule change was submitted to EPA on February 13, 2001.

Kentucky made other program changes after EPA granted interim approval on November 14, 1995. These changes include reorganizing the title V operating permit program requirements and promulgating them in the following new rules on January 15, 2001: 401 KAR 52:001 ''Definitions for 401 KAR Chapter 52,'' 401 KAR 52:020 ''Title V permits,'' 401 KAR 52:050 ''Permit application forms,'' 401 KAR 52:060 ''Acid rain permits,'' and 401 KAR 52:100 ''Public, affected state, and U.S. EPA review.'' The requirements of part 70 are now addressed as follows:

(1) the applicability provisions of 40 CFR 70.3 and 70.4 are addressed in 401 KAR 52:020 Sections 1 and 2;

(2) 401 KAR 52:020 Sections 4–9, 23, and 401 KAR 52:050 address the permit application requirements in 40 CFR 70.5;

(3) the permit content requirements in 40 CFR 70.6 are addressed in 401 KAR 52:001 Section 1; 401 KAR 52:020 Sections 11, 12, 20, and 24; 401 KAR 52:100 Section 12; and Sections 1a–1c of the document entitled ''Cabinet Provisions and Procedures for Issuing Title V Permits,'' which is incorporated by reference in 401 KAR 52:020. However, 401 KAR 52:020, Section 24(1)(d) allows sources ten workdays after an emergency has occurred to submit a written report. Because this provision conflicts with 40 CFR 70.6(g)(3)(iv), EPA regards it as wholly external to the program revisions submitted for approval. Consequently, EPA proposes to take no action on this provision of Kentucky law and the Commonwealth must continue implementing the two-day emergency notification requirement contained in 401 KAR 50:035, Section 4(7)(b)4. of its interimly approved program;

(4) the operational flexibility and off-permit provisions of 40 CFR 70.4(b)(12) and (15), respectively, are addressed in 401 KAR 52:001 Section 1; 401 KAR 52:020 Sections 5, 17, and 18; and Sections 1a–1c of the ''Cabinet Provisions and Procedures for Issuing Title V Permits'' document;

(5) the permit issuance, renewal, reopenings, and revisions requirements in 40 CFR 70.7 are addressed in 401 KAR 52:020 Sections 3, 7–9, 12–16, 19, and 25; 401 KAR 52:100; and Sections 1a and 2 of the ''Cabinet Provisions and Procedures for Issuing Title V Permits'' document; and

(6) the requirements in 40 CFR 70.8 regarding permit review by EPA and affected states are addressed in 401 KAR 52:100 and Section 2 of the ''Cabinet Provisions and Procedures for Issuing Title V Permits'' document.

The new rules, along with sufficient evidence of their procedurally correct adoption, were submitted to EPA on February 13, 2001. A detailed analysis showing how the operating permit program requirements of part 70 are addressed by Kentucky's new rules is available for review at the EPA Region 4 office.

Kentucky also amended its audit privilege and immunity law, KRS 224.01–040, to remove language that restricted its ability to adequately administer and enforce the criminal enforcement, civil penalty, and public access provisions of the title V operating permits program. The law was amended in response to EPA's Notice of Deficiency (see 65 FR 76230, December 6, 2000), and the amendments became effective in June 2001.

What Is Involved in This Proposed Action?

Kentucky has fulfilled the conditions of the interim approval granted on November 14, 1995, and EPA proposes full approval of Kentucky's title V operating permit program. EPA also proposes approval of the other program changes described above. The regulations in Kentucky's federally approved title V program include 401 KAR 50:038 ''Air emissions fee,'' 401 KAR 52:001 ''Definitions for 401 KAR Chapter 52,'' 401 KAR 52:020 ''Title V permits'' (except 401 KAR 52:020, Section 24(1)(d)), 401 KAR 52:050 ''Permit application forms,'' 401 KAR 52:060 ''Acid rain permits,'' 401 KAR 52:100 ''Public, affected state, and U.S. EPA review,'' and 401 KAR 50:035, Section 4(7)(b)4.

Administrative Requirements

A. Request for Public Comments

EPA requests comments on the program revisions discussed in this proposed action. Copies of the Kentucky

submittals and other supporting documentation used in developing the proposed full approval are contained in a docket file numbered KY–T5–2001–01 that is maintained at the EPA Region 4 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 proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. The docket files are available for public inspection at the location listed under the **ADDRESSES** section of this document. EPA will consider any comments received in writing by October 12, 2001.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

This rule 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 CAA.

E. Executive Order 13175

This rule 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).

F. Executive Order 13211

This rule is not subject to 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 significantly regulatory action under Executive Order 12866.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because operating permit program approvals under section 502 of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed 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 requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In reviewing operating permit programs, EPA's role is to approve state choices, provided that they meet the criteria of the CAA 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 VCS, EPA has no authority to disapprove an 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 an operating permit program that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of NTTAA do not apply.

J. Paperwork Reduction Act

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.

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.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 4, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–22912 Filed 9–11–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 67 and 68

[USCG 2001–10048]

Vessel Documentation: ''Sold Foreign''

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard seeks comments from the public on its interpretation of the term ''sold foreign''. Its current interpretation may disqualify from eligibility for coastwise trade certain vessels whose ownership has become ''foreign'' in technical ways. Some affected parties feel that this interpretation imposes a harsh penalty for slight, often unintended foreign involvement while others feel that it just preserves the privilege of coastwise trade for the domestic fleet.

DATES: Comments and related material must reach the Docket Management Facility on or before December 11, 2001.

ADDRESSES: To make sure your comments and related material do not enter the docket (USCG 2001–10048) more than once, please refer them to the docket and submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this Request for Comments, call LCDR Don Darcy, Project Manager, Office of Standards Evaluation and Development Division, Coast Guard Headquarters, 202–267–1200. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number of this Request for Comments (USCG 2001–10048), indicate the specific question(s) listed under Questions of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. Your comments and materials may influence the interpretation that we propose. We will consider all of them received during the comment period.

The Coast Guard may hold a public meeting. Whether it does will depend on the response to this notice. You may seek a meeting by submitting a request to the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If the Coast Guard determines that it should hold a public meeting, it will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as amended, provides, among other things, that a vessel of more than 200 gross tons as measured under chapter 143 of Title 46, United States Code (46 U.S.C. 14301 *et seq.*), and otherwise qualified for coastwise trade, may not be documented for coastwise trade if it has been ''* * * sold foreign in whole or in part * * *''. The Coast Guard has interpreted the term ''sold foreign'' to mean that the vessel has transferred from one business entity, to a newly restructured business entity, to (1) an owner who is no longer a U.S. citizen or (2) an owner who is no longer eligible to document a vessel under the laws of the U.S. If the owner is a business entity, it must meet the requirements for documentation under § 12102 of Title 46 U.S.C., and for a coastwise-trade endorsement under § 12106. (There are limited exceptions under the Oil Pollution Act of 1990 (33 U.S.C. 1321) and under the Act of September 2, 1958 (46 App. U.S.C. 883–1).) The Coast Guard has held that, once a business entity no longer meets these statutory requirements, its vessels have ''sold foreign.'' In the case of a corporation, any vessel transferred to a business entity that does not meet the quorum requirements for a board of directors or that has a noncitizen chairman of the board is permanently barred from coastwise trade. The Coast Guard has held that no business entity can reverse or cure the loss of the privilege of coastwise trade by reorganizing so as to satisfy 46 U.S.C. 12102. The only way a vessel which has run afoul of the strictures of the first proviso has regained the privilege has been through enactment of special legislation.

Questions

We especially need the public's assistance in answering the following questions, and welcome any added information on this topic. In responding to each question, please explain your reasons for each answer as specifically as possible so that we can carefully weigh the consequences and impacts of any actions we may take.

At this time the Coast Guard is reconsidering its interpretation of the effect of the first proviso. For it to do so, it invites comments on the following questions:

1. Should the Coast Guard issue a formal letter-ruling addressing the proposed reorganization of a business entity before the entity undertakes the reorganization?

2.a. If a qualified owner sells a vessel to an owner unqualified because foreign, should the unqualified owner be able to cure the defect through its own reorganization?

b. Should the Coast Guard count as accomplishing a ''sale'' the