

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.

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). This rule will be effective on November 30, 2001.

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 February 4, 2002. 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 70

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

Dated: November 27, 2001.

Wayne Nastri,
Regional Administrator, Region 9.

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. Appendix A to part 70 is amended by adding paragraph (d)(3) under Arizona to read as follows:

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

*	*	*	*	*
<i>Arizona</i>				
*	*	*	*	*
	(d)	*	*	*

(3) revisions submitted on September 18, 2001. Full approval is effective on November 30, 2001.

* * * * *

[FR Doc. 01-30100 Filed 12-4-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NJ002; FRL-7113-1]

Clean Air Act Final Full Approval of Operating Permit Program; New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating final full approval of the operating permit program submitted by the State of New Jersey in accordance with Title V of the Clean Air Act (the Act) and its implementing regulations. This approved program allows New Jersey to issue federally enforceable operating permits to all major stationary sources and to certain other sources within the State's jurisdiction.

EFFECTIVE DATE: November 30, 2001.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866.

FOR FURTHER INFORMATION CONTACT: Steven C. Riva, Chief, Permitting Section, Air Programs Branch, at the above EPA office in New York or at telephone number (212) 637-4074.

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

1. What is the operating permits program?
2. What is being addressed in this document?
3. What are the program changes that EPA is approving?
4. What is involved in this final action?
5. What is the effective date of EPA's final full approval of the New Jersey title V program?

1. What Is the Operating Permits Program?

Title V of the Clean Air Act (CAA) and its implementing regulations at 40 CFR part 70 (part 70) direct all states to develop and implement operating permit programs that meet certain criteria. Operating permit programs are intended to consolidate into single

federally enforceable documents all CAA requirements that apply to individual sources. This consolidation of all of the applicable requirements for a source enables the source, the public, and permitting authorities to more easily determine what CAA requirements apply and whether the source is complying with them. Sources required to obtain operating permits include "major" sources of air pollution and certain other sources specified in CAA section 501 and in EPA's regulations at 40 CFR 70.3.

The EPA reviews state programs pursuant to title V of the CAA and part 70, which outline the 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 which would be effective for two years. If a state does not have in place a fully approved program by the time the interim approval expires, the federal operating permit program under 40 CFR part 71 (part 71) will be implemented. Due to unexpected circumstances that affected states' timeliness in developing fully approvable programs, EPA extended the effective date of all interim approvals until December 1, 2001. For any state that has not received full approval from EPA by December 1, 2001, its interim approval will then expire and be immediately replaced by the federal part 71 program. All sources subject to the federal program that do not have final part 70 permits already issued to them by the state are then required to submit a part 71 permit application and the appropriate fees within one year to their respective EPA Regional offices under part 71.

2. What Is Being Addressed in This Document?

New Jersey's first version of its operating permit program substantially, but not fully, met the requirements of part 70; therefore, EPA granted the program interim approval on May 16, 1996, which became effective on June 17, 1996 (61 FR 24715). EPA identified four issues that needed correction before New Jersey would be eligible for full approval. New Jersey submitted a corrected program to EPA on May 31, 2001, which addressed each of the four deficiencies.

On October 25, 2001, EPA proposed full approval of New Jersey's title V operating permit program and provided the public a period of 30 days to submit comments on EPA's proposed action (66 FR 53969). During the 30-day comment period, EPA received no comments on the proposed full approval. However, EPA finds it appropriate to clarify a

statement made in the "Nonmajor Sources Section" of the proposal. Where it was stated that "[a]n exemption not only relieves the subject sources from the permitting requirement; it also relieves them from the substantive requirements," EPA did not mean to imply that an exemption from the permitting requirement would also exempt the subject source for substantive requirements in the standard. The subject nonmajor source must check the individual standards to determine if requirements other than the need to obtain a part 70 permit apply to it. This document finalizes EPA's action on the proposal.

3. What Are the Program Changes That EPA Is Approving?

The details on the program changes can be found in EPA's proposed action which was published in the October 25, 2001 issue of the **Federal Register** (see 66 FR 53969). In summary, EPA approves the following changes to the New Jersey Operating Permit Rule that became effective on August 2, 1999:

- (1) N.J.A.C. 7:27-22.20(b)(7);
- (2) N.J.A.C. 7:27-22.29(a) and 22.29(e); and
- (3) N.J.A.C. 7:27-22.1.

4. What Is Involved in This Final Action?

The State of New Jersey has fulfilled the conditions of the interim approval granted on May 16, 1996. EPA is therefore taking final action to fully approve New Jersey's operating permit program. EPA is also taking final action to approve other program changes made by the State since the interim approval was granted as identified in the October 25, 2001 issue of the **Federal Register** notice (see 66 FR 53969). This final full approval has no expiration date. However, the State may revise its operating permit program as appropriate in the future by following the procedures stipulated in 40 CFR 70.4(i). EPA may also exercise its oversight authorities under section 502(i) of the Act to require changes to the State's program consistent with the procedure stipulated in 40 CFR 70.10.

In its program submittal, New Jersey did not assert jurisdiction over Indian country. To date, no tribal government in New Jersey has applied to EPA for approval to administer a title V program in Indian country within the State. On February 12, 1998, EPA promulgated regulations (40 CFR part 49) under which eligible Indian tribes may be approved by EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. EPA has

promulgated regulations (40 CFR part 71) governing the issuance of federal operating permits in Indian country. EPA's authority to issue permits in Indian country was challenged in *Michigan v. EPA*, (D.C. Cir. No. 99-1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

5. What Is the Effective Date of EPA's Final Full Approval of the New Jersey Title V Program?

EPA is using the good cause exception under the Administrative Procedure Act (APA) to make the full approval of the State's program effective on November 30, 2001. In relevant part, section 553(d) provides that publication of "a substantive rule shall be made not less than 30 days before its effective date, except—* * * (3) as otherwise provided by the agency for good cause found and published with the rule." Good cause may be supported by an agency determination that a delay in the effective date is "impracticable, unnecessary, or contrary to the public interest." APA section 553(b)(3)(B). EPA believes that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. EPA's interim approval of New Jersey's program expires on December 1, 2001. In the absence of this full approval taking effect on November 30, 2001, the federal part 71 program would automatically take effect in New Jersey and would remain in place until the effective date of the fully-approved state program. EPA believes it is in the public interest for sources, the public and the State to avoid any gap in coverage of the State program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because New Jersey has been administering the title V permit program for five years under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially but did not fully meet the part 70 requirements, to the fully approved program is relatively minor, in

particular if compared to the changes between a state-approved program and the federal program. Finally, sources are already complying with many of the newly approved requirements as a matter of state law. Thus, there is little or no additional burden with complying with these requirements under the federally approved State program.

Administrative Requirements

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.

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). This rule will be effective on November 30, 2001.

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 February 4, 2002. 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 70

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

Dated: November 28, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

For reasons set out in the preamble, chapter I, 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 paragraph (c) to the entry for New Jersey to read as follows:

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

* * * * *

New Jersey

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(c) The New Jersey Department of Environmental Protection submitted program revisions on September 17, 1999 and May 31, 2001. The rule revisions contained in the September 17, 1999 and May 31, 2001 submittals adequately addressed the conditions of the interim approval effective on June 17, 1996, and which would expire on December 1, 2001. The State is hereby granted final full approval effective on November 30, 2001.

* * * * *

[FR Doc. 01-30096 Filed 12-4-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[OK-FRL-7113-7]

Clean Air Act Full Approval of Operating Permits Program; State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: The EPA is promulgating full approval of the Operating Permit