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

* * * * *

(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]

BILLING CODE 6560–50–P

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

Program of the State of Oklahoma. Oklahoma's Operating Permit Program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. The EPA granted interim approval to Oklahoma's Operating Permit Program on February 5, 1996 (61 FR 4220). Oklahoma revised its program to satisfy the conditions of the interim approval, and EPA proposed full approval in the **Federal Register** on October 16, 2001.

EFFECTIVE DATE: November 30, 2001.

ADDRESSES: Copies of the State's submittal and other supporting documentation relevant to this action are available for inspection during normal business hours at the U.S. EPA, Region 6, Air Permitting Section (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, and the Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73102. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Stanton, Regional Title V Air Operating Permits Projects Manager, Air Permitting Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, at (214) 665–8377.

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

What Is the Operating Permit Program?

The CAA Amendments of 1990 required all States to develop Operating Permit Programs that met certain Federal criteria. In implementing the 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 into a single document, the source, the public, and the regulators can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this 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, or particulate matter; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of 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.

Why Is EPA Taking This Action?

Where an Operating Permit Program substantially, but not fully met the criteria outlined in the implementing regulations codified at 40 CFR part 70, EPA granted interim approval contingent on the State revising its program to correct the deficiencies. Because Oklahoma's Operating Permit Program substantially, but not fully met the requirements of part 70, EPA granted interim approval to the program in a rulemaking published on February 5, 1996 (61 FR 4220). Interim approval of Oklahoma's program expires on December 1, 2001.

What Is Involved in This Final Action?

The Oklahoma Department of Environmental Quality (ODEQ) has fulfilled the conditions of interim approval granted on February 5, 1996. On October 16, 2001, EPA published a document in the **Federal Register** (66 FR 52562) proposing full approval of Oklahoma's title V Operating Permits Program, and proposing approval of certain other program revisions. The EPA received comments from one person during the comment period that ran from October 16, 2001, until November 15, 2001. Two of the comments agreed with EPA that the deficiencies for the first, second, and fourth conditions (transition schedule for permit issuance, major source definition, and permit language content) for full approval have been corrected. The remainder of the comments disagreed with EPA's position, and are set forth below.

1. Oklahoma Administrative Code/ Tracking Part 70 Language

The first adverse comment was a general comment that Oklahoma should amend its operating permits regulations so that the language tracks the language in 40 CFR part 70. The commenter contends that Oklahoma's regulations must track the language of 40 CFR part 70 to retain the effect and intent of the Clean Air Act. Otherwise, according to the commenter, EPA is put in the position of trying to renegotiate the Clean Air Act.

EPA does not concur with the comment. Part 70 provides for the establishment of a comprehensive State air quality permitting program consistent with the requirements of title V of the Clean Air Act. 40 CFR 70.1(a). The state's program does not have to exactly track the language in part 70, but it must be consistent with it. 40 CFR 70.1(c). This allows for flexibility by the State to adopt the regulations to fit its needs while maintaining national consistency. The EPA has determined that Oklahoma's program is consistent with part 70 with the exception of the minor issues outlined in the Notice of Deficiency located elsewhere in this **Federal Register**.

2. Insignificant Activities List

The second adverse comment questioned why the insignificant activities definition in Oklahoma's rule and the approved list of insignificant activities in Appendix I of Subchapter 8 remain as a part of the Oklahoma Administrative Code if the EPA is not approving the list. The commenter questioned whether EPA has the authority to approve the list and whether the regulation tracks the language of 40 CFR part 70.

The authority to approve an insignificant activities list is found at 40 CFR 70.5(c), which states that ''the Administrator may approve as a part of the State program a list of insignificant activities and emissions levels which need not be included in permit applications.'' As EPA stated in the **Federal Register** when it granted final interim approval to Oklahoma, ''even though insignificant activities are not a required element of a part 70 program, a State that opts to establish such activities must nevertheless meet certain requirements, including prior approval

by EPA.'' 61 FR 4220, 4221. As EPA stated when it proposed granting full approval, the emission levels in the definition are consistent with the levels in other approved State Operating Permit Programs. Even though EPA did not approve the list of insignificant activities, the list remains a part of Oklahoma's regulations as a matter of state law. However, it is not part of Oklahoma's approved title V program. Therefore, EPA does not concur with this comment.

3. Judicial Review

The third adverse comment involved what the commenter characterized as the ''judicial review'' process, but was not related to the deficiency as outlined by EPA when we granted Oklahoma interim approval. The comment dealt with whether certain construction permits are classified as a Tier II or Tier III permit and how this affects ''judicial review.'' If a permit is characterized as Tier II, the commenter claims that ''judicial review'' is avoided because of the lack of an administrative hearing. If it is classified as a Tier III permit and a hearing is held, the commenter contends that certain regulations governing administrative hearings such as employment of the administrative law judge, declaratory ruling procedures, restricting attendance at administrative hearings in appropriate cases, and burden of proof restrict judicial review.

EPA does not agree with this comment. Judicial review in this instance refers to the ability of an individual to appeal a decision from an administrative agency to state court, not how (or whether) the state conducts an administrative hearing. Thus, the comments are not related to judicial review but instead are related to the Tier II and Tier III permit process as outlined in Oklahoma Administrative Code (OAC) Title 252, Chapter 4. The EPA is not approving this entire Chapter as a part of this action. As previously stated, EPA is not approving any provision of Subchapter 8 which relates to construction permits, or any other provision contained in the submittal which does not pertain to Title V. 66 FR at 52564. The EPA found only one issue with judicial review as it relates to the state's Operating Permit program (no judicial review for persons who made oral comments), and that deficiency has been corrected. The EPA does not believe that these comments are relevant to any interim approval issue or to the action that EPA is taking today.

4. Enhanced New Source Review (NSR) Procedures

The fourth adverse comment states that by not defining the term ''Enhanced New Source Review (NSR) procedures'', Oklahoma has effectively avoided the NSR procedures in the Clean Air Act. The commenter believes that permits which should have been subject to 40 CFR part 70 will be shielded from the NSR procedures. The commenter feels that the state should use the exact language of 40 CFR part 70 in regards to ''Enhanced NSR procedures'' and that Oklahoma is allowed to approve permits without using NSR procedures.

The commenter appears to believe that because Oklahoma used the undefined term ''enhanced NSR procedures'' in the Title V context, certain sources that would have otherwise been subject to NSR procedures will no longer be subject to those procedures. However, this is not the case. The title V program and the NSR program have different procedures and requirements. As noted in the October 16, 2001 proposed full approval, Oklahoma has deleted the term ''enhanced NSR procedures'' from its regulations and has instead made the commitments detailed in the proposal and discussed in paragraph 6. Thus, we will describe the issue in more general terms. Under certain conditions, a state may allow the incorporation into a part 70 permit, the requirements from preconstruction review permits authorized under an EPA-approved program through the use of the administrative permit amendment process. As provided in 70.7(d)(1)(v), the EPA approved NSR permitting program must meet procedural requirements substantially equivalent to the requirements of part 70 that would be applicable to the change if the change were subject to review as a permit modification. Thus, the procedures required by 40 CFR 70.7(d)(1)(v) for use of the administrative amendment process are in addition to the Clean Air Act's New Source Review requirements and do not abrogate those requirements. These procedures are not related to the installation of pollution controls as stated by the commenter. The EPA does not concur with these comments.

5. Options To Address Use of Administrative Amendment Process To Incorporate Requirements From Preconstruction Permits Into the Title V Permit

In the **Federal Register**, EPA stated that it had given Oklahoma four options to address outstanding issues from the sixth and seventh interim approval deficiencies. These options included Oklahoma either including provisions in the title V permit that meet the requirements of 40 CFR 70.7 and 70.8 (the option ultimately chosen by Oklahoma) or amending the regulation to track the language in 40 CFR 70.7(d)(1)(v). The commenter contends that the regulation should be amended so that the language tracks the language in part 70. Otherwise, according to the commenter, it opens the door to renegotiate the language of the Clean Air Act.

As set forth in response to the first comment, a State does not have to use the exact language of part 70 when promulgating its operating permits program. Therefore, we do not agree with this comment.

6. Permit Language

As stated in the **Federal Register**, EPA and Oklahoma agreed on nine conditions it would include in its permits to implement its desire to use the administrative amendment process to incorporate requirements from preconstruction permits into a title V permit. 66 FR at 52564. The commenter had several objections to these provisions. Three of these comments related to the 30 day public notice and comment period, contending that 30 days is insufficient to analyze the permit and that the public will not have another 30 day comment period when the construction permit is incorporated in the title V permit. However, this permit condition is consistent with the federal requirements outlined in 40 CFR 70.7(h)(4) which requires the permitting authority to provide at least 30 days for public comment.

The commenter also objected to the requirement that the public notice state that EPA review, EPA objection, and petitions to EPA will not be available when the preconstruction requirements are incorporated into a title V permit. However, EPA review, EPA objection, and the EPA petition process is available during the construction permit process. The purpose of requiring this language in the public notice is to put the public on notice that the time to object to the permit is during the construction permit process, not when it is incorporated into the title V permit. This procedure is authorized by 40 CFR 70.7(d)(1)(v), and thus we do not agree with this comment.

Two comments related to the criteria for determining what States are affected (*i.e.*, affected states). The federal definition of ''affected states'' is found at 40 CFR 70.2. Oklahoma's definition (OAC 252:100–8–2) is consistent with the federal definition.

The commenter states that EPA review, objections, and petitions should be posted on the ODEQ and EPA web sites. There is no legal requirement to post EPA review, objections, or petitions on Oklahoma's or EPA's website. However, EPA does post title V petitions and its response to the petition on a website. These documents can be found at http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb.htm.

Finally, the commenter asserts that the language of 40 CFR 70.7(f) and (g) should be a part of the Oklahoma Administrative Code (OAC) and not be modified by OAC 252:100–8–7.3(a), (b), and (c). The language of 40 CFR 70.7(f) and (g) is not modified by OAC 252:100–8–7.3(a), (b), and (c). The citations to the Oklahoma Administrative Code are to the procedures for reopening permits that EPA has approved as meeting the part 70 requirements. They do not modify 40 CFR 70.7(f) and (g). If EPA reopens a permit for cause, it will use the procedures in 40 CFR 70.7(f) and (g).

7. Approval by the Governor

There were two comments relating to the Governor's approval of Oklahoma's proposed revisions to OAC 252:100–8–8, which corrected the deficiencies relating to permit review by EPA and affected states. EPA noted that the Governor must approve this regulation before it becomes effective. The commenter was concerned that the Governor would not approve these revisions. However, the Governor has approved these revisions, and Oklahoma submitted these revisions to EPA by letter dated October 19, 2001.

8. Program Deficiencies

The commenter also asserted that the issues identified as additional program deficiencies were not minor and that they should be corrected prior to full approval. The EPA stated in the October 16, 2001 notice that it would publish a notice of deficiency concerning revisions Oklahoma made to its Operating Permits Program that did not meet the requirements of part 70. These deficiencies relate to public participation, Tier I air quality applications, definitions, permit content, administrative permit amendments, minor permit modification procedures, and permit review by EPA and affected States.[1] These deficiencies were identified in a June 12, 2001 letter to Oklahoma. However, for the reasons discussed below, we disagree that these deficiencies prohibit us from granting Oklahoma full program approval at this time.

In 1990, Congress amended the CAA, 42 U.S.C. 7401 *et seq.*, by adding title V, 42 U.S.C. 7661 to 7661f, which requires certain air pollutant emitting facilities, including ''major source[s]'' and ''affected source[s],'' to obtain and comply with operating permits. *See* 42 U.S.C. 7661a(a). Title V is intended to be administered by local, state or interstate air pollution control agencies, through permitting programs that have been approved by EPA. *See* 42 U.S.C. 7661a(a). EPA is charged with overseeing the State's efforts to implement an approved program, including reviewing proposed permits and vetoing improper permits. *See* 42 U.S.C. 7661a(i) and 7661d(b). Accordingly, title V of the CAA provides a framework for the development, submission and approval of state operating permit programs. Following the development and submission of a state program, the CAA provides two different approval options that EPA may utilize in acting on state submittals. *See* 42 U.S.C. 7661a(d) and (g). Pursuant to section 502(d), EPA ''may approve a program to the extent that the program meets the requirements of the Act * * *''. EPA may act on such program submittals by approving or disapproving, in whole or in part, the state program. An alternative option for acting on state programs is provided by the interim approval provision of section 502(g). This section states: ''[i]f a program * * * substantially meets the requirements of this title, but is not fully approvable, the Administrator may by rule grant the program interim approval.'' This provision provides EPA with the authority to act on State programs that substantially, but do not fully, meet the requirements of title V and part 70. Only those program submittals that meet the requirements of eleven key program areas are eligible to receive interim approval. *See* 40 CFR 70.4(d)(3)(i)–(xi). Finally, section 502(g) directs EPA to ''specify the changes that must be made before the program can receive full approval.'' 42 U.S.C. 7661a(g); 40 CFR 70.4(e)(3). This explicit directive encompasses another, implicit one: once a state corrects the specified deficiencies, then it will be eligible for full program approval. EPA believes this is so even if deficiencies have been identified sometime after final interim approval, either because the deficiencies arose after EPA granted interim approval or, if the deficiencies existed at that time, EPA failed to identify them as such in proposing to grant interim approval.

Thus, an apparent tension exists between these two statutory provisions. Standing alone, section 502(d) appears to prevent EPA from granting a state operating permit program full approval until the state has corrected all deficiencies in its program no matter how insignificant, and without consideration as to when such deficiency was identified. Alternatively, section 502(g) appears to require that EPA grant a state program full approval if the state has corrected those issues that the EPA identified in the final interim approval. The central question, therefore, is whether by virtue of correcting the deficiencies identified in the final interim approval Oklahoma is eligible at this time for full approval or whether Oklahoma must also correct any new or recently identified deficiencies as a prerequisite to receiving full program approval.

According to settled principles of statutory construction, statutory provisions should be interpreted so that they are consistent with one another. *See Citizens to Save Spencer County* v. *EPA,* 600 F.2d 844, 870 (D.C. Cir. 1979). Where an agency encounters inconsistent statutory provisions, it must give maximum possible effect to all of the provisions, while remaining within the bounds of its statutory authority. *Id.* at 870–71. Whenever possible, the agency's interpretation should not render any of the provisions null or void *Id.* Courts have recognized that agencies are often delegated the responsibility to interpret ambiguous statutory terms in such a fashion. *See Chevron U.S.A, Inc.* v. *Natural Resources Defense Council,* Inc., 467 U.S. 837, 845 (1984). Harmonious construction is not always possible, however, and furthermore should not be sought if it requires distorting the language in a fashion never imagined by Congress. *Citizens to Save Spencer County,* 600 F.2d at 870.

In this situation, in order to give effect to the principles embodied in title V that major stationary sources of air pollution be required to have an operating permit that conforms to certain statutory and regulatory requirements, and that operating permit programs be administered and enforced by state permitting authorities, the appropriate and more cohesive reading of the statute recognizes EPA's authority to grant Oklahoma full approval in this situation while working simultaneously with the state, in its oversight capacity, on any additional problems that were recently identified. To conclude

[1] The deficiencies relating to permit review by EPA and affected states has been corrected. See Item 7 above.

otherwise would disrupt the current administration of the state program and cause further delay in Oklahoma's ability to issue operating permits to major stationary sources. A smooth transition from interim approval to full approval is in the best interest of the public and the regulated community and best reconciles the statutory directives of title V.

Furthermore, requiring the State to fix all of the deficiencies that were identified in the June 12, 2001 letter to receive full approval runs counter to the established regulatory process that is already in place to deal with newly identified program deficiencies. Section 502(i)(4) of the CAA and 40 CFR 70.4(i) and 70.10 provides EPA with the authority to issue notices of deficiency (''NOD'') whenever EPA makes a determination that a permitting authority is not adequately administering or enforcing a part 70 program, or that the State's permit program is inadequate in any other way. The Oklahoma title V interim approval expires on December 1, 2001. This deadline does not provide adequate time for the State to correct newly identified issues prior to the expiration of interim approval. Allowing the State's program to expire because of issues identified as recently as June 12, 2001 would cause disruption and further delay in the issuance of permits to major stationary sources in Oklahoma. As explained above, we do not believe that title V requires such a result. Rather, the appropriate mechanism for dealing with additional deficiencies that are identified sometime after a program received interim approval, but prior to being granted full approval is a NOD as discussed above. This process provides the State an adequate amount of time after such findings to implement any necessary changes without unduly disrupting the entire state operating permit program. As a result, addressing newly identified problems separately from the full approval process will not cause these issues to go unaddressed. Therefore, the deficiencies EPA identified are not a barrier to granting full approval to States.

9. Comments on Pre-Construction Permit

The commenter also made several comments regarding a preconstruction permit. Since these comments do not pertain to the action proposed in the **Federal Register** notice or to Oklahoma's Operating Permits Program, EPA is not providing a response.

What Is the Effective Date of EPA's Full Approval of the Oklahoma Title V Program?

The 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, the APA 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.'' 5 U.S.C. 553(d)(3). 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.'' 5 U.S.C. 553(b)(3)(B). The EPA finds 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. The EPA's interim approval of Oklahoma's program expires on December 1, 2001. In the absence of the full approval of Oklahoma's program taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in Oklahoma 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 of Oklahoma 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 Oklahoma has been administering the title V permit program for over 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 not fully met 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.

What Is the Scope of EPA's Full Approval?

In its program submission, Oklahoma did not assert jurisdiction over Indian country. To date, no tribal government in Oklahoma has applied to EPA for approval to administer a title V program in Indian country within the state. EPA regulations at 40 CFR part 49 govern how 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's part 71 regulations govern 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.

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). The

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 significantly 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.

Authority: 42 U.S.C. 7401–7671q.

Dated November 29, 2001.

Lawrence E. Starfield,

Acting Deputy Regional Administrator, Region 6.

For the reasons set out in the preamble, Appendix A of part 70 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 under the entry for Oklahoma by adding paragraph (b) to read as follows:

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

* * * * *

Oklahoma

* * * * *

(b) The Oklahoma Department of Environmental Quality submitted program revisions on July 27, 1998. The rule revisions adequately addressed the conditions of the interim approval effective on March 6, 1996, and which will expire on December 1, 2001. The State is hereby granted final full approval effective on November 30, 2001.

* * * * *

[FR Doc. 01–30149 Filed 12–4–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AZ062–OPP; FRL–7113–4]

Clean Air Act Full Approval of the Operating Permits Program; Arizona Department of Environmental Quality, Maricopa County Environmental Services Department, Pima County Department of Environmental Quality, AZ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to fully approve the operating permits programs submitted by the State of Arizona (collectively ''the Arizona programs'') on behalf of the Arizona Department of Environmental Quality (''ADEQ'' or ''State''), Maricopa County Environmental Services Department (''MCESD'' or ''Maricopa''), and Pima County Department of Environmental Quality, Arizona (''PDEQ'' or ''Pima''). The Arizona programs were 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. On October 30, 1996, EPA granted interim approval to the ADEQ, MCESD and PDEQ operating permits programs. These agencies revised their programs to satisfy the conditions of the interim approval, and EPA proposed full approval of the ADEQ, MCESD, and PDEQ programs in the **Federal Register** on October 2, 2001, October 18, 2001, and September 10, 2001, respectively. EPA received three comments on our proposed full approval of the ADEQ program and one comment on the Maricopa program. EPA's responses are included in Section II of this action.

This action promulgates final full approval of the ADEQ, MCESD and PDEQ operating permits programs.

EFFECTIVE DATE: This rule is effective on November 30, 2001.

ADDRESSES: Copies of the ADEQ, MCESD, and PDEQ submittals 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 9, 75 Hawthorne Street, San Francisco, California 94105. You may also see copies of the submitted title V programs for each of the respective agencies at the following locations: