

for sources to obtain part 71 permits. Sources in areas with approved part 70 programs are not permanently required to submit part 71 applications to EPA. Forty CFR 71.4(l) states that the Administrator will suspend the issuance of part 71 permits promptly upon publication of notice of approval of a State or Tribal operating permits program that meets the requirements of part 70. Forty CFR 71.4(l)(1) states that the Administrator will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program. EPA thus suspends issuance of part 71 permits once a part 70 program is authorized. A program that meets the requirements of part 70 can be a program with full approval, or a program with interim approval. Section 71.4(l) states that the Administrator may retain jurisdiction over the part 71 permits for which the administrative or judicial review process is not complete and will address this issue in the notice of state program approval. If the program being granted interim approval in this action were a part 70 program, then EPA would suspend the issuance of part 71 permits, and address in the notice of program approval the issue of part 71 permits for which the administrative process is not complete.

(4) Interpretation of part 71 regulations in light of the conditional exemption: EPA believes that the part 71 regulations should be interpreted in a manner which is consistent with the conditional exemption granted to Guam under section 325 of the Act. Guam requested and received a conditional exemption from the need to implement a program which meets all of the requirements of part 70. Although Guam is not required to implement a part 70 program, it must have a program which meets the requirements set forth at 40 CFR 69.13. Furthermore, while Guam's alternate permit program reflects Guam's unique conditions and circumstances, it is the functional equivalent of a part 70 permit program. It is consistent with the regulatory framework therefore, to consider that Guam's alternate permit program approved in today's rule "meets the requirements of part 70" for the purposes of 40 CFR 71.4(l). Accordingly, EPA will suspend the issuance of part 71 permits for sources which are eligible for the conditional exemption upon Guam's program being granted interim approval, provided that the owners and operators of such sources apply for and obtain permits under Guam's approved operating permit program, in the manner specified below.

(5) Timing and source requirements upon approval of Guam's program. Owners and operators of sources eligible for the conditional exemption that become, pursuant to 40 CFR 69.13(d)(3), automatically subject to part 71 on January 13, 2003 because such source does not have a permit issued under Guam's EPA-approved permit shall be subject to the following: (1) Owners/operators of such sources must submit a timely and complete application to Guam EPA by the applicable deadline specified in Guam's approved program. (2) Owners/operators of such sources must obtain a federally enforceable operating permit issued pursuant to Guam's alternative operating permit program within the time periods specified by that program.

Owners and operators of sources which under 40 CFR 69.13(d)(3) are automatically subject to part 71 on January 13, 2003 do not need to submit a part 71 permit application to EPA so long as they meet all of the above criteria. Owners and operators of sources which under 40 CFR 69.13(d)(3) are automatically subject to part 71 on January 13, 2003 and which do not meet all of the above criteria remain subject to the requirement to apply for and obtain a part 71 permit. Owners or operators of sources excluded from the conditional exemption (see 40 CFR 69.13(a)(4)) remain subject to the requirement to apply for and obtain a part 71 permit.

III. 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 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 parts 69 and 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 Act, EPA will approve State programs provided that they meet the requirements of the Act and EPA's regulations codified at 40 CFR part 70 or, in this case, 40 CFR part 69. 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 Act. Thus, the requirements of section 12(d) of the National Technology Transfer and