

under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 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 promulgated 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 26, 1996.  
**Stanley L. Laskowski**,  
*Acting Regional Administrator, Region III.*  
 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401-7671q.

**Subpart NN—Pennsylvania**

2. Section 52.2020 is amended by adding paragraph (c)(111) to read as follows:

**§ 52.2020 Identification of plan.**

\* \* \* \* \*  
 (c) \* \* \*

(111) Revisions to the Operating Permit and Plan Approval Regulations to add Subchapter H, "General Plan Approvals and Operating Permits", submitted on May 18, 1995 by the Pennsylvania Department of Environmental Resources:

- (i) Incorporation by reference.
  - (A) Letter of May 15, 1995 from the Pennsylvania Department of Environmental Resources transmitting Pennsylvania's general plan approval and general operating permit programs.
  - (B) The following amendments to Title 25, Chapter 127, effective on November 26, 1994: § 127.601, 127.611, 127.612, 127.621, and 127.622.
- (ii) Additional material.
  - (A) Remainder of Pennsylvania's May 18, 1995 submittal.

3. Section 52.2061 is amended by adding paragraph (b) to read as follows:

**§ 52.2061 Operating permits.**

\* \* \* \* \*

(b) Emission limitations and related provisions which are established in Pennsylvania general operating permits as federally enforceable conditions shall be enforceable by EPA. EPA reserves the right to deem general permit conditions not federally enforceable. Such a determination will be made according to appropriate procedures, and be based upon the general permit, general permit approval procedures, or general permit requirements which do not conform with the general operating permit program requirements or the requirements of EPA's underlying regulations.

4. Section 52.2062 is amended by adding paragraph (b) to read as follows:

**§ 52.2062 Plan approvals.**

\* \* \* \* \*

(b) Emission limitations and related provisions which are established in Pennsylvania general plan approvals as federally enforceable conditions shall be enforceable by EPA. EPA reserves the right to deem general plan approval conditions not federally enforceable. Such a determination will be made according to appropriate procedures, and be based upon the general plan approval, the relevant approval procedures, or plan requirements which do not conform with the general plan approval program requirements or the requirements of EPA's underlying regulations.

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**40 CFR Parts 52 and 70**  
**[PA065-4025; AD-FRL-5535-3]**

**Clean Air Act Final Full Approval Of Operating Permits Program; Final Approval of Operating Permit and Plan Approval Programs Under Section 112(l); Final Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable State Plan Approvals and Operating Permits Under Section 110; Commonwealth of Pennsylvania**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final full approval of Title V Operating Permit Program and final approval of State Operating Permit and Plan Approval Programs.

**SUMMARY:** The EPA is promulgating full approval of the Operating Permits Program submitted by the Commonwealth of Pennsylvania for the purpose of complying with Federal

requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA is also granting final approval to Pennsylvania's Operating Permit and Plan Approval Programs pursuant to Section 110 of the Clean Air Act (the "Act") for the purpose of creating Federally enforceable operating permit and plan approval conditions for sources of criteria air pollutants. In order to extend the federal enforceability of State operating permits and plan approvals to include hazardous air pollutants (HAPs), EPA is also approving Pennsylvania's plan approval and operating permits program regulations pursuant to Section 112 of the Act. Today's action also approves Pennsylvania's mechanism for receiving straight delegation of Section 112 standards.

**EFFECTIVE DATE:** August 29, 1996.

**ADDRESSES:** Copies of the State's submittal and other supporting information used in developing this final full approval are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8468, Harrisburg, Pennsylvania 17105-8468.

**FOR FURTHER INFORMATION CONTACT:** Michael H. Markowski, 3AT23, U.S. Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 566-2063.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Purpose**

*A. Introduction*

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline 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 for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On March 7, 1996, EPA proposed full approval of the operating permits program for the Commonwealth of Pennsylvania. See 61 FR 9125-9132. EPA did not receive any public comments on the proposal, and in this document is taking final action to promulgate full approval of the Commonwealth's program.

As part of this action, EPA is also taking final action to approve Pennsylvania's plan approval (i.e., construction permit) and operating permit programs pursuant to Section 110 of the Act. On June 28, 1989 (54 FR 27274) EPA published criteria for approving and incorporating into the State Implementation Plan (SIP) regulatory programs for the issuance of federally enforceable state operating permits. Permits issued pursuant to an operating permit program meeting these criteria and approved into the SIP are considered federally enforceable. EPA has encouraged States to consider developing such programs in conjunction with Title V operating permit programs for the purpose of creating federally enforceable limits on a source's potential to emit. This mechanism enables sources to reduce their potential to emit of criteria pollutants to below the Title V applicability thresholds and avoid being subject to Title V. (See the guidance document entitled, "Limitation of Potential to Emit with Respect to Title V Applicability Thresholds," dated September 18, 1992, from John Calcagni, Director of EPA's Air Quality Management Division).

Also as part of this action, EPA is taking final action to approve Pennsylvania's plan approval (i.e., construction permit) and operating permit programs pursuant to Section 112(l) of the Clean Air Act for the purpose of allowing the Commonwealth to issue plan approvals and operating permits which limit source's potential to emit hazardous air pollutants (HAPs). Section 112(l) of the Clean Air Act provides the underlying authority for controlling emissions of HAPs. Therefore, in order to extend federal enforceability of the Commonwealth's operating permit and plan approval programs to include HAPs, EPA is today approving Pennsylvania's plan approval and operating permit program

submittals pursuant to Section 112(l) of the Act.

**II. Final Action and Implications**

*A. Analysis of State Submission*

The Secretary of the Department of Environmental Resources, as the designee of the Governor of the Commonwealth of Pennsylvania, submitted an administratively complete title V Operating Permit Program for the Commonwealth of Pennsylvania on May 18, 1995. The Pennsylvania program, including the operating permit regulations (25 Pa. Code Chapter 127, Subchapter G, "Title V Operating Permits") fully meets the requirements of 40 CFR parts 70.2 and 70.3 with respect to applicability; parts 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; part 70.5 with respect to complete application forms and criteria which define insignificant activities; part 70.7 with respect to public participation and minor permit modifications; and part 70.11 with respect to requirements for enforcement authority.

Section 127.531 of Subchapter G contains the acid rain provisions of the Commonwealth's Title V operating permits program. EPA is aware that Pennsylvania has not directly incorporated by reference EPA's Title IV regulations found at 40 CFR Part 72, and has not adopted EPA's model rule. However, as referenced in EPA's March 7, 1996 **Federal Register** notice proposing full approval of Pennsylvania's program (61 FR 9125), several regulatory provisions require that Pennsylvania's Title V program be operated in accordance with the requirements of Title IV and its implementing regulations. Section 127.531(a) provides that the acid rain provisions of that section "shall be interpreted in a manner consistent with the Clean Air Act and the regulations thereunder." Section 127.531(b) requires that affected sources submit a permit application and compliance plan "that meets the requirements of \* \* \* the Clean Air Act and the regulations thereunder." Further, the § 121.1 definition of "applicable requirements" for Title V sources includes standards or other requirements "of the acid rain program under Title IV of the Clean Air Act \* \* \* or the regulations thereunder."

For additional assurance that Pennsylvania's operating permit program will operate in compliance with applicable acid rain requirements, EPA notes that the Commonwealth has agreed to accept delegation of the applicable provisions of 40 C.F.R. Parts

70, 72, and 78 for the purpose of implementing the Title IV requirements of its operating permit program. The Pennsylvania Department of Environmental Protection (PADEP) shall apply these provisions for purposes of incorporating Acid Rain program requirements into each affected source's operating permit: identifying designated representatives; establishing permit application deadlines; issuing, denying, modifying, reopening, and renewing permits; establishing compliance plans; processing permit appeals; and issuing written exemptions under 40 C.F.R. 72.7 and 72.8. This commitment is contained in an Implementation Agreement which has been negotiated between EPA and PADEP.

As part of the May 18, 1995 submittal, PADEP submitted to EPA for review and approval a revision to its State Implementation Plan (SIP) designed to create federally enforceable limits on a source's potential to emit. The revision consists of regulations establishing a State operating permit program and a plan approval (i.e., construction permit) program, codified in Subchapters F and B, respectively, of the Commonwealth's air quality regulations. Pennsylvania refers to construction permits as "plan approvals." As explained more fully in EPA's March 7, 1996 Notice of Proposed Rulemaking, 61 FR 9125, and in the Technical Support Document which accompanied that proposed rulemaking, the SIP revision submitted by Pennsylvania generally strengthens the SIP by establishing a comprehensive operating permit and plan approval program designed to limit source's potential to emit of both criteria and hazardous air pollutants. As explained in the March 7, 1996 Notice, EPA's review of this revision to the federally enforceable Pennsylvania SIP indicates that the operating permit and plan approval programs both meet applicable federal criteria for approval. Specifically, EPA's review of the State operating permit program submitted by Pennsylvania indicates that the program meets the five criteria for approval set forth in the June 28, 1989 **Federal Register** document (54 FR 27282) and the statutory criteria for approval under Section 112(l)(5) of the Act. Please refer to EPA's March 7, 1996 **Federal Register** Notice for further information.

EPA's review of the Pennsylvania plan approval program indicates that this program also meets applicable federal criteria for approval. Specifically, EPA has determined that the Pennsylvania plan approval program meets the statutory criteria for approval under Section 112(l)(5) of the Act. As explained in EPA's March 7, 1996

Notice, a State operating permit or plan approval (i.e., construction permit) issued pursuant to a program which has been approved by EPA and incorporated into the SIP, and which meets the June 28, 1989 **Federal Register** document and Clean Air Act Section 112(l) criteria, are deemed federally enforceable and may be used to limit the potential to emit of both criteria and hazardous air pollutants (HAPs). This will, in many cases, allow a source to voluntarily limit its potential to emit of air pollutants and avoid being subject to otherwise applicable major source requirements of the Act, including Title V operating permit requirements. Accordingly, EPA is today approving and incorporating into the SIP Pennsylvania's operating permit and plan approval program regulations pursuant to Sections 110 and 112 of the Act.

On January 31, 1996, PADEP proposed for public review and comment a draft "Voluntary Environmental Compliance Audit Policy." EPA is concerned that this policy may impermissibly limit PADEP's authority to seek civil penalties for certain violations disclosed by a source after a voluntary audit. See Clean Air Act Sections 113(e)(1) and 502(b)(5); 40 CFR 70.11(a)(3) and (c). This policy has not been finalized and implemented by PADEP, and thus its final scope and applicability are uncertain. However, EPA advised Pennsylvania by letter on June 5, 1996 that if PADEP's final audit policy impermissibly limits PADEP's authority to seek civil penalty from sources subject to this rulemaking, then EPA will consider this to be grounds for reopening this rulemaking and reconsidering its decision to fully approve the programs that are the subject of this rulemaking.

#### *B. Response to Comments*

EPA did not receive any comments on its March 7, 1996 **Federal Register** notice proposing full approval of the Pennsylvania Title V operating permit, State operating permit, and plan approval programs.

#### *C. Final Action*

The EPA is promulgating full approval of the operating permits program submitted to EPA by the Commonwealth of Pennsylvania on May 18, 1995. Among other things, Pennsylvania has demonstrated that the program will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR Part 70.

In addition, the EPA is approving the Pennsylvania Operating Permit and Plan

Approval programs, codified in 25 Pa. Code Chapter 127 Subchapters F and B, respectively, pursuant to Section 110 of the Act for the purpose of creating Federally enforceable permit conditions for sources of criteria air pollutants. In order to extend Pennsylvania's authority under Section 110 of the Act to include authority to create federally enforceable limits on the potential to emit of hazardous air pollutants (HAPs) listed pursuant to Section 112(b) of the Act, EPA is approving Pennsylvania's Operating Permit and Plan Approval programs pursuant to Section 112(l) of the Act.

The scope of the Commonwealth's part 70 program approved in this document applies to all Title V facilities (as defined in the approved program) within the Commonwealth, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the Clean Air Act; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, the EPA is also promulgating full approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

### **III. Administrative Requirements**

#### *A. Docket*

Copies of the Commonwealth's submittal and other information relied upon for the final full approval are contained in docket number PA065-4025 maintained at the EPA Regional 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 final

full approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

#### B. Executive Order 12866

This action granting final full approval of Pennsylvania's Title V program and final approval of Pennsylvania's plan approval and State operating permit programs has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

#### C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

#### D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 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 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/promulgated 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### E. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 1996. 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

##### 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

##### 40 CFR Part 70

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

Dated: June 26, 1996.

**Stanley L. Laskowski,**

*Acting Regional Administrator, EPA Region III.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401-7671q.

#### Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(110) to read as follows:

##### § 52.2020 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(110) Revisions to the Operating Permit, Plan Approval and Sampling and Testing Program Regulations submitted on May 18, 1995 by the Pennsylvania Department of Environmental Resources:

(i) Incorporation by reference.

(A) Letter of May 15, 1995 from the Pennsylvania Department of Environmental Resources transmitting Pennsylvania's Title V operating permit, plan approval, and State operating permit programs.

(B) Revisions to the definition of "Potential to emit" and addition of the following definitions in Title 25, Chapter 121, Section 121.1, effective on November 26, 1994: "Air pollution", "Applicable requirements", "Compliance docket", "Compliance review form", "Deviation", "Documented conduct", "Federally enforceable emissions cap", "General plan approval", "General operating permit", "Minor operating permit modification", "Performance standard", "Related party", "Renewal", "Research and development facility", "Responsible official", "Title V facility", "Title V permit", and "Title V regulated air pollutant."

(C) The following amendments to Title 25, Chapter 127, effective on November 26, 1994: § 127.1, 127.3, 127.11 through 127.14, 127.25, 127.32, 127.35, 127.36, 127.44, 127.45, 127.47, 127.49 through 127.51, 127.401 through 127.404, 127.411 through 127.414, 127.421 through 127.431, 127.441 through 127.450, 127.461 through 127.464, 127.701 through 127.703, and 127.707.

(D) The following amendments to Title 25, Chapter 139, effective on November 26, 1994: § 139.4, 139.5, 139.12, 139.13, 139.14, 139.32, 139.101 through 139.104, and 139.108.

(ii) Additional material.

(A) Remainder of May 18, 1995 State submittal.

3. Section 52.2061 is added to read as follows:

**§ 52.2061 Operating permits.**

(a) Emission limitations and related provisions which are established in Pennsylvania operating permits as federally enforceable conditions shall be enforceable by EPA. EPA reserves the right to deem permit conditions not federally enforceable. Such a determination will be made according to appropriate procedures, and be based upon the permit, permit approval procedures, or permit requirements which do not conform with the operating permit program requirements or the requirements of EPA's underlying regulations.

(b) (reserved)

4. Section 52.2062 is added to read as follows:

**§ 52.2062 Plan approvals.**

(a) Emission limitations and related provisions which are established in Pennsylvania plan approvals as federally enforceable conditions shall be enforceable by EPA. EPA reserves the right to deem plan approval conditions not federally enforceable. Such a determination will be made according to appropriate procedures, and be based upon the plan approval, the relevant approval procedures, or plan requirements which do not conform with the plan approval program requirements or the requirements of EPA's underlying regulations.

(b) (reserved)

**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 the entry for Pennsylvania in alphabetical order to read as follows:

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

\* \* \* \* \*

**Pennsylvania**

(a) Pennsylvania Department of Environmental Resources [now known as the Pennsylvania Department of Environmental Protection]; submitted on May 18, 1995; full approval effective on August 29, 1996.

(b) (Reserved)

[FR Doc. 96-19205 Filed 7-29-96; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. ; I.D. 052896A]

RIN 0648-A158

**Fisheries of the Exclusive Economic Zone Off Alaska; Delay of the Pollock Season**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS is delaying from August 15 to September 1 of each fishing year, the opening of the second (non-roe) directed fishing season for pollock in the Bering Sea and Aleutian Islands management area (BSAI). NMFS is also prohibiting vessels from participating in the directed pollock fishery for 7 days after the September 1 opening if the vessel participated in any of the directed groundfish fisheries in the Gulf of Alaska (GOA) or in the BSAI during any portion of the 7-day period prior to the September 1 opening. This action is necessary to allow some pollock processor vessels and shoreside processing plants to more fully realize potential salmon processing opportunities, particularly for late-run pink salmon. This action is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Island Area (FMP).

**EFFECTIVE DATE:** August 15, 1996.

**ADDRESSES:** Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for the original 1993 non-roe season delay or the supplemental EA/RIR prepared for this action may be obtained from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99510-2252; telephone: 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** Kaja Brix, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI is managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations that appear at 50 CFR part 679.

Under regulations at § 679.20(a)(5)(i)(A), the initial total allowable catch (TAC) amounts specified for pollock in the BSAI subareas and the Bogoslof District are divided into two seasonal allowances. Subject to other regulatory provisions, the first seasonal allowance is available for directed fishing from January 1 until noon, A.L.T., April 15 (the roe or "A" season). The second seasonal allowance is available for directed fishing from noon A.L.T., August 15 through the end of the fishing year (the non-roe or "B" season). NMFS annually apportions the initial pollock TACs between the roe and non-roe seasons after consultation with the Council during the annual groundfish TAC specification process set forth at § 679.20(a).

Recent high abundance of Alaska pink salmon, as well as poor salmon market conditions, have caused renewed interest by the salmon industry and groundfish processors to explore opportunities for new salmon product types and markets. This interest prompted the Council to recommend a delay in the opening date of the pollock non-roe season from August 15 to September 1 to provide pollock processors the opportunity to participate in the processing operations for late-run pink salmon. A proposed rule to implement the Council's recommendation was published in the **Federal Register** on June 12, 1996 (61 FR 29726). Public comment was invited through July 8, 1996. No letters of comment were received. No changes to the proposed rule are made in the final rule, except to incorporate the regulatory format into the new consolidated regulations governing the fisheries in Federal waters off Alaska (50 CFR part 679).

This rule annually delays the opening of the pollock non-roe season until September 1 for both the inshore and the offshore components, with a fixed season ending date of November 1 of each year. Vessels participating in the Community Development Quota (CDQ) directed pollock fishery are exempt from the season ending date restriction. This final rule also prohibits a vessel from participating in the directed pollock fishery during the 7 days after the September 1 opening (i.e., from noon A.L.T. September 1 until noon A.L.T. September 8) if the vessel participated in any groundfish fishery in either the BSAI or the GOA during any portion of the 7-day period prior to the opening of the pollock non-roe season (i.e., from noon A.L.T., August 25 until noon, September 1, A.L.T.). Vessels participating in the directed CDQ

