

VI. Procedural Determinations

Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities.

Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 4, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended by adding new paragraph (vvv) to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(vvv) The following amendment (Combined Program Amendments 25R and 56R) pertaining to the Ohio regulatory program, as submitted to OSM on July 19, 1994, and revised on December 20, 1994, is approved, effective May 11, 1995: Ohio Guidelines for Evaluating Revegetation Success

§ 935.16 [Removed and reserved]

3. In § 935.16, paragraph (a) is removed and reserved.
[FR Doc. 95-11649 Filed 5-10-95; 8:45 am]
BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MT-001; FRL-5206-2]

Clean Air Act Final Interim Approval of Operating Permits Program; State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating final interim approval of the Operating Permits Program submitted by the State

of Montana 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.

EFFECTIVE DATE: June 12, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART-AP, U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294-7539.

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 ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (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 one 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 two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On February 14, 1995 EPA published a **Federal Register** notice proposing interim approval of the Operating Permits Program for the State of Montana (PROGRAM). See 60 FR 8335. EPA received no adverse comments on this proposed interim approval, and is taking final action to promulgate interim approval of the Montana PROGRAM.

II. Final Action and Implications

A. Analysis of State Submission

The Governor of Montana submitted an administratively complete title V Operating Permit Program (PROGRAM) for the State of Montana on March 29, 1994. The Montana PROGRAM, including the operating permit

regulations (Sub-Chapter 20, sections 16.8.2001 through 16.8.2025, inclusive, of the Administrative Rules of Montana), substantially meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; 70.5 with respect to complete application forms and criteria which define insignificant activities; 70.7 with respect to public participation and minor permit modifications; and 70.11 with respect to requirements for enforcement authority.

EPA's comments noting deficiencies in the Montana PROGRAM were sent to the State in a letter dated October 3, 1994. The deficiencies were segregated into those that require corrective action prior to interim PROGRAM approval, and those that require corrective action prior to full PROGRAM approval. The State committed to address the PROGRAM deficiencies that require corrective action prior to interim PROGRAM approval in a letter dated October 20, 1994. The State submitted these corrective actions in letters dated March 30 and April 5, 1995. EPA has reviewed these corrective actions and has determined them to be adequate to allow for interim PROGRAM approval.

B. Final Action

The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Montana on March 29, 1994. The State must complete the following corrective actions to receive full PROGRAM approval: (1) Section 16.8.2002(1)(d) of Sub-Chapter 20 is part of the definition of administrative permit amendment and allows for the department's discretion in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements. This does not meet the criteria of an administrative permit amendment listed 40 CFR 70.7(d)(1)(iii), which requires that only more frequent monitoring or reporting requirements can be processed through an administrative permit amendment. Prior to full PROGRAM approval, the State must delete section 16.8.2002(1)(d) of Sub-Chapter 20, which allows for the department's discretion in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements. (2) Section 16.8.2002(1)(f) of Sub-Chapter 20 is part of the definition of administrative permit amendment and allows the State to determine if other types of permit changes not listed in the definition of

administrative permit amendment can be incorporated into a permit through the administrative permit amendment process. This does not meet requirements of 40 CFR 70.7(d)(1)(vi). This provision must be changed prior to full PROGRAM approval to allow the Administrator of EPA (or EPA and the State) to determine if changes not included in the definition of administrative permit amendment can be processed through the administrative permit amendment process. (3) The definition of "insignificant emissions unit" in section 16.8.2002(22)(a) of Sub-Chapter 20 includes an emission threshold of 15 tons per year of any pollutant other than a hazardous air pollutant. EPA does not consider this to be a reasonable level from which to exempt emissions units from title V operating permit requirements. Prior to full PROGRAM approval, the State must lower the emissions cap for defining "insignificant emissions units" to assure they will not encompass activities that trigger applicable requirements. If the State defines insignificant activity levels greater than those suggested, a demonstration must be made to show why such levels are, in fact, insignificant. (4) Section 16.8.2002(24)(a)(ii) of Sub-chapter 20 defines "non-Federally enforceable requirement" to include any term contained in a preconstruction permit issued under Sub-Chapters 9, 11, 17, or 18 that is not Federally enforceable. However, everything contained in a preconstruction permit issued under these Sub-Chapters (which currently are, or soon will be, included in the State's SIP) is considered to be Federally enforceable. Prior to full PROGRAM approval this language must be revised or deleted. (5) Section 16.8.2008 of Sub-Chapter 20 that lists the permit content requirements does not require a severability clause consistent with § 70.6(a)(5) of the Federal permitting regulation. Prior to full PROGRAM approval, the State must include a severability clause in Sub-Chapter 20 consistent with § 70.6(a)(5) of the Federal permitting regulation. (6) Section IX.C.2 of the checklist that was part of the PROGRAM submittal regarding the implementation of the enhanced monitoring requirements of section 114(a)(3) of the Act states that there are no impediments to using any monitoring data to determine compliance and for direct enforcement. However, the State has incorporated by reference the Federal new source performance standards (NSPS) and national emissions standards for HAPs (NESHAPs) in 40 CFR parts 60 and 61

into its SIP-approved regulations, which provide that compliance can be determined only by performance tests (see 40 CFR 60.11(a) and 40 CFR 61.12(a)). Prior to full PROGRAM approval, the State must provide an Attorney General's opinion verifying the State's authority to use any monitoring data to determine compliance and for direct enforcement. If the State does not have such authority, then the State's SIP-approved regulations must be revised prior to full PROGRAM approval to provide authority to use any monitoring data to determine compliance and for direct enforcement. (7) The Attorney General's Opinion regarding the State's authority to terminate permits is unclear. MCA 75-2-211(1) and 217(1) refer to "issuance, modification, suspension, revocation, and renewal" of permits, but not "termination." Prior to full PROGRAM approval, the State must provide an Attorney General's interpretation that Montana's statutory authority extends to "terminating" permits. (8) The PROGRAM submittal contained a letter to Douglas M. Skie dated February 28, 1994 certifying the State's authority to implement section 112 of the Act. The letter discusses the State's authority to require permit applications from sources subject to section 112(j) of the Act, but does not address the State's ability to make case-by-case MACT determinations. Prior to full PROGRAM approval, the State must certify its ability to make case-by-case MACT determinations pursuant to section 112(j) of the Act. (9) The State's February 28, 1994 letter to EPA also discusses the State's authority to implement section 112(r) of the Act, but does not address the State's ability to require annual certifications from part 70 sources as to whether their risk management plans (RMPs) are being properly implemented, or provide a compliance schedule for sources that fail to submit the required RMP. Prior to full PROGRAM approval, the State must certify its ability to require annual certifications from part 70 sources regarding proper implementation of their RMPs and to provide a compliance schedule for sources that fail to submit the required RMP. (10) Section 16.8.2008(2)(a) allows the State to terminate, or revoke and reissue, permits for continuing and substantial violations. This language may be too limiting and may not provide full authority needed to be consistent with section 502(b)(5)(D) of the Act, which requires that state permit programs have authority to "terminate, modify, revoke and reissue permits for cause." The

State addressed this issue in its March 30, 1995 letter; however, EPA was unable to determine whether Montana's PROGRAM is consistent in all respects with section 502(b)(5)(D) of the Act. Prior to full PROGRAM approval, the State must either (a) clarify that it has authority to terminate or revoke and reissue permits in all circumstances in which cause to do so exists or (b) amend section 16.8.2008(2)(a) to eliminate any provisions that may be construed to limit "cause" in an unacceptable manner.

Refer to the technical support document accompanying this rulemaking for a detailed explanation of these PROGRAM deficiencies and the required corrective actions.

The scope of Montana's final interim PROGRAM approval does not extend to "Indian Country," as defined in 18 U.S.C. 1151, including the following "existing or former" Indian reservations in the State: Northern Cheyenne, Rocky Boys, Blackfeet, Crow, Flathead, Fort Belknap, and Fort Peck Indian Reservations. Before EPA would approve the State's PROGRAM for any portion of "Indian Country," EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice. This is a complex and controversial issue, and EPA does not wish to delay interim approval of the State's PROGRAM with respect to undisputed sources while EPA resolves this question.

In deferring final action on PROGRAM approval for sources located in "Indian Country," EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Instead, EPA is deferring judgment regarding this issue pending EPA's evaluation of the State's analysis.

This interim PROGRAM approval, which may not be renewed, extends until June 11, 1997. During this interim approval period, the State of Montana is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the state of Montana. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the three year time

period for processing the initial permit applications.

If the State of Montana fails to submit a complete corrective PROGRAM for full approval by December 11, 1996, EPA will start an 18-month clock for mandatory sanctions. If the State of Montana then fails to submit a corrective PROGRAM that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State of Montana has corrected the deficiency by submitting a complete corrective PROGRAM. Moreover, if the Administrator finds a lack of good faith on the part of the State of Montana, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the State of Montana has come into compliance. In any case, if, six months after application of the first sanction, the State of Montana still has not submitted a corrective PROGRAM that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of Montana's complete corrective PROGRAM, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Montana has submitted a revised PROGRAM and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State of Montana, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the State of Montana has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State of Montana has not submitted a revised PROGRAM that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State of Montana has not timely submitted a complete corrective PROGRAM or EPA has disapproved its submitted corrective PROGRAM. Moreover, if EPA has not granted full approval to the Montana PROGRAM by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for

the State of Montana upon interim approval expiration.

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 promulgating 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 applies to sources covered by the part 70 program, as well as non-part 70 sources.

EPA is also finalizing its approval of Montana's preconstruction permit program found in Sub-Chapter 11, sections 16.8.1101 through 16.8.1120, of the State's regulations under the authority of title V and part 70 solely for the purpose of providing a mechanism to implement section 112(g) during any transition period between EPA's promulgation of a section 112(g) rule and adoption by the State of rules to implement section 112(g). However, since this approval is for the single purpose of providing a mechanism to implement section 112(g) during any transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The EPA is limiting the duration of this approval to 12 months following promulgation by EPA of the final section 112(g) rule.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including public comments received and reviewed by EPA on the proposal, are maintained in a docket 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 interim approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

B. Executive Order 12866

(b) [Reserved]

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

[FR Doc. 95-11677 Filed 5-10-95; 8:45 am]

BILLING CODE 6560-50-P

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.

40 CFR Part 81

[ID12-1-6992; FRL-5204-9]

Designation of Areas for Air Quality Planning Purposes; Idaho; Designation of a Portion of Shoshone County, Idaho, to Nonattainment for Particulate Matter (PM-10); Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

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.

SUMMARY: The City of Pinehurst in Shoshone County, Idaho, was designated nonattainment for PM-10 by operation of law upon enactment of the 1990 Clean Air Act Amendments. Effective January 20, 1994, EPA approved the redesignation of an additional area in Shoshone County, adjacent to the City of Pinehurst, as nonattainment for PM-10. See 58 FR 67334, 67339 (December 21, 1993) and 40 CFR 81.313 (codified air quality designations for the State of Idaho). That document included a legal description of the expanded portion of the nonattainment area (the "Pinehurst expansion area"). The legal description, however, contained several typographical errors and described the area in a more complex manner than necessary. This document corrects the typographical errors and simplifies and standardizes the legal description. This document is not intended to, and does not, change the area designated as nonattainment in the December 21, 1993, **Federal Register** document, as codified at 40 CFR 81.313. Rather, this document is intended to make the description of the Pinehurst expansion area easier to understand.

EFFECTIVE DATE: This correction is effective May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Doug Cole, EPA, Idaho Operations Office, 1435 N. Orchard St., Boise, ID 83706, (208) 334-9555.

SUPPLEMENTARY INFORMATION: This document makes three types of correction to the legal description of the Pinehurst expansion area. First, the legal description of the Pinehurst expansion area published at 58 FR 67339 and codified at 40 CFR 81.313 contained several typographical omissions which are shown below in bold and brackets:

That portion of Shoshone County excluding the initial PM-10 [nonattainment area]; Including the South half of Southeast quarter of Section 31 of Range 2 east, Township 49 [north]; South quarter of Section 32 of Range 2 east, Township 49 north[;] Section 5 of Range 2 east, Township 48 north[;]-east half of Section 6 of Range 2 east, Township 48 north[;]west quarter of Section 8 of Range 2 east, Township 48 North; and excluding that portion of Shoshone County designated nonattainment for PM-10 on November 15, 1990.

Specifically, three words and three semi-colons were erroneously omitted from the description. This document corrects those errors.

Second, in the December 21, 1993, **Federal Register** document and its later codification at 40 CFR 81.313, the Pinehurst expansion area was described by first giving the legal description of the expansion area *and* City of Pinehurst and then excluding "the area in Shoshone County which was designated nonattainment for PM-10 on November 15, 1990." That area is, in fact, the City of Pinehurst. In other words, the Pinehurst expansion area was essentially described as "the Pinehurst expansion area plus the City of Pinehurst, excluding the City of Pinehurst."

Third, the legal description of the Pinehurst expansion area as previously published was further complicated by the fact that the area was described somewhat unconventionally as the "west quarter of Section 8, Range 2 east, Township 48 north." EPA is issuing this correction document to simplify the description and conform the description to standard surveying conventions.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 28, 1995.

Chuck Clarke,
Regional Administrator.

PART 81—[AMENDED]

40 CFR part 81 is amended as follows:

1. The authority citation for part 81 continues to read as follows:

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

2. Section 81.313 is amended by revising the entry for "Shoshone County" in the "Idaho PM-10 Nonattainment Areas" table to read as follows:

§ 81.313 Idaho.

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Montana

(a) Montana Department of Health and Environmental Sciences—Air Quality Division: submitted on March 29, 1994; effective on June 12, 1995; interim approval expires June 11, 1997.