such equipment would be required to install new source technology and offsets would not be available.

Similarly, the April 1, 1994 proposal contained two alternative definitions of major source ''reconstruction.'' The alternative definitions are similar in that, for each, the replacement of components, where the cost of the replacement components is greater than 50 percent of the capital cost of ''constructing a major source,'' would trigger reconstruction requirements. The alternatives differ in that one alternative treats the entire plant site as the basis for comparison, while the other alternative treats a major-emitting ''emission unit'' as the basis for comparison.

The ambiguities surrounding the term ''construction'' have potentially significant impacts on the nature and scope of the Federal program, particularly in a transition period during which the modification provisions of section 112(g) are delayed. While there are likely to be few constructions of ''greenfield'' facilities emitting major amounts of HAPs prior to promulgation of the section 112(g) rule, there will be a far greater number of additions of major-emitting units at existing major source plant sites. Until the issue of whether these additions constitute a ''construction'' is clarified through rulemaking, there will be uncertainty as to how these additions must be treated as a matter of Federal law. For similar reasons, the scope of the section 112(g) requirements for ''reconstructions'' will continue to be in doubt until the section 112(g) rule is promulgated.

These implementation difficulties demonstrate that, as is the case for the section 112(g) modification provisions, rulemaking is needed to provide the degree of certainty EPA believes was intended by Congress regarding the applicability of the provisions for major source construction and reconstruction. For this reason, EPA believes it would be unreasonable to require the implementation of the section 112(g) provisions relating to construction and reconstruction prior to completion of the rulemaking.

F. Additional Clarifications

The EPA's interpretation, announced today, regarding the timing for implementation of section 112(g), applies to every title V program that has been or will be approved prior to promulgation of a Federal rule implementing section 112(g). The interpretation concerns the effective date of a Federal requirement set forth in the Act. In this sense, this interpretation need not be addressed in individual title V approvals. The EPA has indicated in a number of title V approval actions that the State would use its existing SIP-approved preconstruction review program to implement section 112(g) during the transition period. However, there have been no approvals of State programs designed specifically to implement section 112(g). Therefore, there is no need to revisit any EPA rulemaking action in order to implement today's notice.

This interpretation should not require significant changes to any title V program submittal. Each State program reviewed by EPA to date has included a general commitment to implement section 112(g), in accordance with the EPA regulations and/or guidance, upon approval of their title V program. However, those commitments were fashioned broadly enough to accommodate today's announced interpretation, and so no program revisions should be necessary for those States.

The EPA is aware of concerns that States may need additional time following the promulgation of the section 112(g) rule before they can begin implementing section 112(g). The EPA believes the statute may be read to allow for an additional period of delay so that States may adopt conforming rules if it would otherwise be impossible for States to implement the program. However, the EPA has not determined whether additional time will in fact be needed. If it is decided that additional time should be provided before the provisions of section 112(g) become effective, the EPA will so provide in the final section 112(g) rulemaking.

Finally, certain States have already promulgated regulations designed to implement section 112(g). The EPA wishes to emphasize that nothing in this notice is intended to preclude or discourage States from implementing a program similar to section 112(g) as a matter of State law prior to promulgation by the EPA of the section 112(g) guidance.

Dated: February 8, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–3661 Filed 2–13–95; 8:45 am]

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40 CFR Part 70

[MT–001; FRL–5155–3]

Clean Air Act Proposed Interim Approval, or in the Alternative Proposed Disapproval, of Operating Permits Program; State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes 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. In the alternative, EPA proposes disapproval of the Montana Operating Permits Program if the corrective actions necessary for final interim PROGRAM approval are not completed and submitted to EPA prior to the statutory deadline.

DATES: Comments on this proposed action must be received in writing by March 16, 1995.

ADDRESSES: Comments should be addressed to Laura Farris at the Region 8 address. Copies of the State's submittal and other supporting information used in developing the proposed rule 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, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all

major stationary sources and to certain other sources.

The Act requires that States develop and submit these 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.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim PROGRAM approval, and could not be renewed. During the interim approval period, the State of Montana would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the State of Montana. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim PROGRAM approval, if the State of Montana failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the State of Montana then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the State of Montana had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the State of Montana, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State of Montana had come into compliance. In any case, if, six months after application of the first sanction, the State of Montana still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim PROGRAM approval, EPA were to disapprove the State's complete corrective program, EPA would 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 had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State of Montana, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State of Montana had come into compliance. In all cases, if, six months after EPA applied the first sanction, the State of Montana had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

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

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Governor of Montana submitted an administratively complete title V Operating Permit Program (PROGRAM) for the State of Montana on March 29, 1994. EPA deemed the PROGRAM administratively complete in a letter to the Governor dated May 12, 1994. The PROGRAM submittal includes a legal opinion from the Attorney General of Montana stating that the laws of the State provide adequate legal authority to carry out all aspects of the PROGRAM, and a description of how the State intends to implement the PROGRAM. The submittal additionally contains evidence of proper adoption of the PROGRAM regulations, permit application forms, a data management system and a permit fee demonstration.

2. Regulations and Program Implementation

The Montana PROGRAM, including the operating permit regulation (Sub-Chapter 20, §§ 16.8.2001 through 16.8.2025, inclusive, of the Administrative Rules of Montana), substantially 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 16.8.2006(3) of Sub-Chapter 20 provides, in part, that ''Insignificant emission units need not be addressed in an application for an air quality operating permit, except that the application must include a list of such insignificant emission units and emissions from insignificant emission units must be included in emission inventories and are subject to assessment of permit fees.'' The term ''insignificant emissions unit'' is defined in § 16.8.2002(22)(a) of Sub-Chapter 20 as ''any activity or emissions unit located within a source that (i) has a potential to emit less than 15 tons per year of any pollutant, other than a hazardous air pollutant listed pursuant to sec. 7412(b) of the FCAA or lead; (ii) has a potential to emit of less than 500 pounds per year of lead; (iii) does not have a potential to emit hazardous air pollutants listed pursuant to sec. 7412(b) in any amount; and (iv) is not regulated by an applicable requirement.'' The 15 ton per year threshold is considered by EPA to be a PROGRAM deficiency that must be addressed prior to full PROGRAM approval and is discussed in more detail below.

Section 70.6(a)(3)(iii)(B) of EPA's operating permit regulations provides that each permit shall require ''prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken.'' Under § 16.8.2010(3)(c) of Sub-Chapter 20 of Montana's regulations, reporting is considered ''prompt'' if made at least every six months as part of the routine reporting requirements and, if applicable, in accordance with the malfunction reporting requirements under § 16.8.705 of Subchapter 7, unless

otherwise specified in an applicable requirement. However, EPA's position is that reporting only once every six months is not sufficiently ''prompt'' to allow for protection of public health and safety and to provide a forewarning of potential problems. Usually, reporting within two to ten days should be sufficient for these purposes, although with more serious permit deviations, earlier reporting may be necessary. Only for sources with a low level of excess emissions, would it be appropriate to allow more than ten days to elapse before reporting. EPA may veto state permits that do not require appropriately prompt reporting.

Montana has the authority to issue a variance from emission limitations. The Clean Air Act of Montana, Section 75–2–212, Montana Code Annotated (MCA), provides that the State may grant a variance if ''(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and (b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public.'' EPA regards Montana's variance provision as wholly external to the PROGRAM submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. If the State uses its variance provision strictly to establish a compliance schedule for a non-complying source that will be incorporated into a title V permit, then EPA would consider this an acceptable use of a variance provision. However, the routine process for establishing a compliance schedule is through appropriate enforcement action. The EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures.

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. In a letter dated October 20, 1994 the State committed to address the deficiencies that require corrective action prior to interim PROGRAM approval by January 20, 1995.

Areas in which the Montana PROGRAM is deficient and require corrective action prior to final interim PROGRAM approval are as follows: (1) Section 16.8.2004(3) of Sub-Chapter 20 allows the State to exempt sources from the requirement to obtain an air quality operating permit by establishing Federally enforceable limitations which limit the source's potential to emit. However, the State's rules do not describe the process which will be used to create these limits. Prior to interim PROGRAM approval, the State must clarify how Federally enforceable limits will be created to limit a source's potential to emit, and verify its authority to create such limits. If the State plans to create Federally enforceable limits through title V operating permits, such permits must go through all of the title V public participation requirements, including affected State review, 45-day EPA review period and EPA veto authority. (2) Section 16.8.2008(2)(j) of Sub-Chapter 20 states that the State's decision regarding issuance, renewal, revision, denial, revocation, reissuance, or termination of a permit is not effective until 30 days have elapsed from the date of the decision, and that the decision may be appealed to the board by filing a request for hearing within 30 days after the date of the decision. EPA interprets this language to mean that the 30-day period for making appeals to the board would occur after EPA's 45-day review/approval period for the proposed permit. If this is the case, any permits appealed to the board that are changed must be submitted to EPA for additional review. Prior to interim PROGRAM approval, the State must clarify whether the appeal process on the State's decisions regarding permit issuance, renewal, revision, denial, revocation, reissuance, or termination occurs before or after EPA's 45-day review/approval period. If the appeal process follows EPA's review/approval period, then language must be added to the State's permitting regulation to ensure that permits that are changed after appeal to the board are submitted to EPA for additional review. (3) Section 16.8.2008(2)(a) allows the State to terminate, or revoke and reissue, permits for continuing and substantial violations, but does not provide the full authority under 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.'' Prior to interim PROGRAM approval, the State must clarify that it has the authority to ''terminate, modify, revoke and reissue permits for cause'' pursuant to section 502(b)(5)(D) of the Act. (4) Section 16.8.2021(1)(c) of Sub-Chapter 20 states that a significant modification includes ''every *significant* relaxation of permit reporting or recordkeeping terms or conditions.'' Section 70.7(e)(4)(i) of the Federal permitting regulation requires that *any* relaxation of reporting or recordkeeping permit terms be processed as a significant modification. Prior to interim PROGRAM approval, the State must provide an Attorney General's opinion that the language in § 16.8.2021(1)(c) of Sub-Chapter 20 regarding significant modifications will be interpreted as ''every relaxation of reporting or recordkeeping permit terms'', and prior to full PROGRAM approval, the word ''significant'' must be removed from this regulatory language.

Areas in which the Montana PROGRAM is deficient and require corrective action prior to full PROGRAM approval are as follows: (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. Changes in monitoring or reporting requirements must be processed through either the minor permit modification procedures or the significant permit modification procedures, unless the change requires more frequent monitoring or reporting, in which case it can be processed through the administrative permit amendment procedures. This portion of Montana's definition does not meet the criteria of an administrative permit amendment listed in § 70.7(d)(1)(iii) of the Federal permitting regulation. Prior to full PROGRAM approval, the State must delete § 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. Section 70.7(d)(1)(vi) of the Federal permitting

regulation requires that such determinations be made by the Administrator of EPA and be similar to those changes listed in § 70.7(d)(1)(i)-(iv) of the Federal permitting regulation. 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 § 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. For other State title V programs, EPA has proposed to accept, as sufficient for full approval, emission levels for insignificant activities of 2 tons per year of regulated air pollutants and the lesser of 1000 pounds per year, section 112(g) de minimis levels, or other title I significant modification levels for HAPs and other toxics (40 CFR 52.21(b)(23)(i)). EPA believes that these levels are sufficiently below applicability thresholds for most applicable requirements to assure that no unit potentially subject to an applicable requirement is left off a part 70 application and are consistent with current permitting thresholds for the State under consideration here. EPA is requesting comment on the appropriateness of these emission levels for determining insignificant activities in this State. This request for comment is not intended to restrict the ability of the State to propose and EPA to approve other emission levels if the State demonstrates that such alternative emission levels are insignificant compared to the level of emissions from and types of units that are permitted or subject to applicable 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)(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 which 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.

Refer to the Technical Support Document accompanying this rulemaking for a detailed explanation of each comment and the corrective actions required of the State.

3. Permit Fee Demonstration

The Montana PROGRAM includes a fee structure that collects in the aggregate fees that are below the presumptive minimum set in part 70. Therefore, it was necessary for the State to include a permit fee demonstration in its PROGRAM submittal to demonstrate that the title V fee structure would collect sufficient fees to cover the reasonable direct and indirect costs of developing and administering the PROGRAM. The permit fee demonstration included a workload analysis which estimated the annual cost of running the PROGRAM to be $585,130 for fiscal year 1994, increasing to $849,705 for fiscal year 1995. The fee structure for fiscal year 1994, based on the previous year's emission inventory, included a fee of $8.55 per ton for particulates, sulfur dioxide and lead; $2.14 per ton for nitrogen oxides and volatile organic compounds; with a minimum fee of $250 per source. These fees are projected to increase to $11.75 and $2.94 per ton, respectively, for fiscal year 1995, and the State anticipates adding a fee for HAPs in the future. After careful review, the State has determined that these fees would support the Montana PROGRAM costs as required by section 70.9(a) of the Federal operating permitting regulation. Upon review of the State's permit fee demonstration, the EPA noted the following concerns:

(1) Although the State has the authority to assess and collect annual permit fees in an amount sufficient to cover all reasonable direct and indirect costs of the PROGRAM, the State Legislature must appropriate the money

to operate the PROGRAM every biennium. If an adequate appropriation is not made, and the State is not able to fund all the costs of the PROGRAM, the EPA would be required to disapprove or withdraw the part 70 program, impose sanctions, and implement a Federal permitting program.

(2) EPA was unable to determine if sufficient fees will be available to fund the PROGRAM due to deficiencies in the State's Permit Fee Demonstration. The State agreed to address these deficiencies in a letter to EPA dated October 20, 1994 and submit a revised Permit Fee Demonstration to EPA prior to final interim PROGRAM approval.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation

Montana has demonstrated in its PROGRAM submittal adequate legal authority to implement and enforce all section 112 requirements, with the exception of the deficiencies noted above, through the title V permit. This legal authority is contained in Montana's enabling legislation and in regulatory provisions defining ''applicable requirements'' and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Montana to issue permits that assure compliance with all section 112 requirements, and to carry out all section 112 activities, contingent upon the State completing the above noted corrective actions related to section 112.

For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz.

b. Implementation of 112(g) Upon Program Approval

As a condition of approval of the part 70 PROGRAM, Montana is required to implement section 112(g) of the Act from the effective date of the part 70 PROGRAM. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing Federally enforceable restrictions on a source-specific basis. The EPA is proposing to approve Montana's preconstruction permitting program found in Sub-Chapter 11, §§ 16.8.1101 through 16.8.1120, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that Montana has a mechanism in place to establish Federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Section 112(l) provides statutory authority for approval for the use of State air programs to implement section 112(g). Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act. If Montana does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, the EPA may, in the final action approving Montana's PROGRAM, approve the alternative instead. To the extent Montana does not have the authority to regulate HAPs through existing State law, the State may disallow new construction or modifications during the transition period.

This approval is for an interim period only, until such time as the State is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that Montana, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. The EPA is proposing here to limit the duration of this approval to 12 months following promulgation by EPA of section 112(g) regulations. Comment is solicited on whether 12 months is an appropriate period considering Montana's procedures for adoption of Federal regulations.

c. Program for Straight Delegation of Section 112 Standards

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 General Provisions Subpart A and standards as promulgated by EPA as they apply to sources covered by the part 70 Program, as well as non-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 proposing to grant 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 the Federal standards as promulgated. Montana has informed EPA that it intends to accept delegation of section 112 standards through incorporation by reference or case-by-case rulemaking. This program applies to both existing and future standards.

The radionuclide NESHAP is a section 112 regulation and therefore, also an applicable requirement under the State PROGRAM. Sources which are currently defined as part 70 sources and emit radionuclides are subject to Federal radionuclide standards. Additionally, sources which are not currently part 70 sources may be defined as major sources under forthcoming Federal radionuclide regulations. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

d. Program for Implementing Title IV of the Act

Montana's PROGRAM contains adequate authority to issue permits which reflect the requirements of title IV of the Act, and commits to adopt the rules and requirements promulgated by EPA to implement an acid rain program through the title V permit.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by the State of Montana on March 29, 1994. If promulgated, the State must complete the following corrective actions, as discussed above, to receive final interim PROGRAM approval: (1) The State must clarify how the Federally enforceable limits allowed under § 16.8.2004(3) of Sub-Chapter 20 will be created to limit a source's potential to emit, and verify its authority to create such limits. If the State plans to create these Federally enforceable limits through the title V PROGRAM, such permits must go through all of the title V public participation requirements, including affected State review, 45-day EPA review period and EPA veto authority; (2) The State must clarify whether the appeal process in § 16.8.2008(2)(j) of Sub-Chapter 20 on the State's decisions regarding permit issuance, renewal, revision, denial, revocation, reissuance, or termination occurs before or after EPA's 45-day review/approval period. If the appeal process follows EPA's review/approval period, then additional language must be added to the State's

permitting regulation to ensure that permits that are changed after appeal to the board are submitted to EPA for additional review; (3) The State must clarify that it has the authority to ''terminate, modify, revoke and reissue permits for cause'' pursuant to section 502(b)(5)(D) of the Act; (4) The State must provide an Attorney General's opinion that the language in § 16.8.2021(1)(c) of Sub-Chapter 20 regarding significant modifications will be interpreted as ''every relaxation of reporting or recordkeeping permit terms.''

The State must complete the following corrective actions, as discussed above, to receive full PROGRAM approval: (1) The word ''significant'' must be removed from the language in § 16.8.2021(1)(c) of Sub-Chapter 20; (2) The State must delete § 16.8.2002(1)(d) of Sub-Chapter 20 that 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; (3) Section 16.8.2002(1)(f) of Sub-Chapter 20 must be changed 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; (4) The State must lower the emissions cap for defining ''insignificant emissions units'' in § 16.8.2002(22)(a) of Sub-Chapter 20 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; (5) The language in § 16.8.2002(24)(ii) of Sub-Chapter 20 which defines ''non-Federally enforceable requirement'' must be revised or deleted to avoid the implication that terms contained in a preconstruction permit issued under Sub-Chapters 9, 11, 17, or 18 are not Federally enforceable; (6) The State must include a severability clause in § 16.8.2008 of Sub-Chapter 20 consistent with § 70.6(a)(5) of the Federal permitting regulation; (7) 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 to provide authority to use any monitoring data to determine compliance and for direct enforcement; (8) The State must provide an Attorney General's interpretation that Montana's statutory authority under MCA 75–2–211(1) and 217(1) extends to ''terminating'' permits; (9) The State must certify its ability to make case-by-case MACT determinations for sources subject to section 112(j) of the Act; (10) The State must certify its ability to require annual certifications from part 70 sources regarding proper implementation of their section 112(r) RMPs and to provide a compliance schedule for sources that fail to submit the required RMP.

Evidence of these corrective actions for full PROGRAM approval must be submitted to EPA within 18 months of EPA's interim approval of the Montana PROGRAM.

The scope of Montana's part 70 PROGRAM that EPA proposes to approve in this notice would apply to all part 70 sources (as defined in the PROGRAM) within the State, except the following: any sources of air pollution located in ''Indian Country,'' as defined in 18 U.S.C. 1151, including the Northern Cheyenne, Rocky Boys, Blackfeet, Crow, Flathead, Fort Belknap, and Fort Peck Indian Reservations, or any other 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 CAA; *see also* 59 FR 43955, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

In proposing not to extend the scope of Montana's part 70 PROGRAM to sources located in ''Indian Country,'' EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over such sources. Should the State of Montana choose to seek program approval within ''Indian Country,'' it may do so without prejudice. Before EPA would approve the State's part 70 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, that such approval would constitute sound administrative practice, and that those sources are not subject to the jurisdiction of any Indian Tribe.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

The EPA is proposing to disapprove in the alternative the Montana PROGRAM if the specified corrective actions for final interim PROGRAM approval are not completed and submitted to EPA prior to EPA's statutory deadline for acting on Montana's title V submittal. If promulgated, this disapproval would constitute a disapproval under section 502(d) of the Act (see generally 57 FR 32253–54). As provided under section 502(d)(1) of the Act, Montana would have up to 180 days from the date of EPA's notification of disapproval to the Governor of Montana to revise and resubmit the PROGRAM.

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 proposing to grant approval under section 112(l)(5) of the Act 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.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket 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 proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by March 16, 1995.

B. Executive Order 12866

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

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: February 3, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–3659 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 80

[AMS–FRL–5154–7]

RIN 2060–AD71

Regulation of Fuels and Fuel Additives: Standards for Deposit Control Gasoline Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of comment period.

SUMMARY: Section 211(l) of the Clean Air Act requires the Environmental Protection Agency to establish specifications for deposit control detergent additives. On November 22, 1993, the Environmental Protection Agency issued a notice of proposed rulemaking for standards for deposit control detergent additives. On October 15, 1994, EPA promulgated a final regulation (published in the **Federal Register** on November 1, 1994 (59 FR 54678)), with an interim program for detergent additives, which will be replaced by a full certification detergent program in a subsequent action.

On December 28, 1994 (59 FR 66860), EPA issued a supplemental notice reopening the comment period for the final detergent additive certification program and requesting comment on issues related to the final detergent additive certification program. This document extends the public comment period for the supplemental notice.

DATES: The comment period for the supplemental notice will be extended from the original closing date of January 27, 1995 to February 21, 1995.

ADDRESSES: Comments on this document should be submitted in duplicate to: EPA Air Docket Section (LE–131); Attention: Public Docket No. A–91–77; Room M–1500, 401 M Street S.W., Washington, DC 20460. (Phone 202–260–7548; FAX 202–260–4000). This docket is open for public inspection from 8:00 a.m. until 4:00 p.m. except on government holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket materials.

Electronic copies of this and other documents related to this rulemaking are available through the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS).

FOR FURTHER INFORMATION CONTACT: For general information and information related to technical issues contact: Mr. Jeffery A. Herzog, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105; Telephone: (313) 668–4227, FAX: (313) 741–7816. For information on enforcement related issues contact: Judith Lubow, U.S. EPA, Office of Enforcement and Compliance Assurance, Western Field Office, 12345 West Alameda Parkway, Suite 300, Lakewood, CO 80228; Telephone: (303) 969–6483, FAX: (303) 966–6490.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline detergent additives, Gasoline motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: February 7, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–3603 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–144 and PP Docket No. 93–253; DA 95–67]

Facilitation of Future Development of SMR Systems in the 800 MHz Frequency Band; Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 800 MHz SMR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: On November 4, 1994, the Commission released a Further Notice of Proposed Rule Making, FCC 94–271, concerning establishment of a flexible regulatory scheme and competitive bidding procedures for Specialized Mobile Radio (SMR) systems in the 800 MHz band.

Based on the number of initial comments received and the variety of views expressed in this proceeding, this Order extends the deadline for reply comments from January 20 to March 1, 1995. The intended effect of this action is to provide members of the SMR industry with an opportunity to further evaluate, discuss, and attempt to reach consensus regarding the proposals presented and issues addressed both in the Further Notice of Proposed Rule Making and the initial comments submitted in this proceeding.

DATES: Reply comments must be filed on or before March 1, 1995.

ADDRESSES: Federal Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D'wana R. Speight, Legal Branch, Commercial Radio Division, Wireless Telecommunications Bureau, (202) 418–0620.

SUPPLEMENTARY INFORMATION:

Order Extending Reply Comment Period

Adopted: January 18, 1995
Released: January 18, 1995

By the Acting Chief, Commercial Radio Division:

1. We have received requests from the American Mobile Telecommunications Association, Inc. (''AMTA''), Personal Communications Industry Association (''PCIA''), and SMR WON for an extension of time for filing Reply Comments in response to the *Further Notice of Proposed Rule Making* on this