

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