

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 Subchapter 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