

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