[FR Doc. 00–32566 Filed 12–21–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MT–001a; FRL–6920–4]

Clean Air Act Full Approval of Operating Permit Program; State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The EPA is promulgating full approval of the operating permit program submitted by the State of Montana. Montana's operating permit program was submitted for the purpose of meeting the federal Clean Air Act (Act) directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the states' jurisdiction.

DATES: This final rule is effective on January 22, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the U.S. Environmental Protection Agency, Air and Radiation Program, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466 and are also available during normal business hours at the Montana Department of Environmental Quality, 1520 East 6th Avenue, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Patricia Reisbeck, 8P–AR, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Denver, Colorado 80202–2466, (303) 312–6435.

SUPPLEMENTARY INFORMATION:

I. Background

As required under Title V of the Clean Air Act (''the Act'') as amended (42 U.S.C. 7401 *et seq.*), EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit 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 directs states to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act directs states to develop and submit operating permit programs to EPA by November 15, 1993, and requires 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 (42 U.S.C. 7661a) 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. If EPA has not fully approved a program by two years after the November 15, 1993 date, or before the expiration of an interim program approval, it must establish and implement a federal program. The State of Montana was granted final interim approval of its program on May 11, 1995 (see 60 FR 25143) and the program became effective on June 12, 1995. Interim approval of the Montana program expires on December 1, 2001.

On June 13, 2000, EPA published a direct final rule in the **Federal Register** promulgating full approval of the Operating Permit Program for the State of Montana. See 65 FR 37049. The EPA received adverse comments on the direct final rule, which are summarized and addressed below. As stated in the **Federal Register** notice, if adverse comments were received by July 13, 2000, the rule would be withdrawn and timely notice would be published in the **Federal Register**. Therefore, due to receiving adverse comments within the comment period, EPA withdrew the final rule (65 FR 48391, August 8, 2000), and a proposed rule also published in the **Federal Register** on June 13, 2000 served as the proposed rule for this action. EPA will not institute a second comment period on this document.

In this rulemaking, EPA is taking final action to promulgate full approval of the Montana Operating Permit Program.

II. Analysis of State Submission

The Governor of Montana submitted an administratively complete Title V operating permit program for the State of Montana on March 29, 1994. This program, including the operating permit regulations (Title 16, Chapter 8, Sub-Chapter 20, Sections 16.8.2001 through 16.8.2025, inclusive, of the Administrative Rules of Montana (ARM)), substantially met the requirements of part 70. EPA deemed the program administratively complete in a letter to the Governor dated May 12, 1994. The program submittal included 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 would implement the program. The submittal additionally contained evidence of proper adoption of the program regulations, application and permit forms, and a permit fee demonstration.

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 would require corrective action prior to interim program approval, and those that would require corrective action prior to full program approval. The State committed to address the program deficiencies that would require corrective action prior to interim program approval in a letter dated October 20, 1994. The State submitted these corrective actions with letters dated March 30, and April 5, 1995. EPA reviewed these corrective actions and determined them to be adequate for interim program approval.

On January 15, 1998, Montana amended its operating permit program to make the corrections identified as necessary in the May 11, 1995 **Federal Register** notice of final interim approval. These program amendments, recodified at Title 17, Chapter 8, Sub-Chapter 12, Sections 1201, 1210, and 1213, ARM, were approved and adopted by the Montana Board of Environmental Review on January 15, 1998. The revised program regulations adequately addressed the problems identified in the May 11, 1995 **Federal Register** notice as requiring corrective action prior to full program approval. The State also submitted evidence of proper adoption of the revisions to its program regulations and a revised Attorney General's opinion dated July 31, 1998. The revised program and a request for full approval were submitted to EPA in a letter from the Governor of Montana dated February 4, 1999. EPA notified Montana, in a letter to the Department of Environmental Quality (DEQ) dated April 1, 1999, of two additional changes required for final approval. The DEQ revised the administrative rules to implement the two requested changes at Title 17, Chapter 8, Sub-Chapter 12, ARM. These amendments to Sub-Chapter 12 were approved and adopted by the Board on March 17, 2000. On April 12, 2000, the Governor of Montana submitted the revised program, with proof of proper adoption, and requested full approval of its operating permit program. EPA reviewed these changes and determined that they were adequate to allow for full approval. On June 13, 2000, EPA published a direct final rule in the **Federal Register** promulgating full approval of the Operating Permit Program for the State of Montana. See

65 FR 37049. The EPA received adverse comments on the direct final rule and, on August 8, 2000, published withdrawal of the direct final rule approval in the **Federal Register**. See 65 FR 48391.

III. Response to Comments

The comments received on the June 13, 2000 direct final rule in the **Federal Register** promulgating full approval of the Montana operating permit program, and EPA's response to these comments are as follows:

Comment 1: The commenter objected to EPA's approval of the Montana Operating Permit Program because a state regulation allows the administrative permit amendment process to be used for certain permit changes that are not listed in a regulation but that the Montana Department of Environmental Quality (''Department'') and EPA determine are similar to the listed revisions. A list of revisions that qualify for administrative permit amendment is found in Administrative Rules of Montana (''ARM'') Section 17.8.1201(1)(a) through (d). This regulation allows a source to use the administrative permit amendment process for such non-substantive changes as change in address and correction of typographical errors. The State has now added section (e), which allows ''any other change which the department and EPA have determined to be similar'' to the listed revisions. The commenter objected that, by allowing the Department and EPA to add other kinds of permit revisions to the list without public notice and comment, the state regulation violates EPA's regulations at 40 CFR Part 70 (''part 70 program'' or ''part 70 rules'').

EPA Response: The definition of ''administrative permit amendment'' in EPA's regulations is found in 40 CFR 70.7(d)(1). The definition provides, at § 70.7(d)(1)(vi), that an administrative permit amendment ''[i]ncorporates any other type of change which the Administrator has determined as part of the approved part 70 program to be similar to those in paragraphs (d)(1)(i) through (iv) of this section'' 40 CFR 70.7(d)(1)(vi). The enumerated paragraphs (i) through (iv) comprise a list of four non-substantive changes that are identical to those in the State's list in section 17.8.1201(1) (a) through (d). The comment suggests that the State cannot allow a source to use an administrative permit amendment for a change that is not on the list, unless the State first undergoes formal Title V program approval or program revision approval, with public notice and comment, to add the change to the list as a new requirement. The comment implies that ''as part of the approved part 70 program'' in EPA's regulation means ''as part of the part 70 program approval process.''

EPA does not agree with this interpretation of our regulation. EPA believes that the correct interpretation of the phrase ''as part of the approved part 70 program'' refers to the fact that an unlisted change must be evaluated in the context of the approved state program to determine if it qualifies for an administrative amendment. The regulation does not require that EPA must approve a formal revision of the state program before a source can make a particular change administratively, but rather requires the State to seek EPA's approval for using the administrative permit amendment process for the change as part of a specific permitting action. EPA believes that the regulation allows the State to add to the list of non-substantive changes on a case-by-case basis, if EPA agrees that a particular permit change is of the same non-substantive nature as the enumerated list of changes that automatically qualify for administrative permit amendment. EPA's regulation thus allows exactly the kind of case-specific addition to the list contemplated in the new section of Montana's rules, ARM Section 17.8.1201(1)(e).

Montana initially proposed a regulation that would allow the state to make additions to the list without consulting EPA. EPA advised that this would not be acceptable under Title V of the Clean Air Act (''Act''), since 40 CFR 70.7(d)(1)(vi) requires that EPA must make a determination that any additional change is similar to the enumerated changes—in other words, to determine that the change is of such a trivial or non-substantive nature that the administrative permit amendment process would be appropriate. The regulation does not require that the State must submit a list of anticipated non-substantive changes to EPA for prior approval, as part of the Title V program approval process, or that the State must revise its rules and submit them for approval as a program revision whenever it encounters a non-substantive change it believes should qualify for treatment as an administrative permit amendment. The provision requires, instead, that the State must notify EPA on a case-by-case basis whenever it encounters a change it believes qualifies for the simpler administrative amendment process (rather than the more complex minor or significant permit modification process), so that EPA can decide if we agree that the change qualifies for such treatment. If we do not agree that the administration permit amendment process is appropriate for a particular permit change, we can advise the State of our disapproval at the draft permit stage of the operating permit process, or we can object to the proposed permit during our 45-day review and thus prevent the permit's issuance. If the permit has already been issued, we can require the state to re-open the permit to delete an unacceptable administrative permit amendment and instead process the change as a minor or significant permit revision.

We appreciate the concern expressed in the comment that the list should not encompass substantive permit changes. EPA would not approve as an administrative permit amendment any non-substantive change to a Title V permit. We anticipate that the authority to add to the list of administrative permit amendments will be used only infrequently.

Comment 2. a.: The commenter objected that allowing an emission threshold of five tons per year of any pollutant other than a hazardous air pollutant in the State's definition of ''insignificant emission unit'' exceeds the two-ton per year threshold that EPA has set in rules for federal operating permits, 40 CFR part 71 (''part 71 program'' or ''part 71 rules''). The commenter also stated that the two-ton per year threshold was accepted in many other states. In the **Federal Register** notice proposing interim approval, EPA stated that Montana would need to provide a demonstration to show why a higher threshold of five tons per year would be insignificant. See 60 FR 25143–25144 (May 11, 1995).

EPA Response: Insignificant emissions units are emitting units at a source that emit ''insignificant'' levels of emissions. For such units, the State may allow permit applicants to omit a full description of the units in their permit applications. However, there are several caveats. The applicant must still list the insignificant activity in its application and must include complete information about such unit if it is or may be subject to any applicable requirements. The pertinent provision of the part 70 rules provides: ''the Administrator may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability

of, or to impose, any applicable requirement * * *.'' 40 CFR 70.5(c).

This provision of the part 70 rules does not set a ceiling on the level of emissions that will be considered ''insignificant.'' EPA has allowed states, including Montana, to determine what the state considers to be ''insignificant'' for the limited purpose of omitting certain information from the permit application. The comparable section in the part 71 rules, 40 CFR 71.5(c)(11), does set such a ceiling: ''Potential to emit of regulated air pollutants, excluding HAP [hazardous air pollutants] for any single emissions unit shall not exceed 2 tpy [tons per year].'' 40 CFR 71.5(c)(11)(ii)(A). This numerical limit applies only to federal operating permits, however, not to state operating permits or state operating permit programs. EPA's part 71 rules establish the requirements for the operating permits that EPA issues in Indian country or anywhere else when EPA is the permitting agency. The part 71 rules do not establish minimum requirements for state operating permit programs; state programs may differ from the federal program and may still be approved as long as they meet the applicable state program requirements, which are found in 40 CFR part 70.

The Montana operating permit program differs from the federal program in this respect, but we believe it fully satisfies the program requirements of 40 CFR part 70. The part 70 rules allow permit applicants to omit certain information about ''insignificant emissions units'' from their permit application. Montana's rules make clear, however, that if an emissions unit is subject to an applicable requirement other than a generally applicable requirement that applies to all sources, the unit may not be considered an insignificant emissions unit, no matter what its size may be. In other words, a unit emitting five tons per year or less of a regulated pollutant may not be treated as an insignificant emissions unit, if it is subject to a unit-specific limit or a plant-wide applicability limit. Such a unit can only be considered ''insignificant'' if it is subject to a state-wide regulation, such as a generic limit on opacity, or to no applicable requirements at all. And if a unit emitting five tons per year or less does not qualify for ''insignificant'' status because it is subject to a source-specific limit, the applicant must provide all relevant information about the unit in the permit application, not simply information necessary to determine the applicability of the applicable requirement. In this respect, Montana's regulation is actually more stringent than EPA's and provides more protection for the public's right to know than EPA's regulation does. In any case, we believe there is no conflict with EPA's part 70 rules.

In response to EPA's request that the State provide justification for using a five-ton per year cut-off, the Department stated, ''Experience has demonstrated that individual emitting units that are not subject to applicable requirements other than generally applicable requirements, and whose potential emissions are less than 5 tpy, have such limited impact that they can be considered insignificant.'' Based on our knowledge of Montana's industrial sources, we agree with the Sates's assessment. The Department also noted that both 40 CFR part 70 and EPA's July 10, 1995 guidance memorandum entitled, ''White Paper for Streamlined Development of Part 70 Permit Applications'' ''White Paper I''), allow states discretion in selecting an appropriate insignificance level for their Title V programs; and EPA has approved levels higher than two tons per year in some other states. We are aware of at least nine states, including Ohio, Florida, and Tennessee, and ten local permitting authorities with approved Title V programs, where EPA has allowed five tons per year as the cut-off for ''insignificant'' status. Some other states have a varying level depending on the pollutant (five tons per year for carbon monoxide in Washington State, for example) or an altogether different formula, based on pollutant or process, for determining insignificant levels. We conclude that Montana has adequately justified its use of five tons per year as a ceiling.

Comment 2. b.: For hazardous air pollutants, the commenter objected that Montana defines insignificant emissions as less than 500 pounds per year, whereas EPA's part 71 rules provide that the insignificance threshold for hazardous air pollutants cannot exceed 1000 pounds per year or the de minimis level established under section 112(g) of the Act, whichever is less.

EPA Response: The comment implies that the part 71 rules establish minimum requirements for state operating permit programs. They do not. State operating permit programs must satisfy the requirements of 40 CFR part 70, not 40 CFR part 71. The requirements of the two programs are not, and do not need to be, identical. In particular, the part 70 rules do not require that states adopt a particular cut-off for emissions of hazardous air pollutants from ''insignificant emissions units.'' Although the part 71 rules do establish a cut-off, that ceiling applies to federal operating permits only. In fact, the Montana regulation establishes a more stringent cut-off than the federal level: 500 pounds per year in ARM section 17.8.1201(22)(a)(iii), as opposed to 1000 pounds per year in 40 CFR part 71.

The commenter recognizes that a level even lower than 500 pounds per year could be established under the part 71 rules, as a determination of a de minimis increase in emissions pursuant to section 112(g)(1)(A) of the Act: To date, however, EPA has not implemented the modification provisions of section 112(g) of the Act: EPA has not published guidance under section 112(g)(1)(B) of the Act establishing de minimis levels of emission increases for purposes of applying offsets under section 112(g)(1)(A) of the Act. Therefore, the establishment of an ''insignificant'' level under the part 71 program which would be lower than 1,000 pounds per year, let alone 500 pounds per year, remains a merely hypothetical possibility. EPA believes that the Montana ceiling for insignificant emissions of hazardous air pollutants is more stringent than the federal requirement and will adequately protect the public interest in disclosure of information about hazardous air pollutants.

Comment 3: The commenter stated that Montana's rules still do not adequately assure that any monitoring data or other credible evidence can be used to determine compliance and for direct enforcement. The commenter expressed a concern that the wording of ARM 17.8.1213(2), which requires that any data ''generated as a condition of the permit'' may be used to demonstrate compliance with the conditions of the permit and may be used for direct enforcement, might be interpreted to limit evidence of noncompliance only to monitoring or testing data required by the permit.

EPA Response: EPA does not agree with the suggested interpretation of ARM 17.8.1213(2). We do not believe that the provision, by its terms or by implication, precludes the use of other kinds of evidence to show compliance or noncompliance with applicable requirements. We believe that the provision makes clear that, if the permit requires testing or monitoring, the results of such testing or monitoring may be used as evidence of noncompliance regardless of the effect of any other rule. EPA does agree, however, that Montana must develop a credible evidence rule to eliminate any possibility of ambiguity in its regulations and thus ensure that all evidence of noncompliance may be used

for purposes of direct enforcement, as long as that evidence is credible. Montana is in the process of developing and adopting a credible evidence rule, several versions of which were available for public comment this past summer.

Comment 4: The commenter stated that the State must certify its ability to require annual certifications from part 70 sources regarding proper implementation of their Risk Management Plans (RMP) under section 112(r) of the Act, and must provide a compliance schedule for sources that fail to submit the required plan. EPA's full approval notice does not indicate whether this requirement was in fact met, but merely indicates that ''the State will include a statement listing 40 CFR 68.215(a) as an applicable requirement in all Title V operating permits.'' There is no indication that the State has in fact committed to do this or is legally authorized and obligated to do so.

EPA Response: EPA's full approval notice should have made clear that the Governor of Montana, in a letter dated February 4, 1999, made a commitment to require annual certifications from sources regarding their compliance with all program requirements related to accident prevention, emergency response, and risk management plans under section 112(r) of the Act, and to provide compliance schedules for any sources that fail to submit their required plan to EPA. The letter stated, ''The department [of Environmental Quality] will include a statement listing 40 CFR 68.215(a) as an applicable requirement in all title V operating permits.'' The referenced § 68.215(a) of Title 40 of the Code of Federal Regulations requires that each source subject to both section 112(r) of the Act and Title V of the Act must have, as conditions of its operating permit, a statement listing all of 40 CFR part 68 (''Chemical Accident Prevention Provisions'') as an applicable requirement, together with conditions requiring the source owner or operator to submit a compliance schedule for meeting all applicable requirements of part 68, and requiring the source to include in its annual compliance certification a statement certifying that the source is in compliance with all requirements of part 68, including the requirements for registration and submission of a risk management plan.

In particular, 40 CFR part 68 requires sources that have more than a threshold level of any regulated substance to prepare and submit an RMP. See 40 CFR 68.12(a) and 68.150. Unless the source can certify in the RMP that no member of the public would be affected by any accidental release from the source, 40 CFR part 68 further requires sources to implement a risk management system, to conduct a hazard assessment, to implement a chemical accident prevention program, to implement an emergency response program, and to include data on the implementation of these programs in the RMP. See 40 CFR 68.12(b), (c), and (d). All those requirements are included as applicable permit conditions by effect of the State's listing 40 CFR 68.215(a) in all Montana operating permits. As the Governor committed, Montana will satisfy its obligations under section 112(r) of the Act by requiring all part 70 sources to certify compliance with applicable risk management planning requirements and by developing compliance schedules for sources that have not yet submitted risk management plans to EPA. When we referred to the State's commitment in the notice proposing full approval, we should have clarified that the commitment came from the Governor, thus assuring EPA that the State would meet its statutory obligations.

Comment 5: The commenter stated that the State's revised rule on termination, revocation, and re-issuance of state permits still improperly limits the state's authority to terminate or revoke permits.

EPA Response: Section 502(b)(5)(D) of the Act requires that the permitting authority must have adequate authority to ''terminate, modify, or revoke and reissue permits for cause.'' The State's original version of the pertinent regulation provided that the Department could terminate, modify or revoke and reissue permits ''for continuing and substantial violations.'' EPA advised that this provision did not give adequate authority to the Department to terminate or alter permits for other kinds of cause: for example, to correct a material mistake in the permit or to respond to an EPA objection to a permit. Subsequently, Montana revised its rule, ARM 17.8.1210(2)(a), to say that permits could be terminated, modified, or revoked and reissued ''for cause.'' The State then added, ''Appropriate 'cause' for permit termination is noncompliance with permit terms or conditions that is continuing or substantial in nature and scope.'' EPA regards this added language as providing an example when a permit may be terminated in the context of an enforcement action. The specific example with respect to permit termination does not limit the State's general authority to terminate, modify, or revoke and reissue any permit for cause. In addition, we believe that the phrase ''continuing *or* substantial in nature and scope'' in the specific example is not necessarily less inclusive than the phrase ''continuing *and* substantial violations'' in the earlier version. We believe that the State's revision of the regulation has satisfied EPA's concern that the Department have adequate authority to revise or terminate permits, whenever sufficient cause exists.

IV. Final Action

In this document, EPA is granting full approval of the Montana part 70 operating permits program for all areas 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 following Indian reservations in the State: 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 section 301(d)(2)(B) of the Act; see also 63 FR 7254 (February 12, 1998). 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 Act; see also 58 FR 54364 (Oct. 21, 1993).

This rule will be effective January 22, 2001.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a

regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it approves state rules which implement a previously promulgated health or safety-based standard.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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.

Dated: December 13, 2000.

Patricia D. Hull,

Acting Regional Administrator, Region VIII.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In appendix A to part 70 the entry for Montana is amended by adding paragraph (b) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Montana

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(b) The Montana Department of Environmental Quality submitted an operating permits program on March 29, 1994; effective on June 12, 1995; revised January 15, 1998, and March 17, 2000; full approval effective on January 22, 2001.

* * * * *

[FR Doc. 00–32558 Filed 12–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6921–6]

Arizona: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Immediate Final Rule.

SUMMARY: We are withdrawing the immediate final rule for Arizona, the Final Authorization of State Hazardous Waste Management Program Revisions published on October 27, 2000, which approved revisions to Arizona's hazardous waste rules. We stated in the immediate final rule that if we received comments that oppose authorization of the revision, we would publish a timely withdrawal in the **Federal Register**. Subsequently, we received comments that oppose the authorization. We will address the comments received during the comment period in a subsequent final action based on the proposed rule also published on October 27, 2000, at 65 FR 64403.

DATES: As of December 22, 2000, we withdraw the immediate final rule published on October 27, 2000, at 65 FR 64369.

FOR FURTHER INFORMATION CONTACT: Lisa McClain-Vanderpool, U.S. EPA, Waste Management Division, 75 Hawthorne Street (mailcode WST–3) San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: Because we received comments that oppose this authorization, we are withdrawing the immediate final rule for Arizona, the Final Authorization of State Hazardous Waste Management Program Revisions published on October 27, 2000, which approved revisions to Arizona's hazardous waste rules. We stated in the immediate final rule that if we received comments that oppose authorization of the revision, we would publish a timely notice of withdrawal in the **Federal Register**. Subsequently, we received comments that oppose the authorization. We will address the comments received during the comment period in a subsequent final action based on the proposed rule also published on October 27, 2000, at 65 FR 64403. We will not provide for additional public comment during the final action.

Laura Yoshii,

Deputy Regional Administrator, Region 9.

[FR Doc. 00–32668 Filed 12–21–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2779; MM Docket No. 00–15; RM–9804]

Radio Broadcasting Services; Susquehanna and Hallstead, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Tammy M. Celenza, allots Channel 227A at Susquehanna, Pennsylvania, as the community's second local FM transmission service. *See* 65 FR 12155, March 8, 2000. We also dismiss the counterproposal filed by Montrose Broadcasting Corporation to allot Channel 227A at Hallstead, Pennsylvania, as the community's first local aural transmission service as being technically defective. Channel 227A can be allotted at Susquehanna in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.3 kilometers (3.9 miles) east to avoid a short-spacing to the licensed sites of WBZD–FM, Channel 227B1, Muncy, Pennsylvania, and Station WKXZ(FM), Channel 230B, Norwich, New York. The coordinates for Channel 227A at Susquehanna are 41–55–44 North Latitude and 75–31–50 West Longitude. *See* Supplementary Information, *infra.*

DATES: Effective January 22, 2001. A filing window, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–15, adopted November 29, 2000, and released December 8, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Since Susquehanna is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence for the allotment of Channel 227A at Susquehanna has been requested, but not yet received. Therefore, if a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian government, the construction permit will include the following condition: ''Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement.''

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Channel 227A at Susquehanna.