

(2) to delete the limitation that only pollutants specifically regulated by the standard be included. Consistent with this amendment, North Dakota is proposing to revise its rule to correspond with the part 70 definition of "major source." In doing so, North Dakota's rules are as stringent as part 70. Therefore, North Dakota's proposed change in the definition of "major source" is approvable.

III. Final Action

EPA is approving, as a revision to North Dakota's title V air operating permits program, NDAC 33-15-14-06, the proposed amendment to the definition of "major source." Consistent with EPA's action granting North Dakota's full approval, this approval extends to all areas within the State except the following: Any sources located in "Indian Country", as defined in 18 U.S.C. 1151, including the Fort Berthold, Fort Totten, Standing Rock, Sisseton and Turtle Mountain Indian Reservation, or any other sources of air pollution over which an Indian Tribe has jurisdiction. See *e.g.*, 59 FR 55813, 55815-55818 (November 9, 1994). The term "Indian Tribe" is defined under the Clean Air Act (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 59 FR 43955, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

The EPA is publishing this rule without prior proposal because the State is currently implementing its part 70 program and the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of the **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve North Dakota's proposed amendment to their title V air operating permits program. This rule will be effective November 17, 2003 without further notice unless the Agency receives adverse comments by October 17, 2003.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in

commenting on this rule must do so at this time.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing title V operating permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air

Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a title V operating permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a title V operating permit program submission, to use VCS in place of a title V operating permit program submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 the 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 November 17, 2003. 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.