ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0183; FRL–8514–6]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Revisions to Emission Reduction Market System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In 1997, Illinois adopted and submitted rules establishing a cap and trade program regulating emissions of volatile organic compounds (VOC). The program was designed to address VOC sources in the Chicago area with potential to emit at least 25 tons per year. Then, in 2004, EPA replaced the ''Severe'' classification for the Chicago ozone nonattainment area with a ''Moderate'' classification, which according to EPA guidance revised the applicable definition of major sources from 25 tons per year to 100 tons per year. Illinois adopted rule revisions, submitted to EPA on January 10, 2007, to require that sources with potential to emit at least 25 tons per year remain in the program. Illinois' rule revisions also address other ramifications of the ''reclassification.'' EPA is approving these rule revisions.

DATES: Comments must be received on or before February 29, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0183, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: December 18, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E8–805 Filed 1–29–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–R08–OW–2007–0153; FRL–8522–5]

Fort Peck Assiniboine and Sioux Tribes in Montana; Underground Injection Control (UIC) Program; Proposed Primacy Approval and Minor Revisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve an application from the Fort Peck Assiniboine and Sioux Tribes in Montana under Section 1425 of the Safe Drinking Water Act (SDWA) to implement an underground injection control (UIC) program for Class II (oil and gas-related) injection wells. EPA is also proposing minor revisions to regulations that are not specific to the Fort Peck Tribes' application. EPA requests public comment and has scheduled a public hearing on this application, the proposed rule, and EPA's supporting documentation. EPA will consider comments received at the public hearing and during the public comment period before taking final action.

DATES: Comments must be received on or before February 29, 2008. The public hearing will be held at the Fort Peck Community College Auditorium located at 605 Indian Avenue in Poplar, Montana at 7 p.m. on Monday, February 25, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OW–2007–0153, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* Environmental Protection Agency, 8P–W–GW, 1595 Wynkoop Street, Denver, CO 80202–1129.
- *Hand Delivery:* Deliver your comments to Douglas Minter, Environmental Protection Agency, 8P–W–GW, 1595 Wynkoop Street, Denver, CO 80202–1129, Attention Docket ID No. EPA–R08–OW–2007–0153. Such deliveries are only accepted during the Docket's normal hours of operation: Monday through Friday, between 8 a.m. and 4 p.m., excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OW–2007–0153. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly

to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EPA's Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. For additional instructions on submitting comments, go to I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov index*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy in the Ground Water Program, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129. This Docket Facility is open Monday through Friday, between 8 a.m. and 4 p.m., excluding legal holidays. The Docket telephone number is 303–312–6079.

FOR FURTHER INFORMATION CONTACT: Douglas Minter, U.S. Environmental Protection Agency, 8P–W–GW, 1595 Wynkoop Street, Denver, CO 80202–1129. Phone number: 303–312–6079. E-mail address: *minter.douglas@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Category	Examples of potentially regulated entities	North American Industry Classification System
State, Local, and Tribal Governments.	State, local, and Tribal governments that own and operate Class II injection wells within the boundaries of the Fort Peck Indian Reservation.	924110
Industry	Private owners and operators of Class II injection wells within the boundaries of the Fort Peck Indian Reservation.	221310
Municipalities	Municipal owners and operators of Class II injection wells within the boundaries of the Fort Peck Indian Reservation.	924110

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI

Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Introduction

The Fort Peck Assiniboine and Sioux Tribes of Montana (the ''Fort Peck Tribes'') have applied to EPA under Sections 1422 and 1425 of the Safe Drinking Water Act (''SDWA''), 42 U.S.C. 300h–1 and 300h–4, for approval of the Fort Peck Tribes' program regulating Class II (oil and gas-related) underground injection wells on the Fort Peck Indian Reservation in Montana. Because the Fort Peck Tribes have sought primacy only for the Class II UIC program, EPA proposes to approve their program under SDWA section 1425. EPA's proposal is based on a careful and extensive legal and technical review of the Tribes' application. As a result of this review, EPA has determined that the Fort Peck Tribes meet all requirements of section 1451 of the SDWA, including that the Tribes have demonstrated adequate jurisdictional authority over all Class II injection activities on the Reservation, including those conducted by nonmembers. EPA has also determined that the Tribes' program meets all applicable requirements for approval under SDWA section 1425, and that they are capable of administering an effective UIC Class II program in a manner consistent with the terms and purposes of the SDWA and all applicable regulations.

III. Legal Authorities

These regulations are being proposed under authority of sections 1422, 1425, 1450 and 1451 of the Safe Drinking Water Act, 42 U.S.C. 300h–1, 300h–4, 300j–9 and 300j–11.

A. Requirements for State UIC Programs

Section 1421 of the SDWA requires the Administrator of EPA to promulgate minimum requirements for effective State UIC programs to prevent underground injection activities that endanger underground sources of drinking water (''USDWs''). Sections 1422 and 1425 of the SDWA establish requirements for States seeking EPA approval of State UIC programs.

For States that seek approval for UIC programs under Section 1422 of the SDWA, EPA has promulgated a regulation setting forth the applicable procedures and substantive requirements. This regulation has been codified in the *Code of Federal Regulations* (40 CFR part 145). It includes requirements for State permitting programs (by reference to certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, enforcement authority, and information sharing.

For States that seek approval under Section 1425 of the SDWA, which provides an alternative set of requirements for Class II programs, EPA has published interim guidance in the **Federal Register** (46 FR 27333–27339, May 19, 1981), describing how States may apply for program approval under Section 1425 and setting forth the criteria EPA will use in approving or disapproving applications under this provision. By demonstrating that its program represents an effective program to prevent endangerment of USDWs and meets the more general statutory requirements of Section 1421(b)(1)(A) through (D), a State may obtain primacy for a Class II UIC program.

B. Tribal UIC Programs

Section 1451 of the SDWA and 40 CFR 145.52 authorize the Administrator of EPA to treat an Indian Tribe in the same manner as a State for purposes of the UIC program if the Tribe demonstrates that: (1) It is recognized by the Secretary of the Interior; (2) it has a governing body carrying out substantial governmental duties and powers over a defined area; (3) the functions to be exercised by the Tribe are within an area of the Tribal government's jurisdiction; and (4) the Tribe is reasonably expected to be capable, in the EPA Administrator's judgment, of implementing a program consistent with the terms and purposes of the SDWA and applicable regulations.

Under Section 1451 of the SDWA and 40 CFR part 145, Subpart E, EPA is authorized to treat Indian Tribes similarly to States and may approve Tribal UIC programs. Tribes may apply for primacy under either or both Sections 1422 and 1425 of the SDWA, and the references in 40 CFR part 145 and EPA's May 19, 1981 interim guidance to ''State'' programs are also construed to include eligible ''Tribal'' programs. (See 40 CFR 145.1(h), which provides that all requirements of parts 124, 144, 145, and 146 that apply to States with UIC primacy also apply to Indian Tribes except where specifically noted.)

IV. Fort Peck Tribes' Application

On December 18, 1995, the Fort Peck Tribes submitted an initial application for primacy for all Class II wells on all lands within the exterior boundaries of the Fort Peck Indian Reservation (the ''Reservation''). On April 22, 1996, EPA determined that the Fort Peck Tribes' application was complete. On September 12, 1997, EPA published a notice in the **Federal Register** (62 FR 48086–48087) requesting initial comments and scheduling a public hearing on the application. A similar public notice was also published in newspapers in Great Falls, Billings, and Poplar, Montana. A public hearing was held on October 16, 1997, in Poplar, Montana. On February 12, 1998, EPA provided a set of formal comments to the Fort Peck Tribes for incorporation into their application. In response, the Fort Peck Tribes submitted a revised application on July 27, 1999, stating that the Fort Peck Tribal Executive Board had formally adopted underground injection control provisions in the Tribal Code and requesting primacy under both Sections 1422 and 1425 of the SDWA.

V. EPA's Proposed Action

EPA is proposing to approve the Fort Peck Tribes' Class II UIC program. Under EPA's proposed approval of the Fort Peck Tribes' application, the Fort Peck Tribes would assume primary enforcement authority (except for the authority that EPA would retain to take criminal actions: (1) Against non-Indians; and (2) against Indians where the potential fine required is greater than $5,000 or where the penalty would require imprisonment for more than one year, in accordance with 25 U.S.C. 1302) for regulating all Class II injection activities on all lands within the exterior boundaries of the Reservation.

EPA's proposed Decision Document in support of EPA's proposed approval is part of the public record and is now available for public review and comment. The proposed Decision Document includes findings that the Fort Peck Tribes meet all requirements of section 1451 of the SDWA, including that the Tribes have demonstrated adequate jurisdictional authority over all Class II injection activities on the Reservation, including those conducted by nonmembers, and that the Fort Peck Tribes' program meets all applicable requirements for approval under section 1425 of the SDWA.

If approved as proposed, the Fort Peck Tribes would administer and enforce their Class II program with respect to all Class II injection wells on the Reservation. Upon approving the Fort Peck Tribes' Class II program, EPA would amend 40 CFR part 147 as proposed in this notice to revise the reference to the EPA-administered program for Class II injection wells on the Reservation to refer to the Fort Peck Tribes' Class II program. EPA would continue to administer its UIC program for Class I, III, IV, and V wells on the Reservation. (Although the Tribal Code prohibits injection in Class I, III, and IV wells, these prohibitions are separate from the Class II program that EPA proposes to approve in this action.) As noted above, EPA would also retain Class II-related criminal enforcement authority against non-Indians on the Reservation, and against Indians on the Reservation where the potential fine required is greater than $5,000 or where the penalty would require imprisonment for more than one year.

EPA would oversee the Fort Peck Tribes' administration of the Class II program on the Reservation. Part of EPA's oversight responsibility would include requiring quarterly reports of non-compliance and annual UIC program performance reports pursuant to 40 CFR 144.8. The Memorandum of Agreement between EPA and the Fort Peck Tribes would require, among other things, that EPA review all permits associated with aquifer exemptions not previously approved by EPA.

The provisions of the Tribal Code that contain standards, requirements, and procedures applicable to owners or operators of Class II wells on the Reservation would be incorporated by reference into 40 CFR part 147. Any provisions incorporated by reference, as well as all Tribal permit conditions or permit denials issued pursuant to such provisions, would be enforceable by EPA pursuant to section 1423 of the SDWA and 40 CFR 147.1(e).

Although the Program Description submitted with the Fort Peck Tribes' application indicates that the Fort Peck Tribes requested an aquifer exemption for the Dakota Sand formation, the Fort Peck Tribes have decided not to pursue this exemption at this time.

VI. Public Comments Received to Date

In connection with the public comment period and hearing that the Fort Peck Tribes held on September 20, 1995, members of the public asked questions about or commented on several aspects of the proposed Tribal program. The Fort Peck Tribes' written and verbal answers to these questions and comments are given in detail in the Fort Peck Tribes' application, which, along with the other contents of the application and related documentation, are available for public review as described in this proposed rule. The general areas of the comments and summaries of the Fort Peck Tribes' answers are presented briefly below. EPA concurs with the answers that the Fort Peck Tribes have provided.

In addition, during EPA's 1997 public comment period on the Fort Peck Tribes' complete application, EPA received comments on the Fort Peck Tribes' proposed program, which are incorporated below.

A. Transition From EPA to Tribal Permits

Well operators asked various questions about how the Tribal permit program would be administered. In response to questions about Tribal re-permitting for existing wells, the Fort Peck Tribes stated that all EPA-issued permits remain in full effect and Tribal permits will be issued upon review of the EPA permit. The Fort Peck Tribes will charge a fee of $200 per year per well. If the Fort Peck Tribes deny an application for a permit, permit renewal, or permit modification, operators would not be able to obtain permits, permit renewals, or permit modifications from EPA. The Tribal program will apply on all land within the exterior boundaries of the Reservation, including land owned in fee by non-members.

B. Requirement To Obtain a Permit

An operator recommended that some wells should be authorized by rule to operate until a permit application is either granted or denied. The Fort Peck Tribes replied that they would not change their regulation or the need to obtain a permit before operating wells. EPA takes the position that States and Tribes are free to promulgate requirements more stringent than the minimum Federal requirements for UIC primacy, and the SDWA does not prevent the Fort Peck Tribes from requiring permits for all wells.

C. Reporting Requirements

Some commenters suggested reducing the reporting requirements by, for example, eliminating the requirement to notify the Fort Peck Tribes within 24 hours of any well workover, suggesting alternative notification requirements, eliminating the monthly reporting requirement, and using monthly rather than daily data. The Fort Peck Tribes elected to retain their reporting requirements, stating, for example, that daily monitoring would reduce the potential to endanger underground sources of drinking water and that monthly reporting makes compliance easier to achieve.

A comment addressed to EPA stated that the Fort Peck Tribes' proposed requirement for monthly and annual injection fluid reports may be too stringent, recommending quarterly reporting instead. In response, EPA notes that section 302(b)(11) of the Tribal Code incorporates the requirements of 40 CFR 144.51, 144.54 and 146.23(b) for reporting and monitoring, with certain additional monitoring requirements, which EPA finds to be reasonable in helping ensure that USDWs are being protected. EPA has determined more frequent monitoring and reporting improves the operator's and the Tribes' ability to promptly identify problems and reduce the potential for violations.

D. Operating Requirements

A commenter questioned the need for the requirement to maintain pressure gauges on the tubing and annulus. The Fort Peck Tribes responded that pressure gauges allowed for agency field inspectors to observe instantaneous wellhead pressures, that several operators on the Reservation already had such pressure gauges, and that this requirement had been developed from protocols used by the State of North Dakota.

E. Financial Responsibility Requirements

A commenter suggested that a company's size and financial stability should be considered in deciding what type of mechanism, if any, to require for demonstrating financial integrity. The Fort Peck Tribes responded that requiring a surety bond is an easy way to enforce financial responsibility, and that a financially sound company should have no difficulty securing one. The Tribes also responded that part of a company's capability to maintain and operate an injection well safely is demonstrated in securing a surety bond. EPA has determined that requiring a surety bond prior to well operation is reasonable since it eliminates the need to require annual financial statements from a company. Review of annual financial statements creates an ongoing compliance monitoring workload and creates the potential for associated violations for failure to submit such documentation.

F. Mechanical Integrity Requirements

Two commenters suggested that mechanical integrity tests should be run at pressures no higher than 500 psi (according to one commenter) or 1,000 psi (according to another commenter), instead of up to the ''maximum permitted injection pressure.'' In response, the Fort Peck Tribes said that they would require mechanical integrity tests to be run at the higher of: (1) 300 psi above the average operational injection pressure; or (2) the highest operational injection pressure recorded during the past year. The Tribes also stated that the testing pressure required would never be higher than the ''maximum permitted injection pressure.'' The Tribes recognized that a ''maximum permitted injection pressure'' much higher than actual operating pressures can be requested by operators in order to avoid the need for subsequent permit modifications. EPA has determined the Tribes' requirement will help ensure that mechanical integrity is maintained up to the ''maximum permitted injection pressure,'' and that operators should keep this requirement in mind when requesting such pressure limits in their permits.

A commenter suggested requiring cement bond logs only in special cases. The Fort Peck Tribes replied that this was an important tool in determining external mechanical integrity and indicated that some States require cement bond logs as a demonstration of mechanical integrity.

G. Conflict of Interest

Some commenters were concerned that the Fort Peck Tribes would not only regulate injection wells themselves but also own or operate them. They made various suggestions to avoid what they perceived as a conflict, such as having the State of Montana regulate all Class II wells in Montana, including those on the Reservation, having EPA rather than the Tribal court handle appeals for non-Indian operators, and having some mediation process for disputes between the Fort Peck Tribes and permittees.

In response, the Fort Peck Tribes explained that the Tribal Office of Environmental Protection, which would administer and enforce the Fort Peck Tribes' regulatory Class II program, is a regulatory body within the Tribal government separate from the entities within the Fort Peck Tribes that own or operate injection wells. The Tribal program would be no different from a State UIC program in which one State department regulates injection activities but another State department maintains mineral holdings. In addition, the Fort Peck Tribes indicated that all surface and royalty agreements relating to mineral leasing and development on the Reservation are required to be approved by the Bureau of Indian Affairs after negotiation by the Fort Peck Tribes. In this sense, the Tribal program would be no different from an approved State UIC program in which appeals would be heard in State court.

The Fort Peck Tribes also cited legal authority in support of their civil jurisdiction over non-Indians on Reservation land, concluding that providing appeals to be heard by a Federal Agency instead of the Tribal courts would be inconsistent with the Fort Peck Tribes' governmental authority.

H. Permitting Fee

Some comments addressed to EPA questioned the annual $200 permitting fees. In response, EPA notes that this fee is intended to help the Fort Peck Tribes cover a portion of the anticipated expense associated with administering their Class II UIC program. The Fort Peck Tribes have estimated annual implementation costs of approximately $55,000, which is considerably more than the amount likely covered by EPA's UIC grant funds to the Tribes. Other UIC programs, such as the program administered by the Montana Board of Oil and Gas Conservation, impose a similar fee on Class II well operators. Although the Fort Peck Tribes expect that the present injection well fee will help cover program administration costs, they will retain the flexibility to raise or lower this fee if appropriate.

VII. Other Changes to UIC Regulations

This proposed rule includes some minor revisions to 40 CFR 147.1 that are not specific to the Fort Peck Tribes. As a convenience to the reader, EPA has included the full text of 40 CFR 147.1 in this proposal. However, this proposal solicits comments only on the specific amendments proposed, which are: (1) To revise 40 CFR 147.1 to include specific references to Tribal programs in light of the fact that EPA is proposing in this notice to approve its first Tribal UIC program; and (2) to reserve 40 CFR 147.1(f), because it duplicates 40 CFR 9.1. It is important and necessary that EPA's regulations codifying approved UIC programs account for the fact that such programs may be run by Tribes.

VIII. Generalized Findings

As described earlier, EPA's proposed decision to approve the Fort Peck Tribes to implement a Class II UIC program includes findings that the Tribes meet all requirements of section 1451 of the SDWA, including that the Tribes have demonstrated adequate jurisdictional authority over all Class II injection activities on the Reservation, including those conducted by nonmembers. With regard to authority over nonmember activities on nonmember-owned fee lands, EPA is proposing to find that the Tribes have demonstrated such authority under the test established by the United States Supreme Court in *Montana* v. *United States,* 450 U.S. 544 (1981) (*Montana* test). Under the Montana test, the Supreme Court held that absent a Federal grant of authority, Tribes generally lack inherent jurisdiction over the activities of nonmembers on nonmember-owned fee lands. However, the Court also found that Indian Tribes retain inherent sovereign power to exercise civil jurisdiction over nonmember activities on nonmember-owned fee lands within the reservation where: (1) Nonmembers enter into ''consensual relationships with the Tribe or its members, through commercial dealing, contracts, leases, or other arrangements'' or (2) ''* * * [nonmember] conduct threatens or has some direct effect on the political integrity, the economic security or the health or welfare of the Tribe.'' *Id.* at 565–66. In analyzing Tribal assertions of inherent authority over nonmember activities on Indian reservations, the Supreme Court has reiterated that the *Montana* test remains the relevant standard. See e.g., *Strate* v. *A–1 Contractors*, 520 U.S. 438, 445 (1997) (describing *Montana* as ''the pathmarking case concerning Tribal civil authority over nonmembers''); *Nevada* v. *Hicks,* 533 U.S. 353, 358 (2001) (''Indian Tribes'' regulatory authority over nonmembers is governed by the principles set forth in [*Montana*]'').

As part of the public record available for review and comment, EPA's proposed Decision Document, and Appendix A thereto, sets forth the Agency's specific factual findings relating to the Tribes' demonstration of inherent authority over the UIC Class II activities of nonmembers under the *Montana* test and, in particular, the potential for direct effects of nonmember UIC activities on the Tribes' health, welfare, political integrity, and economic security. In addition, EPA is proposing the general findings set forth below regarding the effects of underground injection activities. These general findings provide a foundation for EPA's analysis of the Tribes' assertion of authority under the *Montana* test and, in effect, supplement the Agency's factual findings specific to the Tribes and to the Fort Peck Reservation.

A. General Finding on Political, Economic and Human Health and Welfare Impacts

In enacting part C of the SDWA, Congress generally recognized that if left unregulated or improperly managed, underground injection wells have the potential to cause serious and substantial, harmful impacts on political and economic interests and human health and welfare. Specifically, as stated in legislative history of the SDWA:

> [U]nderground injection of contaminants is clearly an increasing problem. Municipalities are increasingly engaging in underground injection of sewage, sludge, and other wastes. Industries are injecting chemicals, byproducts, and wastes. Energy production companies are using injection techniques to increase production and to dispose of unwanted brines brought to the surface during production. Even government agencies, including the military, are getting rid of difficult to manage waste problems by underground disposal methods. Part C is intended to deal with all of the foregoing situations insofar as they may endanger underground sources of drinking water (USDWs).[1]

In response to the problem of the substantial risks inherent in underground injection activities, Congress enacted section 1421 of the SDWA '' to assure that drinking water sources, actual and potential, are not rendered unfit for such use by underground injection of contaminants.'' [2]

In enacting part C of the SDWA, Congress more specifically found that mismanaged underground injection activities could have serious and substantial, harmful impacts on the public's economic and political interests, as well as its health and welfare. For example, Congress found that:

[1] *See* H.R. Report No. 93–1185, 93rd Congress, 2nd Session (1974), *reprinted in* ''A Legislative History of the Safe Drinking Water Act,'' February, 1982, by the Government Printing Office, Serial No. 97–9, page 561.

[2] Ibid., page 560.

Federal air and water pollution control legislation have increased the pressure to dispose of waste materials on or below land, frequently in ways, such as subsurface injection, which endanger drinking water quality. Moreover, the national economy may be expected to be harmed by unhealthy drinking water and the illnesses which may result therefrom.[3]

Congress specifically noted several economic and political consequences that can result from the degradation of good quality drinking water supplies, including: (1) Inhibition of interstate tourism and travel; (2) loss of economic productivity because of absence from employment due to illness; (3) limited ability of a town or region to attract workers; and (4) impaired economic growth of a town or region, and, ultimately, the nation.[4]

As the Agency charged by Congress with implementing part C of the SDWA and assuring implementation of effective UIC programs throughout the United States, EPA agrees with these Congressional findings. EPA finds that underground injection activities, if not effectively regulated, can have serious and substantial, harmful impacts on human health, welfare, economic, and political interests. In making this finding, EPA recognizes that: (1) The underground injection activities, currently regulated as five distinct classes of injection wells as defined in the UIC regulations, typically emplace a variety of potentially harmful organic and inorganic contaminants (e.g., brines and hazardous wastes) into the ground; (2) these injected contaminants have the potential to enter USDWs through a variety of migratory pathways if injection wells are not properly managed; and (3) once present in USDWs, these injected contaminants can have harmful impacts on human health and welfare, and political and economic interests, that are both serious and substantial.

In 1980, EPA issued a document entitled, ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' which provides the rationale for the Agency in proposing specific regulatory controls for a variety of underground injection activities. These controls, or technical requirements (e.g., testing to ensure the mechanical integrity of an injection well), were promulgated to prevent release of pollutants through the six primary ''pathways of contamination,'' or well-established and recognized ''ways in which fluids can escape the well or injection horizon and enter USDWs.'' [5] EPA has found that USDW contamination from one or more of these pathways can occur from underground injection activity of all classes (I–V) of injection wells.

The six pathways are:

1. Migration of fluids through a leak in the casing of an injection well and directly into a USDW;
2. Vertical migration of fluids through improperly abandoned and improperly completed wells in the vicinity of injection well operations;
3. Direct injection of fluids into or above a USDW;
4. Upward migration of fluids through the annulus, which is the space located between the injection well's casing and the well bore. This can occur if there is sufficient injection pressure to push such fluid into an overlying USDW;
5. Migration of fluids from an injection zone through the confining strata over or underlying a USDW. This can occur if there is sufficient injection pressure to push fluid through a stratum, which is either fractured or permeable, and into the adjacent USDW; and
6. Lateral migration of fluids from within an injection zone into a portion of that stratum considered to be a USDW. In this scenario, there may be no impermeable layer or other barrier to prevent migration of such fluids.[6]

Moreover, consistent with EPA's findings, the U.S. Department of the Interior has recognized the ability of injection wells to contaminate surface waters that are hydrogeologically connected to contaminated ground water.[7] Such contamination of surface waters could further cause negative impacts on human health and welfare, and economic and political interests.

In sum, EPA finds that, given the common presence of contaminants in injected fluids, serious and substantial contamination of ground water and surface water resources can result from improperly regulated underground injection activities. Moreover, such contamination has the potential to cause correspondingly serious and substantial harm to human health and welfare, and political and economic interests. EPA also has determined that Congress reached a similar finding when it enacted part C of the SDWA, directing EPA to establish UIC programs to mitigate and prevent such harm through the proper regulation of underground injection activities.

B. General Finding on the Necessity of Protecting Safe Drinking Water Supplies as a Necessary Incidence of Self-Government

Consistent with the finding that improperly managed underground injection activities can have direct harmful effects on human health and welfare, and economic and political interests that are serious and substantial, EPA has determined that proper management of such activities serves the purpose of protecting these public health and welfare, and political and economic interests, which is a core governmental function whose exercise is integral to, and a necessary aspect of, self-government. *See* 56 FR 64876, 64879 (December 12, 1991); *Montana* v. *EPA,* 137 F.3d 1135, 1140–41 (9th Cir. 1998). EPA has determined that Congress reached this conclusion in enacting the SDWA and that Congress considered enactment of the SDWA to be a necessary act of self-government, serving to protect essential and vital public interests by ensuring that the public's essential drinking water supplies are safe from contamination, including contamination caused by underground injection activities.

The above findings regarding the effects on public health and welfare, and economic and political interests are generally true for human beings and their communities, wherever they may be located. EPA has determined that the above findings that underground injection regulation is an integral and necessary incident of self-government is generally true for any Federal, State and/or Tribal government having responsibility for protecting public health and welfare. With specific relevance to Tribes, EPA has long noted the relationship between proper environmental management within Indian country and Tribal self-government and self-sufficiency. Moreover, in the 1984 *EPA Policy for the Administration of Environmental Programs on Indian Reservations,* EPA determined that as part of the ''principle of Indian self-government,'' Tribal governments are the ''appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace,'' consistent with Agency standards and regulations. (*EPA Policy for the Administration of Environmental Programs on Indian Reservations,*

[3] Ibid., page 540.

[4] Ibid., page 540.

[5] ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' EPA (May, 1980), page 7.

[6] ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' EPA, (May, 1980), pp. 7–17.

[7] *See* Federal Water Quality Administration's Order COM 5040.10 (1970), *as referred to in* H.R. Report No. 93–1185, 561.

Paragraph 2, November 8, 1984). EPA interprets section 1451 of the SDWA, in providing for the approval of Tribal programs under the Act, as authorizing eligible Tribes to assume a primary role in protecting drinking water sources. These general findings provide a backdrop for EPA's legal analysis of the Fort Peck Tribes' Application and, in effect, supplement EPA's factual findings specific to the Fort Peck Tribes and to the Fort Peck Reservation, contained in the proposed Decision Document and Appendix A thereto, and the Fort Peck Tribes' similar conclusions, contained in their Application, pertaining specifically to the Fort Peck Tribes and the Fort Peck Reservation.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

The Class II injection wells the Tribes propose to regulate are currently subject to EPA's regulatory program as described in 40 CFR part 147, subpart BB. Additionally, the Tribes' proposed program is, in many respects, identical to, and in some respects, more stringent than, EPA's program.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that there is no need for an Information Collection Request under the Paperwork Reduction Act because this proposed rule would not impose any new Federal reporting or record-keeping requirements. Reporting or record-keeping requirements would be based on the Tribal Code, and the Fort Peck Tribes are not subject to the Paperwork Reduction Act.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in crude petroleum and natural gas extraction as defined by NAICS Code 211111 according to Small Business Administration size standards for entities employing fewer than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are owners or operators of Class II wells, employing fewer than 500 employees. We have determined that less than 7 small entities will experience an impact of greater than 1% of annual revenues. These entities would be subject to requirements substantially similar to the existing requirements of EPA's program under 40 CFR 147.1351(a) and would not incur significant new costs as a result of this proposed rule. For example, the Tribes propose to charge an annual $200 permitting fee for each Class II well on the Reservation. While this will impose a new cost on a small entity, this cost will not have a significant economic impact on a substantial number of small entities due to the few small entities owning/operating the 23 Class II wells on the Reservation. Moreover, in approving State UIC programs imposing similar fees on a greater number of small entities, EPA determined that these new costs did not have a significant economic impact on a substantial number of small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. The Fort Peck Tribes' program is more stringent than the existing Federal program in certain respects. For example, unlike the existing Federal program, the Fort Peck Tribes' program requires permits for all Class II wells, with no provision for authorization by rule. (See section 202(c) of the Tribal Code.) However, because all Class II wells now in operation on the Reservation currently hold EPA permits, this more stringent requirement will not impose a significant economic impact on the owners or operators of these wells. Other requirements in the Fort Peck Tribes' program that are more stringent than the existing Federal program are identified in the proposed Decision Document available for public review and comment and are mostly minor observation, recording, and reporting requirements. These requirements also will not impose a significant economic effect on the owners or operators of these wells.

We continue to be interested in any potential impacts of the proposed rule on small entities and welcome comments on issues related to any such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome

alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector because the rule imposes no enforceable duty on any State, local, or Tribal governments or the private sector. EPA's proposed approval of the Fort Peck Tribes' program would not constitute a ''Federal mandate'' because there is no requirement that Tribes establish UIC regulatory programs and because the program, if finally approved, will be a Tribal, rather than a Federal program. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, this proposed rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism''(64 FR 43255, August 10, 1999), 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 States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It 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. If finalized, the proposed rule would merely put in place a Tribal regulatory program that is identical in many respects to the existing federal program and more stringent in certain respects, as explained in more detail in the proposed Decision Document. EPA will continue to administer its Class I, III, IV, and V UIC programs on the Reservation. Authorizing the Fort Peck Tribes to administer the Class II program will not substantially alter the distribution of power and responsibilities among levels of government or significantly change EPA's relationship with Montana. The substitution of a Tribal Class II program in place of an EPA-administered Class II program on the Fort Peck Reservation will impose no additional costs on the State of Montana. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.''

EPA has concluded that this proposed rule will have Tribal implications. However, it will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. The Fort Peck Tribes have voluntarily requested EPA authorization to administer their own Class II UIC program and have voluntarily assumed the Tribal share of the costs for doing so. Additionally, EPA is proposing to approve the Tribes' application for UIC Class II primacy and thus replace the existing Federal UIC Class II program for the Fort Peck Indian Reservation with a Tribal program administered pursuant to the laws of the Fort Peck Tribes. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this proposed rule.

EPA consulted with Tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. (See section IV, V, and VI for more information.)

In the spirit of Executive Order 13175, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks & 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 proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The proposed Fort Peck Tribes' Class II UIC program is more stringent than the existing federal program; the Tribal program requirements have been established to prevent underground injection activities that endanger underground sources of drinking water (USDWs). The Fort Peck Tribal Executive Board has formally adopted underground injection control provisions in the Tribal Code in their program to safeguard these resources for all potential users, including but not limited to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not decrease the level of protection provided to human health or the environment or lessen current environmental standards. If finalized, this proposed rule would put in place a Tribal regulatory program that is more stringent than the federal program and, therefore, would increase the level of protection. For example, unlike the existing federal program, the Fort Peck Tribes' program requires permits for all Class II wells, with no provision for authorization by rule. Moreover, in proposing to approve the Tribes' own Class II program, EPA is enhancing the Tribes' ability to determine its own UIC affairs on its Reservation.

List of Subjects in 40 CFR Part 147

Environmental protection, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Incorporation by reference.

Dated: November 16, 2007.

Robert E. Roberts,

Regional Administrator, U.S. EPA Region 8.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

1. The authority citation for part 147 is revised to read as follows:

Authority: 42 U.S.C. 300h *et seq.*; and 42 U.S.C. 6901 *et seq.*

2. Part 147 heading is revised as set forth above.

Subpart A—[Amended]

3. Section 147.1 is revised to read as follows:

§ 147.1 Purpose and scope.

(a) This part sets forth the applicable Underground Injection Control (UIC) programs for each of the States, territories, and possessions identified pursuant to the Safe Drinking Water Act (SDWA) as needing a UIC program, including any Indian country geographically located within those States, territories, and possessions.

(b) The applicable UIC programs set forth in this part may be State-administered programs approved by EPA, Tribally-administered programs approved by EPA, or Federally-administered programs promulgated by EPA. In some cases, the applicable UIC program for a particular area may consist of a State-administered or Tribally-administered program applicable to some classes of wells and a Federally-administered program applicable to other classes of wells. Approval of a State or Tribal program is based upon a determination by the Administrator that the program meets the requirements of section 1422 or section 1425 of the SDWA, any other applicable provisions of this subpart, and the applicable provisions of 40 CFR parts 124, 144, 145 and 146. A Federally-administered program is promulgated in those instances where the State or Tribe has not submitted any program for approval or where the submitted program does not meet the minimum Federal statutory and regulatory requirements.

(c) In the case of each State or Tribal program approved by EPA pursuant to section 1422 of the SDWA, the relevant subpart describes the major elements of that program, including the relevant State or Tribal statutes and regulations, the Statement(s) of Legal Authority, the Memorandum of Agreement, and the Program Description. State or Tribal statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators have been incorporated by reference pursuant to regulations of the Office of the Federal Register. Material incorporated by reference is available for inspection in the appropriate EPA Regional office, in EPA Headquarters, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Other State or Tribal statutes and regulations containing standards and procedures that constitute elements of a State or Tribal program but do not apply directly to owners or operators have been listed but have not been incorporated by reference.

(d) In the case of any program promulgated under section 1422 for a State or Tribe that is to be administered by EPA, the relevant State or Tribal subpart makes applicable the provisions of 40 CFR parts 124, 144, 146, and 148, and any other additional requirements pertinent to the specific State or Tribal program.

(e) Regulatory provisions incorporated by reference (in the case of approved State or Tribal programs) or promulgated by EPA (in the case of EPA-administered programs), and all permit conditions or permit denials issued pursuant to such regulations, are enforceable by the Administrator pursuant to section 1423 of the SDWA.

(f) [Reserved].

Subpart BB—[Amended]

4. Section 147.1351 is amended by revising the first sentence of paragraph (a) and by revising paragraph (b) to read as follows:

§ 147.1351 EPA-administered program.

(a) *Contents.* The UIC program in the State of Montana for Class I, III, IV, and V wells, and for all Classes of wells in Indian country in Montana, except for Class II wells on all lands within the exterior boundaries of the Fort Peck Indian Reservation, is administered by EPA. * * *

(b) *Effective dates.* The effective date for the UIC program for Class I, III, IV, and V wells for all lands in Montana, including all Indian country in Montana, and for Class II wells for all Indian country in Montana other than the Fort Peck Indian Reservation, is June 25, 1984. The effective date for the EPA-approved State-administered UIC Class II program for all lands in Montana, except for those in Indian country, is provided in § 147.1350.

5. Subpart JJJ is added to read as follows:

Subpart JJJ—Assiniboine and Sioux Tribes

§ 147.3200 Fort Peck Indian Reservation: Assiniboine & Sioux Tribes—Class II wells.

The UIC program for Class II injection wells on all lands within the exterior boundaries of the Fort Peck Indian Reservation is the program administered by the Assiniboine and Sioux (Fort Peck) Tribes approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the **Federal Register** on [DATE OF FINAL RULE PUBLICATION]; the effective date of this program is [*DATE OF FINAL RULE PUBLICATION*]. This program consists of the following elements as submitted to EPA in the Fort Peck Tribes' program application:

(a) *Incorporation by Reference.* The requirements set forth in the Fort Peck Tribes' statutes, regulations, and resolutions cited in this paragraph are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for the Fort Peck Indian Reservation. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained or inspected at the Fort Peck Tribal Offices, 605 Indian Avenue, Poplar, Montana 59255, at the Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(1) *Tribal Code.* Provisions of the Tribal Code listed in Appendix A to this Subpart.

(2) Tribal Government Resolution No. 1106–92–6.

(b) *Memorandum of Agreement (MOA).* The MOA between EPA and the Fort Peck Tribes signed by EPA on July 31, 2007.

(c) *Statements of legal authority.* Letters to EPA from Sonosky, Chambers, Sachse, Endreson & Perry, dated September 4, 2003 (attaching a June 17, 2002 letter), March 27, 2001, July 19, 1999, March 13, 1995, March 16, 1994, November 4, 1992, July 14, 1989, and April 13, 1989, and letters submitted as part of the Fort Peck Tribes' application.

(d) *Program Description.* The Program Description submitted as part of the Fort Peck Tribes' application, and any other materials submitted as part of the application or as a supplement to it.

Appendix A to Subpart JJJ of Part 147—Fort Peck Tribal Requirements Incorporated by Reference in Subpart JJJ of Part 147 of the Code of Federal Regulations

The following is an informational listing of Fort Peck Tribal requirements incorporated by reference in Subpart JJJ of part 147 of the Code of Federal Regulations:

Fort Peck Assiniboine and Sioux Tribes

(a) The statutory provisions include portions of the following insofar as they pertain to Class II injection wells:

Fort Peck Assiniboine and Sioux Tribal Underground Injection Control Code, adopted June 1999, Title 18:

Chapter 1. General Provisions
- Section 101. Purposes.
- Section 102. Administration.
- Section 103. Regulations, Criteria, and Standards.
- Section 104. Definitions.
- Section 105. Application.

Chapter 2. General Underground Injection Control Program Requirements
- Section 201. Introduction.
- Section 202. Requirements.

Chapter 3. Underground Injection Control Permit Requirements
- Section 301. Introduction.
- Section 302. Requirements.

Chapter 4. UIC Permitting Procedures
- Section 401. Introduction.
- Section 402. Requirements.

Chapter 5. UIC Technical Criteria and Standards
- Section 501. Introduction.
- Section 502. Requirements.
- Section 503. Additional Requirements.

Chapter 6. Enforcement
- Section 601. Requirements for Compliance Evaluation Programs.
- Section 602. Administrative Enforcement.
- Section 603. Administrative Penalties.
- Section 604. Civil Penalties.
- Section 605. Criminal Violations.
- Section 606. Judicial Relief.
- Section 607. Public Participation in Office of Environmental Protection Enforcement Process.

Chapter 7. Appeals
- Section 701. Judicial Review.

Chapter 8. Public Hearings
- Section 801. Public Hearings.

Chapter 9. Miscellaneous
- Section 901. Savings.
- Section 902. Effective Date.

(b) The provisions of Tribal Government Resolution Number 1106–92–6, adopted June 22, 1992, insofar as this resolution prohibits injection by Class II wells into the Judith River formation.

[FR Doc. E8–1667 Filed 1–29–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7760]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before April 29, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7760, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief,