



Billing Code: 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R08-OAR-2010-0298, FRL-9843-2]**

**Disapproval of State Implementation Plan; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Montana**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is disapproving the State Implementation Plan (SIP) submitted by the State of Montana to demonstrate that the SIP meets one of the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet infrastructure requirements. The State of Montana submitted certifications of their infrastructure SIP for the 1997 ozone NAAQS on November 28, 2007 and December 22, 2009. EPA is disapproving Montana's submissions with respect to the infrastructure element regarding state boards.

**EFFECTIVE DATE:** This final rule is effective **[FEDERAL REGISTER: insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No.EPA-R08-OAR-2010-0298. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ayala, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6142, [ayala.kathy@epa.gov](mailto:ayala.kathy@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials NAAQS mean or refer to National Ambient Air Quality Standards.
- (iv) The initials SIP mean or refer to State Implementation Plan.
- (v) The words State or Montana mean the State of Montana, unless the context indicates otherwise.

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## **I. Background**

Infrastructure requirements for SIPs are provided in sections 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The element that is the subject of this action, section 110(a)(2)(E)(ii), is described in detail in our proposal of May 31, 2013 (78 FR 32613). The State of Montana submitted certifications of their infrastructure SIP for the 1997 ozone NAAQS on November 28, 2007 and December 22, 2009. We acted on those submissions, with the exception of element 110(a)(2)(E)(ii), on July 22, 2011 (76 FR 43918).

On May 31, 2013, EPA published a notice of proposed rulemaking (NPR) for the remaining portion of the two Montana submissions. The NPR proposed disapproval of the Montana submissions with respect to infrastructure element 110(a)(2)(E)(ii) regarding requirements for state boards under section 128. The reasons for this disapproval are detailed within our proposal. In summary, the Montana SIP fails to include provisions which meet the explicit legal requirements of section 128.

## **II. Response to Comments**

No comments were received.

## **III. Final Action**

EPA is disapproving Montana's November 28, 2007 and December 22, 2009 submissions

for the 1997 ozone NAAQS with respect to infrastructure element 110(a)(2)(E)(ii) regarding requirements for state boards under CAA section 128.

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to act on SIP submissions in accordance with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to either approve or disapprove state choices, in accordance with the criteria of the Clean Air Act. Accordingly, this action merely disapproves a state submission that does not meet Federal requirements. This action does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set for in the EO and does not impose additional requirements beyond those imposed by state law. For these reasons, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- 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);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 24, 2013.

Shaun L. McGrath,  
Regional Administrator,  
Region 8.

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