



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2018-0136; FRL-9979-76-Region 8]

**Approval and Promulgation of Air Quality Implementation Plans; State of Montana;
Revisions to PSD Permitting Rules**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to fully approve the State Implementation Plan (SIP) revision submitted by the State of Montana on October 14, 2016. Montana's October 14, 2016 submittal revises their prevention of significant deterioration (PSD) regulations. This action is being taken under section 110 of the Clean Air Act (CAA) (Act).

DATES: This final rule is effective on **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2018-0136. All documents in the docket are listed on the <http://www.regulations.gov> web site. 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 electronically through <http://www.regulations.gov>, or please contact the person identified in the

FOR FURTHER INFORMATION CONTACT section for additional information.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, leone.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What is the EPA Taking Final Action to Approve?

The EPA is taking final action to approve a revision to Montana’s PSD regulations as submitted by the State of Montana on October 14, 2016. We are taking final action to approve the following revision to Administrative Rules of Montana (ARM) 17.8.818(7)(a)(iii): removing the phrase “averaged over a 24-hour period.”

We provided a detailed background in our proposed rulemaking, published on April 27, 2018. See 83 FR 18494. We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on May 29, 2018.

In this action, we are responding to the comments we received and taking final rulemaking action on the State’s October 14, 2016 submittal.

II. Response to Comments

We received two comments during the public comment period. After reviewing the comments, the EPA has determined that the comments are outside the scope of our proposed action or fail to identify any material issue necessitating a response.

III. Final Action

We are taking final action to approve changes to Montana’s SIP – in particular the revisions to ARM 17.8.818(7)(a)(iii), which removes the phrase “averaged over a 24-hour

period” – as submitted on October 14, 2016. We are taking final action to approve this change, as it is consistent with the CAA and the EPA regulations as follows:

1. CAA section 110(a)(2)(C), which requires each state plan to include “a program to provide for ... the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [the NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter”;
2. CAA section 110(a)(2)(A), requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. Montana’s regulations in ARM 17.8 create enforceable obligations for sources;
3. CAA section 110(i) (with certain limited exceptions) prohibits states from modifying SIP requirements for stationary sources except through the SIP revision process. As described in our proposed rulemaking, Montana fulfilled this requirement;
4. CAA section 110(l), provides that the EPA cannot approve a SIP revision that interferes with any applicable requirement of the Act. The revisions to ARM 17.8.818 would not interfere with sections 110(a)(2) and 110(i) of the Act, as they are in compliance with current federal regulations;
5. CAA section 161, which requires a SIP to contain emission limitations to prevent significant deterioration of air quality in regions designated as attainment or unclassifiable; and

6. Montana's SIP revision complies with the requirements of 40 CFR 51.166 as the plan imposes the regulatory requirements on individual sources, as required by the regulatory provisions.

IV. Incorporation by Reference

In this action, the EPA is taking final action to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is taking final action to incorporate by reference a change to the State of Montana's SIP removing "averaged over a 24-hour period" from ARM 17.8.818(7)(a)(iii). The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of this final rulemaking, and will be incorporated by reference in the next update to the SIP compilation.¹

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provision of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state actions, provided that they meet the criteria of the CAA. Accordingly, this action merely finalizes approval of state law as meeting federal requirements and does not impose additional

¹ 62 FR 27968 (May 22, 1997).

requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 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 USC 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 (Pub. L. 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 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

In addition, this final rule is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION 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* CAA 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: June 20, 2018.

Douglas Benevento,
Regional Administrator,
Region 8.

40 CFR part 52 is amended to read as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart BB – Montana

2. Section 52.1370(c) is amended by revising table entry “17.8.818” to read as follows:

§52.1370 Identification of plan.

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(c) * * *

State citation	Rule title	State effective date	EPA rule final date	Final rule citation	Comments
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(vi) Administrative Rules of Montana, Subchapter 08, Prevention of Significant Deterioration of Air Quality					
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17.8.818	Review of Major Stationary Sources and Major Modifications – Source Applicability and Exemptions	08/20/2016	[insert date of publication in the Federal Register]	[insert Federal Register citation]	
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