

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

- 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

- 2. In § 117.789, paragraph (b)(1) is temporarily suspended from July 9, 2011 through September 30, 2011, and paragraph (b)(3) is temporarily added from July 9, 2011 through September 30, 2011, to read as follows:

**§ 117.789 Harlem River.**

\* \* \* \* \*

(b)(3) The draws of the bridges at 103 Street, mile 0.0, need not open for the passage of vessel traffic from July 9, 2011, through September 30, 2011. The draws of the 125 Street (Triborough) bridge, mile 1.3, the Willis Avenue Bridge, mile 1.9, the Madison Avenue Bridge, mile 2.3, the 145 Street Bridge, mile 2.8, the Macombs Dam Bridge, mile 3.2, the 207 Street Bridge, mile 6.0, and the Broadway Bridge, mile 6.8, shall open on signal if at least a four hour advance notice is given to the New York City Highway Radio (Hotline) Room and the Triborough Bridge and Tunnel Authority (TBTA) for the 125 Street (Triborough) Bridge at mile 1.3. The draws of the above bridges, except the Broadway Bridge, need not open for the passage of vessel traffic from 6 a.m. to 9 a.m., and 5 p.m. to 7 p.m., Monday through Friday, except Federal holidays. The draw of the Broadway Bridge need not open for the passage of vessel traffic from 7 a.m. to 10 a.m. and 4 p.m. to 7 p.m., Monday through Friday, except Federal holidays.

\* \* \* \* \*

Dated: June 22, 2011.

**Daniel A. Neptun,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 2011–17115 Filed 7–7–11; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117**

[Docket No. USCG–2011–0594]

**Drawbridge Operation Regulation; Illinois Waterway, Near Morris, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Elgin, Joliet, and Eastern Railroad Drawbridge across the Illinois Waterway, mile 270.6, near Morris, Illinois. The deviation is necessary to allow removal of the existing lift span and installation of the replacement lift span. This deviation allows the bridge to be maintained in the closed-to-navigation position for eighty-four hours.

**DATES:** This deviation is effective starting 7 a.m. on July 9, 2011 through 7 p.m. on July 12, 2011.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0594 and are available online by going to <http://www.regulations.gov>, inserting USCG–2011–0594 in the “Keyword” box and then clicking “Search”. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone (314) 269–2378, e-mail [Eric.Washburn@uscg.mil](mailto:Eric.Washburn@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:** The Canadian National Railroad requested a temporary deviation for Elgin, Joliet, and Eastern Railroad Drawbridge, across the Illinois Waterway, mile 270.6, near Morris, Illinois to remain in the closed-to-navigation position for eighty-four hours while the existing lift span is removed and the replacement lift span is installed. The Elgin, Joliet, and Eastern Railroad Drawbridge currently operates in accordance with 33 CFR

117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Illinois Waterway.

The Elgin, Joliet, and Eastern Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 26.3 feet above flat pool. Due to construction activities, vessels will be unable to pass the bridge site during this 84-hour period. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 22, 2011.

**Eric A. Washburn,**

*Bridge Administrator, Western Rivers.*

[FR Doc. 2011–17111 Filed 7–7–11; 8:45 am]

**BILLING CODE 9110–04–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA–R08–OAR–2006–0601; FRL–9223–4]

**Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Subchapter 7 and Other Subchapters**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is partially approving and partially disapproving State Implementation Plan (SIP) revisions submitted by the State of Montana on August 26, 1999, May 28, 2003, March 9, 2004, October 25, 2005, and October 16, 2006. The revisions contain new, amended, and repealed rules in Subchapter 7 (Permit, Construction, and Operation of Air Contaminant Sources) that pertain to the issuance of Montana air quality permits, in addition to other minor administrative changes to other subchapters of the Administrative Rules of Montana (ARM). In this action, EPA is approving those portions of the rules that are approvable and disapproving those portions of the rules that are

inconsistent with the Clean Air Act (CAA). This action is being taken under section 110 of the CAA.

**DATES:** *Effective Date:* This final rule is effective August 8, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2006-0601. All documents in the docket are listed in the <http://www.regulations.gov> Web site. 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 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 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kevin Leone, Air Program, Mailcode 8P-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, or [leone.kevin@epa.gov](mailto:leone.kevin@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 *SIP* mean or refer to State Implementation Plan.
- (iv) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

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**I. Background and Purpose**

The CAA (section 110(a)(2)(C)) and 40 CFR 51.160 require states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or

maintenance of the National Ambient Air Quality Standards (NAAQS). Such minor New Source Review (NSR) programs are for pollutants from stationary sources that do not require Prevention of Significant Deterioration (PSD) or nonattainment NSR permits. States may customize the requirements of the minor NSR program as long as their program meets minimum requirements.

In a proposed rule action published on March 4, 2010, EPA proposed to partially approve and partially disapprove revisions to the State of Montana's State Implementation Plan (SIP) submitted on August 26, 1999, May 28, 2003, March 9, 2004, October 25, 2005, and October 16, 2006 (as described below). The revisions contain new, amended, and repealed rules in Subchapter 7 (Permit, Construction and Operation of Air Contaminant Sources) that pertain to the issuance of Montana air quality permits, and in addition other subchapters of the ARM.

**A. August 26, 1999 Submittal**

On August 26, 1999, the Governor of Montana submitted a SIP revision request. The revision contains amended and repealed rules to various subchapters in the ARM that were adopted by the Montana Board of Environmental Review (Board) on May 14, 1999. Specific to Subchapter 7 (Permit, Construction, and Operation of Air Contaminant Sources), the submittal revised ARM 17.8.705 and 17.8.733 and repealed ARM 17.8.708. However, as indicated below, a May 28, 2003 submittal rescinded the August 26, 1999 revisions to ARM 17.8.705 and 17.8.733.

**B. May 28, 2003 Submittal**

On May 28, 2003, the Governor of Montana submitted a SIP revision request. The revision contains new, amended, and repealed rules adopted by the Board on December 6, 2002. The new and repealed rules pertain to the issuance of Montana air quality permits and are in Subchapter 7 of the ARM. The amended rules contain references to the new and repealed rules.

The new rules include: ARM 17.8.740, 17.8.743, 17.8.744, 17.8.745, 17.8.748, 17.8.749, 17.8.752, 17.8.755, 17.8.756, 17.8.759, 17.8.760, 17.8.762, 17.8.763, 17.8.764, 17.8.765, 17.8.767, and 17.8.770.

The repealed SIP-approved rules include: ARM 17.8.701, 17.8.702, 17.8.704, 17.8.705, 17.8.706, 17.8.707, 17.8.710, 17.8.715, 17.8.716, 17.8.717, 17.8.720, 17.8.730, 17.8.731, 17.8.732, 17.8.733, and 17.8.734.

The amended SIP-approved rules include: ARM 17.8.101, 17.8.110,

17.8.309, 17.8.310, 17.8.818, 17.8.825, 17.8.826, 17.8.901, 17.8.904, 17.8.905, 17.8.906, 17.8.1004, 17.8.1005, 17.8.1106, and 17.8.1109.

The May 28, 2003 submittal also rescinded outstanding SIP submissions for rules that amended the following: ARM 17.8.702, adopted July 20, 2001 and submitted on December 20, 2001<sup>1</sup>; and ARM 17.8.705 and 17.8.733, adopted on May 14, 1999 and submitted on August 26, 1999.

**C. March 9, 2004 Submittal**

On March 9, 2004, the Governor of Montana submitted a SIP revision request. The revision contains amended rules adopted by the Board on September 26, 2003. The amended rules pertain to the issuance of Montana air quality permits. The following rules were amended: ARM 17.8.749, 17.8.759, 17.8.763, and 17.8.764.

**D. October 25, 2005 Submittal**

On October 25, 2005, the Governor of Montana submitted a SIP revision request. The revision contains amended rules adopted by the Board on June 3, 2005. EPA approved all of the October 25, 2005 submittal on July 19, 2006 (71 FR 40922), except for ARM 17.8.767. We are addressing ARM 17.8.767 in this action.

**E. October 16, 2006 Submittal**

On October 16, 2006, the Governor of Montana submitted a SIP revision request. The revision contains an amended rule for ARM 17.8.743(1) and new rules codified as ARM 17.8.1601, 17.8.1602, 17.8.1603, 17.8.1604, 17.8.1605, and 17.8.1606, and ARM 17.8.759 adopted by the Board on December 2, 2005. The submittal also requested to withdraw ARM 17.8.743(1)(c) from being incorporated into the SIP. We are addressing ARM 17.8.759 in this action. The revision to ARM 17.8.743(1) and the new rules pertain to the regulation of oil and gas well facilities, and we will address this revision request in a separate action.

**II. Response to Comments**

EPA received one letter from WildEarth Guardians (WG) commenting on EPA's **Federal Register** action proposing approval and disapproval of the Montana SIP Provisions in Docket

<sup>1</sup> Note that the May 28, 2003 submittal requested rescinding revisions to ARM 17.8.702, adopted on July 20, 2001 and submitted on December 20, 2001. EPA had already approved the revisions to ARM 17.8.702 (see 67 FR 55125, 8/28/02, and 40 CFR 52.1370(c)(55)) by the time we had received the May 28, 2003 letter. However, the May 28, 2003 submittal also requests that all of ARM 17.8.702 be repealed. We are proposing to remove ARM 17.8.702 from the federally-approved SIP.

ID No. EPA-R08-OAR-2006-0601. In this section EPA responds to the significant adverse comments made by the commenter.

*Comment No. 1*—The commenter opposed EPA's approval of ARM 17.8.743(2) and (3). The commenter alleges that these rules directly contradict 40 CFR 51.160. To the extent the commenter makes this argument, EPA responds below.

*EPA Response*—EPA disagrees with the commenter's assessment. First, the commenter references 40 CFR 51.160(b) in particular, the requirement that a plan must set forth legally enforceable procedures which include a means for the State or local permitting agency to prevent construction or modification of a source if it will interfere with applicable portions of the control strategy or the attainment or maintenance of a national standard. The commenter asserts that ARM 17.8.743(2) allows a stationary source to initiate construction activities upon receipt of a "completeness determination" pursuant to ARM 17.8.759 and that the "completeness determination" requirements are insufficient to show compliance with 40 CFR 51.160(b).

EPA has determined the Montana rules are consistent with the CAA and EPA regulations, and therefore approvable as a SIP revision. Section 110(a)(2)(C) of the CAA requires that SIPs include a program for regulating the construction and modification of stationary sources as necessary to ensure that the NAAQS are achieved. The Montana regulations clearly regulate the construction and modification of stationary sources and ensure that the NAAQS will be met. In addition, as explained in the proposed rule, EPA's regulations at 40 CFR 51.160 do not require the issuance of a permit for the construction or modification of minor sources, but only that the SIP include legally enforceable procedures to prevent the construction of a source or modification that would violate the SIP control strategy or interfere with attainment or maintenance of the NAAQS. EPA-approved SIP minor NSR programs in several states do not require permits prior to construction, but instead contain other enforceable procedures. See 75 FR 54562 (Sept. 26, 2007) (Missouri), 68 FR 2217 (Jan. 16, 2003) (Idaho).

Montana's rules include enforceable procedures to prevent the construction of any source or modification that would violate SIP requirements. In determining whether or not the SIP includes these legally enforceable procedures, EPA does not look at a particular component of an

implementation plan in isolation (such as ARM 17.8.743(2) and (3)). EPA must be able to determine that, with the revisions in place, the whole "plan as revised" meets the requirements of 51.160. In addition, Montana's rule contains sufficient safeguards to meet the requirements of 51.160. First, the State is not obligated to issue a permit where the owner or operator received a completeness determination. ARM 17.8.743(4). Second, the rule contains a provision indicating that if the owner or operator proceeds with the initial construction activities it accepts the regulatory risks of engaging in such activities. ARM 17.8.743(4). Third, Montana's rule contains safeguards regarding the type of activity allowed before permit issuance. The rule only allows installing concrete foundations work, below ground plumbing, installing ductwork, and other infrastructure and/or excavation work involving the same. ARM 17.8.743(2). Fourth, the rule specifically prohibits the construction or installation of emission units (without a permit or a State determination that the unit will not interfere with the NAAQS or a control strategy). ARM 17.8.743(2). Thus EPA disagrees with the commenter's suggestion that the rule does not state that construction or modification of the emission units subject to permitting cannot commence prior to issuance of the permit.

EPA has determined the addition of ARM 17.8.743(2) and (3) to the Montana Air Quality Program (MAQP) do not compromise the legally enforceable procedures in the MAQP and meet the requirements of 40 CFR 51.160.

The commenter also suggests that the phrase "[a] true minor source is not subject to PSD requirements and is not subject to other federal requirements" is confusing and appears to be a contradiction to the requirements of 40 CFR 51.160.

During the rulemaking process, EPA's intent was to make it explicitly clear that ARM 17.8.743(2) and (3) only apply to "true" minor sources in order to ensure that sources that are subject to federal requirements (*i.e.*, PSD and synthetic minors) do not begin any construction prior to permit issuance. 17.8.743(5) states: "The provisions of (2) do not supersede any other local, State, or federal requirements associated with the activities set forth therein." EPA has interpreted "federal requirements" to mean synthetic minor permit limits. PSD provisions remain applicable until a proposed project legally obtains synthetic minor status (*i.e.*, obtains permitted limits which limit the source below the PSD thresholds). Therefore,

EPA has concluded that the rule only applies to true minor sources.

*Comment No. 2*—The commenter opposed EPA's approval of ARM 17.8.752(1)(a)(i), alleging that this approval appears contrary to Section 110(l) of the CAA in that it would weaken current permitting requirements and will lead to more air pollution than would otherwise be allowed. The commenter states that the current minor source Best Available Control Technology (BACT) provision (triggered for an entire source) has been relied upon by Montana and EPA to ensure that the NAAQS will be attained and maintained pursuant to Section 110 of the CAA. The commenter acknowledges there is no federal requirement for minor source BACT. To the extent the commenter makes this argument, EPA responds below.

*EPA Response*—EPA disagrees with this comment. As the commenter points out, there is no federal requirement for BACT for minor sources and the inclusion of ARM 17.8.752(1)(a)(i) is a "discretionary" control measure. Measures not tied to an area's classification and not mandated by the CAA are often referred to as "discretionary" measures. States can remove discretionary measures from attainment, nonattainment or maintenance plans. In this instance, the State has not removed this discretionary control measure from its SIP, but has revised it. This revision results in minor source BACT applying only to the specific emissions unit being modified as opposed to the whole source. This revision will result in fewer sources postponing or foregoing modifying emission units, even those that would implement emission reductions, in order to avoid a comprehensive review and expensive upgrades to an entire facility.

EPA again notes that maintaining compliance with the NAAQS and Section 110 of the CAA is not dependent on a single component of the Montana ARM or a single revision of the SIP, but how the revisions as a whole affect attainment and maintenance of the NAAQS. ARM 17.8.752 has been used in addition to the remainder of the MAQP rules, individual control plans for nonattainment areas, generally applicable rules prohibiting certain emitting activities, open burning rules, *etc.* in order to ensure compliance with the NAAQS. ARM 17.8.752, as revised in this rule, does not weaken the MAQP program and thus a 110(l) analysis is not required before EPA can approve this provision.

*Comment No. 3*—The commenter states that the SIP revisions do not set

forth legally enforceable procedures that enable the State to determine how construction or modification of a stationary source impacts the ambient air quality standards and how these impacts will be assessed, in particular the ozone and PM<sub>2.5</sub> NAAQS, as required by 40 CFR 160(a)(2). The commenter further alleges that the SIP, in general, is not consistent with the procedures set forth in 40 CFR 160.

**EPA Response**—EPA disagrees with this comment. The revisions being approved in this action provide legally enforceable procedures for Montana's minor NSR to determine whether the construction of a new or modified source will result in interference with the NAAQS. ARM 17.8.743 requires sources to obtain a Montana air quality permit or a completeness determination before construction of a source may begin. ARM 17.8.743(3) states “\* \* \* the department may issue a letter instructing the owner or operator to immediately cease such activities pending a final determination on an application if it finds that the proposed project would result in a violation of the State Implementation Plan or would interfere with the attainment or maintenance of any federal or state ambient air quality standard.” This satisfies the requirement of 40 CFR 51.160(a)(2) because it is a legally enforceable procedure that enables the State to prevent violations of the control strategy or interference with the NAAQS.

SIP revisions being approved in this action are not intended to determine the ability of the SIP as a whole to implement, maintain, and enforce each NAAQS promulgated by the EPA. For example, Montana submitted a SIP revision to demonstrate that the State meets the requirements of Section 110(a)(1) and (2) of the Clean Air Act for ozone and PM<sub>2.5</sub>. This revision addresses basic SIP requirements, including emission inventories, monitoring, enforcement of emission limits and control measures, and modeling to assure attainment and maintenance of the standards. The evaluation of these “infrastructure” SIPs, as well as currently approved section 110 SIPs, need to be considered in determining whether the SIP as a whole provides appropriate legally enforceable procedures to ensure attainment and maintenance of the NAAQS.

### III. Final Action

EPA is partially approving and partially disapproving SIP revisions submitted by the State of Montana on August 26, 1999, May 28, 2003, March

9, 2004, October 25, 2005, and October 16, 2006. First, in this action EPA is approving the removal of the following provisions from the federally-approved SIP: ARM 17.8.701, 17.8.702, 17.8.704, 17.8.705, 17.8.706, 17.8.707, 17.8.710, 17.8.715, 17.8.716, 17.8.717, 17.8.720, 17.8.730, 17.8.731, 17.8.732, 17.8.733, and 17.8.734.

Second, EPA is approving the following new Subchapter 7 provisions into the federally-approved SIP: ARM 17.8.740 (except 17.8.740(10) and (14) and the following phrases in 17.8.740(8)(a) and (c), respectively, (1) “except when a permit is not required under ARM 17.8.745” and (2) “except as provided in ARM 17.8.745” and the phrase “reasonable period of time for startup and shutdown” in ARM 17.8.740(2)), submitted on May 28, 2003; 17.8.743 (except the phrases “asphalt concrete plants, mineral crushers” in 17.8.743(1)(b) “and 17.8.745” in 17.8.743(1), and 17.8.743(1)(c)), submitted on May 28, 2003; 17.8.744 and 17.8.748, submitted on May 28, 2003; 17.8.749(1), (3), (4), (5), (6), and (8), submitted on May 28, 2003; 17.8.749(7), submitted on March 9, 2004; 17.8.752, 17.8.755, and 17.8.756, submitted on May 28, 2003; 17.8.759(1) through (3), submitted on May 28, 2003; 17.8.759(4) through (6), submitted on October 16, 2006; 17.8.760 and 17.8.762, submitted on May 28, 2003; 17.8.763(1) and (4), submitted on May 28, 2003; 17.8.763(2) and (3), submitted on March 9, 2004; 17.8.764(1) (except the phrase “the emission increase meets the criteria in ARM 17.8.745 for a de minimis change not requiring a permit” in 17.8.764(1)(b)) and (4), submitted on May 28, 2003; 17.8.764(2) and (3), submitted on March 9, 2004; 17.8.765, submitted on May 28, 2003; 17.8.767(1)(a) through (c), submitted on May 28, 2003; and 17.8.767(1)(d) through (g), (2), (3), and (4), submitted on October 25, 2005.

Third, EPA is disapproving the following new Subchapter 7 provisions: ARM 17.8.749(2), ARM 17.8.740(10), 17.8.740(14); and portions of 17.8.740(2).

Fourth, EPA is approving revisions to the following sections of other subchapters submitted on May 28, 2003: ARM 17.8.101(4); 17.8.110(7), (8), and (9); 17.8.818(1); 17.8.825(3); 17.8.826(1) and (2); 17.8.904(1) and (2); 17.8.905(1) and (4); 17.8.906; 17.8.1004; 17.8.1005(1), (2), and (5); 17.8.1106; and 17.8.1109.

Additionally, EPA is not acting, at the request of the State, on the following provisions in Subchapter 7: ARM 17.8.743(1)(c) and ARM 17.8.770, the phrase “asphalt concrete plants, mineral

crushers” in ARM 17.8.743(1)(b) and ARM 17.8.745 submitted on May 28, 2003.

Note that, with respect to Montana's rules relating to new source review, EPA has determined that Montana's rules meet the requirements of 40 CFR part 51, subpart I, as currently in effect. And while EPA is approving the state's permit to construct rules, EPA recognizes that it has a responsibility to insure that all states properly implement their preconstruction permitting programs. Therefore, EPA's approval of Montana's rules in no way divests EPA of our continued oversight (as set forth in CAA sections 113, 167, and 505(b)) to insure that Montana's permits are consistent with the CAA, EPA regulations, and the SIP.

Consistent with EPA's proposal, this SIP approval does not extend to Indian country in Montana. See 75 FR 9843.

Finally, EPA is not acting on the following provisions of other subchapters because they were either disapproved in a previous action or they relate to a rule EPA is not taking action on: the following phrases in 17.8.740(8)(a) and (c), respectively, (1) “except when a permit is not required under ARM 17.8.745” and (2) “except as provided in ARM 17.8.745,” submitted on May 28, 2003; ARM 17.8.309(5)(b), 17.8.310(3)(e), 17.8.316(6), and 17.8.901(14)(e)(iii), submitted on May 28, 2003; the phrase “and 17.8.745” in ARM 17.8.743(1), submitted on May 28, 2003; ARM 17.8.749(2) submitted on May 28, 2003; the phrase “the emission increase meets the criteria in ARM 17.8.745 for a de minimis change not requiring a permit,” in ARM 17.8.764(1)(b), submitted on May 28, 2003; and ARM 17.8.743(1), 17.8.1601, 17.8.1602, 17.8.1603, 17.8.1604, 17.8.1605, and 17.8.1606, submitted on October 16, 2006.

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies 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 approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional 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 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 (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 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 September 6, 2011. 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: September 24, 2010.

**James B. Martin,**

*Regional Administrator, Region 8.*

#### PART 52—[AMENDED]

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

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

#### Subpart BB—Montana

■ 2. Amend § 52.1370 by adding paragraphs (c)(49)(i)(F), (c)(55)(i)(B), and (c)(70) to read as follows:

##### § 52.1370 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(49) \* \* \*  
(i) \* \* \*

(F) Previously approved in paragraph (c)(49)(i)(A) under Subchapter 7: *Permit, Construction, and Operation of Air Contaminant Sources*. These sections are now deleted without replacement: ARM 17.8.701, *Definitions*; ARM 17.8.702, *Incorporation by Reference* (excluding 17.8.702(1)(f)); ARM 17.8.704, *General Procedures for Air Quality Preconstruction Permitting*; 17.8.705, *When Permit Required-Exclusions*; 17.8.706, *New or Altered Sources and Stacks-Permit Application Requirements*; 17.8.707 *Waivers*; 17.8.710, *Conditions for Issuance of Permit*; 17.8.715, *Emission Control Requirements*; 17.8.716, *Inspection of Permit*; 17.8.717, *Compliance with Other Statutes and Rules*; 17.8.720,

*Public Review of Permit Applications*; 17.8.730, *Denial of Permit*; 17.8.731, *Duration of Permit*; 17.8.732, *Revocation of Permit*; 17.8.733, *Modification of Permit*; 17.8.734, *Transfer of Permit*, as adopted by Montana on 12/9/1996 and effective 12/27/2002.

\* \* \* \* \*

(55) \* \* \*

(i) \* \* \*

(B) Previously approved in paragraph (c)(55)(i)(A) under *Subchapter 7: Permit Construction and Operation of Air Contaminant Sources*. This section is now deleted without replacement: ARM 17.8.702(1)(g), *Incorporation by Reference*, as adopted by Montana on 7/20/2001 and effective 12/27/2002.

\* \* \* \* \*

(70) On May 28, 2003, March 9, 2004, October 25, 2005 and October 16, 2006, the State of Montana submitted revisions to its State Implementation Plan (SIP) that contained new, revised, amended and repealed rules pertaining to the issuance of Montana air quality permits in addition to minor administrative changes to other subchapters of the Administrative Rules of Montana (ARM).

(i) Incorporation by reference.

(A) Letter from David L. Klemp, Montana State Air Director, to Deborah Lebow Aal, Acting Air Program Director, dated April 29, 2011. For certain sections, the following incorporates by reference official State of Montana publications of the Administrative Rules of Montana that are dated after the effective date shown in the incorporation by reference for each section. In these instances, the official publication provides a history for the section showing the last effective date of a change. For each of these sections, the last effective date of a change matches the effective date of the section, showing that the official publication reflects the text of the section as of the effective date shown in the following incorporation by reference. The sections, their effective dates, and the date of the publication are as follows: ARM 17.8.825, effective 12/27/2002, publication 9/30/2006; ARM 17.8.826, effective 12/27/2002, publication 9/30/2006; ARM 17.8.906, effective 12/27/2002, publication 6/30/2003; ARM 17.8.740, effective 12/27/2002, publication 9/30/2006; ARM 17.8.744, effective 12/27/2002, publication 12/31/2005; ARM 17.8.752, effective 12/27/2002, publication 6/30/2006; ARM 17.8.755, effective 12/27/2002, publication 6/30/2006; ARM 17.8.756, effective 12/27/2002, publication 6/30/2006; ARM 17.8.767, effective 12/27/2002, publication 3/31/

2004; ARM 17.8.749, effective 10/17/2003, publication 6/30/2006; ARM 17.8.759, effective 10/17/2003, publication 12/31/2003; ARM 17.8.763, effective 10/17/2003, publication 6/30/2006; ARM 17.8.764, effective 10/17/2003, publication 6/30/2006; ARM 17.8.602, effective 6/17/2005, publication 3/31/2007; ARM 17.8.767, effective 6/17/2005, publication 6/30/2006; ARM 17.8.802, effective 6/17/2005, publication 12/31/2005; ARM 17.8.1102, effective 6/17/2005, publication 3/31/2007; ARM 17.8.759, effective 12/23/2005, publication 9/30/2006.

(B) ARM submission dated May 28, 2003.

(1) The following provisions of the ARM are amended effective 12/27/2002: 17.8.101, *Definitions*, (4) “Air quality preconstruction permit,”; 17.8.110, *Malfunctions*, (7), (8), and (9); 17.8.818, *Review of Major Stationary Sources and Major Modifications—Source Applicability and Exemptions*, (1); 17.8.825, *Sources Impacting Federal Class I Areas—Additional Requirements*, (3); 17.8.826, *Public Participation*; 17.8.904, *When Montana Air Quality Permit Required*; 17.8.905, *Additional Conditions of Montana Air Quality Permit*, (1) and (4); 17.8.906, *Baseline for Determining Credit for Emissions and Air Quality Offsets*; 17.8.1004, *When Montana Air Quality Permit Required*; 17.8.1005, *Additional Conditions of Montana Air Quality Permit*, (1), (2) and (5); 17.8.1106, *Visibility Impact Analysis*; 17.8.1109, *Adverse Impact and Federal Land Manager*.

(2) The following new provisions of the ARM are effective 12/27/2002: 17.8.740, *Definitions*, (except for the phrase in 17.8.740(2) “includes a reasonable period of time for startup and shakedown and”; the phrase in 17.8.740(8)(a) “, except when a permit is not required under ARM 17.8.745”; the phrase in 17.8.740(8)(c) “, except as provided in ARM 17.8.745”; 17.8.740(10) “Negligible risk to the public health, safety, and welfare and to the environment”; and 17.8.740(14) “Routine Maintenance, repair, or replacement”); 17.8.743, *Montana Air Quality Permits—When Required*, (except the phrase in 17.8.743(1) “and 17.8.745,” the phrase in 17.8.743(1)(b) “asphalt concrete plants, mineral crushers, and”, and 17.8.743(1)(c)); 17.8.744, *Montana Air Quality Permits—General Exclusions*; 17.8.748, *New or Modified Emitting Units—Permit Application Requirements*; 17.8.749, *Conditions For Issuance or Denial of Permit*, (1), (3), (4), (5), (6), and (8); 17.8.752, *Emission Control*

*Requirements*; 17.8.755, *Inspection of Permit*; 17.8.756, *Compliance with Other Requirements*; 17.8.759, *Review of Permit Applications*, (1) through (3); 17.8.760, *Additional Review of Permit Applications*; 17.8.762, *Duration of Permit*; 17.8.763, *Revocation of Permit*, (1) and (4); 17.8.764, *Administrative Amendment to Permit*, (1) (except for the phrase in 17.8.764(1)(b) “unless the increase meets the criteria in ARM 17.8.745 for a de minimis change not requiring a permit, or”), (2) and (3); 17.8.765, *Transfer of Permit*; 17.8.767, *Incorporation by Reference*, (1)(a) through (c).

(C) ARM submission dated March 09, 2004.

(1) The following provisions of the ARM are amended effective 10/17/2003: 17.8.749, *Conditions For Issuance or Denial of Permit*, (7); 17.8.759, *Review of Permit Applications*; 17.8.763, *Revocation of Permit*, (2) and (3); 17.8.764, *Administrative Amendment to Permit*, (2) and (3).

(D) ARM submission dated October 25, 2005.

(1) The following provisions of the ARM are amended effective 6/17/2005: 17.8.102, *Incorporation by Reference—Publication Dates*; 17.8.103, *Incorporation by Reference and Availability of Referenced Documents*; 17.8.302, *Incorporation by Reference*; 17.8.602, *Incorporation by Reference*; 17.8.767, *Incorporation by Reference*, (1)(d) through (g), (2), (3), and (4); 17.8.802, *Incorporation by Reference*; 17.8.902, *Incorporation by Reference*; 17.8.1002, *Incorporation by Reference*; 17.8.1102, *Incorporation by Reference*.

(E) ARM submission dated October 16, 2006.

(1) The following provisions of the ARM are amended effective 12/23/2005: 17.8.759, *Review of Permit Applications*, (4) through (6).

\* \* \* \* \*

**Editorial Note:** This document was received in the Office of the Federal Register on June 30, 2011.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2010-1002; FRL-9430-7]

### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Modifications to Indiana Prevention of Significant Deterioration and Non-attainment New Source Review Rules

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving Indiana's modifications to its Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) rules. The amendments include grammatical changes, corrections to numbering, addition of definitions consistent with Federal PSD and NNSR regulations, and removal of references to provisions which were vacated in the Federal rules. Indiana submitted these rule revisions to EPA for approval on November 24, 2010. They are consistent with the current Federal PSD and NNSR regulations.

**DATES:** This direct final rule will be effective September 6, 2011, unless EPA receives adverse comments by August 8, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2010-1002, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [pamela.blakley@epa.gov](mailto:pamela.blakley@epa.gov).

3. *Fax:* (312) 692-2450.

4. *Mail:* Pamela Blakley, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Pamela Blakley, Chief, Air Permits 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.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2010-