

Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 27, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

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

Dated: December 7, 2005.

**Kerrigan G. Clough,**

*Acting Regional Administrator, Region 8.*

■ 40 CFR part 52 is amended to read as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(108) to read as follows:

##### § 52.320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(108) Revisions to the Long-Term Strategy of Colorado's State Implementation Plan for Class I Visibility Protection (Visibility SIP), as submitted by the Governor on March 24, 2005. The revisions update strategies, activities, and monitoring plans that constitute reasonable progress toward the National visibility goal.

(i) Incorporation by reference.

(A) "Revision of the Long-Term Strategy", Part II of the November 18, 2004 document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection," effective November 18, 2004.

(B) Colorado Air Quality Control Commission Regulation No. 3, "Stationary Source Permitting and Air Pollutant Emission Notice Requirements", 5 CCR 1001-5, Part D, Section XIV, Visibility, Subsections A through F, effective April 16, 2004.

[FR Doc. 06-630 Filed 1-23-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 60

[EPA-R08-OAR-2004-MT-0001, FRL-8012-9]

### Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana; New Source Performance Standards for Montana; Final Rule

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Montana on August 20, 2003, except for revisions to three rules that EPA will act on at a later date. The revisions modify definitions and references to federal regulations and other materials in the Administrative Rules of Montana. The intended effect of this action is to make federally enforceable those provisions that EPA is approving. This action is being taken under section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This final rule is effective February 23, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2004-MT-0001. All documents in the docket are listed on the [www.regulations.gov](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 either electronically through

<http://www.regulations.gov> or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. 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:** Laurie Ostrand, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202-2466, (303) 312-6437, [ostrand.laurie@epa.gov](mailto:ostrand.laurie@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Background
- II. Final Action
- III. Statutory and Executive Order Reviews

**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.

**I. Background**

On July 20, 2004 (69 FR 43371), EPA published a notice of proposed rulemaking partially approving and partially disapproving SIP revisions submitted by the State of Montana on April 18, 2003 and August 20, 2003. The revisions modify the open burning rules, definitions and references to federal regulations and other materials in the Administrative Rules of Montana. At this time we are finalizing our proposed action on the August 20, 2003 submittal. We will address the April 18, 2003 submittal, pertaining to open burning rules and ARM 17.8.302(1)(f), in a separate action. In the July 20, 2004 proposed rulemaking notice we also announced that on January 9, 2004, pursuant to section 111(c) of the Act, we delegated the authority to the State of Montana to implement and enforce the New Source Performance Standards (NSPS).

The August 20, 2003 submittal contains amendments to definitions and incorporation by reference of current

federal regulations and other material into air quality rules at ARM 17.8.101, 17.8.102, 17.8.103, 17.8.106, 17.8.110, 17.8.302, 17.8.401, 17.8.402, 17.8.801, 17.8.802, 17.8.818, 17.8.819, 17.8.821, 17.8.901, 17.8.902, 17.8.905, and 17.8.1002. The amendments update federal citations, make clerical amendments, and eliminate the duplication of statutory language in definitions by citing to the definitions in the statute.

We proposed to approve all of the August 20, 2003 submittal, except for changes in ARM 17.8.401 and 402. In our proposal we indicated that we were not acting on the changes to ARM 17.8.401 and 402 at this time for the same reasons stated on our August 13, 2001 action (66 FR 42427 at 42434). We did not receive any comments on our proposed action of the August 20, 2003 submittal.

We have also decided to not act on the changes to ARM 17.8.106 at this time. We will address ARM 17.8.106 at a later date.

**II. Final Action**

EPA is approving the following changes to the ARM that were submitted on August 20, 2003 and effective on April 11, 2003: ARM 17.8.101(2), (8), (9), (12), (19), (20), (22), (23), (30) and (36); 17.8.102; 17.8.103(1); 17.8.110(2); 17.8.302(1); 17.8.801(1), (3), (4), (6), (20), (21), (22), (24), (27) and (28); 17.8.802(1); 17.8.818(2), (3) and (6); 17.8.819(3); 17.8.821; 17.8.901(1), (11), (12) and (14); 17.8.902(1); 17.8.905(1)(c); and 17.8.1002(1). We are also approving the deletion of ARM 17.8.101(43) that references definitions in the Montana Code Annotated.

EPA is not acting on the following changes to the ARM that were submitted on August 20, 2003 and effective on April 11, 2003: ARM 17.8.106, 17.8.401 and 17.8.402. These revisions will be addressed in a separate action.

EPA is updating the table in 40 CFR 60.4(c), entitled "Delegation Status of New Source Performance Standards [(NSPS) for Region VIII]," to indicate the current status of the 40 CFR part 60 NSPS that are delegated to the State of Montana.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The Montana SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act. The

August 20, 2003 submittal merely makes administrative amendments to the State's Administrative Rules of Montana. Therefore, section 110(l) requirements are satisfied.

**III. Statutory and Executive Order Reviews**

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 27, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not

be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects

##### 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.

##### 40 CFR Part 60

Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Zinc.

Dated: December 7, 2005.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

■ 40 CFR parts 52 and 60 are amended to read as follows:

#### 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. Section 52.1370 is amended by adding paragraph (c)(61) to read as follows:

#### § 52.1370 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(61) Revisions to State Implementation Plan were submitted by the State of Montana on August 20, 2003. The revisions modify definitions and references to federal regulations and other materials in the Administrative Rules of Montana (ARM). The revisions also delete the definition at ARM 17.8.101(43).

(i) Incorporation by reference.

(A) Administrative Rules of Montana (ARM) sections: ARM 17.8.101(2), (8), (9), (12), (19), (20), (22), (23), (30), and (36); 17.8.102; 17.8.103(1); 17.8.110(2); 17.8.302(1); 17.8.801(1), (3), (4), (6), (20), (21), (22), (24), (27) and (28); 17.8.802(1); 17.8.818(2), (3) and (6); 17.8.819(3); 17.8.821; 17.8.901(1), (11), (12) and (14); 17.8.902(1); 17.8.905(1)(c); and 17.8.1002(1) effective April 11, 2003.

#### PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Pub. L. 101-549, 104 Stat. 2399 (November 15, 1990; 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted).

#### Subpart A—General Provisions

■ 2. Section 60.4 is amended by revising the entries for "Eb—Large Municipal Waste Combustors" and "Ec—Hospital/Medical/Infectious Waste Incinerators" in the table in paragraph (c) entitled "Delegation Status of New Source Performance Standards [(NSPS) for Region VIII]" to read as follows:

#### § 60.4 Address.

\* \* \* \* \*

(c) \* \* \*

#### DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for Region VIII]

Subpart	CO	MT	ND	SD	UT	WY
* * * * *						
Eb—Large Municipal Waste Combustors .....		X	.....	X	X	X
Ec—Hospital/Medical/Infectious Waste Incinerators .....	X	X	X	X	X	X
* * * * *						

\* \* \* \* \*

[FR Doc. 06-634 Filed 1-23-06; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Parts 239, 257, and 258**

[FRL-8024-2]

**Maine: Determination of Adequacy for  
the State Municipal Solid Waste  
Landfill Permit Program****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve the State of Maine's permit program for municipal solid waste landfills (MSWLFs) and to approve the State's approach of not allowing conditionally exempt small quantity generator (CESQG) hazardous waste to be sent to non-municipal, non-hazardous waste disposal units. Under the Resource Conservation Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA), States may develop and implement permit programs for MSWLFs and for non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste, and submit them for review and an adequacy determination by EPA. Today's approval documents EPA's determination that Maine's MSWLF permit program, and the manner in which the State addresses CESQG hazardous waste with respect to non-municipal, non-hazardous waste disposal units, are adequate to ensure compliance with federal requirements.

**DATES:** This rule is effective on March 27, 2006 without further notice, unless EPA receives adverse comment by February 23, 2006. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments (including requests for a public hearing) by one of the following methods:

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

2. E-mail: Chuck Franks at: [franks.chuck@epa.gov](mailto:franks.chuck@epa.gov).

3. Mail: Chuck Franks, EPA New England—Region 1, One Congress Street, Suite 1100, (Mail Code: CHW), Boston, MA 02114-2023.

4. Hand Delivery or Courier: Deliver your comments to Chuck Franks, EPA

New England—Region 1, One Congress Street, Suite 1100, (CHW), Boston, MA 02114-2023.

**Instructions:** We must receive your comments by February 23, 2006. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://regulations.gov), or e-mail. The Federal [regulations.gov](http://regulations.gov) website 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 [regulations.gov](http://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.

You can view and copy Maine's application and associated publicly available materials at the following locations: (1) Maine Department of Environmental Protection (ME DEP), State House Station 17, Hospital Street, Augusta, Maine 04333, business hours: Monday through Thursday, 8:30 a.m. to 4:30 p.m. and Friday, 8:30 a.m. to 12:30 p.m.; interested persons wanting to examine documents at the state office should make an appointment with the ME DEP, Bureau of Remediation and Waste Management at least one day in advance by calling (207) 287-2651; and (2) EPA New England—Region 1 Library, One Congress Street—11th Floor, Boston, MA 02114-2023, business hours: 10 a.m. to 3 p.m., Monday through Thursday, telephone number: (617) 918-1990.

**FOR FURTHER INFORMATION CONTACT:** Chuck Franks, EPA New England—Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114-2023; telephone number: (617) 918-1554, e-mail: [franks.chuck@epa.gov](mailto:franks.chuck@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

On October 9, 1991, the Environmental Protection Agency (EPA) promulgated the "Solid Waste Disposal Facility Criteria: Final Rule" (56 FR 50978). This rule promulgates part 258

of Title 40 of the Code of Federal Regulations (CFR) (40 CFR part 258) which establishes the minimum criteria for Municipal Solid Waste Landfills (MSWLF's). The criteria set out in 40 CFR part 258 include location restrictions and standards for design, operation, groundwater monitoring, corrective action, financial assurance and closure and post-closure care for MSWLFs. On July 1, 1996, EPA amended part 257 of Title 40 of the CFR (40 CFR part 257) by adding Subpart B, "Federal Disposal Standards for the Receipt of CESQG Wastes at Non-Municipal, Non-Hazardous Waste Disposal Units" (61 FR 34252). The 40 CFR part 257 criteria include location restrictions and groundwater monitoring and corrective action standards for non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste. Today's rule refers to the 40 CFR part 257, subpart B criteria and the 40 CFR part 258 criteria together as the "Subtitle D federal revised criteria." The Subtitle D federal revised criteria establish minimum federal standards that take into account the practical capability of owners and operators of MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste while ensuring that these two types of facilities are designed and managed in a manner that is protective of human health and the environment.

Section 4005(c)(1)(B) of Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste will comply with the Subtitle D federal revised criteria. RCRA Section 4005(c)(1)(C) requires EPA to determine whether the permit programs that states develop and implement for these two types of facilities are adequate.

To fulfill this determination requirement, EPA promulgated the State Implementation Rule (SIR). The SIR, which established part 239 of Title 40 of the CFR (40 CFR part 239), has the following four purposes: (1) It spells out the requirements that State programs must satisfy to be determined adequate; (2) it confirms the process for EPA approval or partial approval of State permit programs for MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous waste; (3) it provides the procedures for withdrawal of such