

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

[EPA-R08-OAR-2005-MT-0002, FRL-8012-8]

**Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Emergency Episode Avoidance Plan; Direct Final Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Montana on August 2, 2004. The revisions are to the State's Emergency Episode Avoidance Plan (EEAP). 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.

**DATES:** This rule is effective on March 6, 2006, without further notice, unless EPA receives adverse comment by February 2, 2006. If adverse comment is 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-R08-OAR-2005-MT-0002 by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- E-mail: [long.richard@epa.gov](mailto:long.richard@epa.gov) and [ostrand.laurie@epa.gov](mailto:ostrand.laurie@epa.gov).
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 200, Denver, Colorado 80202-2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R08-OAR-2005-MT-0002. EPA's policy is that all comments received will be included in the public docket without change and may be

made available online at [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](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 [www.regulations.gov](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 the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](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 form. Publicly available docket materials are available either electronically in [www.regulations.gov](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).

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**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*, 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. General Information****A. What Should I Consider as I Prepare My Comments for EPA?**

1. **Submitting CBI.** Do not submit this information to EPA through [www.regulations.gov](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 to 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:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part of section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

## II. Background

On August 2, 2004, the Governor submitted a SIP revision that contains amendments to the Montana Emergency Episode Avoidance Plan (EEAP). The EEAP fulfills the requirements of 40 CFR part 51, subpart H which requires a plan to prevent ambient concentrations of air pollutants from reaching levels that may endanger public health and welfare.

## III. EPA's Review of the State of Montana's August 25, 2004 Submittal

The August 2, 2004 revisions to Montana's EEAP are substantive and administrative in nature. The substantive changes are in the priority classification of Air Quality Control Regions (AQCRs). Priority classifications are based on recent ambient concentrations. In the August 2004 EEAP submittal, Montana used the three most recent years of ambient data (2000, 2001 and 2002) to revise the priority classification of all AQCRs to priority III for all pollutants (sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), particulate matter (PM-10) nitrogen dioxide (NO<sub>2</sub>), and ozone (O<sub>3</sub>)). Previously the Helena and Missoula AQCR were classified as priority II for particulate matter (PM-10) and the remainder of the state was classified as Priority III for SO<sub>2</sub>, CO, PM-10, NO<sub>2</sub> and O<sub>3</sub>.

It should be noted that Montana experienced exceedences of the PM-10 NAAQS in 2000. These exceedences were caused by natural events (wildfires) and Montana has not included these exceedence values for purposes of determining priority classifications for the state. We believe it is acceptable for Montana to not include the data from the natural events for two reasons. First, Montana has an EPA-approved Natural Events Action Plan (NEAP) to address ambient air quality problems caused by wildfires. Second, Montana is retaining its Emergency Episode Action Stages for

SO<sub>2</sub>, PM-10 and CO because areas in the state have previously been classified as Priority I or II for these pollutants.

Montana has also made administrative changes to the EEAP. We believe the administrative changes are not substantive. Some of the administrative changes clarify aspects of the plan and others are changes in writing style.

## IV. Final Action

EPA is approving Montana's Emergency Episode Avoidance Plan submitted on August 2, 2004.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments; we are merely approving administrative changes to Montana's air rules. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective March 6, 2006, without further notice unless the Agency receives adverse comments by February 2, 2006. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must 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.

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 revision that is the subject of this document does not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act. The August 2, 2004 submittal is a plan to prevent ambient concentrations of air pollutants from reaching levels that may endanger public health and welfare. Therefore, section 110(l) requirements are satisfied.

## V. 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 6, 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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 BB—Montana

■ 2. Section 52.1371 is amended by revising the introductory text and revising the entries "Helena Intrastate AQCR 142" and "Missoula Intrastate AQCR 144" in the table to read as follows:

#### § 52.1371 Classification of regions.

The Montana Emergency Episode Avoidance Plan was revised with an August 2, 2004 submittal by the Governor. The August 2, 2004 Emergency Episode Avoidance Plan classified the Air Quality Control Regions (AQCR) as follows:

Air quality control regions (AQCR)			Pollutant				
			Particulate matter	Sulfur oxide	Nitrogen dioxide	Carbon monoxide	Ozone
*	*	*	*	*	*	*	*
Helena Intrastate AQCR 142 .....			III	III	III	III	III
*	*	*	*	*	*	*	*
Missoula Intrastate AQCR 144 .....			III	III	III	III	III

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R04-OAR-2005-TN-0004-200526(a); FRL-8014-6]

#### Approval and Promulgation of Implementation Plans; Tennessee and Nashville-Davidson County; Approval of Revisions to the State Implementation Plan

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving non-regulatory revisions to the Tennessee State Implementation Plan (SIP) and regulatory revisions to the Nashville-

Davidson portion of the Tennessee SIP, submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on January 26, 1999, October 11, 2001, and April 15, 2005. The revisions amend the Vehicle Inspection and Maintenance program in Nashville-Davidson County and the Nashville (Middle Tennessee) 1-Hour Ozone Maintenance Plan.

**DATES:** This direct final rule is effective March 6, 2006 without further notice, unless EPA receives adverse comment by February 2, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04-OAR-2005-TN-0004, by one of the following methods:

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

2. **Agency Web site:** <http://docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. **E-mail:** [hoffman.annemarie@epa.gov](mailto:hoffman.annemarie@epa.gov).

4. **Fax:** 404-562-9019.

5. **Mail:** R04-OAR-2005-TN-0004, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

6. **Hand Delivery or Courier.** Deliver your comments to: Anne Marie