XI. Effective Date and Congressional Notification

38. This Final Rule is effective March 14, 2012. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 40

Applicability, Mandatory reliability standards, Availability of reliability standards.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–3272 Filed 2–10–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0100; FRL–9495–9]

Disapproval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Subchapter 7, Exclusion for De Minimis Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to partially approve and partially disapprove State Implementation Plan (SIP) revisions and new rules as submitted by the State of Montana on June 25, 2010 and May 28, 2003. The revisions contain new 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 March 14, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0100. All documents in the docket are listed in the *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 *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 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*.

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.

Table of Contents

I. What action is EPA taking?

A. Summary of Final Action

EPA is taking final action to approve new rule ARM 17.8.745 as submitted by the State of Montana on June 25, 2010. Montana adopted this rule on May 14, 2010 and it became State effective on May 28, 2010. We are also taking final action to approve all references to ARM 17.8.745, submitted by Montana on May 28, 2003. Specifically, 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,'' the phrase ''and 17.8.745'' in ARM 17.8.743(1) and the phrase ''the emission increase meets the criteria in ARM 17.8.745 for a *de minimis* change not requiring a permit in ARM 17.8.864(1)(b). These references were adopted on December 6, 2002, and became State effective on December 27, 2002. EPA is also taking final action to disapprove the phrase ''asphalt concrete plants, mineral crushers'' in new rule ARM 17.8.743(1)(b) as submitted by the State of Montana on May 28, 2003. This rule was adopted on December 6, 2002, and became State effective on December 27, 2002.

ARM 17.8.745, as submitted by the State of Montana on June 25, 2010, and all references to ARM 17.8.745, as submitted by the State of Montana on May 28, 2003, meet the requirements of the Act and EPA's minor New Source Review (NSR) regulations. ARM 17.8.743(1)(b), as submitted by the State of Montana on May 28, 2003, does not meet the requirements of the Act and EPA's minor NSR regulations.

EPA proposed an action for the above SIP revision submittals on September 26, 2011 (76 FR 59338). We accepted comments from the public on this proposal from September 27, 2011, until October 26, 2011. A summary of the comments received and our evaluation thereof is discussed in section III below. In the proposed rule, we described our basis for the actions identified above. The reader should refer to the proposed rule, and sections III and IV of this preamble, for additional information regarding this final action.

EPA reviews a SIP revision submission for its compliance with the Act and EPA regulations. CAA 110(k)(3). We evaluated the submitted Program based upon the regulations and associated record that have been submitted and are currently before EPA. In order for EPA to ensure that Montana has a Program that meets the requirements of the CAA, the State must demonstrate the Program is as stringent as the Act and the implementing regulations discussed in this notice. For example, EPA must have sufficient information to make a finding that the new Program will ensure protection of the NAAQS, and noninterference with the Montana SIP control strategies, as required by section 110(l) of the Act.

The provisions in these submittals were not submitted to meet a mandatory

requirement of the Act. Therefore, the final action to disapprove these submittals does not trigger a sanctions or Federal Implementation Plan clock. *See* CAA section 179(a).

B. Other Relevant Actions Related to the Montana SIP Revision Submittals

The Amended Consent Decree in *WildEarth Guardians* v. *EPA,* Case No. 09–cv–02148 (D. Col.), as amended, currently provides that EPA will take final action on the State's SIP revision submittals by October 31, 2011. *See* Stipulation to Extend the Deadline for EPA's Final Action of Item Number 11 on Exhibit A to the Consent Decree, filed with the Court on March 30, 2011 (Doc. 33).

II. What is the background?

A. Brief Discussion of Statutory and Regulatory Requirements

The CAA (section 110(a)(2)(C)) and 40 CFR 51.160 requires 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 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.

Section 110(l) of the CAA states: ''[e]ach revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this chapter.''

The States' obligation to comply with each of the NAAQS is considered as ''any applicable requirement(s) concerning attainment.'' A demonstration is necessary to show that this SIP revision will not interfere with attainment or maintenance of the NAAQS, including those for ozone, particulate matter, carbon monoxide (CO), sulfur dioxide (SO_2), lead, nitrogen oxides (NO_X) or any other requirement of the Act. Montana's demonstration of noninterference (see docket), as submitted to EPA on June 25, 2010, and our Technical Support Document (see docket) provide sufficient basis that new section ARM 17.8.745 submitted by Montana on June 25, 2010, will not interfere with attainment, reasonable further progress (RFP), or any other applicable requirement of the CAA. Further details are provided in sections IV and V of this action.

B. Summary of the Submittals Addressed in This Final Action

The State's May 28, 2003 submittal included ARM 17.8.743, which was a new rule. ARM 17.8.743(1) describes those sources that are required to obtain a Montana air quality permit. ARM 17.8.743(1) provides that any new or modified facility or emitting unit that has the potential to emit more than 25 tons per year of any airborne pollutant, except lead,[1] must obtain a Montana air quality permit except as provided in ARM 17.8.744 and ARM 17.8.745 before constructing, installing, modifying or operating. ARM 17.8.431(1)(b) also requires asphalt concrete plants, mineral crushers, and mineral screens that have the potential to emit more than 15 tons per year of any airborne pollutant, other than lead, to obtain a Montana air quality permit.

This notice contains EPA's final action on Montana rules relating to the permitting threshold for asphalt concrete plants and mineral crushers in ARM 17.8.743(1)(b). In our July 8, 2011 rulemaking, EPA approved of all of new section ARM 17.8.743(1), except for the phrase ''asphalt concrete plants and mineral crushers'' where the *de minimis* permitting threshold for those sources was changed from five tons per year to 15 tons per year. During the State's rulemaking process we expressed concerns with the new permit threshold for asphalt concrete plants and mineral crushers. (See October 9, 2002, letter from EPA to the State of Montana in the docket.) Since for asphalt concrete plants and mineral crushers this revision (ARM 17.8.743(1)(b)) reduces the stringency of the current SIP approved regulations, which has a threshold of five tons, we stated that Montana must provide an analysis showing that this new rule will not interfere with compliance with the NAAQS or PSD increments. Section 110(l) of the CAA states that EPA cannot approve a SIP revision that would interfere with any applicable requirement concerning attainment or RFP, as defined in Section 171 of the CAA, or any other applicable requirement of the CAA. Montana did not provide any analysis or demonstration that the increased permit threshold, from five tons per year to 15 tons per year, for asphalt concrete plants and mineral crushers meets these criteria. At the request of the State, we took no action on the phrase ''asphalt concrete plants, mineral crushers'' in ARM 17.8.743(1)(b) in 76 FR 40237. EPA is taking final action to disapprove the May 28, 2003, SIP revision request for 17.8.743(1)(b) in this action. If the State submits a new SIP with the appropriate 110(l) analysis, we would evaluate such a new SIP and analysis.

The State's June 25, 2010 submittal included new rule ARM 17.8.745. This revision request for ARM 17.8.745, which supercedes the State's May 28, 2003 submittal for ARM 17.8.745, creates an exemption from the requirement to obtain an air quality permit or permit modification for certain changes at a permitted facility that did not increase the facility's potential emissions of an air pollutant by more than five tons per year, when conditions specified in the rule were met.

During the State's 1996 and 1999 rulemaking process we expressed concerns with the *de minimis* level specified in the earlier versions of the regulation we are proposing action on today (see letters from EPA to the State of Montana dated July 25, 1996, April 1, 1999 and October 9, 2002 in the docket.) ARM 17.8.745 created an exemption from the requirement to obtain an air quality permit or permit modification for certain changes at a permitted facility that did not increase the facility's potential emissions of an air pollutant by more than 15 tons per year, when conditions specified in the rule were met. Since this new rule reduced the stringency of the current SIP approved regulations, EPA indicated that the State must provide an analysis showing that the new rule will not interfere with compliance with the NAAQS or PSD increments. Section 110(l) of the CAA states that EPA cannot approve a SIP revision that would interfere with any applicable requirement concerning attainment or RFP, as defined in section 171 of the CAA, or any other applicable requirement of the CAA. Montana's May 28, 2003 submittal did not provide any analysis or demonstration that the new rule (ARM 17.8.745) meets these requirements. In EPA's final July 8, 2011 rulemaking (76 FR 40237), which approved revisions to ARM 17.8.7, no action was taken on Montana's *de minimis* provision in ARM 17.8.745.

[1] Facilities or emitting units that emit airborne lead must obtain a Montana air quality permit if they are new and emit greater than five tons per year of airborne lead, or if they are an existing facility or emitting unit and a modification results in an increase of airborne lead by an amount greater than 0.6 tons per year.

Since EPA took no action on ARM 17.8.745 in our 76 FR 40237 notice, we took no action on all references to ARM 17.8.745 in ARM 17.8.7.

III. Response to Comments

EPA did not receive comments on our September 26, 2011 **Federal Register** proposed action regarding the partial approval and partial disapproval of Montana's SIP revisions to ARM 17.8.745 as submitted by the State of Montana on June 25, 2010, all references to ARM 17.8.745 as submitted by the State of Montana on May 28, 2003 and ARM 17.8.743(1)(B) as submitted by the State of Montana on May 28, 2003.

IV. What are the grounds for this approval action?

We evaluated ARM 17.8.745 using the following: (1) The statutory requirements under CAA section 110(a)(2)(c), which requires states to include a minor New Source Review (NSR) program in their SIP to regulate modifications and new construction of stationary sources within the area as necessary to assure the NAAQS are achieved; (2) the regulatory requirements under 40 CFR 51.160, including section 51.160(b), which requires 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 NAAQS; and (3) the statutory requirements under CAA section 110(l), which provides that EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the CAA. Therefore, EPA will approve a SIP revision only after a state has demonstrated that such a revision will not interfere (''noninterference'') with attainment of the NAAQS, Rate of Progress (ROP), RFP or any other applicable requirement of the CAA.

EPA retains the discretion to adopt approaches on a case-by-case basis to determine what the appropriate demonstration of noninterference with attainment of the NAAQS, rate of progress, RFP or any other applicable requirement of the CAA should entail. In this instance, EPA asked the State to submit an analysis showing that the approval of new section ARM 17.8.745 would not violate section 110(l) of the CAA (see docket number EPA–R08–OAR–2011–0100); this is also referred to as a ''demonstration of noninterference'' with attainment and maintenance under CAA section 110(l). In addition to the State's demonstration submitted on June 25, 2010, EPA conducted its own analysis utilizing SIP-approved attainment plans, past rulemakings, stipulations, consent decrees, air modeling data and air monitoring data. In EPA's proposed notice (76 FR 59338), we considered the State's demonstration of noninterference, our own analysis, the nature of the permitting requirement, its potential impact on the air quality in the area and the air quality of the area in which the permitting requirements apply. We analyzed this information pollutant by pollutant in order to make a determination that new rule 17.8.745 is consistent with CAA requirements; in particular, it's impact on compliance with NAAQS standards. The scope and rigor of the demonstration of noninterference conducted in this notice is appropriate given the air quality status of the State, and the potential impact of the revision on air quality and the pollutants affected.

The State's technical support document (TSD) (see docket) contains the State's regulatory history of the *de minimis* rule, effects of the *de minimis* rule on attainment and reasonable further progress of the NAAQS and assesses air quality trends, current air quality conditions and future projected air quality conditions. The demonstration analyses the effects of the new rule pollutant by pollutant in past and current nonattainment areas utilizing monitoring data, maintenance plans, modeling data, emission inventories, federal implementation plan requirements and past and future projected permits.

V. What are the grounds for this disapproval action?

EPA is disapproving the phrase ''asphalt concrete plants and mineral crushers'' in ARM 17.8.743(1)(b) submitted by the State of Montana on May 28, 2003. Section 110(a)(2)(C) of the Act requires that each implementation plan include a program to regulate the construction and modification of stationary sources, including a permit program as required by parts C and D of title I of the Act, as necessary to assure that the NAAQS are achieved. Parts C and D, which pertain to PSD and nonattainment, respectively, address major NSR programs for stationary sources, and the permitting program for ''nonmajor'' (or ''minor'') stationary sources is addressed by section 110(a)(2)(C) of the Act. We generally refer to the latter program as the ''minor NSR'' program. A minor stationary source is a source whose ''potential to emit'' is lower than the major source applicability threshold for a particular pollutant defined in the applicable major NSR program.

Therefore, we evaluated the submitted revisions and new rules using the federal regulations under CAA section 110(a)(2)(C), which require each state to include a minor NSR program in its SIP.

In addition, we reviewed the State's regulations for compliance with the Act. Generally, SIPs must be enforceable (see section 110(a) of the Act) and must not relax existing SIP requirements (see section 110(l) and 193 of the Act).

EPA is disapproving the revision to ARM 17.8.743(1)(b), which contains a modification size cutoff (15 tons per year) that the State proposes as *de minimis* for asphalt concrete plants and mineral crushers. Fifteen tons per year represents the major modification significance level for one criteria pollutant (PM_{10}) and exceeds the significance level for another criteria pollutant ($PM_{2.5}$) as well as for several non-criteria pollutants. It also exceeds the major source threshold for hazardous air pollutants (HAPs). Because of these reasons, EPA determines that the revision to ARM 17.8.743(1)(b) is not *de minimis* in the sense of having a trivial environmental effect. EPA has agreed in several rulemaking actions that certain activities with emissions of five tons per year or less may be considered ''insignificant.'' However, EPA never before denoted emissions increases as high as 15 tons per year as *de minimis.* Since the State did not provide an analysis as to why emission increases as high as 15 tons per year should be considered as having a trivial environmental effect, EPA finds no basis for approving this revision. Therefore, EPA lacks sufficient available information to determine that the requested revision to increase the *de minimis* permitting threshold for asphalt concrete plants and mineral crushers from five tons per year to 15 tons per year would not interfere with attainment and RFP of the NAAQS as required by CAA Section 110(l), or any other requirement of the Act.

VI. Final Action

Based on the above discussion, EPA finds that the addition of new rule ARM 17.8.745 would not interfere with attainment or maintenance of any of the NAAQS in the State of Montana and would not interfere with any other applicable requirement of the Act (see proposed notice for this action and TSD for basis); and thus, are approvable under CAA section 110(l). Therefore, we are taking final action to approve ARM 17.8.745 as submitted on June 25, 2010 by the State of Montana.

We are approving new section ARM 17.8.745; and thus, we are also approving all references to ARM 17.8.745. This includes: The 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 ''and 17.8.745'' in 17.8.743(1), submitted on May 28, 2003; and 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.

Based on the above discussion, EPA is finds no basis to determine that the addition of new rule ARM 17.8.743(1)(b) would not interfere with attainment or maintenance of any of the NAAQS in the State of Montana and would not interfere with any other applicable requirement of the Act; and thus, is not approvable under CAA section 110(l). Therefore, we are taking final action to disapprove the phrase ''asphalt concrete plants and mineral crushers'' in ARM 17.8.743(1)(b) submitted on May 28, 2003.

VII. 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 final 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 April 13, 2012. 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: October 28, 2011.

James B. Martin,

Regional Administrator, Region 8.

40 CFR part 52 is amended 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)(72) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(72) On May 28, 2003 the State of Montana submitted revisions to the Administrative Rules of Montana (ARM), 17.8.740, *Definitions;* 17.8.743, *Montana Air Quality Permits—When Required;* and 17.8.764, *Administrative Amendment to Permit.* On June 25, 2010, the State of Montana submitted revisions to the ARM, 17.8.745, *Montana Air Quality Permits—Exclusion for De Minimis Changes.*

(i) Incorporation by reference.

(A) Administrative Rules of Montana, 17.8.740, *Definitions;* 17.8.743, *Montana Air Quality Permits—When Required,* except for the phrase in 17.8.743(1)(b), ''asphalt concrete plants, mineral crushers, and''; and 17.8.764, *Administrative Amendment to Permit,* effective 12/27/2002.

(B) Administrative Rules of Montana, 17.8.745, *Montana Air Quality Permits—Exclusion for De Minimis Changes,* effective 5/28/2010.

[FR Doc. 2012–3245 Filed 2–10–12; 8:45 am]

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