costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: September 13, 2011.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2011–24696 Filed 9–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0100; FRL–9471–4]

Approval 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: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the State of Montana on June 25, 2010 and May 28, 2003. The revisions contain new and amended 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 the Administrative Rules of Montana. The intended effect of this action is to propose to approve the rules that are approvable and to propose to disapprove the rules that are inconsistent with the Clean Air Act (CAA.) This action is being taken under section 110 and 112 of the CAA.

DATES: Comments must be received on or before October 26, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0100, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: leone.kevin@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 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–2011–0100. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *http://www.regulations.gov* or e-mail. The *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 *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 *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. 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.*

SUPPLEMENTARY INFORMATION:

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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, 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. 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 *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 in 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 or 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

In response to Montana legislation adopted in 1995, (House Joint Resolution No. 22, Montana's June 25, 2010 SIP Submittal Package, Tab 15, Attachment 2), on August 9, 1996, the Montana Board of Environmental Review (Board) adopted the initial *de minimis* rules, Administrative Rules of Montana (ARM) 16.8.1102, 16.8.1113 and 16.8.1121 as part of Montana's air quality preconstruction permit program rules. These rules created an exemption from the requirement to obtain an air quality 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. On December 9, 1996, the Board recodified its rules, including the following recodification of the *de minimis* rules: ARM 16.8.1102 became 17.8.705; 16.8.1113 became 17.8.733 and 16.8.1121 became 17.8.708. On May 14, 1999, the Board revised ARM 17.8.705 and 17.8.733 and repealed 17.8.708. The Governor of Montana submitted the Board's August 9, 1996 and May 14, 1999 rulemaking actions to EPA on August 26, 1999, for inclusion in the SIP. On December 6, 2002, the Board repealed ARM 17.8.705 and 17.8.733, which the Board incorporated into a new rule, ARM 17.8.745, the State's current *de minimis* rule. On May 28, 2003, the Governor submitted the new rule to EPA for inclusion in the SIP and rescinded the previous submissions of ARM 17.8.705 and 17.8.733.

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 National Ambient Air Quality Standards (NAAQS) or Prevention of Significant Deterioration (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 reasonable further progress (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. 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.

On June 25, 2010, the Governor of Montana submitted the Board's May 14, 2010 rulemaking action to EPA for inclusion in the SIP. This revision request for ARM 17.8.745, which supercedes the State's May 28, 2003 submittal for 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 five tons per year, when conditions specified in the rule were met. In this action EPA proposes to act on two submittals: (1) The May 28, 2003 SIP revision request; and (2) the June 25, 2010 SIP revision request, which amended the 2003 submittal.

The State's May 28, 2003 submittal also 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 also contains EPA's proposed action on Montana rules relating to the permitting threshold for asphalt concrete plants and mineral crushers. 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 5 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 reasonable further progress, as defined in Section 171 of the CAA, or any other applicable requirement of the CAA. Montana did not provide any analysis or

[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.

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 proposing action on the May 28, 2003, SIP revision request for 17.8.743(1)(b) in this action.

III. What Authorities Apply to EPA's Proposed Action

Section 110(l) of the CAA states: Each 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 Act.

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 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.

The CAA at section 110(a)(2)(C) 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. EPA's implementing regulations at 40 CFR 51.160–164 are intended to ensure that new source growth is consistent with maintenance of the NAAQS and 40 CFR 51.160(e) requires states to identify types and sizes of facilities which will be subject to review under their minor NSR program. For sources identified under 40 CFR 51.160(e), section 51.160(a) requires that the SIP include legally enforceable procedures that enable a state or local agency to determine whether construction or modification of a facility, building, structure or installation, or combination of these will result in a violation of applicable portions of the control strategy; or interference with attainment or maintenance of a national standard in the state in which the proposed source (or modification) is located or in a neighboring state. Section 110(i) of the CAA specifically precludes states from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of *section 110* of the CAA and the implementing regulations at 40 CFR part 51. See CAA *section 110(l); 40 CFR 51.104.*

EPA recognizes that, under the applicable Federal regulations, states have broad discretion to determine the scope of their minor NSR programs as needed to attain and maintain the NAAQS. The states have significant discretion to tailor minor NSR requirements that are consistent with the requirements of 40 CFR part 51. States may also provide a rationale for why the rules are at least as stringent as the 40 CFR part 51 requirements where the revisions are different from those in 40 CFR part 51. For example, states may exempt from minor new source review certain categories of changes based on *de minimis* or administrative necessity grounds in accordance with the criteria set out in *Alabama Power Co.* v. *Costle, 636 F.2d 323, 360–361 (D.C. Cir. 1979). De minimis* sources are presumed not to have an impact and their emissions would not prevent or interfere with attainment of the NAAQS, even within nonattainment areas.

Since there are no ambient air quality standards for air toxics, the area's compliance with any applicable maximum achievable control technology (MACT) standards, as well as any Federal mobile source control requirements under CAA sections 112 or 202(l) would constitute an acceptable demonstration of noninterference for air toxics.

Section 110(l) does not require a demonstration of noninterference for changes to Federal requirements that are not included in the SIP. A revision to the SIP, however, cannot interfere with any federally mandated program such as a MACT standard (or related section 112 requirements) or Reid Vapor Pressure.

The following is a table of the NAAQS that were in place at the time Montana submitted its new section ARM 17.8.745 and all references to ARM 17.8.745 for Federal approval on May 23, 2003, as well as the current NAAQS levels:

Criteria pollutant	NAAQS level as of 2003	Current NAAQS level	Date of revision
Carbon Monoxide	35 ppm 1-hr Average 9 ppm 8-hr Average	35 ppm 1-hr Average 9 ppm 8-hr Average	August 31, 2011.
Lead	1.5 ug/m3 Quarterly Average	0.15 ug/m3 Rolling 3-month Average	Nov. 12, 2008.
Nitrogen Dioxide	0.53 ppm Annual Mean	0.53 ppm Annual Mean 100 ppb 1-hour Avg	Feb. 9, 2010.
Particulate Matter (PM_{10})	150 ug/m3 24-hr Avg 50 ug/m3 Annual Mean	150 ug/m3 24-hr Avg	Oct. 17, 2006.
Particulate Matter ($PM_{2.5}$)	65 ug/m3 24-hr Avg 15 ug/m3 Annual Mean	35 ug/m3 24-hr Avg 15 ug/m3 Annual Mean	Oct. 17, 2006.
Ozone	0.12 ppm 1-hour Avg 0.08 ppm 8-hour Avg	0.075 ppm 8-hour Avg	Mar. 27, 2008.
Sulfur Dioxide, Primary Standard	0.14 ppm 24-hour Avg 0.030 ppm Annual Mean	75 ppb 1-hour Average	June 22, 2010.
Sulfur Dioxide, Secondary Standard	0.5 ppm 3-hour Avg	0.5 ppm 3-hour Avg	May 22, 1996.

For this proposal EPA is using indicators such as ambient air quality analysis, air quality trends including air monitoring and air modeling and findings from past EPA-approved rules and attainment demonstrations to show noninterference. In this proposal we are taking into consideration 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.

CAA Section 193, also referred to as the ''General Savings Clause'' requires that ''[n]o control requirement in effect or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification ensures equivalent or greater emission reduction of such air pollutant.'' This proposed rulemaking and associated Technical Support Document (TSD) demonstrates that the requirements of CAA Section

193 have been met through consistent emission reductions in nonattainment areas compared to the current EPA approved SIP.

IV. EPA's Analysis and Proposed Actions on SIP Revisions

In this proposed rulemaking, we are proposing to approve new section ARM 17.8.745 submitted by Montana on June 25, 2010. We are also proposing 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). We are also proposing to disapprove the phrase ''asphalt concrete plants and mineral crushers'' in ARM 17.8.743(1)(b) submitted by Montana on May 28, 2003.

ARM 17.8.745

De minimis Exemptions from minor NSR. The Montana permit to construct rules exempt non-major sources from permitting requirements if they meet all of several criteria. These criteria are:

(1) Any construction or changed conditions of operation at a facility that would violate any condition in the facility's existing Montana air quality permit or any applicable rule contained in this chapter is prohibited, except as allowed in (2);

(2) any construction or changed conditions of operation at a facility that would qualify as a major modification of a major stationary source under subchapters 8, 9, or 10 of this chapter;

(3) any construction or changed conditions of operation at a facility that would affect the plume rise or dispersion characteristics of the emissions in a manner that would cause or contribute to a violation of an ambient air quality standard or an ambient air increment, as defined in *ARM 17.8.804;*

(4) any construction or improvement project with a potential to emit more than 5 tons per year may not be artificially split into smaller projects to avoid permitting under this subchapter; and

(5) emission reductions obtained through offsetting within a facility are not included when determining the potential emission increase from construction or changed conditions of operation, unless such reductions are made federally enforceable.

ARM 17.8.745(1)(b) states that an owner or operator shall notify the department for specific changes, with exceptions listed in ARM 17.8.745(1)(c); ARM 17.8.745(1)(d) includes the information the owner or operator must submit to the department if a notice is required under ARM 17.8.745(1)(b); ARM 17.8.745(1)(e) states that the notice requirements under ARM 17.8.745(1)(d) shall not supercede any requirements under 40 CFR parts 60, 61 or 63 (New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.)

We evaluated ARM 17.8.745 using the Federal regulations under CAA section 110(a)(2)(c) and 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.

We also evaluated the new rules using CAA section 110(l). Section 110(l) 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, ROP, 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, EPA conducted its own analysis utilizing SIP-approved attainment plans, past rulemakings, stipulations, consent decrees, air modeling data and air monitoring data. 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.

We interpret section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. The scope and rigor of an adequate section 110(l) demonstration of noninterference depends on the air quality status of the area, the potential impact of the revision on air quality, the pollutant(s) affected, and the nature of the applicable CAA requirements.

As described above, the changes to ARM 17.8.745 (the *de minimis* rule) that would occur with EPA approval of this SIP revision submittal affect the entire State of Montana for all criteria pollutants, with the exception of lead. ARM 17.8.743(1)(a) already limits a modification to an existing facility or emitting unit that results in an increase in the facility or emitting unit's potential to emit airborne lead by an amount greater than 0.6 tons per year. Therefore, EPA needs to review the effect of the exemption statewide for all criteria pollutants, except lead, before we can determine whether we can approve the SIP revisions under CAA section 110(l).

The Montana Department of Environmental Quality (MDEQ) has been implementing the *de minimis* rule for more than 13 years as a State approved rule. This State approved rule established a 15 tons per year *de minimis* threshold for requiring a Montana air quality permit when a facility is modified. As stated earlier in this notice, Montana's June 25, 2010 SIP revision request revises the federally approved SIP *de minimis* level from zero to a five tons per year threshold. MDEQ submitted a statewide demonstration of noninterference, which includes an air quality analysis, showing the effects of the *de minimis* rule on each criteria pollutant related to SIP control strategies or interference with attainment or maintenance of the NAAQS, as well as all other related requirements of the CAA. The air quality analysis displayed past air quality trends and provided information regarding future implications of the *de minimis* rule (predictive analysis). We find that MDEQ used reasonable methods and appropriate data in estimating the emissions effects of the new exemption. The following is a summary of Montana's air quality for criteria pollutants:

1. Ozone

A review of Montana's past monitoring data show no violations of the ozone NAAQS standard since 2001 (See TSD, pages 4–5.) Montana currently has no ozone nonattainment areas; and consequently, no

nonattainment area control plans with respect to ozone. On November 27, 2008 Montana submitted to EPA assurances certifying Montana's SIP was adequate for addressing the 1997 ozone NAAQS revision (see docket). On July 22, 2011 EPA partially approved ''Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Montana''.

In March 2008, EPA again promulgated revisions to the NAAQS for ozone. The revision lowered the ambient standards from the previous level of 0.08 parts per million (ppm) to 0.075 ppm as averaged over an eight-hour period. In addition, EPA's analysis to support the 2008 ozone NAAQS revision consistent with EPA's modeling of counties predicted to violate the new ozone standard in future years does not include any Montana counties. Using 2004–2006 data, EPA conducted a national scale air quality modeling analysis to estimate future year attainment/nonattainment for ozone.

Rural ozone monitoring currently occurs in Glacier National Park and near Sidney in eastern Montana. Glacier National Park data from 2001–2008 shows continued attainment with the revised ozone standard (See TSD, Figures 1–3.) The Sidney monitor was located in proximity to oil and gas industry development activities. Monitoring began at the Sidney site in October, 2008, and initial data shows attainment with the revised 8 hour ozone standard.

Data from Montana's past monitoring in the Billings area (the area in which conditions conducive to ozone formation are most likely to occur) does not show a violation of the revised 2008 NAAQS. Montana conducted three years of ozone monitoring (June–September, 2007–2010) in the Billings area (Shepherd Bard site) and two years of ozone season monitoring in the Missoula area (Frenchtown site) (See TSD, Figures 2–3.) Based on factors including, but not limited to, population density, area-wide vehicle miles traveled, and existing industrial activity (including oil and gas industry development), Montana determined these locations represent the areas with the highest potential for ozone formation. The design value for the Billings area was determined during 2005–2007 to be 0.059 ppm or 78.7% of the revised ozone NAAQS. Data from Missoula indicated an even lower design value.

Based on future estimates and projections of the number of *de minimis* notices (See TSD pages 36–41) and the minimal likely effect of the *de minimis* rule on VOC and NO_X emissions and monitoring data that show the area has attained the 8-hour ozone and 1-hour ozone NAAQS, we propose to find that approving the *de minimus* rule would not interfere with attainment of the 8-hour ozone NAAQS in the State of Montana. Montana has been implementing the *de minimis* level of 15 tons since 1998 as a state-approved rule, and ozone levels have remained relatively stable. EPA proposes to find that raising the federally enforceable *de minimis* level from zero to five tons will not interfere with compliance with the ozone NAAQS standards.

2. Carbon Monoxide

The town of Billings, located in Yellowstone County, was designated nonattainment for the CO 8-hour NAAQS on March 3, 1978 (43 FR 9010) as a result of the 1977 CAA. Control plans were developed to bring Billings back into compliance following the nonattainment designation. The CO violation was attributed primarily to motor vehicle emissions (See TSD, pages 6 and 7.)

The town of Missoula, in Missoula County, was designated as a nonattainment area for CO in 1978 because of repeated violations of the CO 8-hour NAAQS in 1977 and early 1978. Most of the problem focused on congested intersections and residential wood burning. Missoula took steps to reduce ambient levels of CO, including intersection changes, woodstove regulations, open burning regulations and the Federal motor vehicle emission reduction program. However, Missoula continued to violate the 8-hour CO NAAQS until 1992, when it was required to implement an oxygenated fuels program. Since the program began, Missoula has not recorded a violation of the 8-hour CO NAAQS (See TSD, Figure 4.)

Between 1990 and 2000, CO emissions in the Missoula area decreased by 40%. The biggest reductions were from on-road motor vehicles and woodstoves. In 2000, these sources represented 95% of the CO emissions in the Missoula nonattainment area. The remaining sources, industry, natural gas combustion and railroads were responsible for less than 5% of CO emissions on a typical weekday (see 72 FR 46158; August 17, 2007).

In 72 FR 46158, EPA approved a request submitted by the State of Montana requesting to redesignate the Missoula ''moderate'' CO nonattainment area to attainment for the CO NAAQS. EPA also approved the new CO maintenance plan, which was submitted on May 27, 2005 and includes transportation conformity motor vehicle emission budgets (MVEB) for 2000, 2010, and 2020.

The town of Great Falls, located in Cascade County, was designated nonattainment for CO on September 9, 1980 (45 FR 59315). This designation followed sixteen violations of the NAAQS 8-hour CO standard. Following the nonattainment designation, control plans were developed, but none were EPA approved. Great Falls was reevaluated in September 1990, based on the 1990 CAA Amendments and the lack of exceedances in the CO monitoring data for 1988 and 1989. On November 6, 1991 (56 FR 56799), Great Falls was listed as a ''not classified'' nonattainment area for CO. Great Falls was re-designated as attainment on May 9, 2002 (67 FR 31143) (See TSD page 5 for more details and Figure 5 for Great Falls CO monitoring data).

A review of CO monitoring data statewide from 2002–2008 shows relatively constant levels of overall CO emissions and monitoring data shows that ambient CO levels remain well below the CO NAAQS (See TSD, Figure 5). None of the maintenance plans rely on Title 17, Chapter 8, subchapter 7 of the Montana Air Quality Program (MAQP) to attain and maintain the NAAQS, and CO levels in all three maintenance areas have fallen significantly over the years.

Based on the minimal estimated increase in CO emissions due to the *de minimis* rule (See TSD pages 6–9 for basis and data), the relatively constant level of overall CO emissions, and monitoring data that shows that ambient CO levels remain well below the CO NAAQS, we propose to find that approving the *de minimis* rule would not interfere with continued attainment of the CO NAAQS in the State of Montana.

3. Particulate Matter (PM_{10})

Based on the minimal estimated increase in PM emissions due to the *de minimis* rule (See TSD pages 9–27), the relatively constant level of overall PM_{10} emissions, and monitoring data that shows that ambient PM_{10} levels remain below the PM_{10} NAAQS, we propose to find that approving the *de minimis* rule would not interfere with continued attainment of the PM_{10} NAAQS in the State of Montana. Montana does not have any areas with monitoring data showing nonattainment for PM_{10}. (For supplemental information concerning PM_{10} monitoring data, refer to TSD, pages 9–27.)

4. Particulate Matter ($PM_{2.5}$)

Monitoring results show that Montana is currently in attainment for the 1997

and 2007 $PM_{2.5}$ NAAQS (See TSD, Figures 16–18.) Libby, Lincoln County, is Montana's sole administratively designated $PM_{2.5}$ nonattainment area (currently attaining the standard), that violated the 1997 annual standard. Montana does not have any other nonattainment areas for $PM_{2.5}$.

Based on the minimal estimated increase in $PM_{2.5}$ emissions due to the *de minimis* rule (See TSD pages 27–30 for basis and data), the relatively constant level of overall $PM_{2.5}$ emissions, and monitoring data that shows that ambient $PM_{2.5}$ levels remain below the 24-hour and annual NAAQS for both the 1997 standard and the 2006 standard, we propose to find that approving the *de minimis* rule would not interfere with continued attainment of the $PM_{2.5}$ NAAQS in the State of Montana.

5. Sulfur Dioxide

The Billings/Laurel Federal Implementation Plan (73 FR 21418), and the portions of the Billings/Laurel SO_2 Control Plan EPA approved, remain valid and enforceable, regardless of the existence of the *de minimis* rule. As such, we propose to find that approving the *de minimis* rule would not interfere with continued attainment of the SO_2 NAAQS in the State of Montana (See TSD, pages 31–33 for basis and data.) Montana does not have any other nonattainment areas for SO_2.

6. Nitrogen Dioxide

Montana currently has no NO_2 nonattainment areas; and consequently, no nonattainment area control plans with respect to NO_2. Past monitoring of ambient NO_2 reveals a history of exceedingly low concentrations (See TSD, Figures 20–22.) No discernable trend was observed during the monitoring period.

MDEQ has installed monitoring equipment, including NO_2 monitors, in response to the increase in oil and gas development in the eastern part of the State and in anticipation of the recently proposed revision to the NO_2 NAAQS (See TSD, Figure 22.) EPA strengthened the NO_2 NAAQS in January 2010 by establishing a new 1-hr standard at 100 ppb (represented by the 3-yr average of the 98th percentile from the annual distribution of daily max 1-hr averages) and retained the previous annual standard of 53 ppb.

EPA proposes to find that the *de minimis* rule will not interfere with continued attainment of the NO_2 NAAQS in the State of Montana, even in areas with increased oil and gas development.

ARM 17.8.743(1)(b)

The May 28, 2003 SIP revision for ARM 17.8.743(1)(b) for asphalt concrete plants and mineral crushers reduces the stringency of the current SIP approved regulations. We commented that the State 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 reasonable further progress, 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 for asphalt concrete plants and mineral crushers, from 5 tons per year to 15 tons per year, for any airborne pollutant, other than lead, regulated under Chapter 8 of the ARM meets these criteria.

EPA has concerns about a modification size cutoff (15 tons per year) that the State proposes as *de minimis.* 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 5 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 proposed SIP relaxation would not interfere with any applicable requirement concerning attainment and maintenance of the NAAQS, PSD increment, or any other requirement of the Act. If the State submits a new SIP with the analysis, we would evaluate such an analysis.

V. Summary of Proposed Actions

Based on the above discussion, EPA proposes to find 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 TSD for basis); and thus, are approvable under CAA section 110(l). Therefore, we propose to approve ARM 17.8.745 as submitted on June 25, 2010 by the State of Montana.

We are proposing to approve new section ARM 17.8.745; and thus, we are also proposing to approve 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.

EPA is proposing to disapprove the phrase ''asphalt concrete plants and mineral crushers'' in ARM 17.8.743(1)(b) submitted on May 28, 2003.

VI. 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 16, 2011.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–24697 Filed 9–23–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0631; FRL–9470–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by Maryland to establish transportation conformity regulations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 26, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0631 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0631, Cristina Fernandez, Associate Director, Office of Air Planning Programs, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0631. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *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 *http://www.regulations.gov* or e-mail. The *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 *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.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* 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 in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at *kotsch.martin@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the Rules and Regulations section of this **Federal Register** publication. 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.

Dated: August 29, 2011.

W.C. Early, Acting

Regional Administrator, Region III.

[FR Doc. 2011–24527 Filed 9–23–11; 8:45 am]

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