November 6, 2009, is conditionally approved for Clean Air Act sections 110(a)(2)(C)(ii), (D)(i)(II), and (J)(iii) only as it relates to the aspect of the PSD program pertaining to providing adding NO_X as a precursor for ozone, and addressing the changes made to 40 CFR part 51.116 in the October 20, 2010 rulemaking (75 FR 64864) concerning emissions of fine particulate. On February 18, 2016, the State of Rhode Island supplemented this submittal with a commitment to address these requirements for PSD.

(b) *Disapprovals.* (1) 1997 Ozone NAAQS: The 110(a)(2) infrastructure SIP submitted on December 14, 2007, is disapproved for Clean Air Act element 110(a)(2)(H). A Federal Implantation Plan is already in place at 40 CFR 52.2080.

(2) 2008 Ozone NAAQS: The 110(a)(2) infrastructure SIP submitted on January 2, 2013, is disapproved for Clean Air Act element 110(a)(2)(H). A Federal Implantation Plan is already in place at 40 CFR 52.2080.

(3) 2008 Lead NAAQS: The 110(a)(2) infrastructure SIP submitted on October 26, 2011, is disapproved for Clean Air Act element 110(a)(2)(H). A Federal Implantation Plan is already in place at 40 CFR 52.2080.

(4) 2010 Nitrogen Dioxide NAAQS: The 110(a)(2) infrastructure SIP submitted on January 2, 2013, is disapproved for Clean Air Act element 110(a)(2)(H). A Federal Implantation Plan is already in place at 40 CFR 52.2080.

(5) 1997 $PM_{2.5}$ NAAQS: The 110(a)(2) infrastructure SIP submitted on September 10, 2008, is disapproved for Clean Air Act element 110(a)(2)(H). A Federal Implantation Plan is already in place at 40 CFR 52.2080.

(6) 2006 $PM_{2.5}$ NAAQS: The 110(a)(2) infrastructure SIP submitted on November 6, 2009, is disapproved for Clean Air Act element 110(a)(2)(H). A Federal Implantation Plan is already in place at 40 CFR 52.2080.

§ 52.2078 [Amended]

■ 7. Section 52.2078 is amended by removing and reserving paragraph (a).

§ 52.2079 [Removed and Reserved]

■ 8. Section 52.2079 is removed and reserved.

[FR Doc. 2016–08913 Filed 4–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2013–0556, FRL–9945–14–Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ National Ambient Air Quality Standards; Montana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of State Implementation Plan (SIP) revisions from the State of Montana to demonstrate the State meets infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on March 12, 2008, lead (Pb) on October 15, 2008, nitrogen dioxide (NO_2) on January 22, 2010, sulfur dioxide (SO_2) on June 2, 2010 and fine particulate matter ($PM_{2.5}$) on December 14, 2012. The EPA is also approving 110(a)(2)(D)(ii) for the 1997 and 2006 $PM_{2.5}$ NAAQS. The EPA is conditionally approving CAA section 110(a)(2)(C) and (J) with regard to Prevention of Significant Deterioration (PSD) and element 3 of 110(a)(2)(D)(i)(II) for the 2008 ozone, 2008 Pb, 2010 NO_2, 2010 SO_2, and 2006 and 2012 $PM_{2.5}$ NAAQS. The EPA is disapproving element 4 of CAA section 110(a)(2)(D)(i)(II) for the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2006 and 2012 $PM_{2.5}$ NAAQS. Finally, the EPA is approving SIP revisions the State submitted to update Montana's PSD program and provisions regarding state boards.

DATES: This rule is effective on May 20, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2013–0556. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The 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, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, 303–312–6563, *fulton.abby@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Infrastructure requirements for SIPs are provided in section 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our proposed rulemaking (NPR) published on January 26, 2016 (81 FR 4225).

In our NPR, the EPA proposed to approve, conditionally approve, take no action on, and disapprove infrastructure elements for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 1997, 2006 and 2012 $PM_{2.5}$ NAAQS from the State's certifications. In this rulemaking, we are taking final action to approve infrastructure elements from the State's certifications. We are also conditionally approving elements (C), D(i)(II) element 3 and (J) with respect to the requirement to have a PSD program that meets the requirements of part C of Title 1 of the Act. The EPA is taking final action to disapprove (D)(i)(II) element 4 for the 2006 $PM_{2.5}$, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. We are also taking final action to approve revisions to the Administrative Rules of Montana (ARM) from the August 21, 2012 submittal and conditionally approve a revision from the March 24, 2015 submittal to bring Montana's PSD program up to date with respect to current requirements for $PM_{2.5}$. In this action, we are taking final action to approve new ARM and sections of the Montana Code Annotated submitted on December 17, 2015 to satisfy requirements of element (E)(ii), state boards.

II. Response to Comments

We received two comment letters during the public comment period. One comment letter was submitted anonymously and the other by Andrea Issod from the Sierra Club Environmental Law Program (Sierra

Club) and Anne Hedges from the Montana Environmental Information Center (MEIC). We also received a request for comment period extension from Andrea Issod from the Sierra Club. The EPA contacted the commenter and after a short discussion, the commenter decided not to follow through with their extension request.

Comment 1: The EPA cannot approve the PSD portions of all these Infrastructure SIPs until EPA has finally approved the Class I and Class II $PM_{2.5}$ increments into the Montana SIP. I appreciate EPA's efforts to address this issue.

Response: We agree with the commenter that adoption of $PM_{2.5}$ increments is a necessary requirement when assessing a state's PSD program for the purposes of CAA Section 110(a)(2)(C), (D)(i)(II) element 3, and (J). In this action, we are approving the necessary portions of Montana's August 21, 2012 submission to satisfy the requirements of the October 20, 2010 rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). Montana adopted 40 CFR 51.166(c)(1), which includes Class I and Class II increments, into ARM 17.8.804(1). By meeting this structural requirement for the PSD program in its SIP, the State has also met the relevant Infrastructure SIP elements relevant to the PSD program. Accordingly, the EPA concludes that the issue identified by the commenter has been properly addressed.

Comment 2: The Sierra Club and Montana Environmental Information Center (MEIC) Comment Letter states the following on pages 2, 3, 26 and 27:

> Sierra Club and Montana Environmental Information Center (MEIC) submit to EPA that the Montana PSD program as implemented by MTDEQ fails to require PSD permits for all modified major sources that are required to be covered under the SIP PSD permitting program pursuant to 40 CFR 51.166, due to MTDEQ's policy interpretations of its PSD program that result in rules that are less stringent and thus less inclusive than the federal PSD program. Further, because the MTDEQ's implementation of the Montana PSD program does not cover all PSD-subject modified major sources, MTDEQ's implementation of its PSD program also fails to cover all regulated [New Source Review] NSR pollutants including GHG pollutants for which the PSD permitting requirements only apply to ''anyway sources,'' *i.e.,* sources that would otherwise be subject to PSD permitting for other pollutants.
>
> MTDEQ is following policy interpretations that differ from its EPA-approved PSD rule incorporated into the Montana SIP (which tracks EPA's 1980 PSD regulations) and as a result, Montana's implementation of the PSD program is less inclusive and less stringent than the 1980 federal PSD rules because it fails to include all physical or operational changes that would be major modifications under the federal PSD requirements. Further, MTDEQ's policy interpretations mean that its implementation of the PSD program is less stringent than the 2002 NSR Reform Rules promulgated by EPA on December 31, 2002 (67 Fed. Reg. 80186), as amended by EPA on June 13, 2007 (72 Fed. Reg. 32526) for physical or operational changes at existing major sources.
>
> Although EPA has stated in the proposed approval of the Montana infrastructure SIP approval that it ''does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP'' including existing provisions of the state's PSD program that may be inconsistent with the current federal PSD rules reflecting NSR Reform, EPA has no basis for attempting to limit public comment and EPA review of this issue when a state's policy interpretations of its PSD program result in a program that is less inclusive and less stringent than the current federal PSD program, and is therefore contrary to law.
>
> * * * * *
>
> EPA cannot assume that Montana's minor source permitting program will ensure protection of these NAAQS for those modified sources that, pursuant to MTDEQ's policy interpretations, do not trigger applicability under the Montana PSD program as major modifications. The Montana SIP includes an exemption from the requirement to obtain a Montana Air Quality Permit for ''construction or changed conditions of operation'' at a facility that does not increase the facility's potential to emit by more than 5 tons per year. ARM 17.8.743(1), ARM 17.8.745 ''Exclusion for De Minimis Changes.'' This rule allows a source to apply an emissions test comparing potential to emit pre- and post-change, and if the increase in potential to emit is less than 5 tons per year, no Montana Air Quality Permit is required for the construction or changed operation. For those modifications to existing major sources that do not trigger PSD based on MTDEQ's policy interpretations allowing the source to use an actual emissions to [an] estimated future actual emissions test, it is likely that such a modified source could avoid the requirement to obtain a Montana Air Quality permit under the potential-to[-]potential comparison of the de minimis exemption in Montana's SIP. Even if a modified major source could not initially be exempt under the potential-to-potential test of the Montana de minimis rule, the Montana rule also allows an existing source to revise the federally enforceable emission limitations (thus reducing its potential to emit) through an administrative process pursuant to ARM 17.8.764 (see ARM 17.8.745(1)(a)(5) and (2).
>
> While the de minimis rule does not allow construction or changed conditions that would affect the plume rise or dispersion characteristics of emissions in a manner that would cause or contribute to a NAAQS violation (see ARM 17.8.745(1)(a)(iii)), this provision will not ensure protection of the NAAQS due to emissions from the modified major sources that avoid PSD permitting due to MTDEQ's policy interpretations. To determine if a modified source will cause or contribute to a violation of the NAAQS, the de minimis rule requires notification to MTDEQ if the physical or operational change will change stack height, stack diameter, stack flow, stack gas temperature, or source location, but it does not require ambient air modeling. ARM 17.8.745(b). However, given that the majority of existing sources have never been modeled for compliance with the recent NAAQS for lead, ozone, 1-hour NO_2, 1-hour SO_2, or $PM_{2.5}$ NAAQS, it will be extremely difficult for MTDEQ to determine that a change in stack parameters or source location would cause or contribute to a violation of the NAAQS. Further, it is not evident that MTDEQ always requires submittal of such information to determine if construction or changed operating conditions at an existing source would affect the plume rise or dispersion characteristics of a modified source, given that MTDEQ allows certain emission sources to be excluded from notification requirements of the de minimis rule pursuant to ARM 17.8.745(c).

Response: The commenters' concerns are directed not to whether the existing SIP for Montana meets the relevant structural requirements for PSD programs, but rather to whether Montana is in fact faithfully implementing the existing provisions of its EPA-approved SIP. As the EPA has explained in other contexts, comments like these highlight an important distinction between whether an infrastructure SIP submission meets the applicable requirements of the CAA on its face (*i.e.,* pertain to the facial sufficiency of the state's SIP), and whether a state is actually complying with the requirements of that SIP (*i.e.,* pertain to adequacy of the state's implementation of the SIP).[1] These comments implicate the question of the degree to which implementation concerns are relevant in the context of acting on a state's infrastructure SIP. In the context of an infrastructure SIP submission, the EPA interprets the requirements of section 110(a)(1) and (2) to require the Agency to focus on whether the state has a SIP that provides the requisite legal framework for implementation, maintenance and enforcement of the NAAQS. Generally speaking, the EPA's review of infrastructure SIP submissions is limited to whether, pursuant to CAA section 110(a)(2), the submission

[1] See ''Approval and Disapproval and Promulgation of Implementation Plans; Texas; Infrastructure and Interstate Transport Requirements of the 1997 Ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS,'' 76 FR 81371 (Dec. 28, 2011).

facially meets the requirements of the statutory criteria outlined therein, as applicable. In the case of section 110(a)(2)(C), for example, the statute requires a state to have a SIP that ''include[s] a program to provide for . . . regulation of the modification and construction of any stationary sources . . . including a permit program as required in parts C and D of this subchapter.'' Thus, the EPA reviews a state's infrastructure SIP submission to assure that the structural elements of the state's PSD permitting program meets current CAA requirements for such programs, *e.g.,* that it addresses GHG emissions.

This is not to say that the EPA has no role in reviewing whether a state is faithfully implementing its approved SIP, or otherwise complying with the CAA and its implementing regulations. To the contrary, there are multiple statutory tools that the EPA can use to rectify problems with state implementation of its SIP, and the existence of these tools is consistent with the EPA's interpretation of section 110(a)(2) with respect to the Agency's role in reviewing infrastructure SIP submissions. For example, the CAA provides the EPA the authority to issue a SIP call, 42 U.S.C. 7410(k)(5); make a finding of failure to implement, *id.* §§ 7410(m), 7509(a)(4); and take measures to address specific permits pursuant to the EPA's case-by-case permitting oversight. *See, e.g.,* § 7661d(b). The appropriateness of employing these authorities depends on the nature and extent of the particular implementation problems at issue.

With respect to Montana's infrastructure SIP submission, the EPA analyzed the submission itself, and evaluated the text of its provisions for compliance with the relevant elements of section 110(a)(2). In the proposal, the EPA explicitly evaluated the State's submission on a requirement-by-requirement basis and explained its views on the adequacy of the State's SIP for purposes of meeting the infrastructure SIP requirements.

The EPA appreciates and takes seriously the commenters' assertions that Montana has adopted ''policy interpretations'' outside the context of the SIP that may undermine the State's implementation of the SIP as approved by the EPA. However, because this action involves a review of the SIP itself, the EPA is not evaluating the merits of these assertions concerning implementation of the SIP in the context of this action. Instead, the EPA intends to evaluate the merits of these assertions, separate from this action, at a future time. In the meantime, the EPA is finalizing its proposed approval of the infrastructure SIP submission that is currently before the Agency. If the EPA later determines that there are indeed concerns with respect to the implementation of the PSD program in Montana, the Agency intends to take appropriate action to ensure those problems are rectified using whatever statutory tools are appropriate to the implementation problem identified.

With respect to the requirements related to PSD relevant to this approval of the infrastructure SIP submission, the EPA has determined that the State's SIP as previously approved, and as revised in this action, meets the relevant structural requirements for purposes of PSD in section 110(a)(2)(C), (D)(i)(II) element 3, and (J). Some examples of these basic structural SIP requirements include having state law authority to carry out the SIP, an overarching permitting program in place, and a properly deployed monitoring network. As to the PSD program in particular, these basic structural requirements include those provisions necessary for the permitting program to address all federally regulated pollutants and the proper sources. The EPA considers action on the infrastructure SIP submissions required by section 110(a)(1) and (2) to be an evaluation of a state's SIP to assure that it meets the basic structural requirements for the new or revised NAAQS, not a time to address all potential substantive defects in existing SIP provisions, or alleged defects in implementation of the SIP. [Therefore, EPA generally considers evaluations of a state's implementation of its NSR program to be outside the scope of an infrastructure SIP review, rather than an unambiguous requirement of the EPA's action on an infrastructure SIP with regard to section 110(a)(2)(C).]

Comment 3: The Sierra Club and MEIC comment letter gives a history of the Montana PSD program as well as a history of the corresponding federal PSD program with respect to how it is determined whether a physical or operational change at an existing major stationary source is subject to PSD permitting requirements. The comment discusses MTDEQ's policy interpretations recently set forth in a citizen suit enforcement proceeding, stating that these interpretations ''make Montana's implementation of the PSD program less stringent''. The Sierra Club and MEIC Comment Letter states the following on pages 4 and 5:

> The basic structure of Montana's PSD permitting rules has been the same since the EPA's initial SIP approval of Montana's PSD rules. Specifically, Montana's PSD rules define the applicability to PSD for physical or operational changes at an existing source based on the same regulatory language in EPA's PSD regulations as of 1980. That is, to determine if a physical change or change in the method of operation at an existing major source is subject to PSD as a major modification, one evaluates changes in 'actual emissions [.]

The comment evaluates the definition of ''actual emissions'' and how Montana's SIP has defined this term over the years, and notes two substantive revisions to the definition of ''actual emissions'' since 1980, stating on pages 6, 7, and 8:

> The first revision was made in 1992, where EPA modified the definition of ''actual emissions'' to allow electric utility steam generating units (EGUs) to use the ''representative actual annual emissions,'' and adopted associated definitions including of ''representative actual annual emissions'' and emissions reporting provisions for EGUs. 57 Fed. Reg. 32314 at 32335–6 (July 21, 1992); 40 CFR 51.166(b)(21)(iv) and (v), (b)(30), and (b)(32). In addition, although EPA did not adopt any regulatory revisions regarding the actual emissions baseline before a physical or operational change, EPA set forth a presumption that it considers any 2 year period in the 5 years immediately preceding the physical or operational change at an EGU to be representative of normal source operations for the EGU. 57 Fed. Reg. 32325. The 1992 rulemaking is referred to as the ''WEPCO Rule'' because the rule changes came about as a result of the 7th Circuit Court decision in *Wisconsin Electric Power Co.* v. *Reilly,* 893 F.2d 901 (7th Cir. 1990) (''WEPCO Decision'').
>
> A review of the current SIP-approved Montana rules show that Montana did not revise its PSD regulations to incorporate any of the regulatory changes of the 1992 WEPCO rulemaking.
>
> In 2002, EPA again revised the definition of ''actual emissions'' and adopted new terms and definitions of ''projected actual emissions'' and ''baseline actual emissions'' along with numerous other revisions to its PSD regulations. 67 Fed. Reg. 80186–80289 (Dec 31, 2002, also known as ''NSR Reform'' Rule). EPA adopted a two-step process for determining PSD applicability for physical or operational changes. First, it must be determined if a project will result in a significant emission increase of any regulated NSR pollutant and, if so, then second, it must be determined if the project will result in a significant net emissions increase of any regulated NSR pollutant. 67 Fed. Reg. 80260; 40 CFR 51.166(a)(7)(iv)(a)–(f). EPA essentially allowed all sources (not just EGUs as allowed in 1992) to use an actual-to-projected actual emissions increase test to determine whether a physical or operational change was a major modification, except in certain circumstances such as when a new emissions unit is added. 67 Fed. Reg. 80260–2; 40 CFR 51.166(a)(7)(iv)(a)–(f), (b)(40) and (b)(47).
>
> In the NSR Reform rules, EPA adopted several new rules. EPA adopted a new definition of ''baseline actual emissions'' which codified the 2-in-5 year presumptive baseline that EPA announced in the 1992

WEPCO rule for EGUs, and also promulgated a provision for non-EGUs allowing them to look back ten years before a physical or operational change in determining baseline emissions. 67 Fed. Reg. 80263–4; 40 CFR 51.166(b)(47). EPA also adopted a new definition of ''projected actual emissions'' which defines how modified sources are to project actual emissions when such modifications are not subject to the actual-to-potential to emit test pursuant to the procedures identified in 40 CFR 51.166(a)(7)(iv)(a)–(f). 67 Fed. Reg. 80262–3; 40 CFR 51.166(b)(40). In addition, EPA adopted provisions for reporting to permitting authorities pre- and post-project when there is a reasonable possibility that a project that is not considered a major modification may result in a significant emissions increase. 67 Fed. Reg. 80264; 40 CFR 51.166(r)(6) and (r)(7). There were numerous other revisions to the federal permitting rules adopted in the December 31, 2002 rulemaking, such as requirements to establish PALs. Two other new provisions of the 2002 NSR Reform rule regarding pollutant control projects and clean units were later eliminated from the PSD regulations, after being vacated by the U.S. Court of Appeals for the D.C. Circuit in *New York* v. *EPA,* 413 F. 3d 3 (D.C. Cir. 2005). 72 Fed. Reg. 32526–9 (June 13, 2007). A review of the EPA-approved SIP for Montana shows that Montana did not adopt any of the 2002 New Source Review Reform revisions as revisions to its PSD regulations.

Although EPA has made some revisions to its rules regarding baseline emissions and how to project future emissions for physical or operational changes at existing sources, it is clear that, since 1986, the Montana SIP has continued to have the same definition of ''actual emissions'' and the same applicability approach as applied under EPA's 1980 PSD rules. On its face, Montana's PSD rules track EPA's PSD rules as they existed in 1980, and Montana's rules do not implement the 1992 or 2002 federal rule revisions. Given that the 1992 and 2002 federal rule revisions were intended to be less inclusive than the 1980 PSD rule, allowing for more modifications to not be considered as major modifications subject to PSD review, would be less stringent than the current federal PSD rules.

Montana is implementing policy interpretations regarding the definition of ''actual emissions,'' which pertain to both the determination of actual emissions before a physical or operational change and the determination of the future emissions expected after a physical or operational change, which are less stringent than EPA's interpretation of the same language of its 1980 PSD rules, resulting in Montana's program as implemented being less stringent than EPA's 1980 PSD requirements. In addition, those policy interpretations of Montana's PSD program are less stringent than EPA's current PSD requirements reflective of NSR Reform.''

Response: The commenter's assertion that Montana is, through policy interpretations, implementing its PSD program in a less-stringent manner than required by PSD rules is addressed in our response to comment 2. We note that, while Montana's alleged ''policy interpretations'' of its SIP are outside the scope of the EPA's review in the context of an infrastructure SIP submission, we evaluated the ''structural'' requirements for a PSD program to fulfill the NAAQS infrastructure requirements as required in 110(a)(2)(C), (D)(i)(II) element 3, and (J). In the context of the specific applicability issues raised by the commenter, we have determined that Montana's PSD program provides for the implementation, maintenance, and enforcement of the NAAQS requirements being approved in this rulemaking by applying the EPA's 1980 PSD rules. In addition, EPA has evaluated the State's SIP for compliance with other structural elements such as the Phase 2 Ozone Implementation Rule, 2008 $PM_{2.5}$ NSR, and 2010 $PM_{2.5}$ Increments (a complete discussion can be found in section VI. *Program for enforcement of control measures* of the proposed rule).

While we agree with the history the commenter has provided with regard to what Montana has and has not adopted into the State's EPA-approved PSD program, we note that Montana was not *required* to adopt any of the provisions of the 1992 WEPCO Rule. For example, the state of Utah adopted WEPCO revisions, which we acted on in 69 FR 51368 (Aug. 19, 2004). In that rulemaking, we explained that states generally: ''were not required to adopt revisions to implement these changes, although these changes are in effect in areas where the Federal PSD permitting regulations apply. Utah has opted to revise its NSR program to incorporate the changes to the EPA's NSR rules promulgated on July 21, 1992.''

We note that the commenter agrees with this premise. *See, e.g.,* Sierra Club and MEIC Comment Letter at page 16 (stating that ''states were not required to adopt that new rule language'' in reference to the 1992 WEPCO Rule). Because Montana was not required to adopt the 1992 WEPCO Rule, or to revise its SIP in response to that EPA action, the EPA need not review the state's infrastructure SIP submission for consistency with the requirements of the 1992 WEPCO Rule. In the context of evaluating a state's infrastructure SIP submission with respect to PSD permitting program requirements, the EPA evaluates only whether the SIP meets structural requirements (*e.g.,* having authority to address GHG emissions in such permits). Thus, the State's decision whether or not to revise its PSD permitting program to incorporate the changes contemplated in the 1992 WEPCO Rule does not preclude the EPA from approving Montana's infrastructure SIP in this action.

This is consistent with the EPA's September 13, 2013, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' [2] (2013 Guidance, contained within this docket), wherein we explain that: ''Structural PSD program provisions include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including GHG. Structural PSD provisions do not include provisions which under 40 CFR 51.166 are at the option of the air agency.''

In the EPA's 2013 Guidance and in several EPA rulemakings, the Agency discussed the issue of addressing the 2002 NSR Reform Rule, which followed the 1992 WEPCO Rule, within the context of infrastructure SIPs. Specifically, the EPA explained in the 2013 Guidance that the issue of ''existing SIP provisions for PSD programs that have not addressed the NSR Reform Rules may be dealt with separately, outside of the context of acting on a state's infrastructure SIP.'' [3] The EPA explained its reasoning for this approach to the NSR Reform Rules in a 2007 guidance document,[4] which we further explained in our July 13, 2011 rulemaking (76 FR 41078. *See* page 41078, column three, first full paragraph through page 41079, first column).

Comment 4 Sierra Club and MEIC Comment Letter

The comment asserts that Montana's ''policy interpretations'' of the term ''actual emissions'' as set forth in amicus briefs and appearances in a citizen suit PSD enforcement action against the Colstrip Power Plant are inconsistent and less stringent than the EPA's interpretation of the same language in the 1980 federal PSD regulations and are less stringent than the current federal PSD regulations. The comment also states that MTDEQ's interpretation of how to determine baseline emissions is inconsistent with and less stringent than the EPA's

[2] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, Guidance on Infrastructure State Implementation Plan (SIP) Elements Under the Clean Air Act Sections 110(a)(1) and 110(a)(2) (Sept. 13, 2013).

[3] 2013 Guidance at p. 28.

[4] ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X (October 2, 2007).

historical and current PSD regulations. The comment states that the MTDEQ never informed the public of its policy interpretations set forth in the amicus briefs, and Montana does not have authority to implement policy without going through rulemaking.

Response: In our response to comment 2, we discussed the difference between the legal sufficiency and the structural requirements of a PSD program within the context of evaluation of the infrastructure SIP submission and the *implementation* of the EPA approved SIP. The commenter's assertion that Montana's PSD regulations are less stringent than the 1980 federal PSD regulations and the current federal PSD regulations is based upon allegations concerning how Montana *interprets* federal PSD regulations and the State's own ''policy interpretations.'' As mentioned in our response to comment 2, these implementation concerns fall outside the scope of this action because the EPA is not evaluating the issue of how the state implements its PSD program in this context. In that same vein, the EPA does not consider this the appropriate context in which to evaluate whether MT DEQ's interpretations of PSD applicability tests, or how the State defines ''actual emissions'' or ''like-kind replacements,'' etc., and whether these interpretations make Montana's PSD program less stringent than the 1980 federal PSD regulations and the current federal PSD regulations. As noted in our response above, the EPA has other authorities to take appropriate action to address alleged SIP implementation deficiencies.

III. Final Action

For reasons expressed in the proposed rule, the EPA is taking final action to approve infrastructure elements from the State's certifications as shown in Table 1. We are also conditionally approving elements (C), D(i)(II) element 3 and (J) with respect to the requirement to have a PSD program that meets the requirements of part C of Title 1 of the Act as shown in Table 2. Elements we are taking no action on are reflected in Table 4. The EPA is disapproving (D)(i)(II) element 4 for the 2006 $PM_{2.5}$, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS (Table 3). Finalization of this disapproval does not require further action from the State, and does not create a new FIP obligation for the EPA. We are also approving revisions to the ARM from the August 21, 2012 submittal (Table 1) and conditionally approving a revision from the March 24, 2015 submittal (Table 2) to bring Montana's PSD program up to date with respect to current requirements for $PM_{2.5}$. If Montana does not submit a SIP revision to correct the language in ARM 17.8.818(7)(a)(iii) within one year of this action, conditional approvals will automatically revert to disapprovals for ARM 17.8.818(7)(a)(iii), and elements (C), D(i)(II) element 3 and (J) with respect to PSD requirements. Finally, we are approving new ARM and sections of the Montana Code Annotated submitted on December 17, 2015 to satisfy requirements of element (E)(ii), state boards.

A comprehensive summary of infrastructure elements, and revisions and additions to the ARM organized by the EPA's final rule action are provided in Table 1, Table 2, Table 3 and Table 4.

TABLE 1—LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS APPROVING

Approval
February 10, 2010 submittal—1997 and 2006 $PM_{2.5}$ NAAQS:
(D)(ii) for both the 1997 and 2006 $PM_{2.5}$ NAAQS.
December 19, 2011 submittal—2008 Pb NAAQS:
(A), (B), (C) with respect to minor NSR requirements, (D)(i)(I) elements 1 and 2, (D)(i)(II) element 4, (D)(ii), (E), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
January 3, 2013 submittal—2008 Ozone NAAQS:
(A), (B), (C) with respect to minor NSR requirements, (D)(ii), (E), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
June 4, 2013 submittal—2010 NO_2 NAAQS:
(A), (B), (C) with respect to minor NSR requirements, (D)(i)(I) elements 1 and 2, (D)(ii), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
July 15, 2013 submittal—2010 SO_2 NAAQS:
(A), (B), (C) with respect to minor NSR requirements, (D)(ii), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
December 17, 2015 submittal—2012 $PM_{2.5}$ NAAQS:
(A), (B), (C) with respect to minor NSR requirements, (D)(ii), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
August 21, 2012 submittal—Revisions to ARM, Prevention of Significant Deterioration:
ARM 17.8.801(3), 17.8.801(21), 17.8.801(27), 17.8.804(1), 17.8.818(7)(a)(iv)–(xi), 17.8.822(9), 17.8.822(10), 17.8.822(11), 17.8.822(12) and 17.8.825(4).
December 17, 2015 submittal—New Rules to ARM, CAA Section 128
New Rule I (ARM 17.8.150), II (ARM 17.8.151), III (ARM 17.8.152), and Montana Code Annotated 2–2–121(2)(e) and 2–2–121(8).

TABLE 2—LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS CONDITIONALLY APPROVING

Conditional approval
February 10, 2010 submittal—1997 and 2006 $PM_{2.5}$ NAAQS:
(D)(i)(II) element 3 for the 2006 $PM_{2.5}$ NAAQS.
December 19, 2011 submittal—2008 Pb NAAQS:
(C) and (J) with respect to PSD, and (D)(i)(II) element 3.
January 3, 2013 submittal—2008 Ozone NAAQS:
(C) and (J) with respect to PSD, and (D)(i)(II) element 3.
June 4, 2013 submittal—2010 NO_2 NAAQS:
(C) and (J) with respect to PSD, and (D)(i)(II) element 3.
July 15, 2013 submittal—2010 SO_2 NAAQS:
(C) and (J) with respect to PSD, and (D)(i)(II) element 3.

TABLE 2—LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS CONDITIONALLY APPROVING—Continued

Conditional approval
December 17, 2015 submittal—2012 $PM_{2.5}$ NAAQS:
(C) and (J) with respect to PSD, and (D)(i)(II) element 3.
March 24, 2015 submittal—Revisions to ARM, Prevention of Significant Deterioration:
ARM 17.8.818(7)(a)(iii).

TABLE 3—LIST OF MONTANA INFRASTRUCTURE ELEMENTS THAT THE EPA IS DISAPPROVING

Disapproval
February 10, 2010 submittal—1997 and 2006 $PM_{2.5}$ NAAQS:
(D)(i)(II) element 4 for the 2006 $PM_{2.5}$ NAAQS.
January 3, 2013 submittal—2008 Ozone NAAQS:
(D)(i)(II) element 4.
June 4, 2013 submittal—2010 NO_2 NAAQS:
(D)(i)(II) element 4.
July 15, 2013 submittal—2010 SO_2 NAAQS:
(D)(i)(II) element 4.
December 17, 2015 submittal—2012 $PM_{2.5}$ NAAQS:
(D)(i)(II) element 4.

TABLE 4—LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS TAKING NO ACTION ON

No action				
Revised section	Reason "No Action"			
	Revision to be made in future rulemaking action	Revision made in a separate rulemaking action (80 FR 72937)	Revision deletes section of the ARM never approved into State's SIP	Revision superseded by revision in March 24, 2015 State submittal
January 3, 2013 submittal—2008 Ozone NAAQS:				
(D)(i)(I) elements 1 and 2	.....	x	.....	.....
July 15, 2013 submittal—2010 SO_2 NAAQS:				
(D)(i)(I) elements 1 and 2	x	.....	.....	.....
December 17, 2015 submittal—2012 $PM_{2.5}$ NAAQS:				
(D)(i)(I) elements 1 and 2	x	.....	.....	.....
August 21, 2012 submittal—Revisions to ARM, Prevention of Significant Deterioration:				
ARM 17.8.818(7)(a)(iii)	.....	.....	.....	x
ARM 17.8.820(2)	.....	.....	.....	x
March 24, 2015 submittal—Revisions to ARM, Prevention of Significant Deterioration:				
ARM 17.8.820(2)	.....	.....	x	.....

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the ARM and Montana Code Annotated discussed in section III, *Final Action* of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Orders Review

Under the CAA, 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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves some state law as meeting federal requirements; this final action does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 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, Aug. 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 CAA; and,

• Does not provide the 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, Feb. 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The 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 June 20, 2016. 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 CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: March 30, 2016.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 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:

■ a. In paragraph (c) adding in numerical order, the table entries for ''17.8.150'', ''17.8.151'', and ''17.8.152''; and revising the table entries for ''17.8.801'', ''17.8.804'', ''17.8.818'', ''17.8.822'', and ''17.8.825''; and

■ b. In paragraph (e), under ''(1) Statewide'' adding three entries at the end of the table.

The revisions and additions read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

State citation	Rule title	State effective date	EPA final rule date	Final rule citation	Comments
(1) Statewide					
(i) Administrative Rules of Montana, Subchapter 01, General Provisions					
*	* * *	*	*	*	*
17.8.150	Definitions	10/30/2015	4/20/2016	[Insert **Federal Register** citation].	
17.8.151	Board Action	10/30/2015	4/20/2016	[Insert **Federal Register** citation].	
17.8.152	Reporting	10/30/2015	4/20/2016	[Insert **Federal Register** citation].	
(vi) Administrative Rules of Montana, Subchapter 08, Prevention of Significant Deterioration of Air Quality					
*	* * *	*	*	*	*
17.8.801	Definitions	10/14/2011	4/20/2016	[Insert **Federal Register** citation].	
17.8.804	Ambient Air Increments	10/14/2011	4/20/2016	[Insert **Federal Register** citation].	
17.8.818	Review of Major Stationary Source and Major Modifications—Source Applicability and Exemptions.	10/10/2014	4/20/2016.	[Insert **Federal Register** citation].	
17.8.822	Air Quality Analysis	10/14/2011	4/20/2016	[Insert **Federal Register** citation].	
17.8.825	Sources Impacting Federal Class I Areas—Additional Requirements.	10/14/2011	4/20/2016	[Insert **Federal Register** citation].	

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State citation	Rule title	State effective date	EPA final rule date	Final rule citation	Comments
*	*	*	*	*	*

* * * * * (e) * * *

Title/subject	State effective date	Notice of final rule date	NFR citation
(1) Statewide			
*	*	*	*
Infrastructure Requirements for the 2008 Lead, 2008 8-hour Ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ National Ambient Air Quality Standards.	N/A	4/20/2016	[Insert **Federal Register** citation].
Infrastructure Requirements, Interstate Transport of Pollution 110(a)(2)(D)(ii) for the 1997 and 2006 $PM_{2.5}$ NAAQS.	N/A	4/20/2016	[Insert **Federal Register** citation].
Montana Code Annotated 2–2–121(2)(e) and 2–2–121(8)	N/A	4/20/2016	[Insert **Federal Register** citation].
*	*	*	*

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[FR Doc. 2016–08916 Filed 4–19–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2014–0492; FRL–9945–34–OAR]

RIN 2060–AR97

Clarification of Requirements for Method 303 Certification Training

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because the Environmental Protection Agency (EPA) received adverse comment, we are withdrawing the direct final rule for Clarification of Requirements for Method 303 Certification Training, published on February 25, 2016.

DATES: Effective April 20, 2016, the EPA withdraws the direct final rule published at 81 FR 9350, on February 25, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Garnett, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (Mail Code: E143–02), Research Triangle Park, NC 27711; telephone number: (919) 541–1158; fax number: (919) 541–0516; email address: *garnett.kim@epa.gov*.

SUPPLEMENTARY INFORMATION: Because the EPA received adverse comment, we are withdrawing the direct final rule for Clarification of Requirements for Method 303 Certification Training, published on February 25, 2016 (81 FR 9350). We stated in that direct final rule that if we received adverse comment by March 28, 2016, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on that direct final rule. We will address those comments in any subsequent final action, which will be based on the parallel proposed rule also published on February 25, 2016 (81 FR 9407). As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

Dated: April 14, 2016.

Janet G. McCabe,

Acting Assistant Administrator.

[FR Doc. 2016–09157 Filed 4–19–16; 8:45 am]

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