



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2016-0477; FRL-9960-70-Region 8]

Montana Administrative Rule Revisions: 17.8.334

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to fully approve a revision to Montana's State Implementation Plan (SIP). On July 6, 2016, the Governor of Montana submitted to the EPA a revision to the Montana SIP that removed one section of the Administrative Rules of Montana (ARM) pertaining to aluminum plants. In this action, the EPA is proposing to approve the removal of this section from the SIP because the provision is inconsistent with Clean Air Act (CAA) requirements, as explained in the EPA's June 12, 2015 startup, shutdown, and malfunction (SSM) SIP call for Montana. Removal of this provision will correct certain deficiencies related to the treatment of excess emissions from aluminum plants.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2016-0477 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a

written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full the EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S.

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SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to the EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the 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:
 - Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register volume, date, and page number);

- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On June 30, 2011, the Sierra Club (the Petitioner) filed a petition for rulemaking with the EPA Administrator, asking the EPA to take action on specific provisions in the SIPs of 39 states. The petition included interrelated requests concerning state rule treatment of excess emissions by sources during periods of SSM. Exemptions from emission limitations during periods of SSM exist in a number of state rules, some of which were adopted and approved into SIPs by the EPA many years ago. The petition alleged that SSM exemptions undermine the emission limitations in SIPs and threaten states' abilities to achieve and maintain compliance with national ambient air quality standards, thereby threatening public health and public welfare. The Petitioner requested that the EPA either (i) notify the states of the substantial inadequacies in their SIPs and finalize a rule requiring them to revise their plans pursuant to CAA section 110(k)(5) (referred to as a "SIP call"), or (ii) determine that the EPA's action approving the implementation plan provisions was

in error and revise those approvals so that the SIPs are brought into compliance with the requirements of the CAA pursuant to CAA section 110(k)(6). On February 22, 2013 (78 FR 12459), the EPA proposed an action that would either grant or deny the Sierra Club petition with respect to each of the SIP provisions alleged to be inconsistent with the CAA. That proposal summarizes the EPA's review of all of the provisions that were identified in the petition, providing a detailed analysis of each provision and explaining how each one either does or does not comply with the CAA with regard to excess emission events. For each SIP provision that appeared to be inconsistent with the CAA, the EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5) of the CAA.

On May 22, 2015, the EPA Administrator signed the final SSM SIP action. That action responds to the Sierra Club petition by granting it with respect to the provisions determined to be deficient and denying it with respect to the others. The final action responds to all public comments received on the proposed action and calls for 36 states to submit corrective SIP revisions by November 22, 2016, to bring specified provisions into compliance with the CAA. In addition, the final action reiterates the EPA's interpretation of the CAA regarding excess emissions during SSM periods and clarifies the EPA's longstanding SSM Policy as it applies to SIPs.

With regard to the Montana SIP, the Petitioner objected to ARM 17.8.334.¹ Specifically, the Petitioner argued that ARM 17.8.334 is inconsistent with the CAA and the EPA's interpretation of the CAA in the SSM Policy because it contained an automatic exemption for emissions during startup and shutdown events. ARM 17.8.334 stated, "Operations during startup

¹ 80 FR 33846 (June 12, 2015).

and shutdown shall not constitute representative conditions for the purposes of determining compliance with this rule,” and further specified that, “nor shall emissions in excess of the levels required in [two other ARM sections] during periods of startup and shutdown be considered a violation of [those sections].”

In accordance with the requirements of CAA section 110(a)(2)(A), SIPs must contain enforceable emission limitations that, in accordance with the definition of “emission limitation” in CAA section 302(k), limit emissions of air pollutants on a continuous basis. CAA section 304 generally provides that any person may bring a civil action against any person who is alleged to have violated or to be in violation of an “emission standard or limitation” under the CAA, including SIP emission limitations. The EPA can similarly enforce against violations of SIP emission limitations under CAA section 113. Thus, SIP emission limitations can be enforced in a section 304 action or under section 113 and so must be enforceable. SIP provisions that create exemptions such that excess emissions during SSM and other conditions are not violations of the applicable emission limitations are inconsistent with these fundamental requirements of the CAA with respect to emission limitations in SIPs.² Because ARM 17.8.334 exempts emissions occurring during periods of startup and shutdown from otherwise applicable SIP emission limitations, the EPA determined in its final SSM SIP action that this provision is inconsistent with CAA requirements.

Under CAA section 110(k)(5), Montana is required to revise the SIP as necessary to correct the inadequacies identified by the SSM SIP action within a period specified by the Administrator (not to exceed eighteen months); the SSM SIP action set a deadline of November

² For details regarding these legal requirements for SIP emission limitations, including EPA’s interpretation of the cited CAA provisions and guidance for satisfying them, please see EPA’s “State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction,” (SSM SIP Action), 78 FR 12459 (Feb. 22, 2014) (proposal); 80 FR 33839 (June 12, 2015) (final).

22, 2016 for the corrective SIP revision. On July 6, 2016, the Governor of Montana submitted to the EPA for approval a SIP revision that would remove ARM 17.8.334 from the SIP.³

III. Montana Revision and EPA Analysis

Under CAA section 110(k), the EPA has the authority and responsibility to review SIP submissions to assure that they meet all applicable requirements. CAA section 110(l) prohibits the EPA from approving a SIP revision that would interfere with any applicable requirement of the CAA.

In this instance, the State has elected to bring its existing SIP into compliance with CAA requirements by removing a previously approved provision that created unlawful exemptions from otherwise applicable emission limitations in the SIP during periods of startup and shutdown. As noted, the State proposed removing this provision, ARM 17.8.334, from the Montana SIP in its July 6, 2016 submission.

We consider the removal of this provision sufficient to correct the inadequacies that the EPA's SSM SIP action identified in the Montana SIP.⁴ As a result of the removal from the SIP, the impermissible exemptions from emissions limitations contained within this provision will no longer be available to sources. As explained in the SSM SIP action, removal of an automatic exemption is an appropriate way to address the inadequacy. 80 FR at 33848. The EPA's proposed approval of this revision is consistent with CAA section 110(l) because approval will not interfere with any applicable requirement of the CAA. Specifically, by removing the

³ The State rulemaking that repealed ARM 17.8.334 also repealed two other sections of Montana's rules, including ARM 17.8.335, which allowed aluminum plants to exceed applicable limitations during maintenance periods. ARM 17.8.335 was never approved into Montana's SIP and correspondingly was not identified in the final SSM SIP Action as substantially inadequate. As indicated by the cover letter from the Governor of Montana for the July 6, 2016 submission, the only portion of the rulemaking submitted for approval is the removal of ARM 17.8.334 from the SIP. Today's proposed action, if finalized, will complete the EPA's action on the entirety of the July 6, 2016 submission.

⁴ For a more in-depth discussion on the inadequacies of ARM 17.8.334, see our proposed SSM SIP Action, 78 FR 12459, 12530-12531, February 22, 2013.

unlawful exemptions created by ARM 17.8.334, the SIP is now more protective. Furthermore, this revision will render the revised emission limitations consistent with the CAA requirement that emission limitations in SIPs must be continuously applicable and enforceable. Therefore, we are proposing to approve the removal of this provision from the SIP. Because removal of this provision would fully address the inadequacies that the SSM SIP action identified in the Montana SIP, this proposed action, if finalized, will satisfy Montana's obligations pursuant to the EPA's SSM SIP action.

IV. The EPA's Proposed Action

We are proposing to fully approve Montana's July 6, 2016 SIP submission, which removes ARM 17.8.334 from the Montana SIP. If finalized, our approval of this submission will fully correct the inadequacies in Montana's SIP that were identified in the EPA's SSM SIP action.

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 USC 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 proposed action merely approves state law as meeting federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 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 (Public Law 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 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, February 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).

List of Subjects in 40 CFR Part 52

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

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

Dated: January 30, 2017.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

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