



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2019-0326; FRL-9999-32-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to Administrative Rules of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of State Implementation Plan (SIP) revisions submitted by the State of Montana on February 23, 2017. The revisions are to the Administrative Rules of Montana (ARM) open burning and permitting regulations to align the ARM with the current Montana Code Annotated (MCA) procedures for appealing a permit and requesting a hearing. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR- EPA-R08-OAR-2019-0326. All documents in the docket are listed on the <http://www.regulations.gov> website. 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

through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312 – 6252, dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our July 8, 2019 proposal (84 FR 32361). In that document we proposed to approve a SIP revision that the State of Montana submitted on February 23, 2017, containing amendments to open burning and permitting regulations in the ARM at 17.8.610, *Major Open Burning Source Restrictions*; 17.8.612, *Conditional Air Quality Open Burning Permits*; 17.8.613, *Christmas Tree Waste Open Burning Permits*; 17.8.614, *Commercial Film Production Open Burning Permits*; 17.8.615, *Firefighter Training*; and 17.8.749, *Conditions for Issuance or Denial of Permit*.¹ The amendments: (1) add references to sections 75-2-211, *Permits for Construction, Installation, Alteration, or Use* and 75-2-213, *Energy Development Project – Hearing and Procedures* of the MCA pertaining to the process for appealing air quality permits, including requesting a hearing; (2) remove duplicative language in the ARM; and (3) and make minor editorial changes. The Montana Board of Environmental Review adopted the amendments on June 3, 2016 (effective July 9, 2016). We did not receive any comments on the proposed rule.

¹ The February 23, 2017, submittal also included revisions to 17.8.1210, *General Requirements for Air Quality Operating Permit Content*. However, the state does not want us to act on 17.8.1210, because it is not part of the Federal SIP. (Memorandum from State of Montana to the EPA (June 26, 2019)).

II. Final Action

In this action, the EPA is approving SIP amendments to Administrative Rules of Montana, shown in Table 1, submitted by the State of Montana on February 23, 2017.

Table 1 - List of Montana Amendments that the EPA is Approving

Amended Sections in the February 23, 2017 Submittal for Approval
17.8.610(3), 17.8.612(10) and (11), 17.8.613(8) and (9), 17.8.614(8) and (9), 17.8.615(6) and (7), 17.8.749(7)

III. Incorporation by Reference

In this document, 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 amendments described in section II. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.²

IV. 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, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely

² 62 FR 27968 (May 22, 1997).

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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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, 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 CAA; 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, the SIP is not approved to apply on any Indian reservation land or in any other area where 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. 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 4, 2019.

Gregory Sopkin,
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. In §52.1370, the table in paragraph (c) is amended:

- a. By removing the entry for “17.610”;
- b. By adding an entry for “17.8.610” in numerical order; and
- c. By revising the entries for “17.8.612,” “17.8.613,” “17.8.614,” “17.8.615,” and “17.8.749”.

The addition and revisions read as follows:

§52.1370 Identification of plan.

* * * * *

(c) * * *

State citation	Rule title	State effective date	EPA final rule date	Final rule citation	Comments
* * * * *					
17.8.610	Major Open Burning Source Restrictions	7/9/2016	[Insert <u>Federal Register</u> date of publication]	[Insert <u>Federal Register</u> citation]	
* * * * *					
17.8.612	Conditional Air Quality Open Burning Permits	7/9/2016	[Insert <u>Federal Register</u> date of publication]	[Insert <u>Federal Register</u> citation]	
17.8.613	Christmas Tree Waste Open Burning Permits	7/9/2016	[Insert <u>Federal Register</u> date of	[Insert <u>Federal Register</u> citation]	

			publication]		
17.8.614	Commercial Film Production Open Burning Permits	7/9/2016	[Insert <u>Federal</u> <u>Register</u> date of publication]	[Insert <u>Federal</u> <u>Register</u> citation]	
17.8.615	Firefighter Training	7/9/2016	[Insert <u>Federal</u> <u>Register</u> date of publication]	[Insert <u>Federal</u> <u>Register</u> citation]	
* * * * *					
17.8.749	Conditions for Issuance or Denial of Permit	7/9/2016	[Insert <u>Federal</u> <u>Register</u> date of publication]	[Insert <u>Federal</u> <u>Register</u> citation]	(1), (3), (4), (5), (6), and (8) approved with state effective date of 12/27/02. (7) approved with state effective date of 10/17/03 and revised with state effective date of 7/9/2016.
* * * * *					

* * * * *