

Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 104 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via <http://www.regulations.gov>, please enter the entity's name in the "Organization" blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

#### Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

#### Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, we will post, and you may view, copies of this notice, selected supporting materials, and any electronic or mailed comments we receive about this proposal. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at [http://www.ttb.gov/wine/wine\\_rulemaking.shtml](http://www.ttb.gov/wine/wine_rulemaking.shtml) under Notice No. 104. You may also reach the docket containing this notice and the posted comments received on it through the Regulations.gov search page at <http://www.regulations.gov>.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice, all related petitions and other supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G

Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202-453-2270 to schedule an appointment or to request copies of comments or other materials.

#### Regulatory Flexibility Act

We certify that this proposed regulatory amendment, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

#### Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

#### Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

#### List of Subjects in 27 CFR Part 9

Wine.

#### Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend 27 CFR, chapter I, part 9, as follows:

#### PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

#### Subpart C—Approved American Viticultural Areas

2. Section 9.183 is amended by revising the section heading, paragraph (a) and the introductory text of paragraphs (b) and (c), and by adding a new paragraph (d), to read as follows:

##### § 9.183 Yamhill-Carlton.

(a) *Name.* The name of the viticultural area described in this section is "Yamhill-Carlton". For purposes of part 4 of this chapter, "Yamhill-Carlton" is a term of viticultural significance.

(b) *Approved maps.* The appropriate maps for determining the boundary of the Yamhill-Carlton viticultural area are eight 1:24,000 scale United States

Geological Survey topography maps. They are titled:

\* \* \* \* \*

(c) *Boundary.* The Yamhill-Carlton viticultural area is located in Yamhill and Washington Counties, Oregon, and is entirely within the Willamette Valley viticultural area. The Yamhill-Carlton viticultural area is limited to lands at or above 200 feet in elevation and at or below 1,000 feet in elevation within its boundary, which is described as follows—

\* \* \* \* \*

(d) From February 7, 2005, until [INSERT DATE ONE DAY BEFORE EFFECTIVE DATE OF THE FINAL RULE], the name of this viticultural area was "Yamhill-Carlton District". Effective [INSERT EFFECTIVE DATE OF THE FINAL RULE], this viticulture area is named "Yamhill-Carlton". Existing certificates of label approval showing "Yamhill-Carlton District" as an appellation of origin are revoked by operation of this regulation on [INSERT DATE 2 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE].

Signed: January 29, 2010.

**John J. Manfreda,**  
Administrator.

[FR Doc. 2010-4570 Filed 3-3-10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2006-0601; FRL-9122-6]

#### Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Subchapter 7 and Other Subchapters

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to partially approve and partially disapprove State Implementation Plan revisions submitted by the State of Montana on August 26, 1999, May 28, 2003, March 9, 2004, October 25, 2005, and October 16, 2006. The revisions contain new, amended, and repealed rules in Subchapter 7 (Permit, Construction, and Operation of Air Contaminant Sources) that pertain to the issuance of Montana air quality permits, in addition to other minor administrative changes to other subchapters of the Administrative Rules of Montana. The intended effect of this action is to propose to approve those

portions of the rules that are approvable and to propose to disapprove those portions of the rules that are inconsistent with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Comments must be received on or before April 5, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2006-0601, by one of the following methods:

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

- *E-mail:* [videtich.callie@epa.gov](mailto:videtich.callie@epa.gov) and [leone.kevin@epa.gov](mailto: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:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- *Hand Delivery:* Callie A. Videtich, 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-2006-0601. 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](mailto:leone.kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. General Information
- II. Summary of SIP Revisions
- III. EPA Review and Proposed Action on SIP Revisions
- IV. Summary of EPA's Proposed Action
- V. Statutory and Executive Order Reviews

**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. Summary of SIP Revisions**

*A. August 26, 1999 Submittal*

On August 26, 1999, the Governor of Montana submitted a State Implementation Plan (SIP) revision request. The revision contains amended and repealed rules to various subchapters in the Administrative Rules of Montana (ARM) that were adopted by

the Montana Board of Environmental Review (Board) on May 14, 1999. Specific to Subchapter 7 (Permit, Construction, and Operation of Air Contaminant Sources), the submittal revised ARM 17.8.705 and 17.8.733 and repealed ARM 17.8.708. However, as indicated below, a May 28, 2003 submittal rescinded the August 26, 1999 revisions to ARM 17.8.705 and 17.8.733.

#### B. May 28, 2003 Submittal

On May 28, 2003, the Governor of Montana submitted a SIP revision request. The revision contains new, amended, and repealed rules adopted by the Board on December 6, 2002. The new and repealed rules pertain to the issuance of Montana air quality permits and are in Subchapter 7 of the ARM. The amended rules contain references to the new and repealed rules.

The new rules include: ARM 17.8.740, 17.8.743, 17.8.744, 17.8.745, 17.8.748, 17.8.749, 17.8.752, 17.8.755, 17.8.756, 17.8.759, 17.8.760, 17.8.762, 17.8.763, 17.8.764, 17.8.765, 17.8.767, and 17.8.770.

The repealed SIP-approved rules include: ARM 17.8.701, 17.8.702, 17.8.704, 17.8.705, 17.8.706, 17.8.707, 17.8.710, 17.8.715, 17.8.716, 17.8.717, 17.8.720, 17.8.730, 17.8.731, 17.8.732, 17.8.733, and 17.8.734.

The amended SIP-approved rules include: ARM 17.8.101, 17.8.110, 17.8.309, 17.8.310, 17.8.316, 17.8.818, 17.8.825, 17.8.826, 17.8.901, 17.8.904, 17.8.905, 17.8.906, 17.8.1004, 17.8.1005, 17.8.1106, and 17.8.1109.

The May 28, 2003 submittal also rescinded outstanding SIP submissions for rules that amended the following: ARM 17.8.702, adopted July 20, 2001 and submitted on December 20, 2001;<sup>1</sup> ARM 17.8.705 and 17.8.733, adopted on May 14, 1999 and submitted on August 26, 1999.

EPA provided written comments to the State during the rulemaking process for the revisions submitted to EPA on May 28, 2003. To review these comments please see the October 9, 2002 letter from Richard R. Long, EPA, to the Board included in the docket for this action. All future references in this notice to EPA's comments during the State rulemaking process refer to this letter. In addition, the State provided a response to all comments received

during their rulemaking. To review these responses please see *Public Hearing Notice and Final Notices on amendments of air quality rules* letter dated December 26, 2002 included as part of the May 28, 2003 submittal. All future references in this notice to the State's response to EPA's comments refer to this letter.

#### C. March 9, 2004 Submittal

On March 9, 2004, the Governor of Montana submitted a SIP revision request. The revision contains amended rules adopted by the Board on September 26, 2003. The amended rules pertain to the issuance of Montana air quality permits. The following rules were amended: ARM 17.8.749, 17.8.759, 17.8.763, and 17.8.764.

#### D. October 25, 2005 Submittal

On October 25, 2005, the Governor of Montana submitted a SIP revision request. The revision contains amended rules adopted by the Board on June 3, 2005. EPA approved all of the October 25, 2005 submittal on July 19, 2006 (71 FR 40922), except for ARM 17.8.767. We are addressing ARM 17.8.767 in this document.

#### E. October 16, 2006 Submittal

On October 16, 2006, the Governor of Montana submitted a SIP revision request. The revision contains an amended rule for ARM 17.8.743(1) and new rules codified as ARM 17.8.1601, 17.8.1602, 17.8.1603, 17.8.1604, 17.8.1605, and 17.8.1606, and ARM 17.8.759 adopted by the Board on December 2, 2005. The submittal also requested to withdraw ARM 17.8.743(1)(c) from being incorporated into the SIP. We are addressing ARM 17.8.759 in this document. The revision to ARM 17.8.743(1) and the new rules pertain to the regulation of oil and gas well facilities, and we will address this revision request in a separate action.

### III. EPA Review and Proposed Action on SIP Revisions

#### A. Repealed Rules

The State has completely rewritten its permitting rules in Subchapter 7 of the ARM. The State has repealed the existing SIP-approved rules and adopted new rules. We are proposing to approve the State's May 28, 2003 request to repeal the following rules from the SIP: ARM 17.8.701, 17.8.702, 17.8.704, 17.8.705, 17.8.706, 17.8.707, 17.8.710, 17.8.715, 17.8.716, 17.8.717, 17.8.720, 17.8.730, 17.8.731, 17.8.732, 17.8.733, and 17.8.734. Our review and proposed action on the new rules submitted on May 28, 2003, with revisions submitted

on March 9, 2004 and October 25, 2005, are discussed below.

The August 26, 1999 SIP revision requested that ARM 17.8.708 be repealed from the SIP. On September 19, 1997, the Governor of Montana submitted a SIP revision that completely recodified the State's air quality rules. ARM 17.8.708 was one of the rules recodified. In our August 13, 2001 final notice (66 FR 42427) on the recodification, we indicated that we would act on several provisions, including ARM 17.8.708, at a later date. Therefore, ARM 17.8.708 was never approved into the SIP. (See page 42434 of the August 13, 2001 notice). At this point there is no ARM 17.8.708 to repeal as requested by the August 26, 1999 submittal letter.

#### B. New Subchapter 7 Rules

##### 1. ARM 17.8.740 Definitions

On May 28, 2003, the State submitted new section ARM 17.8.740. ARM 17.8.740 contains the definitions applicable to Subchapter 7. Previously the definitions were in ARM 17.8.701, which was repealed with the May 2003 submittal. ARM 17.8.740 contains definitions for some terms not contained in ARM 17.8.701, as well as makes minor modifications to some of the definitions that were contained in ARM 17.8.701. Also, two terms in ARM 17.8.701, "lowest achievable emission rate" and "major emitting facility," are not contained in ARM 17.8.740.

It is acceptable that the ARM 17.8.740 does not contain definitions for "lowest achievable emission rate" and "major emitting facility." "Lowest achievable emission rate" is defined at ARM 17.8.901(10) and the State's rules also contain a definition of "major stationary source" at ARM 17.8.801(22) and 17.8.901(12).

Definitions for the following terms are being added to ARM 17.8.740, which were not previously in ARM 17.8.701: day; emitting unit; facility; install or installation; modify; Montana air quality permit; and routine maintenance, repair, or replacement.

We are proposing to approve the definitions in section ARM 17.8.740, with the exception of the definitions of "routine maintenance, repair, or replacement" (RMRR), "modify," "negligible risk to the public health, safety, and welfare and to the environment" and "construct or construction." We are proposing to disapprove the definition of "routine maintenance, repair, or replacement" and "negligible risk to the public health, safety, and welfare and to the environment," and portions of the

<sup>1</sup> Note that the May 28, 2003 submittal requested rescinding revisions to ARM 17.8.702, adopted on July 20, 2001 and submitted on December 20, 2001. EPA had already approved the revisions to ARM 17.8.702 (see 67 FR 55125, 8/28/02, and 40 CFR 52.1370(c)(55)) by the time we had received the May 28, 2003 letter. However, the May 28, 2003 submittal also requests that all of ARM 17.8.702 be repealed. We are proposing to remove ARM 17.8.702 from the federally-approved SIP.

definition of “construct or construction” and we are not taking action on portions of the definition of “modify” for the following reasons.

a. “RMRR” EPA has determined that the definition for RMRR at ARM 17.8.740(14) would be applicable to major sources, since this definition does not explicitly limit its application to true minor sources. The term RMRR is used in Montana’s Prevention of Significant Deterioration (PSD) and non-attainment New Source Review (NSR) regulations (ARM 17.8.801(20)(b)(i) and 17.8.901(11)(b)(i)), but RMRR is not defined in these subchapters. During the State’s rulemaking process we provided comments that expressed our concerns with the definition of RMRR.<sup>2</sup> In response to our comments, the State indicated that the definitions section (that includes the RMRR definition) in Subchapter 7 (Permit, Construction and Operation of Air Contaminant Sources) explicitly states that the definitions contained in that rule are “for the purposes of this subchapter,” and therefore, the definition of “routine maintenance, repair, or replacement” would not apply to Subchapters 8, 9, and 10.<sup>3</sup> However, EPA interprets ARM 17.8.743 (Montana Air Quality Permits—When Required) as requiring all Montana sources (both major and minor) to comply with the requirements in Subchapter 7, and that major sources would also comply with the requirements in Subchapters 8, 9, or 10 as applicable. Therefore, major sources and the public may believe the definition of RMRR in Subchapter 7 is applicable to the major sources since there is nothing in subchapters 8, 9, or 10 prohibiting a major source from using this definition.

Montana’s definition of RMRR allows associated fixed capital costs less than 50% of the fixed capital cost necessary to construct a comparable new emitting unit to be considered RMRR. Montana’s definition of RMRR is inconsistent with EPA’s current policy concerning RMRR at PSD sources. EPA’s position is that a determination of routine maintenance, repair, or replacement is a case specific process that cannot be generally defined, and takes into consideration the nature, extent, purpose, frequency and cost of the work, as well as any

<sup>2</sup> See October 9, 2002 letter from Richard R. Long, EPA, to the Montana Board of Environmental Review—all future references in this notice to EPA’s comments during the State rulemaking process refer to this letter.

<sup>3</sup> See *Public Hearing Notice and Final Notices on amendments of air quality rules* letter dated December 26, 2002 included as part of the May 28, 2003 submittal—all future references in this notice to the State’s response to EPA’s comments refer to this letter.

other relevant factors.<sup>4</sup> Furthermore, the State’s rule is less stringent than EPA’s vacated Routine Equipment Replacement Provision rule for PSD sources (68 FR 61248), which had specified that the capital cost threshold for routine equipment replacement shall not exceed 20 percent of the replacement value of the process (rule vacated by the Court of Appeals for the D.C. Circuit, *New York v. EPA*, 443 F.3d 880 (*D.C.Cir.2006*)). Based on the above analysis, we have determined that Montana’s definition for RMRR at ARM 17.8.740(14) is inconsistent with the Clean Air Act (CAA) and is not approvable.

b. “Modify.” We are not taking action on part of the definition of “modify.” The new definition for “modify” at ARM 17.8.740(8) refers to the “Exclusion of De Minimis Changes” provision codified at ARM 17.8.745, which EPA is not taking action on (see discussion regarding ARM 17.8.745 below). Since we are not taking action on ARM 17.8.745, we are proposing to approve ARM 17.8.740(8) with the exception of the following phrases: (1) “Except when a permit is not required under ARM 17.8.745” in ARM 17.8.740(8)(a); and (2) “except as provided in ARM 17.8.745” in ARM 17.8.740(8)(c).

c. “Negligible risk to the public health, safety, and welfare and to the environment.” We are proposing to disapprove the definition of “negligible risk to the public health, safety, and welfare and to the environment” in ARM 17.8.740(10) because, in a March 30, 2006 letter to EPA, the State rescinded its May 28, 2003 request for provision ARM 17.8.770 (Additional Requirements for Incinerators) to be included in the federally-approved SIP. ARM 17.8.770 is the only provision in Subchapter 7 that utilizes this definition; and therefore, it is not necessary for it to be incorporated into the SIP.

Finally, during the State’s rulemaking process we expressed concerns with the definition of “construct or construction” in ARM 17.8.740(2). We were concerned because this definition includes the phrase “reasonable period of time for startup and shakedown.” Subchapters 8, 9 and 10 contain their own definitions addressing construction in ARM 17.8.801(5) and (10) and ARM 17.8.901(3) and (6) for major source

<sup>4</sup> See September 9, 1988 Memorandum from Don R. Clay, Acting Assistant Administrator for Air and Radiation, to David A. Kee, Director, Air and Radiation Division, Region V, titled “Applicability of Prevention of Significant Deterioration (PSD) and New Source Performance Standards (NSPS) Requirements to the Wisconsin Power Company (WEPCO) Port Washington Life Extension Project.”

permitting; however, the addition of the phrase “reasonable period of time for startup and shakedown” makes the definition of “construct or construction” in ARM 17.8.740(2) inconsistent with the same term used in major source permitting. Since this phrase also reduces the stringency of the current SIP approved regulations, an analysis should be provided by the State showing that this new rule will not interfere with compliance with the National Ambient Air Quality Standards (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 definition of “construct or construction” in ARM 17.8.740(2) meets these criteria. Therefore, we are proposing to approve the definition of “construct or construction” in ARM 17.8.740(2) with the exception of the phrase “reasonable period of time for startup and shakedown.”

## 2. ARM 17.8.743 Montana Air Quality Permits—When Required

On May 28, 2003, the State submitted new section ARM 17.8.743. ARM 17.8.743(1) describes those sources that are required to obtain a Montana air quality permit and ARM 17.8.743(2)—(5) adds new provisions pertaining to seasonal construction activities that can occur prior to receiving 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,<sup>5</sup> 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. Sources excluded from the above requirements are those that are

<sup>5</sup> 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.

identified in ARM 17.8.744 and ARM 17.8.745.

ARM 17.8.743(l) is similar to what was previously required in sections ARM 17.8.705(1)(l), (m), (n), and (o). ARM 17.8.705, which was repealed with the May 28, 2003 submittal, identified those sources that were not required to obtain a permit. ARM 17.8.705(1) listed those sources that were not required to obtain a permit and included: (l) Sources and stacks which do not have the potential to emit more than 25 tons per year, other than lead; (m) a new stack or source of airborne lead whose potential to emit is less than 5 tons per year; (n) an alteration or modification of an already constructed stack or other source of lead contamination which results in an increase in maximum potential of the source or stack to emit airborne lead by an amount less than 0.6 tons per year; and (o) asphalt concrete plants and mineral crushers which do not have the potential to emit more than 5 tons per year of any pollutant, other than lead.

For the most part, the provisions that were in ARM 17.8.705(1)(l), (m), (n) and (o) are contained in the ARM 17.8.743(1), except that the permitting threshold for asphalt concrete plants and mineral crushers has been changed from 5 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. In its response to our comments, the State indicated that it was making the permit level for this source category consistent with other permitting thresholds in the subchapter. Also, the State indicated that for mineral screen operations the rule was more stringent since previously only mineral screens greater than 25 tons per year had to get permits.

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, an analysis should be provided by the State 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, from 5 tons per year to 15 tons per year, for asphalt concrete plants and mineral crushers meets these criteria. Montana plans on providing a 110(l) analysis at a later date. At the

request of the State, we are taking no action on the phrase "asphalt concrete plants, mineral crushers" from ARM 17.8.743(1)(b). We are proposing to approve the remainder of ARM 17.8.743(1)(b), which is "mineral screens that have the potential to emit more than 15 tons per year of any airborne pollutant, other than lead, that is regulated under this chapter."

ARM 17.8.743(1) also refers to ARM 17.8.745. As indicated below, we are taking no action on ARM 17.8.745. Consequently, we are taking no action on the phrase "and 17.8.745" that is contained in ARM 17.8.743(1).

As part of the October 16, 2006 submittal, Montana requested to withdraw the request to include ARM 17.8.743(1)(c) into the SIP as part of the May 28, 2003 submission. This provision requires any incinerator to obtain a Montana air quality permit. This incinerator specific provision is not in the currently approved SIP. The approved SIP treats incinerator sources under the provision for "all other sources and stacks not specifically excluded, which do not have the potential to emit more than 25 tons per year of any pollutant, other than lead" (codified at ARM 17.8.743(e)). We also note that any incinerators in Montana that are not permitted must meet the SIP approved provisions in ARM 17.8.316. Therefore, we are taking no action on ARM 17.8.743(1)(c) and this section will not be incorporated into Montana's SIP. In addition, the October 16, 2006 submittal requested a revision to ARM 17.8.743(1) to add a reference to a new rule codified at ARM 17.8.1602. This revision and the new rule pertain to the regulation of oil and gas well facilities, and we will address this revision request in a separate action.

With the exceptions noted above, we are proposing to approve the remaining language in ARM 17.8.743(1).

During the State's rulemaking process we expressed concerns with the provisions in ARM 17.8.743(2)–(5). However, after further analysis and for the reasons stated below, we are proposing to approve ARM 17.8.743(2)–(5). These provisions allow only limited site preparation and construction, can be stopped by the State at any time, require a permit application completeness determination from the State before this type of work can occur, and exclude sources subject to Federal requirements (i.e., PSD and synthetic minors). EPA's regulations at 40 CFR 51.160 do not require the issuance of a permit for the construction or modification of minor sources, but only that the SIP include a procedure to prevent the construction of a source or

modification that would violate the SIP control strategy or interfere with attainment or maintenance of the NAAQS. Provision (2) of the State's regulation limits site work prior to permit issuance to only installing concrete foundation work, below-ground plumbing, installing ductwork, and other infrastructure and/or excavation work involving the same. No construction or installation of emission units will be allowed under this provision. Provision (3) indicates that "Notwithstanding the ability to undertake the construction activities described above, the department may issue a letter instructing the owner or operator to immediately cease such activities pending a final determination on an application if it finds that the proposed project would result in a violation of the State Implementation Plan or would interfere with the attainment or maintenance of any Federal or State ambient air quality standard." Provision (4) indicates that the State is not obligated to issue an air quality permit and that an "owner or operator who has received a completeness determination and who elects to engage in initial construction activities accepts the regulatory risks of engaging in such activities." Provision (5) indicates that "the provisions of (2) do not supersede any other local, state, or federal requirements." The State has interpreted ARM 17.8.743(5), in its formal response to EPA's comments, to mean that ARM 17.8.743(2) "does not allow pre-permit construction if some other permit or rule prohibits such activities. For example, if a source needs a Prevention of Significant Deterioration (PSD) permit, both federal and state regulations require that the applicant secure the permit before undertaking any construction." The State's formal response to comments on this provision also stated that "nothing in this rule would supersede these existing restrictions in other rules. The applicant would only be able to undertake limited pre-permit construction if it did not need a PSD permit as well."

EPA approved minor NSR programs in several States do not require permits prior to construction, but instead require sources to submit a notice and authorization for sources to begin construction after a specified time if the permitting authority does not issue an order preventing construction. However, all minor NSR projects above the permitting thresholds (25 tons per year for new sources and 15 tons per year for modifications (not approved into the SIP)) in Montana will receive a permit.

These projects go through the required air quality impact analysis before the project is approved. Additionally, all minor NSR permits go through a public notice and comment period before being issued.

EPA had commented to the State that we had concerns that ARM 17.8.743(2) does not require some type of administrative approval from the State prior to allowing pre-permit construction activities. EPA did not initially take into account the permit application completeness determination from the Montana Department of Environment Quality (DEQ). After reviewing the procedure for permit application completeness determination, EPA has concluded that it is an administrative approval which must be issued by the State prior to the start of pre-permit construction activities, ensuring that sources that are subject to Federal requirements (i.e., PSD and synthetic minors) do not begin any construction prior to permit issuance. Also, the State clarified in its response to EPA's comments that this pre-permit construction provision is limited to true minor sources. A true minor source is not subject to PSD requirements and is not subject to other Federal requirements.

As part of our analysis of Montana's pre-permit construction provision we also reviewed recent EPA actions approving pre-permit construction rules into other State SIPs. EPA's July 10, 2006 (71 FR 38773) approval of Mississippi's minor source permit regulations included a new provision entitled "Optional Pre-Permit Construction," which allows construction to commence on certain non-major sources and non-major modifications prior to receiving a final permit to construct, provided certain conditions are met. EPA also approved pre-permit construction rules for the State of Idaho's permit to construct regulations, which were approved into the Idaho SIP on January 16, 2003 (68 FR 2217). Both of these State provisions allow complete construction of the source, including the emission units, prior to issuance of the permit. However, these provisions preclude any actual operation of the new or modified source before issuance of the final construction permit. EPA has approved these provisions because they require the prior written approval of the State and have safeguards to ensure that new major stationary sources and major modifications do not commence construction prior to permit issuance. Montana's pre-permit construction provision differs from these other States' rules in that it allows only limited site

preparation and construction, which does not include the emission units, and does not require the prior written approval of the State.

As discussed above, Montana's ARM 17.8.743(2)–(5) is consistent with the requirements of section 110(a)(2)(C) of the CAA and Federal regulations found at 40 CFR 51.160 through 51.164, including 40 CFR 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. Furthermore, Montana's rule is consistent with 40 CFR 51.160(e), which requires States to identify the basis for determining which facilities will be subject to review. Sources in Montana subject to ARM 17.8.743 must have an air quality permit prior to construction or modification of the emission units and prior to operation. Only limited site preparation and construction, which does not include the emission units, would be allowed at minor sources prior to issuance of an air quality permit. A permit application completeness determination from the Montana Department of Environmental Quality (Department) must be made before this type of work can occur. Additionally, the Department can require the owner or operator to immediately cease any pre-permit construction activities if it finds that the proposed project would result in a violation of the SIP or would interfere with the attainment or maintenance of any Federal or State ambient air quality standard. Finally, this proposal is consistent with prior EPA statements.<sup>6</sup> Therefore, we are proposing approval for ARM 17.8.743(2)–(5).

#### 3. ARM 17.8.744 Montana Air Quality Permits—General Exclusions

On May 28, 2003, the State submitted new section ARM 17.8.744. This section describes those sources that are not required to obtain a Montana air quality permit. This section is similar to what previously existed in ARM 17.8.705(1), except that: (a) Several of the provisions that were in ARM 17.8.705(1) were deleted or incorporated into ARM 17.8.743(1), and (b) two provisions were added (ARM 17.8.744(1)(f) and (k)).

<sup>6</sup> NEPA's October 10, 1978, memorandum from Edward E. Reich, Director Division of Stationary Source Enforcement, to Thomas W. Devine, Chief Air Branch, Region 1, titled "Source Construction Prior to Issuance of PSD Permit," discusses preconstruction activities allowed at a site with both PSD and non-PSD sources. This memo states that construction may begin on PSD-exempt projects before the permit is issued.

During the State's rulemaking process we expressed concerns with the provisions in ARM 17.8.744(1)(f). However, after further review, we are proposing to approve all of ARM 17.8.744 including ARM 17.8.744(1)(f). ARM 17.8.744(1)(f) is acceptable since this exclusion is limited to emergency equipment used only to alleviate adverse effects on public health or facility safety. In addition, this exclusion is limited to only minor sources, since ARM 17.8.818(1) states that "a major stationary source or major modification exempted from the requirements of Subchapter 7 under ARM 17.8.744 or 17.8.745 shall, if applicable, still be required to obtain a Montana air quality permit and comply with all applicable requirements of this subchapter." Likewise, ARM 17.8.904(1) and 17.8.1004(1) both indicate "a major stationary source or major modification exempted from the requirements of Subchapter 7 under ARM 17.8.744 or 17.8.745 \* \* \*, shall, prior to construction, still be required to obtain a Montana air quality permit\* \* \*"

#### 4. ARM 17.8.745 Montana Air Quality Permits—Exclusion for De Minimis Changes

On May 28, 2003, the State submitted new section ARM 17.8.745. This section describes those situations where a source is not required to obtain a Montana air quality permit under ARM 17.8.743 for de minimis changes. With this provision, Montana has adopted a 15 tons per year potential to emit increase as a de minimis limit for any pollutant below which no permit is required for changes.

During the State's rulemaking process we expressed concerns with the de minimis level specified in this provision. Since this new section (ARM 17.8.745) reduces the stringency of the current SIP approved regulations, an analysis should be provided by the State 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 new section (ARM 17.8.745) meets these criteria. Montana plans on providing a 110(l) analysis at a later date, as well as a revision to its 15 tons per year de minimus limit. At the request of the State, we are taking no action on

Montana's de minimis provision in ARM 17.8.745.

5. ARM 17.8.748 New or Modified Emitting Units—Permit Application Requirements

On May 28, 2003, the State submitted new section ARM 17.8.748. This section describes the permit application requirements and for the most part is the same as what previously existed in ARM 17.8.706 with some minor changes. The last sentence contained in ARM 17.8.748(1) was originally contained in ARM 17.8.707(1)(b) and ARM 17.8.748(7) was originally contained in ARM 17.8.720(2)(a).

We are proposing to approve all of ARM 17.8.748.

6. ARM 17.8.749 Conditions for Issuance or Denial of Permit

On May 28, 2003, the State submitted new section ARM 17.8.749. This section describes the conditions for issuance or denial of a Montana air quality permit. The provisions in ARM 17.8.749(1), (3), (4), and (7) are similar to what previously existed in ARM 17.8.710(1), (2), (4), and ARM 17.7.730. The provisions in ARM 17.8.749(2), (5) and (6) are new provisions.

On March 9, 2004, the State submitted revisions to ARM 17.8.749(7) pertaining to how the Department notifies an applicant when it denies a permit and advises the applicant of the right to appeal. The revisions allow the Department to provide such notice through the mail.

During the State's rulemaking process, we expressed concerns with provisions ARM 17.8.749(2)—that allow the department to extend the deadlines specified in a permit and ARM 17.8.749(5)—that requires "state-only" conditions be identified in the permit, and specifies these conditions "are not intended by the department to be enforceable under federal law." For ARM 17.8.749(2) we were concerned that extended deadlines may conflict with requirements for sources subject to PSD. In response to our concerns, the State indicated that the provisions of their PSD rules (ARM 17.8.819) meet the requirements of 40 CFR 52.21(r) and 51.166(j)(4). After further analysis we have determined that ARM 17.8.749(2) allows a director's discretion, in that it states that "the department may extend a deadline specified in the schedule" for permit conditions to become effective. Based on this director's discretion we are proposing to disapprove ARM 17.8.749(2).

For ARM 17.8.749(5) we asked for a justification as to why certain permit

provisions would not warrant Federal (and citizen) review and enforceability. In response to our concerns, the State noted that they "have adopted certain requirements that are more stringent than Federal requirements," "these rules are not intended to be part of the SIP," and "during the permitting process, EPA and other concerned persons will have the opportunity to ensure that the Department correctly applies the state-only designation." After further analysis we have determined that ARM 17.8.749(5) will be used to identify State-only provisions in permits that are more stringent than Federal requirements. Therefore, we are proposing to approve ARM 17.8.749(5).

We are proposing to approve ARM 17.8.749(1), (3), (4), (5), (6) and (8) submitted on May 28, 2003; and ARM 17.8.749(7) submitted on March 9, 2004.

7. ARM 17.8.752 Emission Control Requirements

On May 28, 2003, the State submitted new section ARM 17.8.752. This section describes the emission control requirements for a new or modified facility or emission unit. The provisions in ARM 17.8.752 are similar to what previously existed in ARM 17.8.715, except that the provisions in ARM 17.8.752(1)(a)(i) are new. This new provision states that Montana's minor source Best Available Control Technology (BACT) requirement is only triggered for the modified unit at an existing source (not the entire source). Federal NSR regulations do not require BACT for minor sources. Therefore, we are proposing to approve all of ARM 17.8.752.

8. ARM 17.8.755 Inspection of Permit

On May 28, 2003, the State submitted new section ARM 17.8.755. This section indicates that the current Montana air quality permit must be made available at the facility or emitting unit unless the permittee and Department agree on a different location. This section is similar to what previously existed in ARM 17.8.716, except that a new phrase was added indicating that a different location may be acceptable if mutually agreeable between the permittee and department.

We are proposing to approve ARM 17.8.755.

9. ARM 17.8.756 Compliance With Other Requirements

On May 28, 2003, the State submitted new section ARM 17.8.756. This section describes the permittee responsibilities in complying with other requirements. ARM 17.8.756(1) is similar to what previously existed in ARM 17.8.717,

and ARM 17.8.756(2) and (3) is similar to what previously existed in ARM 17.8.710(6) and (3), respectively.

We are proposing to approve ARM 17.8.756.

10. ARM 17.8.759 Review of Permit Applications

On May 28, 2003, the State submitted new section ARM 17.8.759. This section describes the Department's responsibilities for determining completeness of the permit application, for issuing a preliminary completeness determination, for public notification and providing the opportunity for comment, and for issuing a final decision. Most of this new section is similar to what previously existed in ARM 17.8.720(2) and (3).

During the State's rulemaking process we expressed concerns with the timeframe allowed for the public and EPA to comment on preliminary permit determinations. On March 9, 2004, the State submitted revisions to ARM 17.8.759(4). The revisions extend the date by which comments can be submitted on the preliminary determination for certain permit actions and the timeline for the department to notify the applicant of approval or denial of the application. On October 16, 2006, the State submitted additional revisions to ARM 17.8.759(4), added a new 17.8.759(5), and renumbered the existing paragraph 17.8.759(5) to (6). The new 17.8.759(5) specifies, in part, that "the department may, on its own action, or at the request of the applicant or member of the public, extend by 15 days the period within which public comments may be submitted as described in (4)(b)(ii) and the date for issuing a final decision on a permit application." After further analysis, we no longer have concerns with this provision because the Department now has an opportunity to extend by 15 days the period in which public comments may be submitted either on its own, or at the request of an external party. This would minimize the time crunch for reviewing draft permits.

We are proposing to approve ARM 17.8.759(1) through (3), submitted on May 28, 2003; and ARM 17.8.759(4), (5), and (6) submitted on October 16, 2006.

11. ARM 17.8.760 Additional Review of Permit Applications

On May 28, 2003, the State submitted new section ARM 17.8.760. This section describes additional review requirements for applications subject to the Montana Environmental Policy Act and the Major Facility Siting Act. This section is similar to what previously existed in ARM 17.8.720(1) and (4).

We are proposing to approve ARM 17.8.760.

#### 12. ARM 17.8.762 Duration of Permit

On May 28, 2003, that State submitted new section ARM 17.8.762. This section describes the conditions that affect the duration of a permit. This section is similar to what previously existed in ARM 17.8.731. Provision ARM 17.8.762(2) specifies that a permit will expire unless construction or installation is commenced within the time specified in the permit, which may not be less than one year or more than three years after the permit is issued. The current SIP-approved provision in ARM 17.8.731 does not specify a maximum time period for permit expiration.

During the State's rulemaking process, we expressed concerns with the permit expiration timelines in ARM 17.8.762(2). We were concerned that extended deadlines may conflict with requirements for sources subject to PSD. In response to our concerns, the State indicated that a provision in their PSD rules (ARM 17.8.819) met the requirements of 40 CFR 52.21(r)(2) and 51.166(j)(4). The State further indicated that this rule "will not replace the PSD requirements for PSD sources (*i.e.*, the 18-month limit applies to PSD sources, but not to non-PSD sources)." Despite the State's assertion, we note that ARM 17.8.819 does not meet the Federal PSD requirements of 40 CFR 52.21(r)(2), which specifies that "approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval." 40 CFR 52.21 specifies the PSD requirements for areas that are not covered by a federally approved PSD SIP.

However, the PSD requirements for SIP-approved States, such as Montana, contained in 40 CFR 51.166 do not have an "18-month" provision analogous to 40 CFR 52.21(r)(2). ARM 17.8.819 is consistent with the "18-month phased construction project" provision in 51.166(j)(4). Therefore, ARM 17.8.762(2) is consistent with the Federal PSD rules for SIP-approved States. We are proposing to approve ARM 17.8.762.

#### 13. ARM 17.8.763 Revocation of Permit

On May 28, 2003, the State submitted new section ARM 17.8.763. This section describes the reasons why the Department may revoke a Montana air quality permit, the process the Department must follow when revoking a permit, and the ability of the permittee to request a hearing before the Board.

This section is similar to what previously existed in ARM 17.8.732.

During the State's rulemaking process, we expressed concerns with the provisions in ARM 17.8.763(1) in that applicable provisions or the permit (*e.g.*, major source requirements) may be inadvertently revoked at the request of the permittee. In response to our concerns, the State indicated that while some portions of a permit may be revoked, the permit as a whole must still meet any underlying applicable regulations. After further analysis, we no longer have concerns with these provisions because the State does not intend to revoke any applicable regulations, only minor administrative changes.

On March 9, 2004, the State submitted revisions to ARM 17.8.763(2) and (3) pertaining to how the Department notifies an applicant when it revokes a permit or a portion of a permit. The revisions allow the Department to provide such notice through the mail.

We are proposing to approve ARM 17.8.763 (1) and (4), submitted on May 28, 2003; and ARM 17.8.763(2) and (3), submitted on March 9, 2004.

#### 14. ARM 17.8.764 Administrative Amendment to Permit

On May 28, 2003, the State submitted new section ARM 17.8.764. This section describes how the Department may make administrative amendments to a Montana air quality permit, the process the Department must follow when making administrative amendments to a permit, and the ability of the permittee to request a hearing before the Board of. This section is similar to what previously existed in ARM 17.8.733, except that ARM 17.8.764(1)(c) is a new provision.

On March 9, 2004, the State submitted revisions to ARM 17.8.764(2) and (3) pertaining to how the Department notifies an applicant when it proposes administrative amendments to a permit. The revisions allow the Department to provide such notice through the mail.

During the State's rulemaking process we raised concerns that some administrative amendments should receive public review even though there might not be an increase in emissions. In response to our concerns, the State indicated that the current SIP-approved rule contains the same provision. After further analysis, we have determined that new section ARM 17.8.764 is consistent with the existing SIP-approved ARM 17.8.733.

We are proposing to approve ARM 17.8.764(1) (except as noted below) and (4), submitted on May 28, 2003; and ARM 17.8.764(2) and (3) submitted on

March 9, 2004. As indicated earlier, we are taking no action on ARM 17.8.745. Consequently, we are taking no action on the phrase "the emission increase meets the criteria in ARM 17.8.745 for a de minimis change not requiring a permit," that is contained in ARM 17.8.764(1)(b).

#### 15. ARM 17.8.765 Transfer of Permit

On May 28, 2003, the State submitted new section ARM 17.8.765. This section describes the requirements for transferring a Montana air quality permit from one location to another, and from one owner or operator to another. This section is similar to what previously existed in ARM 17.8.734, except that ARM 17.8.765(3) revises what was in ARM 17.8.734(3). The main difference is that the prior rule required action by the Department to approve or disapprove the permit transfer and the new rule indicates that the transfer is deemed approved if the Department does not act within 30 days of receipt of the notice.

During the State's rulemaking process we expressed concerns with the provisions in ARM 17.8.765(3) in that a source may inappropriately locate in an area and jeopardize attainment of the NAAQS and the permit transfer would be deemed approved if the Department does not act within 30 days. In its response to our concerns, the State indicated that permits for portable sources are written in such a manner as to comply with applicable requirements regardless of location of the source. Consequently, we are proposing to approve all of ARM 17.8.765.

#### 16. ARM 17.8.767 Incorporation by Reference

On May 28, 2003, the State submitted new section ARM 17.8.767. This section adopts and incorporates by reference various documents and indicates where these documents are available. This section is similar to what previously existed in ARM 17.8.702.

On October 25, 2005, the State submitted revisions to ARM 17.8.767. This revision deletes the incorporation by reference (IBR) of 40 CFR 52.21 (Prevention of significant deterioration of air quality) in ARM 17.8.767(1)(d) and modifies the addresses where various documents can be obtained in ARM 17.8.767(2), (3) and (4). 40 CFR 52.21 specifies the PSD requirements for areas that are not covered by a federally approved PSD SIP. Since Subchapter 7 contains the requirements for the permitting, construction, and operation of all air contaminant sources and not just PSD sources, this IBR of 40 CFR 52.21 is not necessary. Subchapter 8



contains Montana's SIP approved PSD rules.

We are proposing to approve ARM 17.8.767(1)(a) through (c), submitted on May 28, 2003; and ARM 17.8.767(1)(d) through (g) and 17.8.767(2), (3) and (4) submitted on October 25, 2005.

#### 17. ARM 17.8.770 Additional Requirements for Incinerators

On May 28, 2003, the State submitted new section ARM 17.8.770. This section discusses additional requirements an incineration facility must meet for a Montana air quality permit. In the prior codification of Subchapter 7, this section had not been incorporated into the SIP. On March 30, 2006, the Department requested to withdraw the request to include ARM 17.8.770 into the SIP as part of the May 28, 2003 submission. Consequently, we are taking no action on ARM 17.8.770, and this section will not be incorporated into Montana's SIP.

#### C. Revisions to Other Subchapters

On May 28, 2003, the State submitted revisions to other subchapters of the ARM. Because the State repealed, in Subchapter 7, various rules and added new rules in their place, the cross-references in other subchapters are being revised. In addition, the previous Subchapter 7 referred to "air quality preconstruction permits" whereas the new Subchapter 7 refers to "Montana air quality permits." In other subchapters, the phrase "air quality preconstruction permits" is being replaced with "Montana air quality permits." Finally, new rules are being added and minor administrative changes are occurring in other subchapters.

EPA is proposing to approve revisions to the following sections submitted on May 28, 2003: ARM 17.8.101(4); 17.8.110(7), (8), and (9); 17.8.818(1); 17.8.825(3); 17.8.826(1) and (2); 17.8.904(1) and (2); 17.8.905(1) and (4); 17.8.906; 17.8.1004; 17.8.1005(1), (2), and (5); 17.8.1106; and 17.8.1109.

On May 28, 2003, the State submitted revisions to ARM 17.8.309(5)(b) and 17.8.310(3)(e). We previously disapproved the provisions in ARM 17.8.309(5)(b) and 17.8.310(3)(e) on January 24, 2006 (*see* 40 CFR 52.1384(a)). Therefore, we are proposing to not act on the revisions to these same sections submitted on May 28, 2003.

On May 28, 2003, the State submitted revisions to ARM 17.8.316(6). This rule pertains to the regulation of incinerators and we will address this revision in a separate action with other revisions to ARM 17.8.316 submitted previously.

We have previously approved changes to ARM 17.8.901(14) that incorporate

the changes to ARM 17.8.901(14)(e)(iii) submitted on May 28, 2003 (*see* January 24, 2006 (71 FR 3776) action). Since we have already approved these revisions into the SIP we are not taking action on them in this document.

On October 16, 2006, the State submitted a revision to ARM 17.8.743(1) and new rules codified at ARM 17.8.1601, 17.8.1602, 17.8.1603, 17.8.1604, 17.8.1605, and 17.8.1606. These rules pertain to the regulation of oil and gas well facilities, and we will address this revision request in a separate action.

#### IV. Summary of EPA's Proposed SIP Action

We are proposing to approve the removal of the following provisions from the federally-approved SIP: ARM 17.8.701, 17.8.702, 17.8.704, 17.8.705, 17.8.706, 17.8.707, 17.8.710, 17.8.715, 17.8.716, 17.8.717, 17.8.720, 17.8.730, 17.8.731, 17.8.732, 17.8.733, and 17.8.734.

We are proposing to approve the following new Subchapter 7 provisions into the federally-approved SIP: ARM 17.8.740 (except 17.8.740(10) and (14) and 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" and the phrase "reasonable period of time for startup and shutdown" in ARM 17.8.740(2)), submitted on May 28, 2003; 17.8.743 (except the phrases "asphalt concrete plants, mineral crushers" in 17.8.743(1)(b) "and 17.8.745" in 17.8.743(1), and 17.8.743(1)(c)), submitted on May 28, 2003; 17.8.744 and 17.8.748, submitted on May 28, 2003; 17.8.749(1), (3), (4), (5), (6), and (8), submitted on May 28, 2003; 17.8.749(7), submitted on March 9, 2004; 17.8.752, 17.8.755, and 17.8.756, submitted on May 28, 2003; 17.8.759(1) through (3), submitted on May 28, 2003; 17.8.759(4) through (6), submitted on October 16, 2006; 17.8.760 and 17.8.762, submitted on May 28, 2003; 17.8.763(1) and (4), submitted on May 28, 2003; 17.8.763(2) and (3), submitted on March 9, 2004; 17.8.764(1) (except 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; 17.8.764(2) and (3), submitted on March 9, 2004; 17.8.765, submitted on May 28, 2003; 17.8.767(1)(a) through (c), submitted on May 28, 2003; and 17.8.767(1)(d) through (g), (2), (3), and (4), submitted on October 25, 2005.

We are proposing to disapprove the following new Subchapter 7 provisions:

ARM 17.8.749(2), ARM 17.8.740(10), 17.8.740(14); and portions of 17.8.740(2).

We are proposing to approve revisions to the following sections of other subchapters submitted on May 28, 2003: ARM 17.8.101(4); 17.8.110(7), (8), and (9); 17.8.818(1); 17.8.825(3); 17.8.826(1) and (2); 17.8.904(1) and (2); 17.8.905(1) and (4); 17.8.906; 17.8.1004; 17.8.1005(1), (2), and (5); 17.8.1106; and 17.8.1109.

We are not acting, at the request of the State, on the following provisions in Subchapter 7: ARM 17.8.743(1)(c) and ARM 17.8.770, the phrase "asphalt concrete plants, mineral crushers" in ARM 17.8.743(1)(b) and ARM 17.8.745 submitted on May 28, 2003.

We are not acting on the following provisions of other subchapters: 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," submitted on May 28, 2003; ARM 17.8.309(5)(b), 17.8.310(3)(e), 17.8.316(6), and 17.8.901(14)(3)(iii), submitted on May 28, 2003; the phrase "and 17.8.745" in ARM 17.8.743(1), submitted on May 28, 2003; ARM 17.8.749(2) 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 ARM 17.8.764(1)(b), submitted on May 28, 2003; and ARM 17.8.743(1), 17.8.1601, 17.8.1602, 17.8.1603, 17.8.1604, 17.8.1605, and 17.8.1606, submitted on October 16, 2006.

#### V. 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: February 3, 2010.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2010-4559 Filed 3-3-10; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[EPA-HQ-SFUND-2010-0068, EPA-HQ-SFUND-2010-0069, EPA-HQ-SFUND-2010-0070, EPA-HQ-SFUND-2010-0072, EPA-HQ-SFUND-2010-0073, EPA-HQ-SFUND-2010-0074, EPA-HQ-SFUND-2010-0075, EPA-HQ-SFUND-2010-0076; FRL-9120-6]

**RIN 2050-AD75**

**National Priorities List, Proposed Rule No. 52**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “the Act”), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (“NPL”) constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (“EPA” or “the Agency”) in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add eight sites to the General Superfund section of the NPL.

**DATES:** Comments regarding any of these proposed listings must be submitted (postmarked) on or before May 3, 2010.

**ADDRESSES:** Identify the appropriate Docket Number from the table below.

**DOCKET IDENTIFICATION NUMBERS BY SITE**

Site name	City/County, State	Docket ID No.
Sanford Dry Cleaners .....	Sanford, FL .....	EPA-HQ-SFUND-2010-0068.
St. Clair Shores Drain .....	St. Clair Shores, MI .....	EPA-HQ-SFUND-2010-0069.
Vienna Wells .....	Vienna, MO .....	EPA-HQ-SFUND-2010-0070.
ACM Smelter and Refinery .....	Cascade County, MT .....	EPA-HQ-SFUND-2010-0072.
Wright Chemical Corporation .....	Riegelwood, NC .....	EPA-HQ-SFUND-2010-0073.
Black River PCBs .....	Jefferson County, NY .....	EPA-HQ-SFUND-2010-0074.
Dewey Loeffel Landfill .....	Nassau, NY .....	EPA-HQ-SFUND-2010-0075.
Smokey Mountain Smelters .....	Knox County, TN .....	EPA-HQ-SFUND-2010-0076.

Submit your comments, identified by the appropriate Docket number, by one of the following methods:

- <http://www.regulations.gov>: Follow the online instructions for submitting comments.
- *E-mail:* [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov).
- *Mail:* Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue, NW.; Washington, DC 20460

• *Hand Delivery or Express Mail:* Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW.; EPA West, Room 3334, Washington, DC 20004. Such deliveries are only accepted during the Docket’s normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays).

*Instructions:* Direct your comments to the appropriate Docket number (see table above). 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; that