

association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State has elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind the State government to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to the State government, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to the State government in the aggregate or to the private sector.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Intergovernmental relations, Particulate matter, Ozone, Sulfur oxides.

Dated: August 3, 1995.

**Patrick M. Tobin,**  
*Acting Regional Administrator.*

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

**Subpart L—Georgia**

2. Section 52.570 is amended by adding paragraph (c)(46) to read as follows:

**§ 52.570 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(46) Revisions to minor source permit rules submitted by the Georgia Environmental Protection Division on March 15, 1995.

(i) Incorporation by reference. Revised Rule 391-3-1-.03, "Permits", sections (1), (2), and (12), effective August 17, 1994.

(ii) Other material. None.

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**40 CFR Part 52**

[MT31-1-7007a; FRL-5275-1]

**Clean Air Act Approval and Promulgation of PM<sub>10</sub> State Implementation Plan for Montana; Missoula Air Pollution Control Program Regulations**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA approves the State implementation plan (SIP) revisions submitted by the State of Montana with a letter dated March 3, 1995. This submittal consists of several revisions to Missoula City-County Air Pollution Control Program regulations, which were adopted by the Montana Board of Health and Environmental Sciences (MBHES) on September 16, 1994. These rules include regulations regarding emergency procedure, paving of roads, driveways, and parking lots, street sweeping, National standards of performance for new stationary sources (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), and solid fuel burning devices. Further, this submittal satisfies the one remaining commitment made by the State in a previous PM<sub>10</sub> SIP submittal.

**DATES:** This final rule is effective on October 30, 1995 unless adverse comments are received by September 29, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405; Montana Department of Health and Environmental Sciences, Air Quality Division, Cogswell Building, Helena, Montana 59620-0901; and The Air and Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt, 8ART-AP, Environmental Protection Agency, Region VIII, (303) 293-1769.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Missoula, Montana area was designated nonattainment for PM<sub>10</sub> and classified as moderate under Sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.<sup>1</sup> See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.327 (Missoula and vicinity). The air quality planning requirements for moderate PM<sub>10</sub> nonattainment areas are set out in Subparts 1 and 4 of Part D, Title I of the Act.<sup>2</sup> The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM<sub>10</sub> nonattainment area SIP requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale.

Those States containing initial moderate PM<sub>10</sub> nonattainment areas such as Missoula were required to submit, among other things, several provisions by November 15, 1991. These provisions are described in EPA's final rulemaking on the Missoula moderate PM<sub>10</sub> nonattainment area SIP (59 FR 2537-2540, January 18, 1994).

In a letter dated August 20, 1991, the Governor of Montana submitted to EPA the Missoula City-County Air Pollution

<sup>1</sup> The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. Sections 7401, *et seq.*

<sup>2</sup> Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM<sub>10</sub> nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

Control Program as a revision to the Montana SIP.

EPA's review identified numerous deficiencies, including inconsistencies with the State regulations, as well as deficiencies similar to those EPA identified in the State regulations. In a December 4, 1991 letter from the EPA Region VIII Administrator to the Governor of Montana, the deficiencies in the Missoula regulations were outlined in detail (this letter is available for public inspection at the EPA Region VIII address listed at the beginning of this notice). The problem areas included rules involving emergency procedures, permitting, open burning, wood-waste burners, NSPS, NESHAPs, and variances.

To address EPA's concerns, the State took commitments through the public hearing process on November 23, 1992 and submitted the commitments to EPA in a letter dated November 30, 1992, as additional tasks to be performed to correct the deficiencies in the Missoula and statewide SIP. Montana requested that EPA consider the August 20, 1991 submittal concurrent with its June 4, 1992 PM<sub>10</sub> SIP submittal and the conditions outlined in the State's commitments.

As a result, EPA approved a large portion of the Missoula City-County Air Pollution Control Program with its approval of the Missoula moderate PM<sub>10</sub> nonattainment area SIP on January 18, 1994 (59 FR 2537-2540). In the January 18, 1994 rulemaking, EPA delayed action on the regulations related to the Governor's commitments.

In a March 2, 1994 submittal, the State satisfied several of its November 30, 1992 commitments related to the Missoula City-County Air Pollution Control Program. Accordingly, EPA approved the related regulations on December 13, 1994 (59 FR 64133-64139). However, one of the November 30, 1992 commitments was still outstanding. That commitment addressed Missoula NSPS and NESHAP regulations.

## II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-13566). The Governor of Montana submitted revisions to the SIP for Missoula with a letter dated March 3, 1995. The revisions amend several of the Missoula City-County Air Pollution Control Program regulations, including the regulations related to NSPS and NESHAPs.

### A. Analysis of State Submission

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.<sup>3</sup> Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see Section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment, the State of Montana, after providing adequate notice, held a public hearing for the local air pollution control program revisions on September 16, 1994. Following the public hearing, the local air pollution control program revisions were adopted by the State.

The local air pollution control program revisions were submitted as a SIP revision by the Governor with a letter dated March 3, 1995. The SIP revision was reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V. The submittal was found to be complete and a letter dated April 27, 1995 was forwarded to the Governor indicating the completeness of the submittals and the next steps to be taken in the review process.

### B. Revisions to the Local Regulations

Four public hearings were held at the local level in December 1993, and March, May, and July 1994. The Missoula City-County Air Pollution Control Board adopted the changes to the regulations, and, finally, all changes were approved at a joint public hearing by the City Council and County Commissioners on July 25, 1994. At its September 16, 1994 MBHES public hearing, the Board adopted the local regulation revisions.

<sup>3</sup> Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

Specifically, the revisions are as follows:

1. Chapter XVI was amended to more clearly indicate that upon approval by the Missoula City Council and Board of County Commissioners, changes to the local air pollution rules will be forwarded to the MBHES for final approval. Such amendments and revisions become effective upon approval by the MBHES.

2. Chapter IX, Subchapter 4, Rule 401 was amended to lower the level at which PM<sub>10</sub> air pollution alerts are called. The level was changed from 100 µg/m<sup>3</sup> to 80 µg/m<sup>3</sup>.

3. Chapter IX, Subchapter 14, Rule 1401 was amended to include new sections which address requirements for the paving of new public roads, private roads, private driveways, and parking lots in the Air Stagnation Zone. Such projects must apply for a road construction permit and provide a plan which includes, among other things, detailed information regarding the measurements of the proposed project, thickness of the pavement that shall be used on the proposed construction, a description of the intended uses of the project, including the estimated number and type of vehicles using the road, driveway, or parking lot, and a description of adjoining exterior roads (e.g., paved, unpaved, public, private). After permit approval, requirements are specified for the completion of paving and maintenance of new public roads and parking lots and private (including commercial and industrial) roads, driveways, and parking lots. A further amendment incorporates existing city street sweeping ordinances into the air pollution control program.

4. Chapter IX, Subchapter 14, Rules 1423 and 1424 were amended to incorporate by reference the federal NSPS and NESHAPs rules as of July 1, 1992. These revisions satisfy the State's one remaining November 30, 1992 commitment included with the original moderate PM<sub>10</sub> nonattainment area SIP for Missoula. That commitment was as follows: "Missoula shall revise the Missoula NSPS and NESHAP regulations to incorporate all federal requirements promulgated through July 1, 1992."

5. Chapter IX, Subchapter 14, Rule 1428 was amended to require all new installations of solid fuel burning devices (either in new construction or in existing residences) to meet an emission rate of 1.0 gram per hour or less. In addition, uncertified woodstoves must be replaced or removed upon the sale of a home or other title transfer. Further, fines have been increased from \$20 to \$50 for the first violation, \$50 to \$200

for the second violation, and \$100 to \$500 for third and subsequent violations.

The revisions outlined above are consistent with Federal requirements, and therefore, are approvable. The revisions to rules 401, 1401, and 1428 are more stringent than the versions used in the attainment and maintenance demonstrations for the Missoula moderate PM<sub>10</sub> nonattainment area SIP that EPA approved on January 18, 1994 (59 FR 2537). If the State wishes to receive credit for the PM<sub>10</sub> emissions reductions in the Missoula moderate nonattainment area that are achieved through these more stringent requirements, a revised attainment and maintenance demonstration for the Missoula PM<sub>10</sub> SIP must be submitted to EPA for consideration. However, the State has indicated that it does not wish to claim credit for these measures at this time.

### C. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see Sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). State implementation plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP [see Section 110(a)(2)(C)].

The Missoula air pollution control regulations, as included in the SIP, are legally enforceable by the Missoula City-County Health Department (MCCHD). There are civil penalties, which increase with each violation, for noncompliance with the solid fuel burning device regulation. Violation of any other provision, regulation or rule enforced under the program results in a criminal offense punishable by a fine.

The Missoula City-County Air Pollution Control Program regulations are also enforceable by the MDHES, if the MCCHD fails to administer the program. Since the program has been approved by the MBHES in accordance with Section 75-2-301 of the Montana Clean Air Act and effectuated by a MBHES order, and since the MDHES can enforce MBHES orders, the MDHES has independent enforcement powers. Enforcement provisions are found in the Clean Air Act of Montana, Sections 75-2-401-429, Montana Code Annotated.

If a State relies on a local government for the implementation of any plan provision, then, according to Section

110(a)(2)(E)(iii) of the Act, the State must provide necessary assurances that the State has responsibility for ensuring adequate implementation of such plan provision. A State would have responsibility to ensure adequate implementation if, for example, the State has the authority and resources to implement the provision when the local entity has failed to do so.

The Missoula City-County Air Pollution Control Program was established in accordance with the requirements of Section 75-2-301 of the Montana Clean Air Act, as amended (1991). A revised version of the air pollution control regulations was approved by the Missoula City-County Air Pollution Control Board on April 24, 1991, and on June 28, 1991 the MBHES issued a board order approving these regulations. A stipulation between the MDHES and the Missoula City-County Air Pollution Control Board that delineates responsibilities and authorities between the MDHES and the local authorities was signed April 29, 1991. On March 20, 1992, the MBHES issued a board order approving revisions to the Missoula City-County Air Pollution Control Program. The April 29, 1991 stipulation, the June 28, 1991 Board order, and the March 20, 1992 Board order were incorporated into the SIP on January 18, 1994 (59 FR 2540). A November 19, 1993 MBHES Board order approving further revisions to the Missoula City-County regulations was incorporated into the SIP on December 13, 1994 (59 FR 64133).

On September 16, 1994, the MBHES issued a Board order approving additional revisions to the Missoula City-County regulations. These regulations and the September 16, 1994 Board order were submitted to EPA as a modification to the Montana SIP.

The Missoula City-County rules are in effect now. The MCCHD has adequate personnel and funding to support effective enforcement of the rules. The State of Montana has a program that will ensure that the Missoula City-County regulations are adequately enforced. EPA believes that the State's and Missoula's existing air enforcement program will be adequate.

### III. Final Action

EPA is approving Montana's SIP revisions, submitted by the Governor with a letter dated March 3, 1995, for the Missoula moderate PM<sub>10</sub> nonattainment area. This submittal revised several Missoula City-County Air Pollution Control Program regulations. Specifically, EPA is approving the following revised portions of Chapter IX, Regulations,

Standards, & Permits: (1) Subchapter 4, Rule 401 regarding emergency procedures; (2) Subchapter 14, Rules 1401, regarding the paving of roads, driveways, and parking lots, and 1428, regarding solid fuel burning devices.

The March 3, 1995 submittal also satisfied the one remaining commitment made by the Governor of Montana to EPA in a letter dated November 30, 1992. Due to the satisfaction of that commitment, EPA can now approve Rules 1423 (NSPS) and 1424 (NESHAPs) of Subchapter 14, Chapter IX.

EPA also approves minor revisions to previously approved Chapter XVI, Amendments and Revisions.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective October 30, 1995 unless, by September 29, 1995, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 30, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain duties. The rules being approved by this action will impose no new requirements since such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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 October 30, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must 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)).

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 28, 1995.

**Kerrigan Clough,**  
Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

#### Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(41) to read as follows:

##### § 52.1370 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(41) The Governor of Montana submitted revisions to the Missoula City-County Air Pollution Control Program in a letter dated March 3, 1995. In addition, the March 3, 1995 submittal satisfies the one remaining commitment made by the State in its original PM<sub>10</sub> moderate nonattainment area SIP.

(i) Incorporation by reference.

(A) Board order issued on September 16, 1994 by the Montana Board of Health and Environmental Sciences approving the amendments to Missoula City-County Air Pollution Control Program Chapters IX and XVI regarding, among other things, emergency procedures, paving of private roads, driveways, and parking lots, National standards of performance for new stationary sources, National Emission Standards for Hazardous Air Pollutants, and solid fuel burning devices.

(B) Missoula City-County Rule 401, Missoula County Air Stagnation Plan, effective September 16, 1994.

(C) Missoula City-County Rule 1401, Prevent Particulate Matter from Being Airborne, effective September 16, 1994.

(D) Missoula City-County Rule 1423, Standard of Performance for New Stationary Sources, effective September 16, 1994.

(E) Missoula City-County Rule 1424, Emission Standards for Hazardous Air Pollutants, effective September 16, 1994.

(F) Missoula City-County Rule 1428, Solid Fuel Burning Devices, effective September 16, 1994.

(G) Missoula City-County Air Pollution Control Program Chapter XVI, Amendments and Revisions, effective September 16, 1994.

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#### 40 CFR Part 52

[IA-15-1-7172; FRL-5285-8]

#### Removal of State Implementation Plan (SIP) for the State of Iowa

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

**ACTION:** Final rule; removal.

**SUMMARY:** Due to an adverse comment, EPA is removing the effective date of August 22, 1995, for the approval of a revision to the SIP for the state of Iowa. The revision includes special requirements for nonattainment areas, compliance and enforcement information, and adoption of EPA definitions.

The original action was published in the **Federal Register** on June 23, 1995 (60 FR 32601-32603), as a direct final rule. As stated in the **Federal Register**, if adverse or critical comments were received by July 24, 1995, the effective date would be delayed and timely notice would be published in the **Federal Register**. Therefore, due to receiving an adverse comment within the comment period, EPA is removing the final rule and will address all public comments received in a subsequent final rule based on the proposed rule also published on June 23, 1995 (60 FR 32639). EPA will not institute a second comment period on this document.

**EFFECTIVE DATE:** This removal is effective August 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** Christopher D. Hess at (913) 551-7213.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule and proposed rule section located in the **Federal Register** citation mentioned in the summary.

#### List of Subjects in 40 CFR Part 52

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