

are withdrawing the proposed rule published on June 15, 2001.

### List of Subjects

#### 40 CFR Part 52

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

#### 40 CFR Part 60

Environmental protection, Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Drycleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

#### 40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Vinyl chloride.

#### 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Fluoride, Intergovernmental relations, Phosphate fertilizer plants, Reporting and recordkeeping requirements.

Dated: July 31, 2001.

**Jack W. McGraw,**

*Acting Regional Administrator, Region 8.*

Accordingly, under the authority of 42 U.S.C. 7401-7671q, the direct final rule (66 FR 32545) (FR Doc. 01-15027) published on June 15, 2001, is withdrawn.

[FR Doc. 01-19871 Filed 8-10-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52, 60, 61 and 62

[MT-001-0018a, MT-001-0019a, MT-001-0020a, MT-001-0022a, MT-001-0023a; MT-001-0031a; FRL-7026-3]

### Approval and Promulgation of Air Quality Implementation Plans; Montana

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action partially approving and partially disapproving State Implementation Plan (SIP) revisions submitted by the Governor of Montana on September 19, 1997; December 10, 1997; April 14, 1999; December 6, 1999; and March 3, 2000. These submitted revisions are intended to recodify and modify the State's air quality rules so that they are consistent with Federal requirements, minimize repetition in the air quality rules, and clarify existing provisions. They also contain Yellowstone County's Local Regulation No. 002—Open Burning. We are also announcing that on May 16, 2001 we delegated the authority for the implementation and enforcement of the New Source Performance Standards (NSPS) to the State. We are updating the NSPS and National Emissions Standards for Hazardous Air Pollutants (NESHAP) "Status of Delegation Tables" and the names and addresses of the Regional Office and State Offices in the Region. We are also updating regulations to indicate that Montana provided a negative declaration. EPA is either not acting on or disapproving certain provisions of the State's air quality rules that should not be in the SIP because they are not generally related to attainment of the National Ambient Air Quality Standards (NAAQS) or they are inconsistent with our SIP requirements. Finally, some provisions of the rules will be acted on at a later date. This action is being taken under sections 110 and 111 of the Clean Air Act.

**DATES:** This rule is effective on October 12, 2001 without further notice, unless EPA receives adverse comment by September 12, 2001. If adverse comment is received, EPA will before October 12, 2001 publish a withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. The NSPS delegation of authority to Montana became effective on 5/16/2001.

**ADDRESSES:** Written comments may be mailed to Richard R. Long, Director, Air

and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

**FOR FURTHER INFORMATION CONTACT:** Laurie Ostrand, EPA Region 8, (303) 312-6437.

**SUPPLEMENTARY INFORMATION:** For the purpose of this document, we are giving meaning to certain words as follows: (a) The words "EPA," "we," "us" or "our" mean or refer to the United States Environmental Protection Agency. (b) The words State or Montana mean the State of Montana unless the context indicates otherwise. (c) The initials MDEQ mean the Montana Department of Environmental Quality.

On June 15, 2001, EPA published a direct final rule (66 FR 32545) partially approving and partially disapproving, and a parallel proposed rule (66 FR 32594) proposing to partially approve and partially disapprove, the SIP revisions submitted by the Governor of Montana on September 19, 1997; December 10, 1997; April 14, 1999; December 6, 1999; and March 3, 2000. The direct final rule was scheduled to become effective on August 14, 2001, if EPA did not before that date withdraw the rule, possibly in response to submission of an adverse comment. In separate actions published today, we are withdrawing both the June 15, 2001, direct final rule and parallel proposed rule because the documents contain a number of errors that we had independently identified and wanted to correct before the direct final rule would have otherwise become effective on August 14, 2001. In the withdrawal actions, we indicate that we intend to issue another direct final rule and a parallel proposed rule correcting these errors and addressing the Governor of Montana's September 19, 1997, December 10, 1997, April 14, 1999, December 6, 1999, and March 3, 2000, submittals.

This document is the subsequent direct final rule which addresses the Governor of Montana's September 19, 1997, December 10, 1997, April 14, 1999, December 6, 1999, and March 3, 2000 submittals and corrects the errors we committed in our June 15, 2001, actions as discussed in our withdrawal action. In addition to the errors identified in our withdrawal actions, we have made some additional changes. We expanded the Summary and Final Action paragraphs; revised the regulatory text for 40 CFR 52.1370(c)(49) to (1) make it clearer, (2) indicate that the Governor's submittals also include the Yellowstone County Open Burning Regulation, (3) remove the incorporation by reference of the State's new stack height rules and indicate that the prior stack height rules still remain in the approved SIP, and (4) add another document to the list of Additional Material; expanded section II.B.2.a, below; and made minor editorial changes.

### I. What Is the Purpose of This Document?

In this document we are acting on five SIP revisions, submitted by the Governor of Montana on September 19, 1997; December 10, 1997; April 14, 1999; December 6, 1999; and March 3, 2000, which modify the Montana air quality rules. The revisions are intended to make the rules consistent with Federal requirements, minimize repetition in the air quality rules, and clarify existing provisions. This document explains our action in response to the five submittals.

The September 19, 1997 submittal is a recodification (renumbering) of the State air quality rules. The December 10, 1997 submittal updates the incorporation by reference (IBR) of various documents in the State air quality rules. The April 14, 1999 submittal consists of various air quality rule revisions the State made between 1995 to 1998 but which had not previously been submitted to us. The December 6, 1999 submittal revises the State's open burning rules and adopts Yellowstone County's Local Regulation No. 002—Open Burning. The March 3, 2000 submittal again updates the IBR of various documents in the State's rules and corrects references to an EPA Handbook for Air Pollution Measurement Systems.

### II. Is the State's Submittal Approvable?

We reviewed the five submittals and placed each rule (or section of a rule) into a category based on the changes that were made in the rule and/or our action on the rule. The first category

(see II.A. below) consists of those rules (or sections of rules) which have been recodified; there are no substantive changes in the text of the rules. We are approving these recodified rules. The second category (see II.B. below) consists of those rules (or sections of rules) for which, in addition to being recodified, the text of the rule was modified. A discussion of whether or not the text changes are approved or disapproved is provided below. The third category (see II.C. below) includes those rules we cannot approve in the SIP. A discussion of why these rules cannot be approved in the SIP is provided below. Finally, the fourth category (see II.D. below) identifies those rules that we will act on at a later date.

#### A. Category 1

We are approving the following sections of the Administrative Rules of Montana (ARM) because the rules have only been recodified; there are no substantive changes in the text of the rules. These recodified rules replace the prior codified rules in the federally approved SIP.

##### 1. Subchapter 1—General Provisions

ARM sections 17.8.101 (except 17.8.101(40)(a)), 17.8.105(1), 17.8.110(3), 17.8.111, 17.8.130–131, 17.8.140–142;

##### 2. Subchapter 3—Emission Standards

ARM sections 17.8.301, 17.8.304 (except 17.8.304(4)(f)), 17.8.308, 17.8.316, 17.8.320, 17.8.322–323, 17.8.324 (except 17.8.324(1)(c) and (2)(d)), 17.8.325–326, 17.8.330–331, 17.8.333–334;

##### 3. Subchapter 6—Open Burning

ARM sections 17.8.605, 17.8.614–615;

##### 4. Subchapter 7—Permit, Construction, and Operation of Air Contaminant Sources<sup>1</sup>

ARM sections 17.8.701 (except 17.8.701(10)), 17.8.704(1), (3)–(5), 17.8.705(1)(a)–(n), 17.8.706–707, 17.8.710, 17.8.715–717, 17.8.730–732, 17.8.733 (except 17.8.733(1)(c)), 17.8.734;

<sup>1</sup> The recodification contains paragraphs ARM 17.8.705(1)(q), 17.8.708, and 17.8.733(1)(c) (formerly ARM 16.8.1102(1)(q), 16.8.1121 and 16.8.1113(1)(c), respectively) that had been adopted by the State on August 8, 1996 but had not been submitted to us prior to the recodification submittal. Revisions to ARM 17.8.705(1) and (2), 17.8.708 (repealed), and 17.8.733(1)(b) and (c) were subsequently adopted by the State on May 14, 1999. The August 8, 1996 and May 14, 1999 adopted revisions were submitted to EPA on August 26, 1999. With this document we are not approving ARM 17.8.705(1)(q), 17.8.708 and 17.8.733(1)(c) submitted with the recodification. We are addressing the August 26, 1999 submittal and these recodified rules in a separate rulemaking action.

##### 5. Subchapter 8—Prevention of Significant Deterioration<sup>2</sup>

ARM sections 17.8.801 (except 17.8.801(29)(a)), 17.8.804–809, 17.8.818–828;

##### 6. Sub-Chapter 9—Permit Requirements for Major Stationary Sources or Major Modifications Locating Within Non-attainment Areas

ARM sections 17.8.901 (except 17.8.901(14)(c) and 901(20)(a)), 17.8.904–906;

##### 7. Subchapter 10—Preconstruction Permit Requirements for Major Stationary Sources or Major Modifications Locating Within Attainment or Unclassified Areas

ARM sections 17.8.1001, 17.8.1006–1007; and

##### 8. Subchapter 11—Visibility Impact Assessment

ARM sections 17.8.1101(2) and (3), 17.8.1106(2), 17.8.1108, 17.8.1109(2) and (3), and 17.8.1110.

#### B. Category 2

The second category consists of those rules (or sections of rules) for which, in addition to being recodified, the text of the rule has been modified. A discussion of the modification to each rule (or section of a rule) and whether or not the text changes are approved or disapproved is provided below. The recodified and modified rules that we are approving replace the prior codified rules in the federally approved SIP.

##### 1. Subchapter 1—General Provisions

(a) *Definitions*—ARM 17.8.101(40)(a). On October 6, 1995, June 21, 1996 and June 12, 1998, the State adopted revisions to the definition of “volatile organic compounds (VOC)” in ARM 17.8.101(40)(a) (formerly ARM 16.8.701(40)(a)). The State revised the definition to coincide with revisions to the federal definition. Since the definition of VOC is consistent with our definition we are approving ARM 17.8.101(40)(a) into the SIP.

(b) *Incorporation by Reference*—ARM sections 17.8.102 and 17.8.103(1)–(4). On June 21, 1996, the State adopted revisions to its incorporation by reference of documents and other statutory references contained in the State's air quality rules, to update the references to the July 1995 edition of the Code of Federal Regulations (CFR), 1995 edition of the Montana Code Annotated

<sup>2</sup> In the State definition of “baseline area,” ARM 17.8.801(3)(a), it reads “ \* \* \* equal to or greater than 1 g/m<sup>3</sup> (annual average) \* \* \* ” This should read “ \* \* \* equal to or greater than 1 µg/m<sup>3</sup> (annual average) \* \* \* ” The State must correct this error in its next regulatory update.

(MCA), 1993 edition of the United States Code, and December 31, 1995 edition of the Administrative Rules of Montana. With this revision, the State deleted duplicative rules and combined existing incorporation by references into new rules. The State also made several non-substantive amendments for consistency, to delete unnecessary language and to make the language in the rules conform to current rule drafting requirements. The following sections of the rules were modified or added: ARM 17.8.102 (formerly ARM 16.8.710) and ARM 17.8.103(1)–(4) (formerly ARM 16.8.708(1)–(2)).

On August 22, 1997, the State again adopted updates to its incorporation by reference section of the Administrative Rules of Montana to specify additional sources for obtaining federal material incorporated by reference, and to incorporate the July 1996 edition of the CFR and the December 31, 1996 edition of the Administrative Rules of Montana. The following sections were revised: ARM 17.8.102 and ARM 17.8.103(3).

On June 12, 1998, the State again adopted revisions to incorporate the July 1997 edition of the CFR, the 1997 edition of the MCA and the December 31, 1997 edition of the Administrative Rules of Montana into ARM 17.8.102.

On September 24, 1999, the State again adopted revisions to incorporate the July 1998 edition of the CFR and the December 31, 1998 edition of the Administrative Rules of Montana into ARM 17.8.102 and the reference to EPA's "Quality Assurance Handbook for Air Pollution Measurement Systems" into ARM 17.8.103.

We are approving ARM sections 17.8.102 and 17.8.103(1)–(4) into the SIP.

(c) *Testing Requirements*—ARM 17.8.105(2). On June 21, 1996 the State adopted a minor revision in ARM 17.8.105(2) (formerly ARM 16.8.704(2)) to include a reference to another State rule. In addition, on June 21, 1996 the State deleted and did not replace ARM 16.8.704(3). State rule ARM 16.8.704(3) incorporated by reference 40 CFR part 51, Appendix P. This incorporation was duplicative of ARM 16.8.708(1)(d) (now ARM 17.8.103(1)(d)) which also incorporated by reference 40 CFR part 51, Appendix P. We are approving the revision of ARM 17.8.105(2) into the SIP and the deletion of ARM 16.8.704(3) from the SIP.

(d) *Source Testing Protocol*—ARM 17.8.106. On September 24, 1999 the State adopted revisions to ARM 17.8.106 to correct the reference to EPA's "Quality Assurance Handbook for Air Pollution Measurement Systems."

We are approving the revisions to ARM 17.8.106 into the SIP.

(e) *Malfunctions*—ARM 17.8.110(1), (2), (4), (5), (6), and (7). On October 6, 1995, the State adopted revisions to its malfunction rule in ARM 17.8.110(7) (formerly ARM 16.8.705(7)). The revised State rule allows a facility to respond to a malfunction of equipment on a temporary basis without obtaining an air quality permit. Because the revisions require that if the temporary replacement equipment constitutes a major stationary source under sub-chapters 8, 9, and 10, then the source must comply with the requirements of the applicable sub-chapter, we believe the revision is acceptable. In addition to the temporary replacement revisions, on October 6, 1995 the State also made several editorial and clarifying revisions in the malfunction rule, ARM 17.8.110(1), (2), (4), (5) and (6) (formerly ARM 16.8.705(1), (2), (4), (5) and (6)). We are approving the revisions to ARM 17.8.110(1), (2), (4), (5), (6), and (7) into the SIP.

## 2. Subchapter 3—Emission Standards

(a) *Incorporation by Reference*—ARM 17.8.302(1)–(4). On May 19, 1995, the State adopted revisions to add ARM 17.8.302(1)(b) and (c) (formerly ARM 16.8.1429(2)(b) and (c)). This revision incorporated by reference 40 CFR part 60, Appendix A, Method 9, and 40 CFR part 60 Appendix B, performance specification 1. This revision occurred at the same time the State adopted revisions to the Kraft Pulp Mill rule in section II.D.1 below.

On August 9, 1996 the State adopted revisions reformatting the incorporation by reference of documents in ARM 17.8.302(1)(a)–(h) and (2)–(4) and adding ARM 17.8.302(1)(i) (formerly ARM 16.8.1429(1)(a)–(h) and (2)–(4) and 16.8.1429(1)(i), respectively). State rule ARM 17.8.302(1)(i) incorporates by reference 40 CFR part 63.

On June 20, 1997, the State adopted revisions to ARM 17.8.302(1) by adding 17.8.302(1)(j). State rule ARM 17.8.302(1)(j) incorporates by reference 40 CFR part 60, subpart Cc.

As indicated in the General Provisions section II.B.1(b) above, on August 22, 1997, the State again adopted updates to its incorporation by reference of documents. State rule ARM 17.8.302(3) was revised.

On June 12, 1998 the State adopted more revisions to update the incorporation by reference of documents in ARM 17.8.302(1)(e) and (i). State rule ARM 17.8.302(1)(e) was revised to incorporate by reference our final rule published on October 7, 1997 (62 FR

52399), entitled "Determination of Total Fluoride Emissions from Selected Sources of Primary Aluminum Production Facilities." State rule ARM 17.8.302(1)(i) was revised to incorporate by reference our final rule published on October 7, 1997 (62 FR 52407), entitled "National Emission Standards for Hazardous Air Pollutants from Primary Reduction Facilities."

On November 6, 1998 the State adopted revisions to ARM 17.8.302(1) by adding 302(1)(k). State rule ARM 17.8.302(1)(k) incorporates by reference 40 CFR part 60, subpart Ce.

On September 24, 1999, the State adopted more revisions to ARM 17.8.302(1) to remove superfluous language since a more current version of the CFR is being incorporated elsewhere. As a result, the September 24, 1999 revision deleted some of the prior adopted revisions mentioned above.

We are approving ARM 17.8.302(1)–(4) into the SIP.

(b) *Visible Air Contaminants*—ARM 17.8.304(4)(f). On May 19, 1995, the State adopted revisions to its rules by adding ARM 17.8.304(4)(f) (formerly 16.8.1404(4)(f)). This pertains to opacity from recovery furnaces at Kraft Pulp Mills. As indicated in section II.D.1 below, we will act on the revisions pertaining to the Kraft Pulp Mill Rule at a later date. Therefore, we are not approving ARM 17.8.304(4)(f) into the SIP at this time.

(c) *Fuel Burning*—ARM 17.8.309 and ARM 17.8.310. On October 6, 1995, the State adopted revisions to the particulate emission limits for fuel burning equipment and industrial processes (ARM 17.8.309 and 17.8.310, formerly, ARM 16.8.1402 and 16.8.1403, respectively). The State re-wrote and reformatted the provisions in ARM 17.8.309(1) and (2) (formerly ARM 16.8.1402(1) and (2)) and ARM 17.8.310(1) and (2) (formerly ARM 16.8.1403(1) and (2)). We believe the revisions to these sections do not change the stringency of the rule and are approving them. However, the State added provisions to the rules with ARM 17.8.309(5)(b) and 17.8.310(3)(e) (formerly ARM 16.8.1402(5) and ARM 16.8.1403(3)(e)). State rules ARM 17.8.309(5)(b) and 17.8.310(3)(e) provide an exception that the rules do " \* \* \* not apply to particulate matter emitted from \* \* \* sources constructed after March 16, 1979, that have a specific particulate emission limitation contained in an air quality preconstruction permit obtained under ARM Title 17, Chapter 8, sub-chapter 7, a court order, board order or department order, or a process specific rule." We

interpret this language as allowing terms of a construction permit to override a requirement that has been approved as part of the SIP. We cannot approve this part of the provision into the SIP, as it would allow the State to change a SIP requirement through the issuance of a permit. Pursuant to section 110 of the Act, to change a requirement of the SIP, the State must adopt a SIP revision and obtain our approval of the revision. Alternatively, EPA's March 5, 1996 "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program" explains how States can streamline multiple applicable requirements for the same emission unit under the part 70 permit process. Such process must ensure that the streamlined emission limit is at least as stringent as all applicable emission limits for an emissions unit. This streamlining can only be allowed through the part 70 permit process, in which we have the opportunity to review the streamlined requirements and the ability to veto the part 70 permit if the streamlined requirement is not as stringent as each separate applicable requirement. Because we do not have veto authority under the Prevention of Significant Deterioration (PSD) or minor source permitting programs, we do not allow the State to streamline requirements through either of those construction permitting programs. Therefore, we are approving ARM 17.8.309 and ARM 17.8.310 into the SIP, except that we are disapproving ARM 17.8.309(5)(b) and 17.8.310(3)(e).

(d) *Hydrocarbon Emissions, Petroleum Products—ARM 17.8.324(1)(c) and (2)(d)*. On December 6, 1996, the State adopted a new numbering system for the air rules. We are disapproving ARM 17.8.324(1)(c) and (2)(d) (formerly ARM 16.8.1425(1)(c) and (2)(d), respectively). We previously disapproved these rules under the prior codification. See July 18, 1995 (60 FR 36768) notice and 40 CFR 52.1384(c). Our prior disapproval also applies to the new codification. We are modifying 40 CFR 52.1384(c) accordingly.

(e) *Emission Standards for Existing Aluminum Plants—Standards for Visible Emissions—ARM 17.8.332*. As indicated in the General Provisions section II.B.1(b) above, on June 21, 1996 the State adopted revisions to its incorporation by reference of documents. State rule ARM 17.8.332(1) (formerly ARM 16.8.1503(1)) was modified and ARM 16.8.1503(2) was deleted. State rule ARM 16.8.1503(2) incorporated by reference method 9 of Appendix A of 40 CFR part 60. This was duplicative of the incorporation by

reference material being added with ARM 16.8.1507(1)(a). On November 7, 1996 the state repealed ARM 16.8.1507 because, with the recodification of the rules, sub-chapters 14 and 15 were combined, making ARM 16.8.1507 unnecessary since sub-chapter 14 already had a rule incorporating by reference the same documents being incorporated in sub-chapter 15. Therefore, the material incorporated by reference in ARM 16.8.1503(2) is now incorporated by reference at ARM 17.8.302(1)(b). We are approving the revision of ARM 17.8.332 into the SIP and the deletion of ARM 16.8.1503(2) from the SIP.

### 3. Subchapter 6—Open Burning

(a) *Incorporation by Reference and Minor Changes—ARM sections 17.8.602, 17.8.604 and 17.8.612(6)*. On January 20, 1995, the State adopted revisions to its Open Burning Rules (ARM 17.8.604 and 17.8.612(6) (formerly ARM 16.8.1302 and 16.8.1307(6), respectively)). The State revised the rules to correct incorrect wording, insert a missing rule reference and correct a reference to the Division.

As indicated in the General Provisions section in II.B.1(b) above, on June 21, 1996 the State adopted revisions to its incorporation by reference of documents. The following sections were modified: ARM 17.8.602 (formerly ARM 16.8.1311) and ARM 17.8.604(1)–(2) (formerly ARM 16.8.1302(1)–(3)).

As indicated in the General Provisions section in II.B.1(b) above, on August 22, 1997, the State again adopted updates to its incorporation by reference of documents. State rule ARM 17.8.602(3) was revised.

On July 2, 1999, the State revised ARM 17.8.612(6) to update the MDEQ's telephone number.

We are approving ARM sections 17.8.602, 17.8.604 and 17.8.612(6) into the SIP.

(b) *Open Burning Eastern Montana—ARM sections 17.8.601 and 17.8.606*. On October 6, 1995 the State adopted revisions to its Open Burning Rules (ARM 17.8.601 and 17.8.606 (formerly ARM 16.8.1301 and 16.8.1303, respectively)). The revisions allow minor open burners in eastern Montana to conduct essential agricultural open burning and prescribed wildland open burning without a permit during December, January and February if they notify the department prior to the burning. Prior to these changes, minor open burners in eastern Montana had to request department permission to conduct such open burning. We are approving the revisions to the open

burning rule because we do not believe the revisions will jeopardize existing particulate matter (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10)) nonattainment areas or interfere with attainment and maintenance of the PM-10 NAAQS or increment in Montana. All but one of the State's PM-10 nonattainment areas are in the western region of the State. Although there is one PM-10 nonattainment area in the eastern Montana open burning zone, the difference in the geography and weather patterns of the eastern part of the State should assure that the revisions made in the open burning rule will not jeopardize this one PM-10 nonattainment area. For these same reasons, we believe these rule changes will not interfere with attainment and maintenance of the PM-10 NAAQS or increment in Montana. Therefore, we are approving ARM 17.8.601 and 17.8.606 into the SIP.

(c) *Other Revisions to Open Burning Rule—ARM sections 17.8.601, 17.8.606, 17.8.610, 17.8.611, 17.8.612, 17.8.613*. On July 2, 1999, the State adopted revisions to the Open Burning Rules (ARM 17.8.601, 17.8.606, 17.8.610, 17.8.611, 17.8.612, 17.8.613). The revisions (1) update the MDEQ's telephone number; (2) remove reference to the national weather service office as a source of forecasts of ventilation conditions and in its place indicate that ventilation conditions may be obtained from MDEQ; (3) allow open burning permits to be issued for periods other than one year; and (4) require additional information be submitted for emergency open burning permits.

We are approving the revisions to ARM 17.8.601, 17.8.606, 17.8.610, 17.8.611, 17.8.612, and 17.8.613, adopted on July 2, 1999, into the SIP.

### 4. Subchapter 7—Permit, Construction, and Operation of Air Contaminant Sources

(a) *Definition and IBR—ARM 17.8.701 and ARM 17.8.702*. On August 8, 1996, the State adopted a definition for "negligible risk" (ARM 17.8.701(10), formerly ARM 16.8.1101(10)) and updated the incorporation by references in ARM 17.8.702 (formerly ARM 16.8.1120). As indicated in an April 5, 2000 letter from the State to EPA, the definition of "negligible risk," at ARM 17.8.701(10) and a document incorporated by reference in ARM 17.8.702(1)(f) were not intended to be incorporated into the SIP.

As indicated in the General Provisions section in II.B.1(b) above, on August 22, 1997, the State adopted

updates to its incorporation by reference of documents. State rule ARM 17.8.702(3) was revised.

We are approving ARM 17.8.702 (except for ARM 17.8.702(1)(f)) into the SIP. We are not approving ARM 17.8.701(10) nor ARM 17.8.702(1)(f) into the SIP.

(b) *Minor Corrections—ARM 17.8.704(2), 17.8.705(1)(o), 17.8.720(2)*. On January 20, 1995, the State adopted revisions to several sections of the permitting rules to clarify the rules and update incorrect citations. The following rules were revised: ARM 17.8.704(2), 17.8.705(1)(a), 17.8.720(2) (formerly, ARM 16.8.1119(2), 16.8.1102(1)(o), and 16.8.1107(2), respectively). We are approving ARM 17.8.704(2), 17.8.705(1)(o), and 17.8.720(2) into the SIP.

(c) *Malfunctions—ARM 17.8.705(1)(p)*. On October 6, 1995, the State adopted revisions to its permitting rule (in ARM 17.8.705(1)(p) (formerly ARM 16.8.1102(1)(p)) to coincide with revisions to its malfunction rule. As discussed in section II.B.1(e) above, we believe the revision to the malfunction rule is acceptable. Therefore, we are approving ARM 17.8.705(1)(p) into the SIP.

(d) *Public review of Permit Application—ARM 17.8.720*. On April 12, 1996, the State adopted revisions to ARM 17.8.720 (formerly ARM 16.8.1107) to allow an applicant to request an extension of the 60-day deadline for the department to issue a permit; to allow the department more time to issue a permit; to correct grammatical and citations in the rule; and to improve clarity of the rule. We are approving ARM 17.8.720 into the SIP.

#### 5. Subchapter 8—Prevention of Significant Deterioration

(a) *Definitions—ARM 17.8.801(29)(a)*. On October 6, 1995, June 21, 1996 and June 12, 1998 the State adopted revisions to the definition of “volatile organic compounds (VOC)” in ARM 17.8.801(29)(a) (formerly 16.8.945(29)(a)). The State revised the definition to coincide with revisions to the federal definition. Since the definition of VOC is consistent with our definition, we are approving ARM 17.8.801(29)(a) into the SIP.

(b) *Incorporation by Reference—ARM 17.8.802*. As indicated in the General Provisions section II.B.1(b) above, on June 21, 1996 the State adopted revisions to its incorporation by reference of documents. State rule ARM 17.8.802 (formerly ARM 16.8.946) was revised.

As indicated in the General Provisions section II.B.1(b) above, on August 22, 1997, the State again adopted updates to its incorporation by reference of documents. State rules ARM 17.8.802(1)(g) and (3) were revised.

We are approving ARM 17.8.802 into the SIP.

#### 6. Subchapter 9—Permit Requirements for Major Stationary Sources or Major Modifications Locating Within Non-Attainment Areas

(a) *Definitions—ARM 17.8.901(20)(a)*. On October 6, 1995, June 21, 1996 and June 12, 1998 the State adopted revisions to the definition of “volatile organic compounds (VOC)” in ARM 17.8.901(20)(a) (formerly ARM 16.8.1701(20)(a)). The State revised the definition to coincide with revisions to the federal definition. Since the definition of VOC is consistent with our definitions, we are approving ARM 17.8.901(20)(a) into the SIP.

(b) *Incorporation by Reference—ARM sections 17.8.901(14)(c) and 17.8.902(1)–(5)*. As indicated in the General Provisions section II.B.1(b) above, on June 21, 1996 the State adopted revisions to its incorporation by reference of documents. The following sections were modified: ARM 17.8.901(14)(c) (formerly 16.8.1701(14)(c)) and ARM 17.8.902(1)–(5) (formerly ARM 16.8.1702(1)–(2)).

As indicated in the General Provisions section II.B.1(b) above, on August 22, 1997, the State again adopted updates to its incorporation by reference of documents. State rule ARM 17.8.902(3) was revised.

We are approving ARM 17.8.901(14)(c) and 17.8.902 into the SIP.

#### 7. Subchapter 10—Preconstruction Permit Requirements for Major Stationary Sources or Major Modifications Locating Within Attainment or Unclassified Areas

(a) *Incorporation by Reference—ARM 17.8.1002*. As indicated in the General Provisions section II.B.1(b) above, on June 21, 1996 the State adopted revisions to its incorporation by reference of documents. State rule ARM 17.8.1002(1)–(5) (formerly ARM 16.8.1802(1)–(2)) was revised.

As indicated in the General Provisions section II.B.1(b) above, on August 22, 1997, the State again adopted updates to its incorporation by reference of documents. State rule ARM 17.8.1002(3) was revised.

We are approving ARM 17.8.1002 into the SIP.

(b) *Minor Corrections—ARM sections 17.8.1004 and 17.8.1005*. On January 20, 1995, the State adopted revisions to several sections of the permitting rules to clarify the rules and update incorrect citations. The following rules were revised: ARM 17.8.1004 and 17.8.1005 (formerly, ARM 16.8.1803 and 16.8.1804, respectively). We are approving ARM 17.8.1004 and 17.8.1005 into the SIP.<sup>3</sup>

#### 8. Subchapter 11—Visibility Impact Assessment

(a) *Incorporation by Reference—ARM 17.8.1102, 1103 and 1107*. As indicated in the General Provisions section II.B.1(b) above, on June 21, 1996 the State adopted revisions to its incorporation by reference of documents. The following sections were modified: ARM 17.8.1102 (formerly ARM 16.8.1009); ARM 17.8.1103(1) (formerly ARM 16.8.1001) and ARM 17.8.1107(1) (formerly ARM 16.8.1004(1)).

As indicated in the General Provisions section II.B.1(b) above, on August 22, 1997, the State again adopted updates to its incorporation by reference of documents. The following sections were revised: ARM 17.8.1102(1)(b) and (3).

Because of the reformatting of the incorporation by reference of documents, on June 21, 1996 the State deleted and did not replace the following sections: ARM 16.8.1001(2) and 16.8.1004(2).

We are approving ARM 17.8.1102, 1103 and 1107 into the SIP and the deletion of ARM 16.8.1001(2) and 16.8.1004(2) from the SIP.

(b) *Minor Corrections—ARM 17.8.1101(1), 17.8.1103(1), 17.8.1106(1), 17.8.1109(1), and 17.8.1111*. On January 20, 1995 the State adopted revisions to several sections of the visibility rules to update incorrect citations. The following rules were revised: ARM 17.8.1101(1), 17.8.1103(1), 17.8.1106(1), 17.8.1109(1), and 17.8.1111 (formerly, ARM 16.8.1002(1), 16.8.1001(1), 16.8.1003(1), 16.8.1006(1), and 16.8.1008, respectively). We are approving ARM 17.8.1101(1), 17.8.1103(1), 17.8.1106(1), 17.8.1109(1), and 17.8.1111 into the SIP.

#### C. Category 3

We cannot approve certain types of rules into the SIP. A listing of each rule (or section of a rule) we are not approving in the SIP and a discussion

<sup>3</sup> When the State recodified its rules it inadvertently made an error. ARM 17.8.1005(6) refers to “17.8.905(6) through (8).” This should read “17.8.906(6) through (8).” The State must correct this error in its next regulatory update.

of why we believe we can not approve that rule into the SIP is provided below:

1. Subchapter 3—Emission Standards

(a) *Odors—ARM 17.8.315.* We believe we have no legal basis in the Act for approving Montana’s odor control rule ARM 17.8.315 (formerly ARM 16.8.1427) and making it Federally enforceable because odor control provisions are not generally related to attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). Therefore, we are not taking action to incorporate ARM 17.8.315 into the SIP.

(b) *Standard of Performance for New Stationary Sources and Emission Guidelines for Existing Sources—ARM 17.8.340(1) through (3).* ARM 17.8.340(1) through (3) (formerly ARM 16.8.1423(1) through (3)) is the rule the State uses to implement our new source performance standards (NSPS) in 40 CFR part 60. On May 16, 2001, we issued a letter delegating the responsibility for all sources located, or to be located, in the State of Montana subject to the NSPS promulgated in 40 CFR part 60. The categories of new stationary sources covered by this delegation are the categories covered by all NSPS subparts in 40 CFR part 60, as in effect on July 1, 1998, except subparts Cb, Cc, Cd and Ce. Given that the State now has delegation of authority for NSPS in 40 CFR part 60, pursuant to 110(k)(6) of the Act, we are removing the old codification, ARM 16.8.1423(1) through (3), from the SIP and not approving the new codification of ARM 17.8.340(1) through (3) into the SIP. We are updating the table in 40 CFR 60.4(c) to indicate that the 40 CFR part 60 NSPS are now delegated to the State and revising EPA’s address and Montana’s and other States’ agency names and addresses in 40 CFR 60.4(a) and (b)(BB), (b)(JJ) and (b)(TT).

The May 16, 2001 letter of delegation to the State follows:

Honorable Judy Martz,  
Governor of Montana, State Capitol, Helena,  
Montana 59620-0801

Dear Governor Martz: On March 3, 2000 the State submitted a revision to the New Source Performance Standards (NSPS) rules in the Administrative Rules of Montana (ARM) 17.8.340. Specifically, the State revised its NSPS to incorporate the Federal NSPS in effect as of July 1, 1998.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those NSPS, so long as the State’s regulations are equivalent to the Federal regulations. EPA reviewed the pertinent statutes and regulations of the State of Montana and determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of Montana. Therefore, pursuant to Section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR Part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of Montana as follows:

(A) Responsibility for all sources located, or to be located, in the State of Montana subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60. The categories of new stationary sources covered by this delegation are all NSPS subparts in 40 CFR Part 60, as in effect on July 1, 1998. Note this delegation does not include the emission guidelines in subparts Cb, Cc, Cd, and Ce. These subparts require state plans which are approved under a separate process pursuant to Section 111(d) of the Act.

(B) Not all authorities of NSPS can be delegated to States under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. Therefore, of the NSPS of 40 CFR Part 60 being delegated in this letter, the enclosure lists examples of sections in 40 CFR Part 60 that cannot be delegated to the State of Montana.

(C) As 40 CFR Part 60 is updated, Montana should revise its regulations accordingly and in a timely manner and submit to EPA requests for updates to its delegation of authority.

This delegation is based upon and is a continuation of the same conditions as those stated in EPA’s original delegation letter of May 18, 1977, to the Honorable Thomas L. Judge, then Governor of Montana, except that condition 6, relating to Federal facilities, was voided by the Clean Air Act Amendments of 1977. Please also note that EPA retains concurrent enforcement authority as stated in condition 3. In addition, if at any time there is a conflict between a State and Federal NSPS regulation, the Federal regulation must be applied if it is more stringent than that of the State, as stated in condition 9. EPA published its May 18, 1977 delegation letter in the notices section of the September 6, 1977 **Federal Register** (42 FR 44573), along with an associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of Montana (42 FR 44544). Copies of the **Federal Register** notices are enclosed for your convenience.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of Montana will be deemed to accept all the terms of this delegation. EPA will publish an information notice in the **Federal Register** in the near future to inform the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please contact me or have your staff contact Richard Long, Director of our Air and Radiation Program, at (303) 312-6005.

Sincerely yours,  
Jack W. McGraw,  
Acting Regional Administrator.

Enclosures  
cc: Jan Sensibaugh, Director, Montana Department of Environmental Quality, John Wardell, 8MO

Enclosure to Letter Delegating NSPS in 40 CFR Part 60, Effective Through July 1, 1998, to the State of Montana

EXAMPLES OF AUTHORITIES IN 40 CFR PART 60 WHICH CANNOT BE DELEGATED

40 CFR subparts	Section(s)
A .....	60.8(b)(2) and (b)(3), and those sections throughout the standards that reference 60.8(b)(2) and (b)(3); 60.11(b) and (e).
Da .....	60.45a.
Db .....	60.44b(f), 60.44b(g) and 60.49b(a)(4).
Dc .....	60.48c(a)(4).
Ec .....	60.56c(i), 60.8
J .....	60.105(a)(13)(iii) and 60.106(i)(12).
Ka .....	60.114a.
Kb .....	60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).
O .....	60.153(e).
S .....	60.195(b).
DD .....	60.302(d)(3).
GG .....	60.332(a)(3) and 60.335(a).
VV .....	60.482-1(c)(2) and 60.484.
WW .....	60.493(b)(2)(i)(A) and 60.496(a)(1).

## EXAMPLES OF AUTHORITIES IN 40 CFR PART 60 WHICH CANNOT BE DELEGATED—Continued

40 CFR subparts	Section(s)
XX .....	60.502(e)(6)
AAA .....	60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e) and 60.539.
BBB .....	60.543(c)(2)(ii)(B).
DDD .....	60.562–2(c).
GGG .....	60.592(c).
III .....	60.613(e).
JJJ .....	60.623.
KKK .....	60.634.
NNN .....	60.663(e).
QQQ .....	60.694.
RRR .....	60.703(e).
SSS .....	60.711(a)(16), 60.713(b)(1)(i) and (ii), 60.713(b)(5)(i), 60.713(d), 60.715(a) and 60.716.
TTT .....	60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e) and 60.725(b).
VVV .....	60.743(a)(3)(v)(A) and (B), 60.743(e), 60.745(a) and 60.746.
WWW .....	60.754(a)(5).

(d) *Standard of Performance for New Stationary Sources and Emission Guidelines for Existing Sources—Municipal Solid Waste Landfill Facilities—ARM 17.8.340(4)*. On June 20, 1997, the State adopted rules for Municipal Solid Waste Landfill Facilities. We believe we have no legal basis in the Act for approving Montana's rule for Municipal Solid Waste Landfill Facilities, ARM 17.8.340(4), into the SIP because these rules are not generally related to attainment or maintenance of the NAAQS. Therefore, we are not taking action to incorporate ARM 17.8.340(4) into the SIP. However, on July 8, 1998 (63 FR 36858), we did approve these rules as meeting section 111(d) of the Act. See 40 CFR 62.6600–6602.

(e) *Standard of Performance for New Stationary Sources and Emission Guidelines for Existing Sources—Hospital/Medical/Infectious Waste Incinerator Facilities—ARM 17.8.340(5)*. On October 16, 1998, the State adopted rules for Hospital/Medical/Infectious Waste Incinerator Facilities. We believe we have no legal basis in the Act for approving Montana's rule for Hospital/Medical/Infectious Waste Incinerator Facilities, ARM 17.8.340(5), into the SIP because these rules are not generally related to attainment or maintenance of the NAAQS. Therefore, we are not taking action to incorporate ARM 17.8.340(5) into the SIP. However, on June 22, 2000 (65 FR 38732), we did approve these rules as meeting section 111(d) of the Act. See 40 CFR 62.6610–6612.

(f) *Emission Standards for Hazardous Air Pollutants—ARM 17.8.341*. ARM 17.8.341 (formerly ARM 16.8.1424) is the rule the State uses to implement our national emission standards for hazardous air pollutants (NESHAPs) regulations in 40 CFR part 61. On May

16, 2000, we issued a letter indicating that we were delegating the authority of 40 CFR part 61 to the State. Given that the State now has delegation of authority for NESHAPs in 40 CFR part 61, pursuant to 110(k)(6) of the Act, we are removing the old codification ARM 16.8.1424 from the SIP and not approving the new codification of ARM 17.8.341 into the SIP. We are updating the table in 40 CFR 61.04(c)(8) to indicate that the 40 CFR part 61 NESHAPs are now delegated to the State and revising EPA's address and Montana's and other States' agency names and addresses in 40 CFR 61.04(a) and (b)(G), (b)(BB), (b)(JJ), (b)(TT) and (b)(ZZ).

(g) *Emission Standards for Hazardous Air Pollutants for Source Categories—ARM 17.8.342*. On August 9, 1996, the State adopted ARM 17.8.342 (formerly ARM 16.8.1431) for the Maximum Achievable Control Technology (MACT) standards (i.e., 40 CFR part 63). We believe we have no legal basis in the Act for approving Montana's MACT rules into the SIP because these rules are not generally related to attainment or maintenance of the NAAQS. Therefore, we are not taking action to incorporate ARM 17.8.342 into the SIP. However, on May 16, 2000, we issued a letter indicating that we were delegating the authority of 40 CFR part 63 to the State.

(h) *Air Quality Operating Permit Program Applicability—ARM 17.8.1204*. On January 20, 1995, the State adopted revisions to ARM 17.8.1204 (formerly ARM 16.8.2004) and the Governor of Montana submitted these revisions on April 14, 1999. Sub-chapter 12 pertains to the Operating Permit Program. We believe we have no legal basis in the Act for approving any of the provisions of the operating permit program into the SIP. Therefore, we are not taking action to incorporate ARM 17.8.1204 into the

SIP. However, we fully approved Montana's Title V program on December 22, 2000, 65 FR 80785.

#### D. Category 4

Category 4 consists of those rules that we will act on at a later date.

(1) On April 14, 1999, the Governor of Montana submitted revisions to the Incorporation by Reference Rule, Visible Air Contaminant Rule and Kraft Pulp Mill Rule (ARM 17.8.302(1)(b) and (c), 17.8.304(4)(f) and 17.8.321 (formerly ARM 16.8.1429(2)(b) and (c), 16.8.1404(4)(f) and 16.8.1413, respectively)) which had been adopted by the State on May 19, 1995 and December 11, 1998. The revisions to the Kraft Pulp Mill Rule were adopted both prior to and after the air quality rules were recodified. As discussed earlier in section II.B.2(a), we are approving the revisions to ARM 17.8.302(1). We will act on the revisions and the recodification of ARM 17.8.304(4)(f) and 17.8.321 at a later date. These revisions are not being approved as part of SIP at this time. The prior codified Kraft Pulp Mill Rule, ARM 16.8.1413, effective December 13, 1972, remains in the SIP.

(2) On December 8, 1997, the Governor of Montana submitted revisions to the Incinerator Rule, ARM 17.8.316, which were adopted by the State on June 11, 1997. The revisions to the Incinerator rule were adopted after the recodification of the air quality rules. We are approving the recodification, as indicated in section II.A.2 above, but we will act on the June 11, 1997 revisions to the Incinerator Rule at a later date.

(3) The September 19, 1997 submittal contained Subchapter 13, Conformity. We will act on the Conformity sub-chapter at a later date.

(4) The September 19, 1997 recodification contains paragraphs ARM

17.8.705(1)(q), 17.8.708, and 17.8.733(1)(c) (formerly ARM 16.8.1102(1)(q), 16.8.1121 and 16.8.1113(1)(c), respectively) that had been adopted by the State on August 8, 1996 but had not been submitted to us prior to the recodification. Revisions to ARM 17.8.705(1) and (2), 17.8.708 (repealed), and 17.8.733(1)(b) and (c) were subsequently adopted by the State on May 14, 1999. The August 8, 1996 and May 14, 1999 adopted revisions were submitted to EPA on August 26, 1999. With this document we are not approving ARM 17.8.705(1)(q), 17.8.708 and 17.8.733(1)(c), which were submitted with the recodification. We will address the August 26, 1999 submittal along with these recodified rules at a later date.

(5) On January 20, 1995, the State adopted revisions to several sections of the stack height rules to update incorrect citations. The following rules were revised: ARM 17.8.401(4)(b) and 17.8.403(1) (formerly, ARM 16.8.1204(4)(b) and 16.8.1206(1), respectively). On September 17, 1997, the State submitted a recodification of its rules including the stack height rules. We will address the January 20, 1995 stack height rule revisions along with the recodified stack height rules in a future rulemaking action. The prior codified stack heights and dispersion techniques rule, ARM 16.8.1204 through 16.8.1206, effective June 13, 1986, remains in the approved SIP.

The June 15, 2001 preambles to the direct final and proposed rules stated our intent to approve most of the State's recodified air quality rules, including the State's recodified stack height rules. However, in another pending SIP action in Montana (Billings/Laurel), we have questioned aspects of the Montana stack height regulations that are repeated in the recodification. We do not believe we should act on the recodification of these rules before we give full consideration to relevant issues in the context of our ongoing action on the Billings/Laurel SIP, where the issues first arose and should be resolved. Accordingly, we will act on the recodified stack height rules at a later date. This deferral of action will have no effect on the existing approved Montana stack height SIP.

### III. Miscellaneous Issues

(1) On June 21, 1996, the State repealed ARM 16.8.1419, Fluoride Emissions—Phosphate Processing. Previously we had incorporated this provision into the Federally approved SIP. Since fluoride emissions are not generally related to attainment or maintenance of the NAAQS, we are approving the deletion of ARM

16.8.1419 from the SIP. In a February 14, 2001 letter, the State indicated that ARM 16.8.1419 was not developed to satisfy the Clean Air Act section 111(d) requirements and that there are no phosphate fertilizer plants in Montana that meet the definition of affected facility under any of the 40 CFR part 60, subparts T, U, V, W or X, and that there are no phosphate fertilizer plants in Montana that meet the definition of affected facility under any of the subparts T, U, V, W, or X, constructed before October 22, 1974, and that have not reconstructed or modified since 1974. We are revising 40 CFR part 62, subpart BB to indicate that Montana has certified that it has no such sources.

(2) On November 7, 1996, the State repealed ARM 16.8.301, Standing (pertaining to a rehearing before the Board), because it merely refers the reader to existing statutory requirements, and ARM 16.8.401–404, Emergency Procedures (pertaining to Board hearings on emergency orders of the department), because most of the provisions repeat statutory language. Previously we had incorporated these provisions into the Federally approved SIP. Since these provisions are not generally related to attainment or maintenance of the NAAQS, we are approving the deletion of ARM 16.8.301 and 16.8.401–404 from the SIP.

(3) On November 7, 1996, the State repealed ARM 16.8.1104, Existing Sources and Stacks—Permit Application Requirements (requiring existing sources constructed after November 23, 1968, to apply for an air quality permit), because the State believed the rule was no longer necessary; all such facilities have either applied for an air quality permit or have altered the facility in a manner that would require an air quality permit under other provisions of the department's air quality rules. Previously we had incorporated ARM 16.8.1104 into the Federally approved SIP. We agree with the State's assessment and are approving the deletion of ARM 16.8.1104 from the SIP.

(4) The April 14, 1999 submittal contained rule ARM 17.4.101 pertaining to alternative public hearing procedures. According to the State's April 5, 2000 letter to EPA, the State will be rescinding this rule. We are not acting on rule ARM 17.4.101.

(5) The State's September 19, 1997 submittal also contained the State Emergency Episode Avoidance Plan (EEAP). The same EEAP was submitted on July 8, 1997. We approved the July 8, 1997 submittal on December 6, 1999 (64 FR 68034). Since the September 19, 1997 EEAP merely duplicates the July 8, 1997 EEAP, and we have already

approved the July 8, 1997 EEAP, we are not acting on the September 19, 1997 submittal.

(6) On August 22, 1997, the Board revised ARM 17.8.1202 (formerly ARM 16.8.2003). The Governor's April 14, 1999 letter requested that ARM 17.8.1202 be rescinded. Sub-chapter 12 pertains to the Operating Permit Program. We have no legal basis in the Act for approving any of the provisions of the operating permit program into the SIP. However, on October 23, 1996 (61 FR 54946) we inadvertently incorporated ARM 16.8.2003 (now ARM 17.8.1202) into the SIP. Since approval of ARM 16.8.2003 into the SIP was in error, we are removing ARM 16.8.2003 from the SIP pursuant to section 110(k)(6) of the Act. Also, we fully approved Montana's Title V program on December 22, 2000, 65 FR 80785.

(7) On December 6, 1999, the Governor of Montana submitted a regulation from the Yellowstone County Air Pollution Control (YCAPC) program. The submittal consists solely of Regulation No. 002—Open Burning Restrictions. We believe it is appropriate to incorporate local air pollution control programs in the SIP if the program is needed for attainment and maintenance of any National Ambient Air Quality Standard (NAAQS). The State's Group II PM-10 SIP relies on many rules, including the State's open burning rules, to assure maintenance of the PM-10 NAAQS. We approved the Group II PM-10 SIP on January 20, 1994 (59 FR 2988). By approving the YCAPC's Regulation No. 002, the State has given Yellowstone County the responsibility to ensure that State open burning rules are met. Since the County is implementing measures that the State is relying upon to assure that the PM-10 NAAQS are maintained, we believe it is appropriate to incorporate the county rules in the SIP. In addition, including the county rules in the SIP will make the county-issued open burning permits federally enforceable, further assuring the effectiveness of the PM-10 plan.

On December 23, 1992, then Montana Governor Stan Stephens submitted a SIP revision regarding the YCAPC major rule revisions. To date we have not acted on the December 23, 1992 submittal. The December 6, 1999 letter from Governor Marc Racicot indicates that the recent modifications to the YCAPC's program supersede the 1992 submittal and, therefore, rescinds the December 23, 1992 submittal. Accordingly, we are acting to approve the December 6, 1999 submittal of the YCAPC open burning program.

#### IV. Final Action

We are approving the revisions and recodification to the Administrative Rules of Montana submitted by the Governor on September 19, 1997, December 10, 1997, April 14, 1999, December 6, 1999 and March 3, 2000 except for the following provisions that we are not acting on, are disapproving, or will act upon at a later date. The portions of the recodification and revisions that we are approving replace the prior SIP approved regulations (except for the Kraft Pulp Mill Rule, ARM 16.8.1413, effective December 13, 1972, and the Stack Heights and Dispersion Techniques Rule, ARM 16.8.1204–1206, effective June 13, 1986, which will remain a part of the approved SIP). We are also approving into the SIP Yellowstone County's Local Regulation No. 002—Open Burning. The provisions that we are not acting on because these rules are not appropriate to be in the SIP or because the State does not want them in the SIP include: ARM sections 17.4.101, 17.8.315, 17.8.340, 17.8.341, 17.8.342, 17.8.701(10) and 17.8.702(1)(f), and 17.8.1204.

The provisions that we are disapproving include: ARM 17.8.309(5)(b), 17.8.310(3)(e), and 17.8.324(1)(c) and 2(d).

The provisions that we will act upon at a later date include: ARM sections 17.8.304(4)(f), revisions to ARM 17.8.316 (adopted on 6/11/97), 17.8.321, 17.8.401–403, 17.8.705(1)(q), 17.8.708, 17.8.733(1)(c), and 17.8.1301–1313.

The provisions that we are removing from the SIP include: ARM sections 16.8.301, 16.8.401–404, 16.8.704(3), 16.8.1001(2), 16.8.1004(2), 16.8.1104, 16.8.1419, 16.8.1423, 16.8.1424, 16.8.1503(2) and 16.8.2003.

Finally, we are announcing the delegation of authority for NSPS implementation and enforcement to the State and updating the tables in 40 CFR 60.4(c) and 40 CFR 61.04(c)(8) to indicate that the 40 CFR part 60 NSPS and 40 CFR part 61 NESHAPs are now delegated to the State and revising EPA's address and Montana's and other States' agency names and addresses in 40 CFR 60.4(a), (b)(BB), (b)(JJ) and (b)(TT), and 40 CFR 61.04(a), (b)(G), (b)(BB), (b)(JJ), (b)(TT) and (b)(ZZ). We are also updating 40 CFR part 62 subpart BB to indicate that Montana submitted a negative declaration.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**

publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective October 12, 2001 without further notice unless we receive adverse comments by September 12, 2001. If the EPA receives adverse comments, we will before October 12, 2001 publish a withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### V. Administrative Requirements

##### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

##### B. Executive Order 13045

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### C. Executive Order 13132

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory

policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely partially approves and partially disapproves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

##### D. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the

distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

#### E. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies 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 small governmental jurisdictions.

This partial approval rule will not have a significant impact on a substantial number of small entities because SIP approvals 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of 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. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Moreover, EPA's partial disapproval rule will not have a significant impact on a substantial number of small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Furthermore, as explained in this action, the submission does not meet the requirements of the Clean Air Act and EPA cannot approve the submission. EPA has no option but to partially disapprove the submittal. The partial disapproval will not affect any existing State requirements applicable to the

entities. Federal disapproval of a State submittal does not affect its State enforceability.

#### G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the partial approval and partial disapproval actions promulgated do not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action partially approves and partially disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 12, 2001 unless EPA receives adverse written comments by September 12, 2001.

#### I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

#### J. Petitions for Judicial Review

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 12, 2001. 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 may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Clean Air Act.)

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 60

Environmental protection, Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Drycleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage

disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

**40 CFR Part 61**

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Vinyl chloride.

**40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Fluoride, Intergovernmental relations, Phosphate fertilizer plants, Reporting and recordkeeping requirements.

Dated: July 31, 2001.

**Jack W. McGraw,**

*Acting Regional Administrator, Region 8.*

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 *et seq.*

2. Section 52.1370 is amended by adding paragraph (c)(49) to read as follows:

**§ 52.1370 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(49) On September 19, 1997, December 10, 1997, April 14, 1999, December 6, 1999 and March 3, 2000, the Governor submitted a recodification and revisions to the Administrative Rules of Montana. EPA is replacing in the SIP all of the previously approved Montana air quality regulations except that the Kraft Pulp Mill Rule, ARM 16.8.1413, effective December 13, 1972, and Stack Heights and Dispersion Techniques Rule, ARM 16.8.1204–1206, effective June 13, 1986, with those regulations listed in paragraph (c)(49)(i)(A) of this section. The Kraft Pulp Mill Rule, ARM 16.8.1413, effective December 13, 1972, and Stack Heights and Dispersion Techniques Rule, ARM 16.8.1204–1206, effective June 13, 1986, remain part of the SIP. In addition, the Governor submitted Yellowstone County's Local Regulation No. 002—Open Burning.

(i) Incorporation by reference.

(A) Administrative Rule of Montana (ARM) Table of Contents; section 17.8.101, effective 6/26/98; sections 17.8.102–103, effective 10/8/99; section 17.8.105, effective 8/23/96; section 17.8.106, effective 10/8/99, sections 17.8.110–111, effective 8/23/96; sections 17.8.130–131, effective 8/23/96; sections

17.8.140–142, effective 8/23/96; section 17.8.301, effective 8/23/96; section 17.8.302, effective 10/8/99; section 17.8.304 (excluding 17.8.304(4)(f)), effective 8/23/96; section 17.8.308, effective 8/23/96; section 17.8.309 (excluding 17.8.309(5)(b)), effective 8/23/96; section 17.8.310 (excluding 17.8.310(3)(e)), effective 8/23/96; section 17.8.316, effective 8/23/96; section 17.8.320, effective 8/23/96; sections 17.8.322–323, effective 8/23/96; section 17.8.324 (excluding 17.8.324(1)(c) and (2)(d)), effective 8/23/96; sections 17.8.325–326, effective 8/23/96; sections 17.8.330–334, effective 8/23/96; section 17.8.601, effective 7/23/99; section 17.8.602, effective 9/9/97; sections 17.8.604–605, effective 8/23/96; section 17.8.606, effective 7/23/99; sections 17.8.610–613, effective 7/23/99; section 17.8.614–615, effective 8/23/96; section 17.8.701 (excluding 17.8.701(10)), effective 8/23/96; section 17.8.702 (excluding 17.8.702(1)(f)), effective 9/9/97; section 17.8.704, effective 8/23/96; section 17.8.705 (excluding 17.8.705(1)(q)) effective 8/23/96; sections 17.8.706–707, effective 8/23/96; section 17.8.710, effective 8/23/96; sections 17.8.715–717, effective 8/23/96; section 17.8.720, effective 8/23/96; sections 17.8.730–732, effective 8/23/96; section 17.8.733 (excluding 17.8.733(1)(c)), effective 8/23/96; section 17.8.734, effective 8/23/96; section 17.8.801, effective 6/26/98; section 17.8.802, effective 9/9/97; sections 17.8.804–809, effective 8/23/96; sections 17.8.818–828, effective 8/23/96; section 17.8.901, effective 6/26/98; section 17.8.902, effective 9/9/97; sections 17.8.904–906, effective 8/23/96; section 17.8.1001, effective 8/23/96; section 17.8.1002, effective 9/9/97; sections 17.8.1004–1007, effective 8/23/96; section 17.8.1101, effective 8/23/96; section 17.8.1102, effective 9/9/97; section 17.8.1103, effective 8/23/96; and sections 17.8.1106–1111, effective 8/23/96.

(B) April 27, 2000 letter from Debra Wolfe, Montana Department of Environmental Quality, to Dawn Tesorero, U.S. Environmental Protection Agency, Region 8.

(C) Board Order issued on September 24, 1999, by the Montana Board of Environmental Review approving the Yellowstone County Air Pollution Control Program.

(D) Yellowstone County Air Pollution Control Program, Regulation No. 002 Open Burning, effective September 24, 1999.

(E) March 6, 2001 letter from Robert Habeck, Montana Department of Environmental Quality, to Laurie Ostrand, EPA Region 8, explaining the

effective date of the Yellowstone County Air Pollution Control Program Regulation No. 002 Open Burning.

(ii) Additional Material.

(A) April 5, 2000 letter from Debra Wolfe, Montana Department of Environmental Quality, to Dawn Tesorero, U.S. Environmental Protection Agency, Region 8.

(B) February 14, 2001 letter from Don Vidrine, Montana Department of Environmental Quality, to Dick Long, U.S. Environmental Protection Agency, Region 8.

\* \* \* \* \*

3. Section 52.1384 is amended by adding paragraph (a) and revising paragraph (c).

**§ 52.1384 Emission control regulations.**

(a) Administrative Rules of Montana 17.8.309(5)(b) and 17.8.310(3)(e) of the State's rule regulating fuel burning, which were submitted by the Governor on April 14, 1999 and which allow terms of a construction permit to override a requirement that has been approved as part of the SIP, are disapproved. We cannot approve these provisions into the SIP, as it would allow the State to change a SIP requirement through the issuance of a permit. Pursuant to section 110 of the Act, to change a requirement of the SIP, the State must adopt a SIP revision and obtain our approval of the revision.

\* \* \* \* \*

(c) Administrative Rules of Montana 17.8.324(1)(c) and 2(d) (formerly ARM 16.8.1425(1)(c) and (2)(d)) of the State's rule regulating hydrocarbon emissions from petroleum products, which were submitted by the Governor on May 17, 1994 and later recodified with a submittal by the Governor on September 19, 1997, and which allow the discretion by the State to allow different equipment than that required by this rule, are disapproved. Such discretion cannot be allowed without requiring EPA review and approval of the alternative equipment to ensure that it is equivalent in efficiency to that equipment required in the approved SIP.

**PART 60—[AMENDED]**

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Pub. L. 101–549, 104 Stat. 2399 (November 15, 1990; 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted).

**Subpart A—General Provisions**

2. Section 60.4 is amended by:

a. Revising the names and addresses listed for the EPA Region VIII office in paragraph (a), the State of Montana in paragraph (b)(BB), the State of North Dakota in paragraph (b)(JJ) and the State of Utah in paragraph (b)(TT) to read as follows: and

b. Amending the table entitled "Delegation Status of New Source Performance Standards [(NSPS) for Region VIII]" in paragraph (c) by revising the column heading for "MT" and the entries for subparts "Ec", "RRR", "UUU" and "WWW" to read as follows:

**§ 60.4 Address.**

\* \* \* \* \*

(a) \* \* \*

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, 999 18th Street, Suite 300, Denver, CO 80202-2466.

\* \* \* \* \*

(b) \* \* \*

(BB) State of Montana, Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

**Note:** For a table listing Region VIII's NSPS delegation status, see paragraph (c) of this section.

\* \* \* \* \*

(JJ) State of North Dakota, Division of Air Quality, North Dakota Department of Health, P.O. Box 5520, Bismarck, ND 58506-5520.

**Note:** For a table listing Region VIII's NSPS delegation status, see paragraph (c) of this section.

\* \* \* \* \*

(TT) State of Utah, Division of Air Quality, Department of Environmental Quality, P.O. Box 144820, Salt Lake City, UT 84114-4820.

**Note:** For a table listing Region VIII's NSPS delegation status, see paragraph (c) of this section.

\* \* \* \* \*

(c) \* \* \*

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS [(NSPS)] FOR REGION VIII

Subpart	CO	MT	ND	SD <sup>1</sup>	UT <sup>1</sup>	WY
Ec-Hospital/Medical/Infectious Waste Incinerators .....	(*)	(*)	(*)	(*)		
RRR—VOC Emissions from Synthetic Organic Chemistry Manufacturing Industry (SOCMI) Reactor Processes .....	(*)	(*)	(*)	(*)	(*)	(*)
UUU—Calciners and Dryers in Mineral Industries .....	(*)	(*)	(*)	(*)	(*)	(*)
WWW—Municipal Solid Waste Landfills .....	(*)	(*)	(*)	(*)	(*)	(*)

(\*) Indicates approval of State regulation.

<sup>1</sup> Indicates approval of State regulation as part of the State Implementation Plan (SIP).

**PART 61—[AMENDED]**

1. The authority citation for part 61 continues to read as follows:

**Authority:** Sec. 101, 112, 114, 116, 301, Clean Air Act as amended (42. U.S.C. 7401, 6412, 7414, 7416, 7601).

**Subpart A—General Provisions**

2. § 61.04 is amended by:

a. Revising the names and addresses listed for the EPA Region VIII office in paragraph (a), the State of Colorado in paragraph (b)(G), the State of Montana in paragraph (b)(BB), the State of North Dakota in paragraph (b)(JJ) and the State of Utah in paragraph (b)(TT) and adding the State of Wyoming in paragraph (b)(ZZ) to read as follows:

b. Amending the table entitled "Region VIII.—Delegation Status of National Emission Standards for Hazardous Air Pollutants" by revising the column heading for "MT" to read as follows:

**§ 61.04 Address.**

\* \* \* \* \*

(a) \* \* \*

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, 999 18th Street, Suite 300, Denver, CO 80202-2466.

\* \* \* \* \*

(b) \* \* \*

(G) State of Colorado, Air Pollution Control Division, Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246-1530.

**Note:** For a table listing Region VIII's NESHAP delegation status, see paragraph (c) of this section.

\* \* \* \* \*

(BB) State of Montana, Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

**Note:** For a table listing Region VIII's NESHAP delegation status, see paragraph (c) of this section.

\* \* \* \* \*

(JJ) State of North Dakota, Division of Air Quality, North Dakota Department of Health, P.O. Box 5520, Bismarck, ND 58506-5520.

**Note:** For a table listing Region VIII's NESHAP delegation status, see paragraph (c) of this section.

\* \* \* \* \*

(TT) State of Utah, Division of Air Quality, Department of Environmental Quality, P.O. Box 144820, Salt Lake City, UT 84114-4820.

**Note:** For a table listing Region VIII's NESHAP delegation status, see paragraph (c) of this section.

\* \* \* \* \*

(ZZ) State of Wyoming, Air Quality Division, Department of Environmental Quality, 122 W. 25th St., Cheyenne, WY 82002.

\* \* \* \* \*

(c) \* \* \*

REGION VIII.—DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS<sup>1</sup>

Subpart	CO	MT	ND <sup>2</sup>	SD <sup>2</sup>	UT <sup>2</sup>	WY
*	*	*	*	*	*	*

\* Indicates approval of delegation of subpart to state.

<sup>1</sup> Authorities which may not be delegated include 40 CFR part 61.04(b), 61.12(d)(1), 61.13(h)(1)(ii), 61.112(c), 61.164(a)(2), 61.164(a)(3), 61.172(b)(2)(ii)(B), 61.172(b)(2)(ii)(C), 61.174(a)(2), 61.174(a)(3), 61.242-1(c)(2), 61.244, and all authorities listed as not delegable in each subpart under Delegation of Authority.

<sup>2</sup> Indicates approval of National Emission Standards for Hazardous Air Pollutants as part of the State Implementation Plan (SIP) with the exception of the radionuclide NESHAP subparts B, Q, R, T, W which were approved through section 112(l) of the Clean Air Act.

<sup>3</sup> Delegation only for asbestos demolition, renovation, spraying, manufacturing, and fabricating operations, insulating materials, waste disposal for demolition, renovation, spraying, manufacturing and fabricating operations, inactive waste disposal sites for manufacturing and fabricating operations, and operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.

## PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

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

### Subpart BB—Montana

2. Add a new and undesignated center heading and § 62.6613 to subpart BB to read as follows:

#### Fluoride Emissions From Existing Phosphate Fertilizer Plants

##### § 62.6613 Identification of plan—negative declaration.

The Montana Department of Environmental Quality certified in a letter dated February 14, 2001, that there are no phosphate fertilizer plants in Montana that meet the definition of affected facility under any of the subparts T, U, V, W or X. Additionally, there are no phosphate fertilizer plants in Montana that meet the definition of affected facility under any of the subparts T, U, V, W, or X, constructed before October 22, 1974, and that have not reconstructed or modified since 1974.

[FR Doc. 01-19872 Filed 8-10-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[FRL-7031-6]

#### Clean Air Act Full Approval of Operating Permits Program in Washington

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to fully approve the operating permits program submitted by the State of Washington. Washington's operating permits program was submitted in

response to the directive in the 1990 Clean Air Act Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction.

**DATES:** Effective September 12, 2001.

**ADDRESSES:** Copies of the State of Washington's submittal and other supporting information used in developing this final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

**FOR FURTHER INFORMATION CONTACT:** Denise Baker, EPA, Region 10, Office of Air Quality (OAQ-107), 1200 6th Avenue, Seattle, WA 98101, (206) 553-8087.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Clean Air Act (CAA) Amendments of 1990 required all state and local permitting authorities to develop operating permits programs that meet certain Federal criteria. Washington's operating permits program was submitted in response to this directive. EPA granted interim approval to Washington's air operating permit program on November 9, 1994 (59 FR 55813). EPA repromulgated final interim approval on one issue, and a notice of correction for Washington's operating permits program, on December 8, 1995 (60 FR 62992).

After the state and local agencies that implement the Washington operating permits program revised their programs to address the conditions of the interim approval, EPA promulgated a proposal to approve Washington's title V operating permits program on January 2,

2001, (66 FR at 84). At the same time, because EPA viewed the proposal as a noncontroversial action and did not anticipate adverse public comment on the proposal, EPA also published a direct final rule approving the Washington operating permits program (66 FR 16).

EPA received one adverse public comment on the proposal. Therefore, EPA removed the direct final approval on April 2, 2001 (66 FR 17512). After carefully reviewing and considering the issues raised by the commenter, EPA is taking final action to give full approval to the Washington operating permits program.

##### II. Response to Comments

The comment received by EPA related to Washington's provisions for insignificant emission units (IEUs). As discussed in the direct final approval notice, the Washington operating permits program specifically exempts IEUs from monitoring, recordkeeping, reporting, and compliance certification requirements except where such requirements are specifically imposed in the applicable requirement itself. *See* WAC 173-401-530(2)(c) and (d); *see also* 66 FR at 19. Because EPA does not believe that part 70 exempts IEUs from the monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6, but instead provides only a limited exemption from permit application requirements for IEUs, EPA initially determined that Ecology must revise its IEU regulations as a condition of full approval. *See* 60 FR at 62993-62997 (final interim approval of Washington's operating permits program based on exemption of IEUs from certain permit content requirements); 60 FR 50166 (September 28, 1995) (proposed interim approval of Washington's operating permits program on same basis).

As also discussed in the direct final notice, however, the Western States Petroleum Association (WSPA), together with several other companies and the