

The Congressional Review Act, 5 U.S.C. section 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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

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 January 14, 2002. 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).)

**List of Subjects 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.

Dated: November 2, 2001.

**James B. Gulliford,**  
Regional Administrator, Region 7.

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.

**Subpart AA—Missouri**

- 2. Section 52.1320 is amended:
  - a. By adding a table heading to the table in paragraph (d).
  - b. By adding a new entry to the end of the table in paragraph (d).

The additions read as follows:

**§ 52.1320 Identification of plan.**

\* \* \* \* \*  
(d) \* \* \*

**EPA-APPROVED STATE SOURCE-SPECIFIC PERMITS AND ORDERS**

Name of source	Order/permit No.	State effective date	EPA approval date	Explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
St. Joseph Light & Power SO <sub>2</sub> .....	Consent Decree .....	05/21/01	November 15, 2001 [Insert FR cite.]	

\* \* \* \* \*  
[FR Doc. 01-28519 Filed 11-7-01; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MT-001-0039a & MT-001-0041a; FRL-7086-3]

**Clean Air Act Approval and Promulgation of Air Quality Implementation Plan for Montana; Revisions to the Missoula City-County Air Pollution Control Program**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA approves the State implementation plan (SIP) revisions regarding the Missoula City-County Air Pollution Control Program, as submitted by the Governor of Montana with a letter dated April 30, 2001. On November 17, 2000, the Montana Board of Environmental Review (MBER) adopted the revisions to the Missoula program rules regarding program authority and administration,

definitions, failure to attain standards, emergency episode planning, general provisions, standards for stationary sources (including air quality permit program), outdoor burning, fugitive particulate, solid fuel burning devices, fuels, motor vehicles, enforcement and administrative procedures, and penalties. EPA's approval makes these revisions federally enforceable. In addition, the State requested that rules of the Missoula program that are not appropriate for incorporation into the SIP be removed from the federally approved plan. Finally, the Governor's April 30, 2001 submittal consists of several other revisions to Montana regulations, which will be handled separately.

**DATES:** This direct final rule is effective on January 14, 2002 without further notice, unless EPA receives adverse comment by December 17, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Mail written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency,

Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2405. Documents relevant to this action can be perused during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2405. 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 at the Montana Department of Environmental Quality, 1520 E. 6th Avenue, Helena, Montana 59620-0901.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt, Environmental Protection Agency, Region VIII, (303) 312-6449.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we" or "our" is used, it means EPA.

**I. Background**

EPA approved the Missoula nonattainment area SIP for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>) on January 18, 1994 (59 FR 2537-2540). Subsequent

revisions to the Missoula PM<sub>10</sub> SIP were approved as follows. On December 13, 1994 (59 FR 64133), we approved revisions to the Missoula City-County Air Pollution Control Program regulations related to, among other things, PM<sub>10</sub> contingency measures, inspections, emergency procedures, minor source construction permitting, open burning and wood waste burners. On August 30, 1995 (60 FR 45051), we approved revisions to the Missoula City-County Air Pollution Control Program regulations related to emergency procedures; the paving of roads, driveways, and parking lots; and solid fuel burning devices. On January 3, 2000 (65 FR 16), we approved revisions to the Missoula program related to general definitions, open burning, and criminal penalties.

EPA approved the Missoula carbon monoxide (CO) nonattainment area plan on January 16, 1986 (51 FR 2397). Subsequent revisions were approved on November 8, 1994 (59 FR 55585) regarding the oxygenated gasoline program in Missoula, December 13, 1994 (59 FR 64133) regarding CO contingency measures, and December 6, 1999 (64 FR 68034) regarding an update to the SIP narrative.

## II. Analysis of State Submission

### A. Procedural Background

The Act requires States to follow certain procedures in developing implementation plans and plan revisions for submission to EPA. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan a State submits must be adopted after reasonable notice and public hearing.

We also must determine whether a submittal is complete and therefore warrants further review and action (see section 110(k)(1) of the Act and 57 FR 13565). Our completeness criteria for SIP submittals can be found in 40 CFR part 51, appendix V. We attempt to determine completeness within 60 days of receiving a submission. However, the law considers a submittal complete if we don't determine completeness within six months after we receive it.

To provide for public comment, the Montana Board of Environmental Review (MBER), after providing adequate notice, held a public hearing on November 17, 2000 to address the revisions to the Missoula program. At the conclusion of the public hearing, the MBER approved the revisions by teleconference which was affirmed by a Board Order dated November 30, 2000. By approving the revisions, the MBER made them enforceable at the State level to satisfy the requirements of section

110(a)(2)(E) of the Federal Clean Air Act, U.S.C. 7410(a)(2)(E). On February 20, 2001, after providing adequate notice, the Montana Department of Environmental Quality (MDEQ) held a hearing to provide for public comment on the inclusion of the Missoula regulation revisions in the SIP.

The Governor of Montana submitted the revisions to the Missoula City-County Air Pollution Control Program regulations to EPA with a letter dated April 30, 2001. EPA determined that the SIP submittal was administratively and technically complete on June 29, 2001.

### B. November 17, 2000 Revisions

The revisions to the Missoula City-County Air Pollution Control Program regulations include extensive renumbering of the regulations. In addition, revisions were made to chapters regarding program authority and administration, failure to attain standards, emergency procedures, general provisions, standards for stationary sources (including air quality permit program), outdoor burning, fugitive particulates, solid fuel burning devices, fuels, motor vehicles, enforcement and administrative procedures, and penalties. In most cases, the rule revisions are either editorial in nature, allow for easier use through reorganization, clarify existing policy, and/or ensure consistency with the Montana and Federal Clean Air Acts. Since the State is constantly revising its rules, the county must periodically update its rules to stay consistent. Finally, several provisions are being removed because they were not appropriate for incorporation into the Federally approved SIP for various reasons. The more substantive revisions are discussed in detail below.

#### 1. Revisions to Chapter 4, Missoula County Air Stagnation and Emergency Episode Avoidance Plan

Numerous revisions were made to the emergency episode avoidance plan to ensure that the county plan is as stringent as, or consistent with, the State's plan. For example, new requirements were added for emergency episode operations planning, and a new rule states that the county may require sources to periodically review and update their abatement plans, and submit them for review and approval. In addition, there are some new control activities required at the various stages of the emergency episode avoidance plan. These revisions satisfy Federal Clean Air Act requirements and are approvable.

#### 2. Revisions to Chapter 6, Standards for Stationary Sources, Subchapter 1, Air Quality Permits for Air Pollutant Sources

The construction and operating permits programs were combined into one "air quality permit" program. Requirements for public review of air quality permit applications were added, to be consistent with Federal requirements. Also, clarification was made that the conditions of a construction permit are permanent, so there is always an enforceable permit applicable to the source. Accordingly, a source is required to renew its combined permit every 5 years (unless another time line is warranted because additional construction that is not covered by an existing permit begins on the source, a change in operation could result in an increase of emissions at the source, the permit is revoked or modified, or the permit clearly states otherwise). A source whose permit has expired may not operate without the issuance of a renewal permit. An exemption from the requirement to obtain a construction permit for routine maintenance and repair of equipment was clarified such that it does not apply to the replacement of equipment. In addition, definitions for "commencement of construction" and "source" have been added to be consistent with Federal requirements. These revisions satisfy Federal requirements and are approvable. Please note that in addition to meeting Missoula's permitting requirements, major sources subject to Prevention of Significant Deterioration (PSD) permitting requirements and several other source categories must obtain permits to construct from the State of Montana, and all sources subject to Title V of the Clean Air Act must obtain operating permits from the State.

#### 3. Revisions to Chapter 7, Outdoor Burning

Numerous revisions were made to Chapter 7 to clarify the meaning of Missoula City-County Department of Health's (MCCDH's) interpretation of certain rules. For instance, the firefighter training rule now specifies that the MCCDH will inspect every structure before it is burned. While this had been MCCDH practice, it was not clear in the rules previously. In addition, Impact Zone M was increased in area. The purpose of the Impact Zone is to help protect the ambient air standards in a populated area where smoke is only one of many air pollution sources. It was originally established as a way of prioritizing the scrutiny given

to large burns occurring in the autumn. The adjustment to the boundary now will take inversion effects into account and thus protect the public, as well as mitigate harm, by preventing thick smoke events caused by air flows draining down valleys into populated areas. Also, revisions allow for prescribed wildland burning in the Impact Zone only on days of good dispersion throughout the period of smoke generation (as opposed to just the day that the fire is lit). In addition, provisions were added for bonfire permits, Christmas tree waste outdoor burning permits (to be consistent with State requirements), and public notice requirements for outdoor burning permit applications. The revisions to this chapter meet Federal Clean Air Act requirements and are approvable.

#### 4. Revisions to Chapter 8, Fugitive Particulate

The definition of "approved de-icer" was revised to allow for a "magnesium chloride based product or other product with similar dust suppression properties \* \* \*" as opposed to strictly requiring a magnesium chloride based product. Since any alternative will have to demonstrate the same level of dust suppression, EPA believes this revision is approvable. In addition, some new rules were added to this chapter. One rule addresses construction sites and specifies what reasonable precautions must be taken to control fugitive particulate matter emissions. Another new section requires new roads to be paved in the Air Stagnation Zone. Also, provisions for additional options to control fugitive emissions from parking lots in the Air Stagnation Zone have been expanded. However, fugitive emissions from parking lots cannot increase over what they would be if paving were the control measure utilized. The revisions to this chapter meet Federal Clean Air Act requirements and are approvable.

#### 5. Revisions to Chapter 9, Solid Fuel Burning Devices

For the most part, the changes made to this chapter were editorial in nature or merely clarified the current implementation of the program (*e.g.*, removing provisions that no longer apply because certain types of solid fuel burning devices are no longer allowed to be installed in the area). The substantive changes made to this already stringent program make it even more stringent. Revisions to this chapter include a streamlined process for certifying that woodstoves are removed at the time of the sale of a property (when they are required to be removed).

Also, a requirement was added that woodstoves sold in the Air Stagnation Zone must be labeled if they cannot be lawfully installed in the Air Stagnation Zone. These changes are approvable.

#### 6. Rules Being Removed from the Federally Approved SIP

The State of Montana originally submitted Missoula's National Standards of Performance for New Stationary Sources (NSPS) and 40 CFR part 61 National Emissions Standards for Hazardous Air Pollutants (part 61 NESHAPs) regulations (Rules 1423 and 1424 under the old numbering system) for approval by EPA as part of the Montana SIP. EPA approved this submittal on August 30, 1995 (60 FR 45051). With a November 14, 1997 SIP submittal, the State requested revisions to these rules. Subsequent to the 1997 submittal, EPA and the State agreed that these rules should be removed from the SIP because programs for which EPA can delegate authority to the State, such as NSPS and NESHAPs and which the State, in turn, can delegate authority to the County, if appropriate, should not be incorporated into the SIP. Therefore, with its April 30, 2001 submittal, the State requested that Missoula's NSPS and part 61 NESHAPs be removed from the Federally approved SIP.

In addition, rules that are not generally related to attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) also should not be incorporated in the SIP. Therefore, although the State of Montana originally submitted Missoula's fluoride emissions standards rule (Rule 1419 under the old numbering system) for approval by EPA through the SIP process (see 59 FR 2537, January 18, 1994), with its April 30, 2001 submittal, the State requested that this provision also be removed from the Federally approved SIP.

The removal of these rules conforms with the requirements of section 110(k)(6) of the Federal Clean Air Act and is approvable. Finally, with the removal of the NSPS and part 61 NESHAPs rules, EPA has completed its actions on the November 14, 1997 SIP submittal.

#### III. Section 110(l) Analysis

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. EPA approved the Missoula PM<sub>10</sub> attainment demonstration on January 18, 1994 (59

FR 2537) and subsequent revisions to the Missoula PM<sub>10</sub> SIP were approved on December 13, 1994 (59 FR 64133), August 30, 1995 (60 FR 45051), and January 3, 2000 (65 FR 16). EPA approved the Missoula nonattainment area plan which provided for the attainment of the CO NAAQS (*i.e.*, attainment demonstration) on January 16, 1986 (51 FR 2397) and subsequent revisions to the Missoula CO SIP were approved on November 8, 1994 (59 FR 55585), December 13, 1994 (59 FR 64133), and December 6, 1999 (64 FR 68034). The area has been maintaining the NAAQS for many years. EPA has determined that the revisions to the Missoula City-County Air Pollution Control Program that are the subject of this document do not interfere with the federally approved attainment demonstrations for the area, but will enhance the area's efforts in maintaining the NAAQS since certain requirements in the local regulations have been strengthened. Therefore, section 110(l) requirements are satisfied.

#### IV. Final Action

EPA is approving the revisions to the Missoula City-County Air Pollution Control Program, as submitted by the Governor with a letter dated April 30, 2001. The revisions being approved include extensive renumbering of the program and completely replace the previous version of the program. In addition, the rules of the Missoula program that are not appropriate for incorporation into the SIP are being removed from the federally approved plan. The approved version of the Missoula program is as follows: Chapter 1, Program Authority and Administration; Chapter 2, Definitions; Chapter 3, Failure to Attain Standards; Chapter 4, Missoula County Air Stagnation and Emergency Episode Avoidance Plan; Chapter 5, General Provisions, Rules 5.101–5.103, 5.105–5.106, and 5.112; Chapter 6, Standards for Stationary Sources, Subchapter 1, Air Quality Permits for Air Pollutant Sources, Rules 6.101–6.103 and 6.105–6.109, Subchapter 5, Emission Standards, Rules 6.501–6.504, Subchapter 6, Incinerators, Rules 6.601–6.604, and Subchapter 7, Wood Waste Burners, Rules 6.701–6.703; Chapter 7, Outdoor Burning; Chapter 8, Fugitive Particulate; Chapter 9, Solid Fuel Burning Devices; Chapter 10, Fuels; Chapter 11, Motor Vehicles; Chapter 14, Enforcement and Administrative Procedures; Chapter 15, Penalties; Appendix A, Maps; Appendix B, Missoula's Emergency Episode Avoidance Plan Operations and Procedures; and Appendix D,

Oxygenated Fuels Program Sampling Requirements for Blending Facilities.

#### V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves 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. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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).

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 January 14, 2002. 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).)

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

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

Dated: October 5, 2001.

**Jack W. McGraw,**  
*Acting Regional Administrator, Region VIII.*

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.*

#### Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(54) to read as follows:

#### § 52.1370 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(54) The Governor of Montana submitted revisions to the Missoula City-County Air Pollution Control Program with a letter dated April 30, 2001. The revisions completely replace the previous version of the program regulations in the SIP.

(i) Incorporation by reference.

(A) November 17, 2000 Montana Board of Environmental Review order approving revisions to the Missoula City-County Air Pollution Control Program regulations.

(B) Missoula City-County Air Pollution Control Program regulations as follows: Chapter 1, Program Authority and Administration; Chapter 2, Definitions; Chapter 3, Failure To Attain Standards; Chapter 4, Missoula County Air Stagnation and Emergency Episode Avoidance Plan; Chapter 5, General Provisions, Rules 5.101–5.103, 5.105–5.106, and 5.112; Chapter 6, Standards for Stationary Sources, Subchapter 1, Air Quality Permits for Air Pollutant Sources, Rules 6.101–6.103 and 6.105–6.109, Subchapter 5, Emission Standards, Rules 6.501–6.504, Subchapter 6, Incinerators, Rules 6.601–6.604, and Subchapter 7, Wood Waste Burners, Rules 6.701–6.703; Chapter 7, Outdoor Burning; Chapter 8, Fugitive Particulate; Chapter 9, Solid Fuel Burning Devices; Chapter 10, Fuels; Chapter 11, Motor Vehicles; Chapter 14, Enforcement and Administrative Procedures; Chapter 15, Penalties; Appendix A, Maps; Appendix B, Missoula's Emergency Episode Avoidance Plan Operations and Procedures; and Appendix D, Oxygenated Fuels Program Sampling Requirements for Blending Facilities, effective November 17, 2000.

[FR Doc. 01–28189 Filed 11–14–01; 8:45 am]

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