

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.*).

#### *B. 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *C. 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 December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule to approve and revise certain definitions of Allegheny County's Generic VOC and NO<sub>x</sub> RACT regulations do 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 24, 2002.

**James M. Newsom,**

*Acting Regional Administrator, Region III.*

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 NN—Pennsylvania**

2. Section 52.2020 is amended by adding paragraph (c)(157) to read as follows:

#### **§ 52.2020 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(157) Approval of revisions to the Allegheny County Regulations, Article XXI pertaining to Major Sources of Nitrogen Oxides and Volatile Organic Compounds and Definitions for Major Source, Potential Emissions and Low NO<sub>x</sub> burner with separate overfire air submitted on October 30, 1998, by the Pennsylvania Department of Environmental Protection on behalf of Allegheny County Health Department:

(i) Incorporation by reference.

(A) The letter dated October 30, 1998, from the Pennsylvania Department of Environmental Protection transmitting Allegheny County's Generic VOC and NO<sub>x</sub> RACT regulations, Appendix 33; Article XXI, Section 2105.06—Major Sources of Nitrogen Oxides and Volatile Organic Compounds and Section 2101.20—Definition for Major Source, Potential Emissions and Low NO<sub>x</sub> Burner with Separate Overfire Air.

(B) Additions of the following Article XXI definitions and regulations, effective October 20, 1995:

(1) Regulation 2101.20—definitions of "major source" (introductory paragraph, paragraphs (d) and (e) and closing paragraph; only), "potential emissions" and "low NO<sub>x</sub> burner with separate overfire air."

(2) Regulation 2105.06—Major Sources of Nitrogen Oxides and Volatile Organic Compounds.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(157)(i) of this section.

[FR Doc. 02-25285 Filed 10-4-02; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[MT-001-0046a; FRL-7383-2]

### **Approval and Promulgation of Air Quality Implementation Plans; State of Montana: General Conformity**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving revisions to the Montana State Implementation Plan (SIP) submitted by the Governor of Montana on August 26, 1999. The revisions adopt Administrative Rules of Montana (ARM), Sub-Chapter 14, "Conformity of General Federal Actions," Sections 17.8.1401 and 17.8.1402, into the SIP. The rules require conformity of general Federal actions to assure that actions of federal agencies that take place in nonattainment or maintenance areas, other than transportation actions, are consistent with the goals of the Montana SIP. EPA is taking this action under section 110 and 176 of the Clean Air Act (Act).

**DATES:** This rule is effective on December 6, 2002, without further notice, unless EPA receives adverse comment by November 6, 2002. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202-2466; and,

Air and Radiation Docket and Information, Room B-108, United States Environmental Protection Agency, (Mail Code 6102T), 1301 Constitution Avenue NW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Montana Department of Environmental Quality, Planning, Prevention and Assistance

Division, 1520 East 6th Avenue, Helena, Montana 59620.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Kimes, Air and Radiation Program, Mailcode 8P-AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Telephone number: (303) 312-6445.

**SUPPLEMENTARY INFORMATION:**

Throughout this document, “we,” “our,” or “us” refers to the United States Environmental Protection Agency.

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**I. Background**

*a. What Is General Conformity?*

The conformity rules assure that in air quality nonattainment or maintenance areas projected emissions stay within the emissions ceiling in the SIP. The rules for conformity of general Federal actions assure that actions of Federal agencies that take place in nonattainment or maintenance areas, other than transportation actions, are consistent with the Montana SIP. Conformity first appeared in the Act’s 1977 amendments (Pub. L. 95-95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The Act’s 1990 Amendments expanded the scope and content of the conformity concept by defining conformity to an implementation plan. Section 176(c) of the Act defines conformity as conformity to an implementation plan’s purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards (NAAQS) and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) Cause or contribute to any new violation of any

standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

*b. Who Must Follow General Conformity?*

All Federal government agencies must follow The General Conformity rules. The General Conformity rules establish emissions thresholds for requiring a conformity analysis. The Federal agency taking the action is required to perform the conformity analysis. We published the first General Conformity rule on November 30, 1993 (58 FR 63214) and it was codified at 40 CFR part 93, subpart B.

*c. How Is General Conformity Different From Transportation Conformity?*

Section 176(c)(A) of the Act requires us to issue criteria and procedures for determining conformity of all Federal actions to applicable SIPs. 40 CFR part 93, subpart A spells out criteria and procedures for determining conformity of all Federal actions related to transportation projects funded or approved under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). 40 CFR part 93, subpart B provides criteria and procedures for determining the conformity of all other Federal actions to applicable SIPs. Examples of Federal actions covered by this rule may include but are not limited to reuse of military bases, private construction on Federal land, granting of permits, leasing of Federal land, and construction of Federal office buildings.

*d. Why Is Montana Required To Create Its Own General Conformity Rule?*

The Act requires each State to develop rules to implement the General Conformity rule. (See 40 CFR 93.151) EPA believes that State and local agencies have the primary responsibility for achieving the clean air goals established in the Act. Therefore, each State must submit a revised SIP that includes General Conformity criteria and procedures that are consistent with General Conformity rule. These criteria require that State rules must be at least as stringent as the requirements specified in EPA’s General Conformity rule. Furthermore, State rules can only be more stringent if they apply equally to Federal and non-Federal entities.

**II. Approval of the States’ Transportation Conformity Rules**

*a. What Did the State Submit?*

Section 110(k) of the Act addresses our actions on submissions of revisions to a SIP. The Act requires States to observe certain procedural requirements in developing SIP revisions for submission to us. Section 110(a)(2) of the Act requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

On August 26, 1999, the Governor of Montana submitted a SIP revision that adopts Administrative Rules of Montana (ARM), Sub-Chapter 14, “Conformity of General Federal Actions,” Sections 17.8.1401 and 17.8.1402. The Montana Board of Environmental Review adopted this SIP revision at a public hearing on May 14, 1999 after appropriate public participation and interagency consultation and it became effective in the ARM as State law on June 4, 1999.

We have evaluated the Governor’s submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the Act. By operation of law under section 110(k)(1)(B) of the Act, the Governor’s August 26, 1999, submittal became complete on February 26, 2000.

*b. What Is EPA Approving Today and Why?*

We are approving the Administrative Rules of Montana (ARM), Sub-Chapter 14, “Conformity of General Federal Actions,” Sections 17.8.1401 and 17.8.1402 submitted by the Governor of Montana on August 26, 1999. The Montana Board of Environmental Review adopted this SIP revision at a public hearing on May 14, 1999 after appropriate public participation and interagency consultation and it became effective in the ARM as State law on June 4, 1999. The Montana rules are consistent with the Federal General Conformity rules.

Montana incorporated 40 CFR part 93, subpart B into the State rules. Montana modified definitions found in 40 CFR part 93, subpart B and incorporated them into the State rule. The definitions of “MPO” (Metropolitan Planning Organization) and “state air quality agency” were modified to incorporate meaning specific to Montana. Montana incorporated 40 CFR 93.153 and 93.160 with modifications to provide language consistent with a State rule rather than a Federal rule. We agree with these minor changes. It should be noted that Administrative Rules of Montana (ARM)

Section 17.8.1402, a subject of this action, references ARM Section 17.8.1302 which we did not act on in a previous **Federal Register** action (66 FR 48561, September 21, 2001). ARM 17.8.1302 includes an incorporation by reference (IBR) of 40 CFR part 93, subpart A. EPA excluded ARM Section 17.8.1302 because of the IBR. The rationale for not acting on ARM 17.8.1302 is discussed in a separate action (66 FR 48561, September 21, 2001).

### III. Final Action

In this action, we are approving the adoption of ARM, Sub-Chapter 14, "Conformity of General Federal Actions," Sections 17.8.1401 and 17.8.1402 to the Montana SIP. This SIP revision was submitted by the Governor of Montana on August 26, 1999. We are 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 on December 6, 2002, without further notice unless we receive adverse comments by November 6, 2002. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule, in the **Federal Register**, informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 6, 2002, and no further action will be taken on the proposed rule. Please note that if we receive 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.

### IV. Consideration of Clean Air Act Section 110(l)

Section 110(l) of the Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable progress towards attainment of a National Ambient Air Quality Standard (NAAQS) or any other applicable requirements of the Act. This SIP revision is consistent

with Federal requirements and does not interfere with any applicable requirements of the Act. Therefore, we conclude that our approval of ARM, Sub-Chapter 14, "Conformity of General Federal Actions," Sections 17.8.1401 and 17.8.1402 meets the intent of section 110(l) of the Act.

### 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 (Pub. L. 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 December 6, 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 12, 2002.

**Jack McGraw,**

*Acting Regional Administrator, Region VIII.*

Chapter I, title 40, part 52, of the Code of Federal Regulations is amended to read 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)(56) to read as follows:

**§ 52.1370 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(56) On August 26, 1999, the Governor of Montana submitted Administrative Rules of Montana Sub-Chapter 14, "Conformity of General Federal Actions" that incorporates conformity of general federal actions to state or federal implementation plans, implementing 40 CFR part 93, subpart B into State regulation.

(i) Incorporation by reference.

(A) Administrative Rules of Montana 17.8.1401, and 17.8.1402 effective June 4, 1999.

[FR Doc. 02-25287 Filed 10-4-02; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 61**

[ND-001-0005a & 0007a; FRL-7379-8]

**Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants**

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

**ACTION:** Direct final rule and delegation of authority.

**SUMMARY:** EPA approves revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated June 21, 2001. The revisions affect air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration. EPA will

handle separately direct delegation requests for emission standards for hazardous air pollutants for source categories and the State's Acid Rain Program.

In addition, EPA is providing notice that on January 3, 2002, North Dakota was delegated authority to implement and enforce certain New Source Performance Standards (NSPS), as of August 1, 2000. Finally, given that on July 7, 1995 EPA delegated authority to North Dakota to implement and enforce the Clean Air Act section 112 requirements, including, among other things, the National Emission Standards for Hazardous Air Pollutants (NESHAPs), EPA is now removing the State's part 61 regulations from the federally-approved SIP.

**DATES:** This direct final rule is effective on December 6, 2002, without further notice, unless EPA receives adverse comment by November 6, 2002. 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, U.S. Environmental Protection Agency, Room B-108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington DC 20460. Copies of the State documents relevant to this action are available at the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota, 58504-5264.

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

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" are used we mean EPA.

**I. Background**

*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]. EPA's completeness criteria for SIP submittals can be found in 40 CFR part 51, appendix V. EPA attempts 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 North Dakota Department of Health (NDDH), after providing adequate notice, held a public hearing on September 28, 2000 to address the revisions to the SIP and Air Pollution Control Rules. Following the public hearing, public comment period, and legal review by the North Dakota Attorney General's Office, the North Dakota State Health Council adopted the rule revisions, which became effective on June 1, 2001.

The Governor of North Dakota submitted the SIP revisions to EPA with a letter dated June 21, 2001. We reviewed them to determine completeness under the completeness criteria in 40 CFR part 51, appendix V. We found the submittal complete and so notified the Governor in a letter dated July 26, 2001. That letter also described the next steps to be taken in our review.

*B. June 21, 2001 Revisions*

As noted above, we will handle separately the revisions in the June 21, 2001 submittal regarding Chapter 33-15-21 (the State's Acid Rain Program) and a direct delegation request for North Dakota Air Pollution Control Rules Chapter 33-15-22, regarding emission standards for hazardous air pollutants for source categories. The submittal also included a direct delegation request for standards of performance for new stationary sources (see below). The revisions in the June 21, 2001 submittal to be addressed in this document pertain to general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration, which involve the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33-15-01 General Provisions; 33-15-05 Emissions of Particulate Matter Restricted; 33-15-14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate