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[FR Doc. 2010-1452 Filed 1-25-10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2008-0307; FRL-8968-3]

#### Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Montana on November 1, 2006 and November 20, 2007. The revisions are to the Administrative Rules of Montana; they include minor editorial and grammatical changes, updates to the citations and references to federal and state laws and regulations, other minor changes to conform to federal regulations, and updates to links to sources of information. This action is being taken under section 110 of the Clean Air Act.

**DATES:** This rule is effective on March 29, 2010 without further notice, unless EPA receives adverse comment by February 25, 2010. 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:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2008-0307, by one of the following methods:

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

- *E-mail:* [dolan.kathy@epa.gov](mailto:dolan.kathy@epa.gov).
- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-OAR-2008-0307. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I.

General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. 303-312-6142, [dolan.kathy@epa.gov](mailto:dolan.kathy@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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- I. General Information
- II. Summary of SIP Revisions
- III. EPA's Review of the State of Montana's November 1, 2006 and November 20, 2007 Submittals
- IV. Final Action
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#### Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *SIP* mean or refer to State Implementation Plan.
- (iv) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

#### I. General Information

##### A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI

information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

## II. Summary of SIP Revisions

A. On November 1, 2006 the State of Montana submitted formal revisions to its State Implementation Plan (SIP) (hereafter, the “2006 SIP revisions”). The 2006 SIP revisions contain amendments to the following sections of the Administrative Rules of Montana (ARM): 17.8.101, 17.8.102, 17.8.103, 17.8.302, 17.8.744, 17.8.767, 17.8.801, 17.8.802, 17.8.818, 17.8.902, 17.8.1002, 17.8.1701, 17.8.1702, 17.8.1703, 17.8.1704, 17.8.1705, 17.8.1710, 17.8.1711, 17.8.1712, and 17.8.1713.

B. On November 20, 2007 the State of Montana submitted formal revisions to its State Implementation Plan (SIP) (hereafter, the “2007 SIP revisions”). The 2007 SIP revisions contain amendments to the following sections of the ARM: 17.8.102, 17.8.103, 17.8.302(1)(d), 17.8.602, 17.8.767 with the exception of

subsection (1)(c), 17.8.801, 17.8.802 with the exception of subsection (1)(d), 17.8.818, 17.8.901, 17.8.902 with the exception of subsection (1)(a), 17.8.1002 with the exception of subsection (1)(a), 17.8.1007, 17.8.1102, and 17.8.1402.

## III. EPA’s Review of the State of Montana’s November 1, 2006 and November 20, 2007 Submittals

### A. 2006 SIP Revisions

A number of the 2006 SIP revisions are strictly administrative; they make minor editorial and grammatical changes, update the citations and references to federal and state laws and regulations, and update links to sources of information. The following are the 2006 rule revisions that fall in this category: ARM sections 17.8.101, 17.8.102, and 17.8.103. All of the revisions are approvable. However, the 2007 revisions supersede the 2006 revisions to ARM sections 17.8.102 and 17.8.103. Therefore, in this action we are approving ARM section 17.8.101 from the 2006 SIP revisions, but not 17.8.102 and 103. We discuss ARM sections 17.8.102 and 103 further in the section below that addresses the 2007 SIP revisions.

The 2006 SIP revisions include changes to ARM sections 17.8.801 and 17.8.818. These changes are approvable. The revision to 17.8.801 adds the pollutant Hydrogen Sulfide (H<sub>2</sub>S), at 10 tons per year (tpy), to the table “Pollutant and Emissions Rate” within the definition of “Significant” at ARM 17.8.801(27). This provision defines pollutant significance levels within Montana’s prevention of significant deterioration (PSD) regulations, and the addition of H<sub>2</sub>S at 10 tpy is consistent with EPA’s PSD regulations. *See* 40 CFR 51.166(b)(23). The revision to 17.8.818 adds “hydrogen sulfide (H<sub>2</sub>S)—0.2 µg/m<sup>3</sup>, one hour average” at 17.8.818(7)(a)(ix). This establishes an air quality impact level below which the State may exempt a proposed PSD major stationary source or major modification from certain monitoring requirements. This too is consistent with EPA’s PSD regulations. *See* 40 CFR 51.166(i)(5). The State made additional changes to ARM sections 17.8.801 and 17.8.818 as part of the 2007 SIP revisions. We discuss these changes below.

The EPA is not taking action on the 2006 revisions to ARM sections 17.8.302, 17.8.767, 17.8.802, 17.8.902, and 17.8.1002. These revisions reference EPA’s Clean Air Mercury Rule (CAMR). Because the U.S. Court of Appeals for the D.C. Circuit vacated CAMR on February 8, 2008 (*see New Jersey v. EPA*,

517 F.3d 574), EPA will not act on these revisions.

We are not taking action on the revisions to ARM sections 17.8.1701, 17.8.1702, 17.8.1703, 17.8.1704, 17.8.1705, 17.8.1710, 17.8.1711, 17.8.1712, 17.8.1713, and 17.8.744, which establish a system of registration of oil and gas well facilities and provide for the exclusion of eligible facilities from Montana air quality permitting requirements. These revisions will be addressed in a future action.

### B. 2007 SIP Revisions

A number of the 2007 SIP revisions are strictly administrative; they make minor editorial and grammatical changes, update the citations and references to federal and state laws and regulations, and update links to sources of information. The following are the 2007 rule revisions that fall in this category: ARM sections 17.8.102, 17.8.103, 17.8.302(1)(d), 17.8.602, 17.8.801, 17.8.818, 17.8.901, 17.8.1007, and 17.8.1102. All of the revisions are approvable. As noted above, the 2007 revisions to ARM sections 17.8.102 and 103 supersede the 2006 revisions to these rules. Therefore, EPA is approving the 2007 revisions. As indicated, both the 2006 and 2007 revisions to ARM sections 17.8.801 and 17.8.818 are approvable. The 2006 revisions are substantive; the 2007 revisions are administrative. EPA is approving both revisions but is only incorporating by reference the later version of the rules, which reflect both the 2006 and 2007 revisions.

The EPA is not taking action on the 2007 revisions to ARM sections 17.8.767, 17.8.802, 17.8.902, and 17.8.1002. These revisions reference EPA’s Clean Air Mercury Rule (CAMR). Because the U.S. Court of Appeals for the D.C. Circuit vacated CAMR on February 8, 2008 (*see New Jersey v. EPA*, 517 F.3d 574), EPA will not act on these revisions.

We are not taking action on the revision to ARM section 17.8.1402. The State has indicated that this revision may be repealed; therefore, action will not be taken at this time.

## IV. Final Action

The EPA is approving revisions that the State submitted on November 1, 2006. The Montana Board of Environmental Review adopted these revisions on July 21, 2006 and they became effective on August 11, 2006. The EPA is approving the 2006 revisions to ARM sections 17.8.101, 17.8.801, and 17.8.818. The EPA is not taking action on the 2006 revisions to ARM sections 17.8.302, 17.8.744,

17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1701, 17.8.1702, 17.8.1703, 17.8.1704, 17.8.1705, 17.8.1710, 17.8.1711, 17.8.1712, and 17.8.1713.

The EPA is approving revisions that the State submitted on November 20, 2007. The Montana Board of Environmental Review adopted these amendments on September 28, 2007 and they became effective on October 26, 2007. The EPA is approving the 2007 revisions to ARM sections 17.8.102, 17.8.103, 17.8.302(1)(d), 17.8.602, 17.8.801, 17.8.818, 17.8.901, 17.8.1007, and 17.8.1102. The EPA is not taking action on the 2007 revisions to ARM sections 17.8.767, 17.8.802, 17.8.902, 17.8.1002, and 17.8.1402.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments; we are merely approving administrative and other minor changes to Montana's air rules. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions if adverse comments are filed. This rule will be effective March 29, 2010 without further notice unless the Agency receives adverse comments by February 25, 2010. If the EPA receives adverse comments, EPA will publish a timely 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, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### V. Statutory and Executive Order Reviews

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 approves a State rule implementing a Federal standard.

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. 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. 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. section 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 *March 29, 2010*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 25, 2009.

**Andrew M. Gaydos,**

*Acting Regional Administrator, Region 8.*

■ 40 CFR part 52 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)(68) to read as follows:

**§ 52.1370 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(68) Revisions to the State Implementation plan which were submitted by the State of Montana on November 1, 2006 and November 20, 2007. The revisions are to the Administrative Rules of Montana; they make minor editorial and grammatical changes, update the citations and references to federal and state laws and regulations, make other minor changes to conform to federal regulations, and update links to sources of information.

(i) Incorporation by reference.

(A) Administrative Rules of Montana (ARM) section 17.8.101, *Definitions*; effective August 11, 2006.

(B) Administrative Rules of Montana (ARM) sections: 17.8.102, *Incorporation by Reference—Publication Dates*; 17.8.103, *Incorporation by Reference and Availability of Referenced Documents*; 17.8.302(1)(d), *Incorporation by Reference*; 17.8.602, *Incorporation by Reference*; 17.8.801, *Definitions*; 17.8.818, *Review of Major Stationary Sources and Major Modifications—Source Applicability and Exemptions*; 17.8.901, *Definitions*; 17.8.1007, *Baseline for Determining*

*Credit for Emissions and Air Quality Offsets*; and, 17.8.1102, *Incorporation by Reference*; all effective October 26, 2007.

[FR Doc. 2010-1386 Filed 1-25-10; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2009-0475; FRL-9104-7]

**Revisions to the California State Implementation Plan, San Joaquin Valley Air Pollution Control District**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** EPA is finalizing a limited approval and limited disapproval of revisions to the San Joaquin Valley Air Pollution Control District (SJVAPCD or District) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on July 17, 2009 and concerns volatile organic compound (VOC) emissions from steam-enhanced crude oil production well vents, aerospace coating operations, and polyester resin operations. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate these emission sources and directs California to correct rule deficiencies.

**DATES: Effective Date:** This rule is effective on February 25, 2010.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2009-0475 for this action. The index to the docket is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Nicole Law, EPA Region IX, (415) 947-4126, [law.nicole@epa.gov](mailto:law.nicole@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

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- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

**I. Proposed Action**

On July 17, 2009 (74 FR 34704), EPA proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVAPCD .....	4401	Steam-Enhanced Crude Oil Production Wells .....	12/14/06	05/08/07
SJVAPCD .....	4605	Aerospace Assembly and Component Coating Operations .....	09/20/07	03/07/08
SJVAPCD .....	4684	Polyester Resin Operations .....	09/20/07	03/07/08

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions do not fully satisfy requirements of section 110 and part D of the Act. The deficiencies include the following:

1. Rule 4401 authorizes the District to grant a waiver from SIP requirements, in section 6.2.4.

2. SJVAPCD has not adequately demonstrated that Rule 4605 and Rule 4684 implement RACT.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

**II. Public Comments and EPA Responses**

EPA’s proposed action provided a 30-day public comment period. During this period, we received comments from the following party.

1. Scott Nester, Director of Planning, San Joaquin Valley Air Pollution Control District; letter dated and received August 17, 2009.

After the close of the comment period, we also received comments from the following party.

2. Sayed Sadredin, Executive Director/Air Pollution Control Officer of San Joaquin Valley Air Pollution Control District; letter dated August 27, 2009 and received August 31, 2009.

The comments and our responses are summarized below. Although we are not obligated to address comments

submitted after the close of the comment period, we are addressing below both the District’s August 17 comments and those comments in the District’s August 27 letter that pertain to the rules we are acting on today.

*SJVAPCD Aug. 17 Comment #1:* The District stated that its staff has proposed to amend Rule 4684 to implement requirements in the September 2008 Control Techniques Guideline (CTG) for fiberglass boat manufacturing materials.

*EPA Response:* We appreciate SJVAPCD’s efforts to promptly address RACT requirements for sources covered by the 2008 CTG for Fiberglass Boat Manufacturing Materials (2008 CTG), but we are obligated to act at this time on the submitted version of Rule 4684. In addition, we note that Rule 4684 should be revised to address RACT