of required permits, imposing undue costs on small sources; which would overwhelm Connecticut's permitting resources and severely impair the function of the program.

The State's December 9, 2010, proposed SIP revision: (1) Provides the State with the authority to regulate GHG under the PSD program of the CAA, and (2) establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD program. Specifically, Connecticut's December 9, 2010, proposed SIP revision includes proposed changes to Regulations of Connecticut State Agencies, section 22a–174–1, by adding definitions for "carbon dioxide equivalent emissions" and "greenhouse gases." The proposed SIP revision also addresses the thresholds for GHG permitting applicability and implementation through changes proposed to Connecticut's PSD regulations at section 22a–174–3a.

The State of Connecticut is currently a SIP-approved state for the PSD program. However, Connecticut does not interpret its current rules, which are generally consistent with the federal rules, to be automatically updating to include newly designated regulated air pollutants such as GHG. In a letter provided to EPA on July 20, 2010, Connecticut notified EPA that the State does not currently have the authority to regulate GHG and thus is in the process of revising its regulation (the subject of this proposed action) to provide this authority. To provide this authority, Connecticut is adding definitions of "carbon dioxide equivalent emissions" and "greenhouse gases" to section 22a–174–1, and revising PSD applicability and BACT requirements in section 22a–174–3a, to explicitly regulate GHG under the CAA. EPA has preliminarily determined that this change to Connecticut's regulation is consistent with the CAA and its implementing regulations regarding GHG.

The changes included in Connecticut's PSD program are substantively the same as EPA's Tailoring Rule. The Connecticut rules have been developed to conform to the structure of Connecticut's rule in section 22a–174–3a, but in substantive content the rules that address the Tailoring Rule provisions are the same as the federal rules. As part of its review of the Connecticut submittal, EPA performed a line-by-line review of Connecticut's proposed changes to its regulations and concluded the state's proposed regulations are consistent with the Tailoring Rule.

V. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve the State of Connecticut's December 9, 2010, proposed SIP revision, relating to PSD requirements for GHG-emitting sources. Specifically, Connecticut's December 9, 2010, proposed SIP revision: (1) Provides the State with the authority to regulate GHGs under its PSD program, and (2) establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the State's law as meeting federal requirements and does not impose additional requirements beyond those imposed by the State's law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 22, 2010.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2011–17 Filed 1–5–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–0662; FRL–9248–2]

Disapproval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Subchapter 7, Subchapter 16 and Subchapter 17

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove portions of revisions and new rules as submitted by the State of Montana on October 16, 2006 and November 1, 2006. Montana adopted these rules on December 2, 2005 and March 23, 2006 and these rules became State-effective on January 1, 2006. These revisions and new rules do not meet the requirements of the Clean Air Act and EPA's Minor New Source Review (NSR) regulations. EPA has concluded that none of the identified elements for the submitted revisions and new rules are

severable from each other. The intended effect of this action is to propose to disapprove these rules as they are inconsistent with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before February 7, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–0662, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: leone.kevin@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie A. Videtich, 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–2007–0662. 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 information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* 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: Kevin Leone, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, or *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

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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) Minor NSR means NSR established under section 110 of the Act and 40 CFR 51.160.

(iv) NSR means new source review, a phrase intended to encompass the stationary source regulatory programs that regulate the construction and modification of stationary sources as provided under CAA section 110(a)(2)(C), CAA Title I, parts C and D, and 40 CFR 51.160 through 51.166.

(v) The initials *SIP* mean or refer to State Implementation Plan.

(vi) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

(vii) NAAQS means National Ambient Air Quality Standards.

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. What is being addressed in this document?

On October 16, 2006, the State of Montana submitted revisions to revise the Montana State Implementation Plan (SIP) and rules. This submission contained revisions to Administrative Rules of Montana (ARM) 17.8.743(1), and new rules I–VI, codified as ARM 17.8.1601, 17.8.1602, 17.8.1603, 17.8.1604, 17.8.1605, and 17.8.1606, pertaining to the regulation of oil and gas well facilities, and 17.8.759, pertaining to Montana air quality permit applicability. The revisions to ARM 17.8.743(1), 17.8.1601, 17.8.1602, 17.8.1603, 17.8.1604, 17.8.1605, and 17.8.1606 provide, generally, that an owner or operator of an oil and gas well facility for which a Montana air quality permit is required may wait until 60 days after the well completion date before submitting an application for a permit. EPA is proposing to act on the revisions to these seven regulations in this notice. The Montana Board of Environmental Review (Board) adopted these revisions to existing SIP revisions and new rules on December 2, 2005. ARM 17.8.759 is being addressed in a separate action (*see* 75 FR 9834–9843). The submission also contains revisions to ARM 17.8.1402 pertaining to incorporation by reference. This revision was addressed by EPA in a previous action (*see* 75 FR 3993–3996). In addition to these revisions, on October 16, 2006, Montana is also withdrawing ARM 17.8.743(1)(c) regarding the applicability of incinerators in the Montana air pollution program rules. ARM 17.8.743(1)(c) was inadvertently included in the submission dated May 28, 2003. The Board adopted ARM 17.8.743(1)(c) on December 6, 2002.

On November 1, 2006, the State of Montana submitted revisions to revise the Montana SIP and rules. This submission contained revisions to ARM 17.8.504, 17.8.505, 17.8.744, 17.8.1204 and new rules I–IX, codified as ARM 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 pertaining to the regulation of oil and gas well facilities. The revision to ARM 17.8.504 pertains to air quality permit application fees; ARM 17.8.505 pertains to air quality operation fees; ARM 17.8.744(l) provides that a Montana air quality permit is not required for facilities that register with the department in accordance with ARM 17.8.17; and ARM 17.8.1204 addresses air quality operating permit program applicability. The Board adopted these new rules and rule amendments on March 23, 2006. EPA is proposing to act on all these rule submissions in this action.

EPA notes that ARM 17.8.1204 (regarding Air Quality Operating Permit Program Applicability) and ARM 17.8.505 (regarding Air Quality Operation Fees) are part of the Title V and Part 70 regulations which we do not approve into the SIP. Instead, we approve operating permit regulations under our operating permit regulations at 40 CFR part 70. Thus, we intend to consider approval of Montana's proposed Part C revisions pursuant to our part 70 regulations at such time as Montana submits an appropriate request under 40 CFR 70.4(i). The revisions are meaningless absent their regulatory context, and that regulatory context is not part of the EPA-approved SIP and is not incorporated by reference into 40 CFR part 52. Instead, the approval status of Montana's part 70 Program is reflected in 40 CFR part 70, Appendix A. Thus, because we are obligated to act on SIP submissions, we plan to disapprove these revisions as a revision to Montana's SIP. If the State requests to withdraw part C from the SIP revision prior to the time we take final action, we would not be obligated to take final action because part C would no longer be pending before the Agency as a SIP revision. Additionally, if requested by the State, we will separately consider these revisions as a revision to the approved operating permit program for the State.

The November 1, 2006 submission also contains revisions to the following rules: ARM 17.8.101, ARM 17.8.102, ARM 17.8.103, ARM 17.8.302, ARM 17.8.767, ARM 17.8.801, ARM 17.8.802, ARM 17.8.818, ARM 17.8.902 and ARM 17.8.1002 pertaining to incorporation by reference of current federal regulations and other materials into air quality rules. EPA is not acting on these rule submissions. These revisions were addressed by EPA in a previous action (*see* 75 FR 3993–3996).

These proposed amendments to existing new rules and adoption of new rules listed above that are the subject of this notice, hereafter referred to as "the Program," would establish a registration system for certain facilities that presently require a minor NSR air quality permit under the SIP regulations. The Program would establish a general registration system for oil and gas well facilities. The Program would allow the owner or operator of an oil or gas well facility to register with the Montana Department of Environmental Quality (MDEQ) in lieu of submitting a permit application and obtaining a permit to construct or modify the source. Currently, with specific exemptions, the administrative rules adopted under the CAA of Montana and approved by EPA into the SIP, require the owner or operator of sources of air pollution to obtain a permit prior to construction or modification.

III. EPA Review and Proposed Action on SIP Revisions

EPA is proposing to disapprove the revisions and new rules as submitted by Montana on October 16, 2006 and November 1, 2006, as identified above.

Section 110(a)(2)(C) of the Act requires that each implementation plan include a program to regulate the construction and modification of stationary sources, including a permit program as required by parts C and D of title I of the Act, as necessary to assure that the NAAQS are achieved. Parts C and D, which pertain to prevention of significant deterioration (PSD) and nonattainment, respectively, address major NSR programs for stationary sources, and the permitting program for "nonmajor" (or "minor") stationary sources is addressed by section 110(a)(2)(C) of the Act. We generally refer to the latter program as the "minor NSR" program. A minor stationary source is a source whose "potential to emit" is lower than the major source applicability threshold for a particular pollutant defined in the applicable major NSR program.

Therefore, we evaluated the submitted revisions and new rules using the federal regulations under CAA section 110(a)(2)(C), which require each State to include a minor NSR program in its SIP. EPA regulations require that a minor NSR program include:

- A plan that includes "legally enforceable procedures that enable" the permitting agency to determine whether a minor source will cause or contribute to violations of applicable portions of the control strategy, 40 CFR 51.160(a)(1).
- A plan that sets forth legally enforceable procedures that enable the State to determine whether the minor source will result in "interference with a national ambient air quality standard," 40 CFR 51.160(a)(2) and, to prevent the source from doing so, 40 CFR 51.160(b).
- A plan that includes a discussion of "the basis for determining which facilities will be subject to review," 40 CFR 51.160(e).
- A plan that includes a discussion of "the air quality data and the dispersion or other air quality modeling used" to

meet the requirements of EPA regulations 40 CFR 51.160(f).

In addition, we reviewed the State's regulations for compliance with the Act. Generally, SIPs must be enforceable (*see* section 110(a) of the Act) and must not relax existing SIP requirements (*see* section 110(l) and 193 of the Act).

EPA has issued several guidance memoranda that explain the Agency's requirements for practicable enforceability for purposes of effectively limiting a source's potential to emit. See, e.g., June 13, 1989 Memorandum entitled, "Guidance on Limiting Potential to Emit in New Source Permitting, from Terrell F. Hunt, Associate Enforcement Counsel, OECA, and John Seitz, Director, OAQPS, to EPA Regional Offices. Further guidance was provided on January 25, 1995 in a memorandum entitled, "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, ORE to Regional Air Directors. Although the latter memo applies to stationary sources subject to CAA Section 112 and Title V, we are citing this notice for the general practicable enforceability principles.

For example, as presented in the guidance, practicable enforceability for a source-specific permit means that the permit's provisions must, at a minimum:

(1) Include technically accurate emission limitations;

(2) Specify the time period for the limitation (hourly, daily, monthly, annually);

(3) Specify the method for determining compliance including appropriate monitoring, recordkeeping and reporting (MRR);

(4) Identify the category of sources that are covered by the rule;

(5) Where coverage is optional, provide for notice to the permitting authority of the source's election to be covered by the rule; and

(6) Recognize the enforcement consequences relevant to the rule.

EPA reviewed the proposed new rules against the six criteria mentioned above. This review, which is also discussed in a memo from Richard R. Long, Director, Region 8 Air and Radiation Program, to the Board on January 30, 2006 (Long memo), includes:

a. Specific applicability. The Rules must clearly identify the category of sources that qualify for the rule's coverage.

b. Reporting or notice to permitting authority. The rule should provide that a source notify the permitting authority of its coverage by the rule.

c. Specific technically accurate emission limits. The rule must clearly specify the emission limits that apply, and include the specific associated compliance monitoring. A rule that allows sources to submit the specific parameters and associated emission limits to be monitored may not be enforceable because the rule itself does not set specific emission limits.

d. Specific compliance monitoring. The rule must specify the methods to determine compliance. Specifically, the rule must state the monitoring requirements, recordkeeping requirements, reporting requirements and test methods as appropriate.

e. Practically enforceable averaging times. The averaging time period must readily allow for determination of compliance.

f. Clearly recognized enforcement. Violations of the emission thresholds imposed by the rule constitute violations of permitting and SIP requirements.

Section 110(a)(2)(A) of the Act and 40 CFR 51.160(a)(1) requires that SIP revision submittals be enforceable. The September 23, 1987, Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency" provides EPA's guidance for interpreting this provision in the Act. EPA proposes to find that the proposed new and modified rules do not meet the requirements of section 110(a)(2), which require that SIP revision submittals be enforceable. First, there are no specific up-front methodologies in the submitted Program for the State to use to be able to determine whether a source covered by these rules is in compliance with 40 CFR 51.160. The Program fails to meet the enforceability requirements to assure compliance. This is because there are no specific limits to limit production, hours of operation, fuel consumption, etc. to ensure the facility's potential to emit remains below major source thresholds for any particular pollutant. Second, while ARM 17.8.1705, codified as New Rule V, requires that the owner or operator of a registered facility shall monitor and record annual production information for all emission points and maintain onsite records showing daily hours of operation and daily production rates, 17.8.1705 does not have any specific limits that limit the potential to emit. Thus, EPA finds that the testing, recordkeeping, reporting, and monitoring provisions necessary to establish how compliance will be determined and to ensure that the NAAQS are protected are insufficient.

The rule must clearly specify the emission limits that apply, and include the necessary more specialized monitoring, recordkeeping, and reporting (MRR) requirements required for an oil and gas registration program to ensure accountability and provide a means to determine compliance. The submitted Program is generic concerning MRR. For example, ARM 17.8.1705 requires that the owner or operator of a registered facility shall monitor and record annual production information for all emission points, as required by the MDEQ in the annual emission inventory request. ARM 17.8.1605 (Recordkeeping requirements) only requires that the owner or operator of an oil and gas well facility shall record, and maintain onsite or at a central field office, a record of each monthly inspection. There are no specific limits to limit potential to emit and there are no specific up front methodologies specified in this rule to determine compliance.

The submitted Program is generic concerning the types of monitoring that are required, rather than identifying the application of specific monitoring approaches, providing the technical specifications for each of the specific allowable monitoring systems, and requiring replicable procedures for the approval of any alternative monitoring system (January 25, 1995 memo from Kathie A. Stein, Director Air Enforcement Division entitled "Guidance on Practicable Enforceability"). The Program also lacks the replicable procedures that are necessary to ensure that (1) adequate monitoring is required that would accurately determine emissions under the Program; (2) the Program is based upon sound science and meets generally acceptable scientific procedures for data quality and manipulation; and (3) the information generated by such system meets minimum legal requirements for admissibility in a judicial proceeding to enforce the Program (September 23, 1987, Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency"). For example: ARM 17.8.1604 and 17.8.1712 require the source to inspect monthly all VOC piping components for leaks and repair such leaks within a specific period of

time. The rule should specify methods more sophisticated than sight, sound and smell to detect leaks; for example, field gas chromatography; photo ionization air monitoring; or portable gas detection instrumentation. Additionally, ARM 17.8.1713(4) requires the owner or operator of a registration oil or gas well facility with a "detectible level of hydrogen sulfide from the well" to submit an "air quality analysis demonstrating compliance" with the ambient standards for SO_2 and hydrogen sulfide. The regulation is ambiguous and provides no information regarding what should go in such a demonstration. The Program should also ensure consistency and accuracy in the calculations that oil and gas well facilities conduct, for example by including the calculations in the rule or referencing specific AP–42 air pollutant emission factors or American Society for Testing Materials (ASTM) methods to determine emissions from the various emission units at the oil and gas well facility.

Because of the reasons stated above, EPA finds the MRR requirements in the Program fail to ensure attainment and maintenance of the NAAQS are protected. The Program lacks language requiring the owner or operator to maintain the proper MRR, which would allow the State to be able to determine if there was an adverse impact on air quality.

Even if the rules were federally enforceable as required by CAA section 110(a)(2)(C), the rule must also be enforceable as a practical matter. EPA's review of these proposed revisions also focused on whether these revisions are enforceable as a practical matter. If limitations imposed by SIP rules are incomplete, vague, or nonexistent, enforcement by the States, citizens and EPA would not be effective. Emission limitations must be of sufficient quality and quantity to ensure accountability. EPA has issued several guidance documents explaining the requirements of practicable enforceability (*e.g.,* June 13, 1989 Memorandum entitled, "Guidance on Limiting Potential to Emit in New Source Permitting, from Terrell F. Hunt, Associate Enforcement Counsel, OECA, and John Seitz, Director, OAQPS, to EPA Regional Offices. Further guidance was provided on January 25, 1995 in a memorandum entitled, "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, ORE to Regional Air Directors).

The standard of review in this instance is a determination whether the submitted Program has sufficient practically enforceable procedures that enable the permitting agency to determine whether a minor source will cause or contribute to violations of applicable portions of the NAAQS and the control strategy as required in 40 CFR 51.160. In the Long memo, EPA expressed concerns that, among other things, the submitted Program lacks the appropriate practically enforceable averaging times in order to determine compliance. EPA policy expresses a preference for short term limits, generally daily, but not to exceed one month (January 25, 1995 memo from Kathie A. Stein, Director Air Enforcement Division entitled "Guidance on Practicable Enforceability"). ARM17.8.1705 only requires the owner or operator of a registered facility to monitor and record annual production information, as required by MDEQ in the annual emission inventory request. The State only requires that production information be gathered on a calendar year basis and submitted to MDEQ by the date required in the emission inventory request. This requirement does not enable the permitting agency to determine whether a minor source will cause or contribute to violations of applicable portions of the NAAQS short term limits or PSD increments. If MDEQ envisions that some oil and gas well facilities that emit less than 100 tons per year of criteria air pollutants may be registration eligible, the rule must also include provisions for short term limits to ensure that the short term NAAQS limits and increments are met.

One of the requirements for practical enforceability is for a minor source to provide notice to the State before construction begins (Stein, Guidance on Enforceability Requirements for Limits Potential to Emit through SIP and § 112 Rules and General Permits). The proposed Program allows sources to operate and emit criteria pollutants up to 60 days before submitting a registration or permit application; therefore, there is no requirement that the State be notified before construction begins. Therefore, neither the public, the State, nor EPA can determine if compliance is met before construction; thus, these limitations are not practically enforceable.

As discussed above, any Minor NSR SIP revision submittal must meet section 110(l) of the CAA. Section 110(l) of the Act indicates that EPA cannot approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in Section 171), or any other applicable requirement of the Act. The Long memo stated that MDEQ should provide an appropriate analysis showing that the proposed new rule will not impact the NAAQS or PSD increments. EPA expressed concerns to MDEQ related to the cumulative effect of numerous registration sources. For example, the Program could allow hundreds of unrelated emission sources to be subject to individual emission limitations, yet the submitted Program lacks the appropriate practically enforceable averaging times in order to determine compliance with short term NAAQS limits and PSD increments. EPA recommended that MDEQ should perform a screening cumulative impact analysis showing, under the worst case scenarios, what effect oil and gas well facilities would have on the ozone, NO_2, SO_2 and PM NAAQS and increments. Montana has not performed such an analysis. Therefore, EPA lacks sufficient available information to determine that the proposed SIP relaxation would not interfere with any applicable requirement concerning attainment and maintenance of the NAAQS, PSD increment, or any other requirement of the Act.

Montana's submittal did not include modeling assumptions that will ensure compliance with NAAQS. Examples of assumptions which should be discussed include the estimated number of facilities expected to be covered under the Program, as well as, their assumed locations (i.e., identify potentially high density locations). Montana did not demonstrate what the cumulative impacts from numerous oil and gas facilities operating under the Program in certain regions and statewide would have on the NAAQS.

EPA notes that in addition to the registration program allowing for new sources to escape the SIP permit requirements, ARM 17.8.1703 allows an owner or operator of a registration eligible facility for which a valid Montana Air Quality Permit (MAQP) has been issued to register with the department and request a revocation of the previously issued MAQP. This is a relaxation under section 110(l), because it provides an exemption from SIP requirements not previously available to sources. This SIP relaxation creates a risk of interference with attainment and maintenance of the NAAQS and control strategy. EPA lacks sufficient information to determine that this SIP relaxation would not interfere with attainment and maintenance of the NAAQS, PSD increment, or any other requirement of the Act.

IV. Summary of Proposed Actions

EPA is proposing to disapprove revisions and new rules as identified in this action and as submitted by the State of Montana on October 16, 2006 and November 1, 2006. EPA is proposing disapproval based upon a number of factors, including: (1) The lack of any objective, replicable methodology in order to determine compliance, (2) the lack of sufficient MRR requirements, and (3) the lack of enforceability. Additionally, EPA lacks sufficient information to determine that the requested revision to add the new oil and gas registration program to the Montana Minor NSR SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) as required by CAA Section 110(l), or any other requirement of the Act. Finally, EPA also lacks sufficient information to make a finding that the submitted Program will ensure protection of the NAAQS, PSD increments, and noninterference with the Montana SIP control strategies.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 22, 2010.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–18 Filed 1–5–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–0839; FRL–9248–7]

Finding of Substantial Inadequacy of Implementation Plan; Call for Kansas Section 110 State Implementation Plan for Interstate Transport for the 1997 National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to our authority under the Clean Air Act (CAA), EPA is proposing to find that the Kansas State Implementation Plan (SIP) is substantially inadequate to satisfy the CAA requirement to address Kansas' significant contribution to downwind nonattainment or interference with maintenance in another State with respect to the 1997 National Ambient Air Quality Standards (NAAQS) for ozone. The specific State Implementation Plan deficiencies that EPA has identified are described in this proposal and in the proposed Federal Implementation Plan To Reduce Interstate Transport of Fine Particulate Matter and Ozone. If EPA finalizes this proposed finding of substantial inadequacy, Kansas will be required to revise its SIP to correct these deficiencies no later than 12 months following the date of signature of the final finding of substantial inadequacy.

DATES: Comments must be received on or before March 7, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2010–0839, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: kramer.elizabeth@epa.gov.*
3. *Mail:* Ms. Elizabeth Kramer, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier:* Deliver your comments to: Ms. Elizabeth Kramer, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2010–0839. 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 through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. 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://*