demand and for legal work in connection with the demand; expenses generated by equipment used to search for, produce, and copy the requested information; travel costs of the employee and the agency attorney, including lodging and per diem where appropriate. Such fees shall be assessed at the rates and in the manner specified in § 265.9.

(ii) At the discretion of the Inspection Service where appropriate, fees and costs may be estimated and collected before testimony is given.

(iii) The provisions in this section do not affect rights and procedures governing public access to official documents pursuant to the Freedom of Information Act, 5 U.S.C 552a.

(l) *Acceptance of service.* The rules in this section in no way modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–17326 Filed 7–17–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT25–1–6541a; FRL–5251–8]

Approval and Promulgation of Air Quality Implementation Plans; Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is acting on revisions to the State Implementation Plan (SIP) submitted by the Governor of Montana on May 17, 1994. The submittal included, among other things, revisions to the State's construction permitting regulations to comply with Federal requirements and revisions to address outstanding rule deficiencies, as well as a request that the existing regulations in the SIP be replaced with the October 1979 recodification of the Administrative Rules of Montana (ARM). EPA is approving all of the regulations included in this submittal, with the exception of the two director's discretion provisions regarding hydrocarbon emissions which EPA is disapproving, the odor control rules and the sulfur oxide rules for lead smelters on which EPA is taking no action, and the variance provisions which EPA will be acting on in a separate notice. Also, EPA is not approving the submitted versions of two provisions of the State's open burning rules which EPA previously disapproved. The previously-approved versions of these rules remain part of the SIP. In addition, EPA is only partially approving the State's nonattainment permitting rules for the Kalispell PM–10 nonattainment area. Last, EPA is approving Montana's construction permit rules for sources of hazardous air pollutants under section 112(l) of the Clean Air Act.

DATES: This final rule is effective on September 18, 1995, unless adverse or critical comments are received by August 17, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations: Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and Air Quality Division, Montana Department of Health and Environmental Sciences, P.O. Box 200901, Cogswell Building, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

On May 17, 1994, the Governor of Montana submitted comprehensive revisions to the Montana SIP. Specifically, the submittal included the following revisions to the State's regulations:

(1) Revisions to the nonattainment new source review (NSR) permitting program by the addition of new ARM 16.8.1701–1705 and 16.8.1801–1806 to meet the requirements of 40 CFR 51.165 and the amended Clean Air Act (Act), as required for all of the State's nonattainment areas;

(2) Revisions to the prevention of significant deterioration (PSD) permitting program in ARM 16.8.945–963 to bring the State's PSD rules up to date with the Federal PSD requirements in 40 CFR 51.166 and with some of the new requirements of the amended Act;

(3) Revisions to the general NSR permitting requirements in ARM 16.8.1101–1120 to address outstanding EPA concerns and to reflect the major source preconstruction permitting requirements in subchapters 9, 17, and 18 of title 16, chapter 8 of the ARM;

(4) Revisions to address commitments in Montana's PM–10 SIPs including, among other things, revisions to: (1) The State's NSR rules as discussed above; (2) the source testing requirements in ARM 16.8.708–709; (3) the New Source Performance Standards (NSPS) in ARM 16.8.1423; and (4) the National Emission Standards for Hazardous Air Pollutants (NESHAPs) in ARM 16.8.1424;

(5) Revisions to the wood waste burner emission rule in ARM 16.8.1407 to address EPA's December 4, 1992 disapproval of the previous revision to this rule (see 57 FR 57345);

(6) Revisions to the general definitions for Montana's air program rules in ARM 16.8.701; and

(7) Miscellaneous revisions to other source-category emission control rules in ARM 16.8.1401, 1425, and 1427–1428.

Also as part of this submittal, the State submitted the entire State air quality rules which were recodified in October of 1979 to be incorporated into the SIP. Although the State recodified its rules in 1979, the State never formally submitted the recodified rules to replace the existing rules approved by EPA in the SIP. Only rules to which revisions were made after 1979 have been submitted to EPA and approved in the SIP. Therefore, in this submittal, the State submitted its entire air quality regulations to be incorporated into the SIP and to replace the existing State rules approved in the SIP.

A. Nonattainment NSR and PSD Requirements of the Act

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Act. The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this notice and the supporting rationale. A brief discussion of the specific elements required in a State's nonattainment NSR program is also included in Section II.B. of this document.

EPA is currently developing rule revisions to implement the changes under the 1990 Clean Air Act Amendments (1990 Amendments) in the NSR provisions of parts C and D of title I of the Act. The EPA anticipates

that the proposed rule will be published for public comment in the near future. If EPA has not taken final action on States' NSR submittals by that time, EPA may generally refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. EPA expects to take final action to promulgate the rule revisions to implement the part C and D changes sometime during 1996. Upon promulgation of those revised regulations, EPA will review NSR SIPs to determine whether additional SIP revisions are necessary to satisfy the requirements of the rulemaking.

Prior to EPA approval of a State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991 and September 3, 1992.

As explained in the March 11 memorandum, EPA does not believe Congress intended to mandate the more stringent title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to issue permits consistent with requirements in their current NSR SIPs during that period, or to apply 40 CFR part 51, appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3, 1992 memorandum also addressed the situation where States did not submit the part D NSR SIP revisions by the applicable statutory deadline. For permit applications complete by the SIP submittal deadline, States may issue final permits under the prior NSR rules, assuming certain conditions in the September 3 memorandum are met. However, for applications completed after the SIP submittal deadline, EPA will consider the source to be in compliance with the Act where the source obtains from the State a permit that is consistent with the substantive new NSR part D provisions in the amended Act. EPA believes this guidance continues to apply to permitting pending final action on Montana's NSR SIP submittal.

For further information on the NSR and PSD requirements of the amended Act, see the Technical Support Document (TSD) accompanying this document.

B. Outstanding Rule Deficiencies

Prior to enactment of the 1990 Amendments, EPA had identified numerous deficiencies in the State's PSD and nonattainment NSR rules in subchapters 9 and 11 of the State's air quality rules. Note that subchapter 11 previously contained the State's nonattainment NSR rules as well as its general construction permit rules. As part of the PM–10 SIP submittals, the State committed, among other things, to correct these deficiencies in its NSR and PSD rules as well as to address all of the new NSR requirements of the amended Act. The State's May 1994 submittal was intended to address all major NSR/PSD deficiencies and inconsistencies with the Federal requirements.

In order to address EPA's concerns, as well as to address the new NSR requirements of the amended Act, the State revised subchapters 9 and 11 and adopted new subchapters 17 and 18. Specifically, the State's PSD permitting rules in subchapter 9 were revised to conform with the existing Federal PSD rules in 40 CFR 51.166 and with the amended Act. New subchapter 17 includes the nonattainment NSR rules and was written to conform with the existing Federal nonattainment NSR rules in 40 CFR 51.165 and the amended Act. New subchapter 18 includes the permitting requirements for new and modified major stationary sources locating in attainment areas but which cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS).

Also as part of the PM–10 SIP submittals, the State committed to correct other deficiencies in the Statewide SIP. Specifically, the State committed to adopt regulations which specify 40 CFR part 51, appendix M, Methods 201, 201A, and 202 as required test methods for the determination of PM–10 emissions, correct its wood waste burner rule in ARM 16.8.1407 to address EPA's December 2, 1992 disapproval of this rule (57 FR 57345), and revise its NSPS and NESHAPs in ARM 16.8.1423 and 1424 to incorporate all Federal requirements promulgated through July 1, 1992.

For further information on the outstanding deficiencies with these rules, see the TSD accompanying this notice.

C. State-Initiated Revisions

In addition to the revisions mentioned above, the State also made other regulatory revisions in this submittal. Those revisions included: (1) Changes resulting from the State's substantial revisions to its PSD and NSR permitting regulations, and new statutory authority from the State's 1993 Legislature; (2) a restructuring of the State's emission control rules in subchapter 14; (3) the addition of some director's discretion provisions in the State's hydrocarbon emission rule in ARM 16.8.1425 and the State's odor control rule in ARM 16.8.1427; and (4) other minor revisions for clarity. For further details, see the TSD.

II. Analysis of State Submission

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566).

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565, April 16, 1992]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA within 6 months after receipt of the submission.

The State of Montana held public hearings on July 16, 1993, September 17, 1993, and November 19, 1993 to entertain public comment on these various SIP revisions. Following the public hearings, the revisions to subchapter 14 were adopted on September 17, 1993, and all of the other regulatory revisions were adopted on November 19, 1993. These rule revisions were formally submitted to EPA for approval on May 17, 1994.

The SIP revisions were reviewed by EPA to determine completeness shortly after their submittal, in accordance with the completeness criteria referenced above. The submittal was found to be complete, and a letter dated July 13, 1994 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the processing of the SIP submittal.

[1] Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

B. Review of Submittal for Meeting the Nonattainment NSR and PSD Requirements of the Amended Act

1. General Nonattainment NSR Requirements

The general statutory requirements for nonattainment NSR permitting as amended by the 1990 Amendments are found in sections 172 and 173 of the Act. These requirements apply in all nonattainment areas. The State's nonattainment NSR rules are generally found in subchapter 17 of the ARM. The following represents EPA's review of the State's rules in meeting the NSR requirements of the Act:

(a) The amended Act repealed the construction ban provisions previously found in section 110(a)(2)(I) with certain exceptions. No construction bans are currently imposed in Montana, so this requirement is inapplicable.

(b) Section 173(a)(1)(A) of the Act requires a demonstration for permit issuance that the new source growth does not interfere with reasonable further progress (RFP) for the area. Also, calculations of emissions offsets must be based on the same emissions baseline used in the RFP demonstration. In ARM 16.8.1704(1)(c)(iii), the State has established provisions which address section 173(a)(1).

(c) Section 173(c)(1) of the Act requires that offsets must generally be obtained by the same source or other sources in the same nonattainment area. However, offsets may be obtained from sources in other nonattainment areas if: the area in which the offsets are obtained has an equal or higher nonattainment classification; and emissions from the nonattainment area in which the offsets are obtained contribute to a NAAQS violation in the area in which the source would construct. In ARM 16.8.1705(7), the State has established provisions that meet the requirements of section 173(c)(1).

(d) Section 173(c)(1) of the Act requires that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source commences operation. In ARM 16.8.1704(1)(c)(v) and (1)(d) and 16.8.1705(6), the State has established provisions that meet the requirements of section 173(c)(1).

(e) Section 173(c)(1) of the Act requires that emissions increases from new or modified major stationary sources are offset by real reductions in actual emissions. In ARM 16.8.1704(1)(c) and 16.8.1705(1), the State has established provisions that meet the requirements of section 173(c)(1).

(f) Section 173(c)(2) of the Act prohibits emissions reductions otherwise required by the Act from being credited for purposes of satisfying the part D offset requirements. In ARM 16.8.1705(12), the State has established provisions that meet the requirements of section 173(c)(2).

(g) Section 173(a)(3) provides that, as a condition of permit issuance, states must require the owner or operator of a proposed new or modified source to demonstrate that all major stationary sources under the same ownership or control are in compliance or are on a schedule for compliance with all applicable emission limitations and standards. In ARM 16.8.1704(1)(b), the State has established provisions that meet the requirements of section 173(a)(3).

(h) Section 173(a)(2) requires a new or modified major stationary source to comply with the lowest achievable emission rate (LAER). In ARM 16.8.1704(1)(a), the State has established provisions that address section 173(a)(2).

(i) Revised sections 172(c)(4), 173(a)(1)(B), and 173(b) of the Act limit and invalidate use of certain growth allowances in nonattainment areas. In ARM 16.8.1704(2), the State has adopted a provision invalidating any existing growth allowances in a nonattainment area that received a notice prior to the 1990 Amendments that the SIP was substantially inadequate or that receives such a notice of inadequacy under section 110(k) in the future, consistent with the requirements of section 173(b). Further, the State has no formally targeted economic growth areas in which growth allowances would be allowed per sections 172(c)(4) and 173(a)(1)(B) of the Act.

(j) Revised section 173(a)(5) of the Act requires that, as a prerequisite to issuing any part D permit, an analysis of alternative sites, sizes, production processes, and environmental control techniques for a proposed source be completed which demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. In ARM 16.8.1704(1)(e), the State has established provisions which address section 173(a)(5).

(k) Section 173(d) of the Act requires States to submit control technology information from permits to EPA for the purposes of making such information available through the RACT/BACT/LAER clearinghouse. Montana and EPA have established provisions in the annual State-EPA agreement requiring the State to submit information from nonattainment NSR permits to EPA's RACT/BACT/LAER clearinghouse, which EPA believes is adequate to meet this requirement.

(l) Revised section 302(z) of the Act sets forth a new definition of ''stationary source'' reflecting Congressional intent that certain stationary internal combustion engines are subject to State regulation under stationary source permitting programs, while certain ''nonroad engines,'' defined in section 216(10), are generally excluded. On June 17, 1994, the EPA published regulations in 40 CFR Part 89 regarding new nonroad engines and vehicles, including a definition of nonroad engine (59 FR 31306). EPA's action to approve this SIP revision is limited in that it does not include the regulation of nonroad engines in a manner inconsistent with section 209 of the Act and EPA regulations implementing section 209.

2. Nonattainment Area-Specific NSR Requirements

In addition to all of the general nonattainment NSR provisions mentioned above, there are also nonattainment area-specific NSR provisions in subparts 2, 3, and 4 of part D of the Act, some of which supersede these general NSR provisions because they are more stringent. The following provisions are the additional NSR provisions that apply in Montana's nonattainment areas and represent EPA's review of the State's regulation in meeting these requirements:

(a) Carbon Monoxide Nonattainment Areas. The State of Montana has three carbon monoxide (CO) nonattainment areas: the Billings area and the Great Falls area, both currently not classified, and Missoula, currently classified moderate with a design value less than 12.7 parts per million (ppm).

For both not classified and moderate CO nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above: A definition of the term ''major stationary source'' that reflects the section 302(j) 100 tons per year (tpy) CO threshold and a 100 tpy significance level for defining major modifications of CO, consistent with the significance level in 40 CFR 51.165(a)(1)(x).

In the definition of ''major stationary source'' in ARM 16.8.1701(12)(a)(i), the State has established a 100 tpy threshold for sources of CO. In addition, the State has established a 100 tpy significance threshold for CO in the

definition of ''significant'' in ARM 16.8.1701(18). Therefore, EPA finds that the State's NSR rules meet the requirements for all of its CO nonattainment areas.

(b) PM–10 Nonattainment Areas. The State of Montana has seven PM–10 nonattainment areas, all of which are currently classified as moderate. These areas include the cities of Libby, Missoula, Columbia Falls, Kalispell, Butte, Thompson Falls, and Whitefish. The State was required to submit the nonattainment NSR rules for all of these areas, except the Whitefish and Thompson Falls areas, by June 30, 1992. For the Whitefish and Thompson Falls PM–10 nonattainment areas whose nonattainment designation was not effective until November 18, 1993 and January 20, 1994, respectively, the State has eighteen months after the date of redesignation (or until May 18, 1995 and July 20, 1995, respectively) to submit the PM–10 attainment plans for the areas which must include, among other things, provisions meeting the NSR requirements of part D (see section 189(a)(2)(B) of the Act).

For moderate PM–10 nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

(1) A definition of ''major stationary source'' that reflects the section 302(j) 100 tpy PM–10 threshold and a 15 tpy significance level defining major modifications of PM–10, consistent with the significance level in 40 CFR part 51.

(2) Section 189(e) of subpart 4 of part D of the amended Act requires that the control requirements applicable to major stationary sources of PM–10 must also apply to major stationary sources of PM–10 precursors, except where the Administrator of EPA has determined that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. PM–10 precursors may include volatile organic compounds (VOCs) which form secondary organic compounds, sulfur dioxide (SO_2) which forms sulfate compounds, and oxides of nitrogen (NO_X) which form nitrate compounds. Thus, unless the EPA Administrator finds otherwise, States must submit rules for PM–10 precursors meeting all of the NSR provisions mentioned above, including the section 302(j) 100 tpy threshold for defining major stationary sources and the current significance level thresholds in 40 CFR 51.165(a)(1)(x) for each PM–10 precursor pollutant for defining major modifications.

In the definition of ''major stationary source'' in ARM 16.8.1701(12)(a)(i), the State has established a 100 tpy threshold for any source of PM–10 located in a PM–10 nonattainment area. In ARM 16.8.1701(12)(a)(ii), the State has established a 70 tpy threshold for defining major stationary sources of PM–10 locating in serious PM–10 nonattainment areas, in the event that one of the State's PM–10 nonattainment areas is classified as serious at some point. The State has also established a 15 tpy significance level for PM–10 in the definition of ''significant'' in ARM 16.8.1701(18).

EPA plans to make findings of whether major stationary sources of PM–10 precursors contribute significantly to PM–10 levels in excess of the NAAQS (and thus whether the requirements of section 189(e) apply) concurrent with EPA's action on the State's PM–10 SIP submittals.[2] As of the date of this document, EPA has promulgated findings that such sources of PM–10 precursors do not contribute significantly to PM–10 exceedances in the Missoula, Butte, Columbia Falls, and Libby PM–10 nonattainment areas (see, respectively, 59 FR 2539 (January 18, 1994), 59 FR 11552 (March 11, 1994), 59 FR 17702 (April 14, 1994), and 59 FR 44630 (August 30, 1994)). However, EPA has not yet proposed or promulgated a finding that such sources of PM–10 precursors do not contribute significantly in the Kalispell area.

Until EPA promulgates such a finding for the Kalispell PM–10 nonattainment area, the State is required to adopt NSR provisions meeting the requirements of section 189(e) for this PM–10 nonattainment area. Because the State has not yet submitted these NSR provisions, EPA is only partially approving the State's nonattainment NSR submittal. If EPA promulgates a finding that such sources of PM–10 precursors do not contribute significantly in the Kalispell area, then the State's nonattainment NSR program will be considered to be fully approved as meeting all of the nonattainment NSR requirements of the amended Act. If EPA does not promulgate such a finding or if the State fails to timely submit PM–10 precursor NSR rules, then EPA will promulgate the partial disapproval that is the companion of this partial approval.

Since the State is not required to submit NSR provisions for the Whitefish and Thompson Falls PM–10 nonattainment areas until May 18, 1995 and July 20, 1995, respectively, EPA will determine the approvability of the State's NSR provisions for those nonattainment areas when EPA takes action on the attainment plans for those areas.

Thus, EPA finds that the State's NSR program meets all of the requirements for the Butte, Columbia Falls, Libby and Missoula PM–10 nonattainment areas, and EPA finds that the State has only partially met the nonattainment NSR requirements for the Kalispell PM–10 nonattainment area.

(c) Sulfur Dioxide Nonattainment Areas. The State of Montana has two SO_2 nonattainment areas, which are defined as the Laurel area and the East Helena area. For SO_2 nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

A definition of ''major stationary source'' that reflects the section 302(j) 100 tpy SO_2 and a 40 tpy significance level for defining major modifications of SO_2, consistent with the significance level in 40 CFR 51.165(a)(1)(x).

In the definition of ''major stationary source'' in ARM 16.8.1701(12)(a)(1), the State has established a 100 tpy threshold for SO_2. In addition, the State has established a 40 tpy significance threshold for SO_2 in the definition of ''significant'' in ARM 16.8.1701(18). Therefore, EPA finds that the State's NSR rules meet the requirements for all of its SO_2 nonattainment areas.

(d) Lead Nonattainment Areas. The State of Montana has one lead nonattainment area, which is defined as the East Helena area. For lead nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

A definition of ''major stationary source'' that reflects the section 302(j) 100 tpy lead and a 0.6 tpy significance level for defining major modifications of lead, consistent with the significance level in 40 CFR 51.165(a)(1)(x).

In the definition of ''major stationary source'' in ARM 16.8.1701(12)(a)(1), the State has established a 100 tpy threshold for lead. In addition, the State has established a 0.6 tpy significance threshold for lead in the definition of ''significant'' in ARM 16.8.1701(18). Therefore, EPA finds that the State's NSR rules meets the requirements for its lead nonattainment area.

For further information on these requirements and the State's provisions which meet these requirements, please

[2] Note that EPA's findings are based on the current character of an area including, for example, the existing mix of sources in an area. It is possible, therefore, that future growth could change the significance of precursors in an area.

see the TSD accompanying this document.

3. Montana's PSD Revisions Due to the Amended Act

In its revisions to its PSD regulations, the State addressed one new requirement of the amended Act pertaining to hazardous air pollutants (HAPs). Prior to the 1990 Amendments, section 112 HAPs were regulated both under PSD permitting and the NESHAPs, in addition to any other applicable State or Federal rules. A new source or modification that was considered to be major for any pollutant was subject to PSD permitting requirements, including BACT, for every pollutant subject to regulation under the Act that was emitted by the source in significant quantities. Section 112(b)(6) of the amended Act eliminates PSD applicability of the HAPs listed in section 112. Thus, new and modified sources subject to PSD permitting are no longer required to apply BACT and other PSD requirements to all HAPs emitted in significant amounts. There is one exception to this exemption from PSD requirements: Any HAPs which are regulated as constituents of a more general pollutant listed under section 108 of the Act are still subject to PSD as part of the more general pollutant, despite the exemption described above. This includes pollutants such as VOCs, PM–10, and elemental lead. (See 57 FR 18075, April 29, 1992.)

The State made numerous revisions to its PSD rules in subchapter 9 to clarify that HAPs are no longer regulated under PSD except to the extent that such HAPs are regulated as constituents of more general pollutants regulated under section 108 of the Act. EPA believes the State's PSD rule revisions regarding HAPs are consistent with the amended Act and, therefore, are approvable.

C. Outstanding Rule Deficiencies

EPA's review of the State's revisions to its PSD permitting rules in subchapter 9 found that the State's revised rules are consistent with the Federal PSD permitting requirements in 40 CFR 51.166.

EPA's review of the State's new subchapters 17 and 18, which contain the State's nonattainment NSR regulations, found that the State's rules are consistent with the corresponding Federal regulations in 40 CFR 51.165, as well as with the amended Act as discussed in Section II.B. above.

Since the State now has separate permitting regulations for new and modified major sources locating in attainment or unclassified areas and nonattainment areas, subchapter 11 is now generally considered to be the State's general construction permit requirements. The corresponding Federal requirements that such programs must meet are found in 40 CFR 51.160 through 51.164. EPA has reviewed the revised subchapter 11 and believes the State's general construction permit requirements adequately meet all of the Federal requirements in 40 CFR 51.160 through 51.164. See the TSD for further details.

Therefore, EPA believes the State has satisfied the commitment in its PM–10 SIPs to revise its construction permitting rules to address deficiencies previously identified by EPA.

In ARM 16.8.709, the State adopted provisions requiring all emission source testing to be performed as specified in the applicable sampling method contained in the Federal regulations, including 40 CFR part 51, appendix M (which includes Methods 201, 201A, and 202 for determination of PM–10 emissions). Thus, the State has satisfied the commitment in its PM–10 SIPs to adopt regulations which specify 40 CFR part 51, appendix M, Methods 201, 201A, and 202 as required test methods for the determination of PM–10 emissions.

The State also adequately addressed EPA's enforceability concerns with its wood waste burner rule in ARM 16.8.1407 by deleting the mass particulate emission limit which was not practicably enforceable at the tepee-style wood waste burners in the State. Therefore, EPA is approving the revised wood waste burner rule.

Last, the State has satisfied the PM–10 SIP commitment to revise its NSPS and NESHAPs in ARM 16.8.1423 and 1424 to incorporate all Federal requirements promulgated through July 1, 1992.

Thus, EPA believes this submittal satisfies all of the Statewide SIP deficiencies which the State committed to address in its PM–10 SIPs, with the exception of the Kalispell PM–10 SIP commitment regarding NSR. Since the State's NSR rules are only being partially approved for the Kalispell PM–10 nonattainment area at this time, the State can only be considered to have partially met the PM–10 SIP commitment regarding NSR for this area.

D. Evaluation of the Other Regulations Included in the State's Submittal

EPA believes that the other revisions to the State's regulations provide for clarity and consistency within the State's regulations and are consistent with any corresponding Federal requirements, with a few exceptions. One of those exceptions is the revisions to the hydrocarbon emission rule in ARM 16.8.1425. Specifically, the State revised this rule to allow the Montana Department of Health and Environmental Sciences, rather than the previously-required Administrator of EPA, to authorize use of other equipment that is equally efficient to that equipment required by this rule. Thus, the State's rule now permits the State to modify a specific control requirement of the SIP without requiring EPA review and approval of the alternative control equipment. Such a provision is generally termed a ''director's discretion'' provision, in that it allows the State discretionary authority to alter a provision of the SIP. EPA cannot legally approve such discretionary authority in States' SIPs without the State providing for some type of EPA review and approval of alternatives to the stated requirements in this regulation. Therefore, EPA is disapproving the revisions to ARM 16.8.1425(1)(c) and (2)(d) which allow this discretion. If the State wishes to implement these provisions for a certain source allowing alternatives to the control equipment required in this rule, then the State must submit such alternatives to EPA for review and approval.

In this submittal, as discussed at the beginning of this document, the State submitted the entire State air quality rules which were recodified in October of 1979 to be incorporated into the SIP and to replace any previous codifications of State rules currently approved as part of the SIP. EPA is therefore replacing the previously approved Montana rules with all of the rules included in the State's submittal, with the exception of the following:

1. As discussed above, EPA is disapproving the director's discretion provisions in ARM 16.8.1425 (1)(c) and (2)(d);

2. In this submittal, the State included the most current version of its open burning rules. However, on December 21, 1992, EPA disapproved revisions to ARM 16.8.1302 and 16.8.1307 which were submitted by the Governor on April 9, 1991 (see 57 FR 60485–60486 for further details). Therefore, EPA is not approving the current version of ARM 16.8.1302 and 16.8.1307. The previously approved version of ARM 16.8.1302 and 16.8.1307, as in effect on April 16, 1982 and as approved by EPA on July 15, 1982 (47 FR 30763, 40 CFR 52.1370(c)(11)), remain part of the SIP;

3. EPA believes it has no legal basis in the Act for approving the State's odor control rule in ARM 16.8.1427 and making it federally enforceable because

odor control provisions are not generally related to attainment or maintenance of the NAAQS. Therefore, EPA is not taking action on ARM 16.8.1427, and it is not considered part of the federally enforceable SIP;

4. EPA is not taking action on the State's variance provision in ARM 16.8.101–102 at this time and will instead take action on this rule in a separate **Federal Register** notice; and

5. EPA is not taking action on the State's sulfur oxide emission limits for lead or lead-zinc smelters in ARM 16.8.1414 because EPA has never previously approved this regulation into the SIP. Further, EPA understands that the State plans to repeal this regulation in the near future. See the TSD for further details.

III. Section 112(l) Approval

In addition to approving Montana's construction permit program in ARM 16.8.1101–1120 as part of the SIP, EPA is also approving Montana's construction permit program for the regulation of HAPs under the authority provided in section 112(l) of the amended Act. Approval of the State's construction permit program under section 112(l) is necessary to allow the State to create federally enforceable limits on the potential to emit HAPs, because SIP approval of the State's construction permit rules only extends to the control of HAPs which are constituents of photochemically reactive organic compounds or particulate matter. Federally enforceable limits on photochemically reactive organic compounds or particulate matter may have the incidental effect of limiting certain HAPs. As a legal matter, no additional program approval by the EPA is required in order for those ''criteria'' pollutant limits to be recognized as federally enforceable. However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

The State's construction permit program applies to new and modified sources which would emit ''air contaminants.'' ''Air contaminant'' is further defined in Section 75–2–103 of the MCA as ''dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.'' The State has defined ''air contaminant'' in such a broad manner that it includes HAPs. Consequently, the State's construction permit program provides authority for the State to issue construction permits to sources of HAPs.

The criteria which were used in reviewing Montana's construction permit program are located in 40 CFR 51.160 through 51.164. As discussed in Section II.C. above and as detailed in the TSD accompanying this notice, EPA believes the State's construction permit program adequately meets the requirements of 40 CFR 51.160 through 51.164. EPA believes the most significant criteria in 40 CFR part 51 for creating federally enforceable limits through construction permits are those in 40 CFR 51.160 through 51.162. Further, as discussed in EPA's January 25, 1995 memorandum from John S. Seitz, Director of the Office of Air Quality Planning and Standards, and Robert I. Van Heuvelen, Director of the Office of Regulatory Enforcement, entitled ''Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and Title V of the Clean Air Act,'' in order for EPA to consider any construction permit terms federally enforceable, such permit conditions must be enforceable as a practical matter. Montana's program will allow the State to issue permits that are enforceable as a practical matter. Thus, any permits issued in accordance with Montana's program and which are practically enforceable would be considered federally enforceable.

In addition to meeting the criteria in 40 CFR 51.160–164 for creating federally enforceable construction permits, a construction permit program for HAPs must meet the statutory criteria for approval under section 112(l)(5) of the Act. This section allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting the potential to emit of HAPs through amendments to subpart E of 40 CFR part 63, the regulations promulgated to implement section 112(l) of the Act. EPA believes it has the authority under section 112(l) to approve programs to limit potential to emit HAPs directly under section 112(l) prior to this revision to subpart E of 40 CFR part 63. Given the timing problems posed by impending deadlines under section 112 and Title V, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to issuance of a rule specifically addressing this issue. The EPA is therefore approving Montana's construction permit program to limit the potential to emit HAPs now, so that the State may begin to issue federally enforceable synthetic minor permits as soon as possible. The EPA also plans to codify programs approved under section 112(l) without further rulemaking once the revisions to subpart E are promulgated.

As discussed above in Section II.C., Montana's construction permit program in ARM 16.8.1101–1120 satisfies the criteria for such programs in 40 CFR 51.160 through 51.164. In addition, EPA believes Montana's construction permit program meets the statutory criteria for approval under section 112(l)(5). For further details, refer to the TSD accompanying this document. Accordingly, EPA finds that Montana's construction permit program in subchapter 11 of its air quality rules satisfies the applicable criteria for establishing federally enforceable limitations for HAPs. Therefore, EPA is approving Montana's construction permit program in ARM 16.8.1101–1120 of the State's rules under section 112(l) of the Act.

Final Action

EPA is acting on the revisions to the Montana SIP which were submitted by the Governor on May 17, 1994. Specifically, EPA is approving the State's submittal for meeting the NSR requirements of the amended Act for the State's CO, SO_2, and lead nonattainment areas and for the Butte, Columbia Falls, Libby, and Missoula PM–10 nonattainment areas. However, for the Kalispell PM–10 nonattainment areas where EPA has not yet promulgated a finding that major sources of PM–10 precursors do not contribute significantly to PM–10 exceedances in the area, EPA is only partially approving the submittal at this time because the State's submittal did not include NSR provisions for new and modified major sources of PM–10 precursors proposing to locate in this area. EPA is approving all of the other State regulations included in this submittal, with the exception of: the variance provisions in 16.8.101–102, which EPA will be acting on in a separate notice; the hydrocarbon rule director's discretion provisions in 16.8.1425(1)(c) and (2)(d), which EPA is disapproving; and the odor rules in 16.8.1427 and the sulfur oxide emission limits for lead smelters in 16.8.1414, which EPA is not incorporating into the approved SIP. In addition, EPA is not approving the current version of ARM 16.8.1302 and 1307 of the State's open burning rules included in the State's May 1994 submittal, because these provisions were previously disapproved by EPA on December 21, 1992 (see 57 FR 60485–60486). The previously approved version of ARM 16.8.1302 and

1307, as in effect on April 16, 1982 and as approved by EPA on July 15, 1982 (47 FR 30763, 40 CFR 52.1370(c)(11)), remain part of the SIP.

EPA is also approving the State's construction permit requirements in ARM 16.8.1101–1120 for the purposes of creating federally enforceable limits for HAPs pursuant to section 112(l) of the Act, as well as for pollutants regulated under the SIP.

In accordance with the Governor's request, EPA is replacing any State regulations previously approved in the SIP with the following State regulations effective as of March 30, 1994: ARM 16.8.201–202, 16.8.301–304, 16.8.401–404, 16.8.701–709, 16.8.945–963, 16.8.1001–1008, 16.8.1101–1120, 16.8.1204–1206, 16.8.1301, 16.8.1303–1306, 16.8.1308, 16.8.1401–1413, 1419–1424, 16.8.1425 (except 16.8.1425(1)(c) and (2)(d)), 16.8.1426, 16.8.1428–1430, 16.8.1501–1505, 16.8.1701–1705, 16.8.1801–1806. The previously-approved versions of ARM 16.8.1302 and 16.8.1307, as in effect on April 16, 1982, remain part of the SIP.

Also in this action, EPA is deleting 40 CFR 52.1386, in which EPA originally codified its disapproval of Montana's malfunction provision. EPA subsequently approved a revised version of Montana's malfunction provision on July 13, 1984 (see 49 FR 28553) and inadvertently failed to remove this previous disapproval from the Code of Federal Regulations. Thus, the disapproval in 40 CFR 52.1386 no longer is applicable and is being deleted.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective on September 18, 1995 unless, by August 17, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 18, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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 September 18, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect thefinality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 23, 1995.

Jack W. McGraw,

Acting Regional Administrator.

Part 52, 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. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(39) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(39) On May 17, 1994, the Governor of Montana submitted revisions to the Administrative Rules of Montana (ARM) regarding nonattainment new source review, prevention of significant deterioration, general construction permitting, wood waste burners, source

test methods, new source performance standards, and national emission standards for hazardous air pollutants. Also, the Governor requested that all existing State regulations approved in the SIP be replaced with the October 1, 1979 codification of the ARM as in effect on March 30, 1994. EPA is replacing all of the previously approved State regulations, except ARM 16.8.1302 and 16.8.1307, with those regulations listed in paragraph (c)(39)(i)(A) of this section. ARM 16.8.1302 and 16.8.1307, as in effect on April 16, 1982 and as approved by EPA at 40 CFR 52.1370(c)(11), will remain part of the SIP.

(i) Incorporation by reference.

(A) Administrative Rules of Montana (ARM) Sections 16.8.201–202, 16.8.301–304, and 16.8.401–404, effective 12/31/72; Section 16.8.701, effective 12/10/93; Section 16.8.704, effective 2/14/87; Section 16.8.705, effective 6/18/82; Section 16.8.707, effective 9/13/85; Sections 16.8.708–709, effective 12/10/93; Sections 16.8.945–963, effective 12/10/93; Sections 16.8.1001–1003, effective 9/13/85; Section 16.8.1004, effective 12/25/92; Sections 16.8.1005–1006, effective 9/13/85; Section 16.8.1007, effective 4/29/88; Section 16.8.1008, effective 9/13/85; Section 16.8.1101, effective 6/16/89; Section 16.8.1102, effective 2/14/87; Section 16.8.1103, effective 6/16/89; Section 16.8.1104, effective 3/16/79; Section 16.8.1105, effective 12/27/91; Sections 16.8.1107 and 16.8.1109, effective 12/10/93; Sections 16.8.1110–1112. effective 3/16/79; Section 16.8.1113, effective 2/14/87; Section 16.8.1114, effective 12/10/93; Sections 16.8.1115, 16.8.1117, and 16.8.1118, effective 3/16/79; Sections 16.8.1119–1120, effective 12/10/93; Sections 16.8.1204–1206, effective 6/13/86; Sections 16.8.1301 and 16.8.1303, effective 4/16/82; Section 16.8.1304, effective 9/11/92; Section 16.8.1305, effective 4/16/82; Section 16.8.1306, effective 4/1/82; Section 16.8.1308, effective 10/16/92; Section 16.8.1401, effective 10/29/93; Section 16.8.1402, effective 3/11/88; Section 16.8.1403, effective 9/5/75; Section 16.8.1404, effective 6/13/86; Section 16.8.1406, effective 12/29/78; Section 16.8.1407, effective 10/29/93; Section 16.8.1411, effective 12/31/72; Section 16.8.1412, effective 3/13/81; Section 16.8.1413, effective 12/31/72; Section 16.8.1419, effective 12/31/72; Sections 16.8.1423, 16.8.1424, and 16.8.1425 (except 16.8.1425(1)(c) and (2)(d)), effective 10/29/93; Section 16.8.1426, effective 12/31/72; Sections 16.8.1428–1430, effective 10/29/93; Section 16.8.1501, effective 2/10/89; Section 16.8.1502, effective 2/26/82; Section 16.8.1503, effective 2/10/89; Sections 16.8.1504–1505, effective 2/26/82; Sections 16.8.1701–1705, effective 12/10/93; and Sections 16.8.1801–1806, effective 12/10/93.

3. Section 52.1384 is amended by removing and reserving paragraph (a) and adding a new paragraph (c) to read as follows:

§ 52.1384 Emission control regulations.

* * * * *

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

§ 52.1386 [Removed and reserved]

4. Section 52.1386 is removed and reserved.

[FR Doc. 95–17212 Filed 7–17–95; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 52

[UT24–1–7036a; FRL–5260–9]

Withdrawal of the Determination of Attainment of Ozone Standard for the Salt Lake and Davis Counties Ozone Nonattainment Area; Utah; and the Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On June 8, 1995, EPA published a direct final rule (60 FR 30189) determining the applicability of certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act (CAA) for the Salt Lake and Davis Counties ozone nonattainment area. This action was published without prior proposal. Because EPA has received adverse comments on this action, EPA is withdrawing the June 8, 1995, direct final rulemaking action pertaining to the Salt Lake and Davis Counties area.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 Phone: (303) 293–1814.

SUPPLEMENTARY INFORMATION: On June 8, 1995, EPA published a direct final rule determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act (CAA), as amended 1990, for the Salt Lake and Davis Counties, Utah, ozone nonattainment area were no longer applicable. This determination was based on the area having attained the National Ambient Air Quality Standard (NAAQS) for ozone based on three years of ambient air quality monitoring data (60 FR 30189). The direct final rule was published, without prior proposal, in the **Federal Register** with a provision for a 30 day comment period. In addition, EPA published a proposed rule, also on June 8, 1995, which announced that this direct final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of the date of publication of the direct final rule in the **Federal Register** (60 FR 30217). EPA received adverse comments within the prescribed comment period. With this notice, EPA is withdrawing the June 8, 1995, direct final rulemaking action (60 FR 30189) pertaining to the Salt Lake and Davis Counties' ozone nonattainment area. All public comments that were received will be addressed in a final rulemaking action based on the proposed rule (60 FR 30217).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen Dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 13, 1995.

Jack W. McGraw,

Acting Regional Administrator.

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