

Dated: May 13, 2015.

**Shaun L. McGrath,**

*Regional Administrator, Region 8.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2010-0304; FRL-9928-51-Region 8]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Montana on March 17, 2010, August 1, 2011, November 22, 2011, and September 19, 2014. The revisions are to the Administrative Rules of Montana (ARM) and include minor editorial and grammatical changes, updates to citations and references to federal and state laws and regulations, revisions to open burning rules, changes to the process for appealing air quality permits, and providing a process for revocation of air quality permits when owners cannot be found by mail. Also in this action, EPA is proposing to correct final rules pertaining to Montana's SIP. On January 29, 2010, EPA took direct final action to approve SIP revisions as submitted by the State of Montana on January 16, 2009 and May 4, 2009. EPA subsequently discovered an error in our January 29, 2010 direct final action related to "incorporation by reference" (IBR) materials and the associated regulatory text numbering. EPA is proposing to correct this error with today's action. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before July 1, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2010-0304, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Email: [fulton.abby@epa.gov](mailto:fulton.abby@epa.gov).
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER**

**INFORMATION CONTACT** if you are faxing comments).

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

- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 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-2010-0304. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](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 email comment directly to EPA, without going through [www.regulations.gov](http://www.regulations.gov) your email 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 [www.regulations.gov](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 [www.regulations.gov](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, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

#### **FOR FURTHER INFORMATION CONTACT:**

Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6563, [fulton.abby@epa.gov](mailto:fulton.abby@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **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 initials *ARM* mean or refer to the Administrative Rules of Montana.
- (iii) The initials *BACT* mean or refer to Best Available Control Technology.
- (iv) The word or initials *Board* or *BER* mean or refer to the Montana Board of Environmental Review.
- (v) The initials *CAMR* mean or refer to the Environmental Protection Agency's Clear Air Mercury Rule.
- (vi) The initials *CBI* mean or refer to confidential business information.
- (vii) The initials *CFR* mean or refer to the United States Code of Federal Regulations.
- (viii) The initials *DEQ* mean or refer to the Department of Environmental Quality.
- (ix) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (x) The initials *IBR* mean or refer to Incorporate by Reference.
- (xi) The initials *MCA* mean or refer to the Montana Code Annotated.
- (xii) The initials *NAAQS* mean or refer to national ambient air quality standards.
- (xiii) The initials *NESHAP* mean or refer to National Emission Standards for Hazardous Air Pollutants.
- (xiv) The initials *NSPS* mean or refer to New Source Performance Standards.
- (xv) The initials *SIP* mean or refer to State Implementation Plan.
- (xvi) The word *State* means or refers to the State of Montana.

## I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI)*. Do not submit CBI to EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on 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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register**, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and
- Make sure to submit your comments by the comment period deadline identified.

## II. Background

A. On March 17, 2010 the State of Montana submitted a SIP revision containing amendments to IBR current federal regulations and other material into air quality rules at ARM 17.8.102, 17.8.302, 17.8.767, 17.8.802, 17.8.822, 17.8.902, and 17.8.1002. The amendments update IBR dates, make minor editorial and grammatical changes, and delete references to EPA's Clean Air Mercury Rule (CAMR) which was vacated in February 2008. The Montana Board of Environmental Review (BER) adopted the amendments on October 2, 2009.

B. On August 1, 2011 the State submitted a SIP revision containing amendments to IBR current federal regulations and other material into air quality rules at ARM 17.8.102. The revisions update IBR dates and associated references, make minor editorial and grammatical changes, and delete the exclusion from IBR of 40 Code of Federal Regulations (CFR) part 60, subpart DDDD—Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units. The BER adopted the amendments on January 28, 2011.

C. On November 22, 2011 Montana submitted a SIP revision containing amendments to ARM 17.8.604, 17.8.610, 17.8.612, 17.8.613, 17.8.614, 17.8.615, and 17.8.763. The amendments allow certain open burning to occur in areas other than where waste was generated, revise the process for appealing air quality permits, provide a process for revocation of air quality permits when owners cannot be found by mail, and make minor editorial and grammatical changes. The Board adopted the amendments on March 25, 2011.

D. On September 19, 2014 the State of Montana submitted a SIP revision containing amendments to IBR current federal regulations and other material into air quality rules at ARM 17.8.102. The amendments update IBR dates, make minor editorial and grammatical changes, and delete references to certain subparts of 40 CFR parts 60 and 63. The Montana BER adopted the amendments on May 30, 2014.

E. On January 26, 2010, EPA took direct final action (75 FR 3993) to approve revisions to ARM 17.8.102—Incorporation by Reference—Publication Dates, with a State effective date of October 26, 2007. In a subsequent action, EPA took final action on July 8, 2011 (76 FR 40237) and inadvertently approved revisions to ARM 17.8.102 with a state effective date of June 17, 2005. This action provides notice that language in ARM 17.8.102 with a State effective date of October 26, 2007 was in effect between January 26, 2010 and publication of this notice. A copy of ARM 17.8.102 effective October 26, 2007 is available within this docket.

F. On January 29, 2010, EPA published a direct final rule in the **Federal Register** approving Montana SIP revisions to the ARM. This action proposes to correct an error in the regulatory language in 40 CFR 52.1370(c) of EPA's January 29, 2010 direct final rule (75 FR 4698).

The State was delegated the authority for implementation and enforcement of National Emission Standards for Hazardous Air Pollutants (NESHAPs)

through a **Federal Register** notice on May 11, 1995 (60 FR 25143) and New Source Performance Standards (NSPS) by letter on January 9, 2004 (69 FR 43371, July 20, 2004). When a delegation of authority is granted, EPA authorizes a state to implement and enforce a federal regulation. Prior to receiving delegation, NESHAPs and NSPS were enforced through Montana's SIP.<sup>1</sup> Through this process, the State IBR'd the Federal NESHAPs and NSPS in 40 CFR parts 60, 61, and 63 into its SIP-approved regulations. However, since receiving program delegation, many of the parts of the IBR referencing NESHAPs and NSPS in parts 60, 61, and 63 no longer need to be approved into Montana's SIP. EPA is working with the State to remove unnecessary parts of NESHAPs and NSPS from its SIP. These amendments will be reflected in a future **Federal Register** action. In the interim, we are proposing no action on any SIP revisions referencing 40 CFR parts 60, 61, and 63.

## III. EPA's Review of the State of Montana's March 17, 2010; August 1, 2011; November 22, 2011; and September 19, 2014 Submittals, and CFR Correction

### A. March 17, 2010 SIP Submittal

The State's March 17, 2010 SIP submittal contained amendments adopted by the State on October 2, 2009 (effective October 16, 2009) and includes the following types of amendments to the State's air quality rules: Revisions to its IBR of documents and other statutory references; and updated references to the July 1, 2008 edition of the CFR and the December 31, 2008 edition of the ARM. The revisions also make minor editorial and grammatical changes, and delete certain references to rules which have been vacated.

We are not acting on several of the State's amendments in the March 17, 2010 submittal that delete certain provisions from the State's rules because we did not approve those provisions into the SIP when they were part of a prior submittal from the State and they reference an NSPS in 40 CFR part 60. On November 1, 2006, the State submitted revisions to its SIP, including amendments to ARM 17.8.302, 17.8.767, 17.8.802, 17.8.902, and 17.8.1002. In our January 26, 2010 action (75 FR 3993), EPA did not act on revisions to ARM 17.8.302, 17.8.767, 17.8.802, 17.8.902, or 17.8.1002 because the revisions

<sup>1</sup> See Douglas M. Ski, Chief of the Air Programs Branch, EPA Region 8, Memorandum to Jeffery T. Chaffe, Chief of the Montana Air Quality Bureau (October 9, 1991).

referenced CAMR which was vacated by the U.S. Court of Appeals for the D.C. Circuit on February 8, 2008 (see *New Jersey v. EPA*, 517 F. 3d 574).

In its March 17, 2010 submission, the State revisions delete references to CAMR in ARM 17.8.302(1)(a)(ii), 17.8.767(1)(c), 17.8.802(1)(d), 17.8.902(1)(a), 17.8.1002(1)(a). Since EPA did not act on revisions to these sections of the ARM in our January 26, 2010 action, references to CAMR were never approved into Montana's SIP. Furthermore, as explained in the "Background" section of this notice, we are proposing no action on revisions referencing 40 CFR parts 60, 61, and 63. Therefore, EPA is proposing no action on the 2010 revisions to ARM 17.8.302(1)(a)(ii), 17.8.767(1)(c), 17.8.802(1)(d), 17.8.902(1)(a), and 17.8.1002(1)(a).

The March 17, 2010 revisions to ARM 17.8.102(1), 17.8.102(1)(a), and 17.8.102(1)(c) make minor grammatical changes and update the citations and references to federal law and State rules. In subsequent SIP submittals dated August 1, 2011 and September 19, 2014, the State again updates IBR publication dates. We therefore propose to act on revisions to ARM 17.8.102(1)(a), and 17.8.102(1)(c) from the September 19, 2014 submittal, as discussed below, and to approve the grammatical changes to ARM 17.8.102(1) from the March 17, 2010 submittal. Since the March 17, 2010 publication date revisions to these three rules were superseded by the August 1, 2011 and September 19, 2014 submittals, we are not acting on the publication date revisions in the March 17, 2010 submittal.

The March 2010 submittal also makes minor editorial and grammatical changes to ARM 17.8.102(2), 17.8.102(2)(a), and 17.8.102(3). ARM 17.8.102(2) and (3) list subparts of NSPS at 40 CFR part 60 and NESHAPs at 40 CFR part 63 which are excluded from IBR. We therefore propose no action on the revisions to ARM 17.8.102(2), 17.8.102(2)(a), and 17.8.102(3) from the August 1, 2011 submittal.

Finally, the submittal deletes ARM 17.8.802(1)(c) and 17.8.822(9), which require compliance with the ambient monitoring requirements of 40 CFR part 58, Appendix B. EPA proposes to approve revisions to ARM 17.8.802(1)(c) and 17.8.822(9) because that appendix no longer exists.

#### B. August 1, 2011 SIP Submittal

The State's August 1, 2011 SIP submittal contained amendments adopted by the State on January 28, 2011 (effective February 11, 2011) and includes the following types of

amendments to the State's air quality rules: Revisions to its IBR of documents and other statutory references contained in the State's air quality rules; an updated reference to the July 1, 2009 edition of the CFR; and updated references to the 2006 edition of the United States Code and Supplement II (2009), and the December 31, 2009 edition of the ARM. The revisions also make minor editorial and grammatical changes, and delete references to a rule which has been vacated.

The August 1, 2011 revisions to ARM 17.8.102(1)(a), 17.8.102(1)(b), and 17.8.102(1)(c) update the citations and references to federal law and State rules. In a subsequent SIP submittal dated September 19, 2014, the State again updates IBR publication dates. We therefore propose to act on revisions to ARM 17.8.102(1)(a), 17.8.102(1)(b), and 17.8.102(1)(c) from the September 19, 2014 submittal, as discussed below. Since the August 1, 2011 publication date revisions to these three rules were superseded by the September 19, 2014 submittals, we are not acting on the publication date revisions in the August 1, 2011 submittal.

Additionally, the August 1, 2011 revisions makes a minor editorial change to ARM 17.8.102(3)(b) which excludes 40 CFR part 63, subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing from IBR and deletes ARM 17.8.102(3)(d) which references portions of 40 CFR part 63, subpart DDDD—NESHAP for Plywood and Composite Wood Products. As previously discussed, we are not acting on revisions referencing 40 CFR parts 60 and 61, and therefore propose no action on ARM 17.8.102(3)(b) and 17.8.103(d).

#### C. November 22, 2011 SIP Submittal

The State's November 22, 2011 SIP submittal contained amendments adopted by the State on March 25, 2011 (effective April 15, 2011) and includes the following types of amendments to the State's air quality rules: Revisions to open burning rules regarding burning locations, permit appeal processes, grammatical changes, and revisions to the notification process of intent to revoke Montana Air Quality Permits.

Revisions to open burning rules in ARM section 17.8.604 specify the circumstances under which moving wood waste from the location where it was generated and burning it elsewhere may occur. The purpose of the revisions are to provide an exception to the general prohibition to allow wood waste generated in areas where burning would be unwise (e.g., where burning wood waste on the premises where it is

generated would produce unacceptable amounts of smoke that could cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS)) to be moved to areas where the burning could take place under conditions protective of the NAAQS and other conditions applicable to open burning.

In our August 24, 2006 final rule (71 FR 49999), we took no action on revisions to ARM 17.8.604(1)(a) that were submitted by the State on April 18, 2003 because language used in the rule revision was considered a department discretion. However, the State's November 22, 2011 submittal removes previous discretionary language of "or unless approval is granted by the department on a case by case basis" from its April 18, 2003 submittal and replaces it with criteria that the department applies when determining whether to issue a permit that allows for burning of any wood waste at a location other than where the wood waste was generated. The revisions ensure waste that is moved from the premises where it is generated is still prohibited material and may not be burned unless it is conducted pursuant to a landfill or conditional open burning permit issued by the department. For conditional air quality open burning, the State's rules require that the department only issue a permit under its rules if the open burning will not cause or contribute to a violation of the NAAQS and that the open burn conform to Best Available Control Technology (BACT) (ARM 17.8.612). Among other things, BACT also requires that these additional categories only burn during the time periods specified by the department (ARM 17.8.601(1)). The revisions also ensure the movement and burning is only an option for wood that is not already described as prohibited and ensure other methods of disposal are considered.

In our July 20, 2004 proposed notice (69 FR 43373) we explained that the proposed changes would not impact the stringency of the rule. In a letter to EPA dated August 19, 2004, the State clarified the intent of proposed changes to ARM 17.8.604(1)(a) stating that the purpose is to ". . . allow open burning of material moved to an alternative site for purposes of better attaining and maintaining the NAAQS." ARM 17.8.604(1)(a) further allows ". . . movement of material for open burning to locations that minimize health effects caused by exposure to smoke emissions. For example, when municipalities experience massive tree damage, disposal of material by open burning within city limits would expose

populations to smoke emissions. However, if material is relocated to an alternate site, populations are better protected from adverse health effects caused by exposure to smoke emissions” (comment letter from Jan Sensibaugh, Director, Montana Department of Environmental Quality (DEQ) to EPA Air & Radiation Program Director Richard Long, contained within this docket).

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The proposed revisions to ARM 17.8.604(1) do not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act. The November 22, 2011 submittal revises the open burning rules; however, as discussed earlier, we do not believe the changes will impact the NAAQS. Therefore, section 110(l) requirements are satisfied and we consequently propose to approve revisions to ARM 17.8.604(1)(a).

We propose to approve the revision to ARM 17.8.610(2) which corrects a grammatical error.

Revisions to ARM 17.8.612, 17.8.613, 17.8.614, and 17.8.615 reflect the Montana Legislature’s revision of the process for appealing air quality permits pursuant to 75–2–211, Montana Code Annotated (MCA). The 2003 Legislature amended 75–2–211, MCA, to eliminate an automatic stay of the department’s decision to issue a permit upon a permit appeal. Instead, during a 15-day delay before the department decision on the permit application becomes final, a permit decision may be stayed only following a petition and a finding that the person requesting the stay is entitled to the relief demanded in the request for hearing or that continuation of the permit would cause the petitioner great or irreparable injury. After 15 days, the department’s decision cannot be appealed. If a stay is granted, but the appeal ultimately fails, the petitioner is liable for costs and damages to the permit applicant.

On March 11, 2003, EPA mailed a memorandum to the Director of the Montana DEQ<sup>2</sup> which expressed potential concern with legislation (including revisions to 75–2–211, MCA) pending in the Montana Legislature. As

<sup>2</sup> See Stephen S. Tuber, Acting Assistant Regional Administrator for the Office of Partnerships and Regulatory Assistance, Memorandum to Jan Sensibaugh, Director of Montana Department of Environmental Quality (March 11, 2003).

outlined in the memo, EPA was concerned that the proposed legislation had the potential to create major impediments to the public’s ability to challenge air permits in state court as required by the CAA. An important consideration before EPA approves programs under the CAA is that the state must provide the same opportunity for judicial review of the air permitting actions in state court as would be available in federal court. The proposed bill (HB No. 700, available within this docket) contained provisions which would have required citizens and organizations to file for a preliminary injunction and then post a bond if such injunction was granted. The appealing party’s bond required coverage of the permittee’s costs of delay. Another provision required the person challenging the permit to indemnify the permittee for the same items covered in the bond. However, this language (*see* HB No. 700, Section 1. 75–2–211.(11)(d) and (e) contained within this docket) was struck from the legislation prior to approval.

We therefore conclude that the 2003 revisions made to 75–2–211, MCA (contained within this docket) do not conflict with the CAA requirements for judicial review of air permitting actions (*see* 42 U.S.C. 7607(b)<sup>3</sup> and 7607(d)<sup>4</sup>) and consequently propose to approve revisions to 17.8.612(10) and (11), 17.8.613(8) and (9), 17.8.614(8) and (9), and 17.8.615(6) and (7). Finally, revision to ARM 17.8.763 provides a process for notice by publication of the department’s intent to revoke a Montana Air Quality Permit issued under Title 17, chapter 8, subchapter 7 when an owner or operator cannot be found for service by certified mail. We propose to approve the revision to ARM 17.8.763(3).

#### D. September 19, 2014 SIP Submittal

The State’s September 19, 2014 SIP submittal contained amendments adopted by the State on May 30, 2014 (effective June 12, 2014) and includes the following types of amendments to

<sup>3</sup> The Environmental Appeals Board Practice Manual, EPA, (September 2010) <http://www.epa.gov/eab/pmanual.pdf>.

<sup>4</sup> 42 U.S.C. 7607(d)(7)(B) states: “Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review . . . .” “If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.”

the State’s air quality rules: Revisions to its IBR of documents and other statutory references contained in the State’s air quality rules; an updated reference to the July 1, 2013 edition of the CFR; and an updated reference to the 2012 edition of the United States Code as it existed on December 31, 2013. The revisions also make minor editorial and grammatical changes; delete references to NSPS and NESHAPs which are excluded from IBR; delete references to a rule which has been vacated; and add information on how to obtain IBR materials referenced in the ARM.

The September 19, 2014 revisions to ARM 17.8.102(1)(a), 17.8.102(1)(b), and 17.8.102(1)(c) update the citations and references to federal law and State rules. We propose to approve these revisions.

The September 19, 2014 revisions delete ARM 17.8.102(2), 17.8.102(2)(a), and 17.8.102(2)(b) which reference subparts of 40 CFR part 60 (NSPS) that are excluded from IBR. The revisions also make a minor editorial change to ARM 17.8.102(3); delete certain language in ARM 17.8.102(3)(a) and ARM 17.8.102(3)(b) which references 40 CFR part 63, subpart JJJJ, NESHAP for Brick and Structural Clay Products Manufacturing and subpart KKKK, NESHAP for Clay Ceramics Manufacturing, respectively; and delete ARM 17.8.102(3)(c) which references 40 CFR part 63, subpart DDDDD, NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters. We propose no action on these revisions since they are in reference to 40 CFR parts 60 and 63.

Finally, the September 19, 2014 revisions add ARM 17.8.102(3) and 17.8.102(4)(a) through (d) which includes information on how to obtain a copy of materials incorporated by reference in this chapter of the ARM and copies of federal materials. We propose to approve language added to ARM 17.8.102(3) and 17.8.102(4)(a) through (d).

#### Proposed Correction

In the direct final rule published in the **Federal Register** on January 29, 2010 (75 FR 4698), on page 4700, third column, we propose to correct the amendatory instruction 2, in the second line, “. . . adding paragraph (c) (68) . . . .” to read: “. . . Adding paragraph (c) (69) . . . .”; and also propose the conforming change in the regulatory text, changing paragraph (c)(68) to (c)(69). This proposed change is necessary because of the inadvertent error made to this regulatory language in our action at 75 FR 4698.

#### IV. What action is EPA taking?

EPA is proposing to approve grammatical changes made to ARM 17.8.102(1), and all revisions of 17.8.802(1)(c) and 17.8.822(9) from the March 17, 2010 submittal. We propose to approve November 22, 2011 revisions to ARM 17.8.604(1)(a), 17.8.610(2), 17.8.612(10) and (11), 17.8.613(8) and (9), 17.8.614(8) and (9), 17.8.615(6) and (7), and 17.8.763(3). We propose to approve the September 19, 2014 submittal's citations and references to federal law and State rules superseding and replacing all previous versions of ARM 17.8.102(1)(a), 17.8.102(1)(b), and 17.8.102(1)(c). Previous submittals were received on March 17, 2010 and August 1, 2011. We also propose to approve language added to ARM 17.8.102(3) and 17.8.102(4)(a) through (d) from the September 19, 2014 submittal. Our action also provides notice that language in ARM 17.8.102 was in effect between January 16, 2010 and publication of this notice. Finally, EPA proposes to correct erroneous amendatory instructions published in the **Federal Register** on January 29, 2010 (75 FR 4698).

#### V. Statutory and Executive Orders Review

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Administrative Rules of Montana regarding citations and references to federal and State laws and regulations; open burning rules; air quality permits appeal process; and revocation of air quality permits discussed in section III, *EPA's Review of the State of Montana's March 17, 2010; August 1, 2011; November 22, 2011; and September 19, 2014 Submittals, and CFR Correction*, of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

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 some state law as meeting federal requirements and disapproves other state law because it

does not meet federal requirements; this proposed action does not impose additional requirements beyond those imposed by state 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 13, 2015.

**Shaun L. McGrath,**

*Regional Administrator, Region 8.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 97

[FRL-9928-49-OAR]

#### Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for the 2015 Compliance Year

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

**ACTION:** Notice of data availability (NODA).

**SUMMARY:** The Environmental Protection Agency (EPA) is providing notice of the availability of preliminary calculations of emission allowance allocations to certain units under the Cross-State Air Pollution Rule (CSAPR). Under the CSAPR federal implementation plans (FIPs), portions of each covered state's annual emissions budgets for each of the four CSAPR emissions trading programs are reserved for allocation to electricity generating units that commenced commercial operation on or after January 1, 2010 (new units) and certain other units not otherwise obtaining allowance allocations under the FIPs. The quantities of allowances allocated to eligible units from each new unit set-aside (NUSA) under the FIPs are calculated in an annual one- or two-round allocation process. EPA has completed preliminary calculations for the first round of NUSA allowance allocations for the 2015 compliance year and has posted spreadsheets containing the calculations on EPA's Web site. EPA will consider timely objections to the preliminary calculations (including objections concerning the identification of units eligible for allocations) and will promulgate a notice responding to any such objections no later than August 1, 2015, the deadline for recording the first-round allocations in sources' Allowance Management System accounts. This notice may concern CSAPR-affected units in the following states: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New