

recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Patricia Morris, Environmental Scientist, at (312) 353-8656 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Patricia Morris, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)353-8656. [morris.patricia@epa.gov](mailto:morris.patricia@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **I. General Information**

##### *A. Does This Action Apply to Me?*

No, this action is rulemaking on a non-regulatory planning document intended to ensure the maintenance of air quality in the Cincinnati Area.

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

1. **Submitting CBI.** Do not submit this information to EPA through EDOCKET, [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI

must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- 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.
- Make sure to submit your comments by the comment period deadline identified.

#### **II. Additional Information**

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at EDOCKET or in hard copy at the above address. (Please telephone Patricia Morris at (312) 353-8656 before visiting the Region 5 Office.)

Dated: July 8, 2004.

**Norman Niedergang,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 04-16334 Filed 7-19-04; 8:45 am]

**BILLING CODE 6560-50-P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Parts 52 and 60**

[SIP NO. R08-OAR-2004-MT-0001; FRL-7790-1]

#### **Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana; New Source Performance Standards for Montana**

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

**ACTION:** Proposed rule and NSPS delegation.

**SUMMARY:** EPA is proposing to partially approve and partially disapprove State Implementation Plan (SIP) revisions submitted by the State of Montana on April 18, 2003 and August 20, 2003. The revisions modify the open burning rules, definitions and references to Federal regulations and other materials in the Administrative Rules of Montana. The intended effect of this action is to make federally enforceable those provisions that EPA is proposing to approve and to disapprove those provisions that are not approvable. We are also announcing that on January 9, 2004, we updated the delegation of authority for the implementation of the New Source Performance Standards (NSPS) to the State of Montana. This action is being taken under sections 110 and 111 of the Clean Air Act.

**DATES:** Comments must be received on or before August 19, 2004.

**ADDRESSES:** Submit your comments, identified by Docket ID No. R08-OAR-2004-MT-0001, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Web site: <http://docket.epa.gov/rmepub/index.jsp>. Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: [long.richard@epa.gov](mailto:long.richard@epa.gov) and [ostrand.laurie@epa.gov](mailto:ostrand.laurie@epa.gov).
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466.

• **Hand Delivery:** Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. R08-OAR-2004-MT-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available at <http://docket.epa.gov/rmepub/index.jsp>, 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 EDOCKET, regulations.gov, or e-mail. The EPA's Regional Materials in EDOCKET and Federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). 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 Regional Materials in EDOCKET index at <http://docket.epa.gov/rmepub/index.jsp>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Laurie Ostrand, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, (303) 312-6437, [ostrand.laurie@EPA.gov](mailto:ostrand.laurie@EPA.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents**

- I. General Information
- II. Background
- III. EPA's Review of the State of Montana's April 18, 2003 and August 20, 2003 Submittals
- IV. Announcement of NSPS Delegation
- V. Proposed Action
- VI. Statutory and Executive Order Reviews

##### **Definitions**

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

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

#### **I. General Information**

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

1. **Submitting CBI.** Do not submit this information to EPA through Regional Materials in EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In

addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

#### **II. Background**

##### **A. April 18, 2003 Submittal**

On April 18, 2003, the Governor submitted a SIP revision that contains amendments to open burning rules at the Administrative Rules of Montana (ARM) 17.8.601, 17.8.604, 17.8.605, 17.8.606, 17.8.610, 17.8.612 and 17.8.614 and an amendment to the incorporation by reference at 17.8.302(f). The amendments allow certain minor open burning to occur in the winter that had previously been prohibited; change the timeframe a landfill burn permit is valid from 30 days to one year and add the requirement that the department or its designated representative inspect burn piles at licensed landfills prior to every burn to ensure that no prohibited materials are in the piles; allow the open burning of the detonation of unexploded ordnance; clarify the materials prohibited from open burning; revise the conditional open burning permit requirements and make minor editorial and grammatical changes. The

submittal also contains amendments to ARM 17.8.302(f)—Incorporation by Reference. The Montana Board of Environmental Review (Board) adopted the amendments on December 6, 2002.

#### *B. August 20, 2003 Submittal*

On August 20, 2003, the Governor submitted a SIP revision that contains amendments to definitions and incorporation by reference of current Federal regulations and other material into air quality rules at ARM 17.8.101, 17.8.102, 17.8.103, 17.8.106, 17.8.110, 17.8.302, 17.8.401, 17.8.402, 17.8.801, 17.8.802, 17.8.818, 17.8.819, 17.8.821, 17.8.901, 17.8.902, 17.8.905, 17.8.1002. The amendments update Federal citations, make clerical amendments, and eliminate the duplication of statutory language in definitions by citing to the definitions in the statute. The Board adopted the amendments on March 28, 2003.

### **III. EPA's Review of the State of Montana's April 18, 2003 and August 20, 2003 Submittals**

#### *A. April 18, 2003 Submittal*

##### **1. Changes to Sub-Chapter 6—Open Burning**

a. Review of changes to ARM 17.8.601—Definitions: The State is revising the definition of “best available control technology (BACT)” in ARM 17.8.601(1). As discussed in the review of changes to ARM 17.8.605 and 606, the State is revising the open burning rules to allow the open burning of additional source categories year round. The definition of BACT is being revised to indicate that BACT, for the additional source categories, includes only burning during time periods specified by the department, which may be determined by calling the department. The State is also revising the definition of “open burning” in ARM 17.8.601(7) to indicate that open burning does not include the detonation of unexploded ordnance. We were originally concerned that adding this exclusion to the definition might be considered a SIP relaxation. However, the State has indicated that the detonation of unexploded ordnance was never considered open burning, because unexploded ordnance may pose an imminent threat to public safety and health. Additionally, the detonation of unexploded ordnance is also subject to permitting required under Montana's Hazardous Waste Management Rules. Therefore, even though the detonation of unexploded ordnance may not be subject to the open burning regulations it would likely be subject to hazardous waste permitting requirements. Finally, the State is making administrative

changes to the definition of “trade wastes” in ARM 17.8.601(10). We are proposing to approve these changes.

b. Review of changes to ARM 17.8.604—Materials Prohibited From Open Burning: The State is revising ARM 17.8.604(1) to clarify the material that may not be disposed of by open burning. We do not believe the changes impact the stringency of the rule. However, with the changes, the State is adding a department discretion provision. Specifically, ARM 17.8.604(1)(a) indicates that waste moved from the premises where it was generated may not be disposed of by open burning except as provided by other provisions in the rule or “or unless approval is granted by the department on a case-by-case basis.” The phrase “or unless approval is granted by the department on a case-by-case basis” is considered a department discretion. A department discretion provision allows the Department to revise the SIP without completing a formal SIP revision. We cannot approve department discretion provisions because they are inconsistent with section 110(i) of the Act. Therefore, we are proposing to approve the changes to ARM 17.8.604(1) except that we are proposing to disapprove the phrase “or unless approval is granted by the department on a case-by-case basis” in ARM 17.8.604(1)(a).

c. Review of changes to ARM 17.8.605—Special Burning Periods: The State is revising ARM 17.8.605(1) to add the following categories that may burn during the entire year: conditional air quality open burning, commercial film production open burning, Christmas tree waste open burning, and any minor open burning that is not prohibited by ARM 17.8.604 or that is allowed by ARM 17.8.606. Initially we were concerned that allowing the open burning during the entire year for these additional categories would be considered a relaxation of the SIP and could interfere with attainment of the national ambient air quality standards (NAAQS) or reasonable further progress. The State explained “that allowing open burning to take place during periods when it is currently prohibited does not increase the total amount of burning that takes place. The burning that is going to take place is merely spread throughout the entire year. This reduces emissions during the fall and spring. Allowing minor open burning to occur under favorable conditions during the winter months will not endanger ambient air quality standards since the burning would be allowed only at times and in places where the ventilation is sufficient to protect ambient standards.”

Additionally, for conditional air quality open burning, commercial film production open burning and Christmas tree waste open burning, the states rules require that 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 BACT (see ARM 17.8.612, 614 and 613, respectively). Among other things, BACT also requires that these additional categories to only burn during the time periods specified by the department (see ARM 17.8.601(1)). We are no longer concerned that the changes to ARM 17.8.605(1) will jeopardize the NAAQS and we are proposing to approve these changes.

d. Review of changes to ARM 17.8.606—Minor Open Burning Source Requirements: The State is revising ARM 17.8.606(3) and (4) to clarify that minor open burning sources need to call the department during certain times of the year to determine if there are any burning restrictions. We are proposing to approve these changes.

e. Review of changes to ARM 17.8.610—Major Open Burning Source Restrictions: The State is making some minor editorial changes to ARM 17.8.610(4). We are proposing to approve these changes.

f. Review of changes to ARM 17.8.612—Conditional Air Quality Open Burning Permits: The State is making changes to ARM 17.8.612(4) and (5) to make the open burning requirements consistent with State and Federal solid waste rules that regulate such burning. We are proposing to approve these changes.

g. Review of changes to ARM 17.8.614—Commercial Film Production Open Burning Permits: The State is making some minor editorial changes to ARM 17.8.614(1). We are proposing to approve these changes.

##### **2. Changes to Sub-Chapter 3—Emission Standards**

a. Review of changes to ARM 17.8.302—Incorporation by Reference: The State is revising ARM 17.8.302(f) to update a citation to a Federal rule. We are proposing to approve these changes.

#### *B. August 20, 2003 Submittal*

##### **1. Changes to Sub-Chapter 1—General Provisions.**

a. Review of changes to ARM 17.8.101—Definitions: The State is updating citations, making minor clerical amendments and eliminating the duplication of statutory language in definitions by citing the definition in the statute; in lieu of repeating

definitions that are contained in the statute, otherwise known as the Montana Code Annotated (MCA), the State is referencing the definition in the MCA. The definitions in ARM 17.8.101 that are being replaced with a reference to the MCA, at this time, are the same. We were originally concerned that the MCA could be revised and that in effect would change the SIP without going through a formal SIP revision. However, ARM 17.8.102—Incorporation by Reference—Publication Dates and Availability of Referenced Documents—references the specific edition (or date) of MCA that is referenced in the rules. As the MCA is updated, the specific edition (or date) will also be updated in the SIP. Updating the specific edition of the MCA is the mechanism that the definitions in the SIP (in ARM 17.8.101) will be updated when the MCA definitions are amended. We are including in the docket for this action a copy of the section 75–2–103 of the MCA (2001 edition) to show the definitions the State intended to be in the SIP with this submittal. We will evaluate any changes to definitions when the State submits SIP revisions that update the editions (or date) of the MCA in ARM 17.8.102. With this submittal, the State also deleted the definition contained in ARM 17.8.101(43). The specific sections the State is revising include: ARM 17.8.101(2), (8), (9), (12), (19), (20), (22), (23), (30) and (36). We are proposing to approve these changes.

b. Review of changes to ARM 17.8.102—Incorporation by Reference—Publication Dates and Availability of Referenced Documents: The State is updating the date of referenced documents. We are proposing to approve these changes.

c. Review of changes to ARM 17.8.103—Incorporation by Reference: The State is updating citations, making wording consistent throughout and changing the order of subsections to a more logical sequence in ARM 17.8.103(1). We are proposing to approve these changes.

d. Review of changes to ARM 17.8.106—Source Testing Protocol: The State is making minor clerical amendments and revising the numbering to conform to State requirements. We are proposing to approve these changes.

e. Review of changes to ARM 17.8.110—Malfunctions: The State is deleting an outdated telephone number and making a minor clerical correction in ARM 17.8.110(2). We are proposing to approve these changes.

## 2. Changes to Sub-Chapter 3—Emission Standards

a. Review of changes to ARM 17.8.302—Incorporation by Reference: The State is updating citations, making wording consistent throughout and changing the order of subsections to a more logical sequence in ARM 17.8.302(1). We are proposing to approve these changes.

## 3. Changes to Sub-Chapter 4—Stack Heights and Dispersion Techniques

a. Review of changes to ARM 17.8.401—Definitions: The State is making minor clerical changes and revising the numbering to conform to State requirements. We are not acting on these changes at this time for the same reasons stated on our August 13, 2001 action (66 FR 42427 at 42434).

b. Review of changes to ARM 17.8.402—Requirements: The State is making minor clerical changes. We are not acting on these changes at this time for the same reasons stated on our August 13, 2001 action (66 FR 42427 at 42434).

## 4. Changes to Sub-Chapter 8—Prevention of Significant Deterioration of Air Quality

a. Review of changes to ARM 17.8.801—Definitions: The State is making minor clerical changes, updating citations and revising the numbering to conform to State requirements. The specific sections the State is revising include: ARM 17.8.801(1), (3), (4), (6), (20), (21), (22), (24), (27) and (28). We are proposing to approve these changes.

b. Review of changes to ARM 17.8.802—Incorporation by Reference: The State is updating citations, making wording consistent throughout and changing the order of subsections to a more logical sequence in ARM 17.8.802(1). We are proposing to approve these changes.

c. Review of changes to ARM 17.8.818—Review of Major Stationary Sources and Major Modifications—Source Applicability and Exemptions: The State is updating citations in ARM 17.8.818(2), (3), and (6). We are proposing to approve these changes.

d. Review of changes to ARM 17.8.819—Control Technology Review: The State is updating a citation in ARM 17.8.819(3). We are proposing to approve these changes.

e. Review of changes to ARM 17.8.821—Air Quality Models: The State is updating citations. We are proposing to approve these changes.

## 5. Changes to Sub-Chapter 9—Permit Requirements for Major Stationary Sources or Major Modifications Locating Within Nonattainment Areas

a. Review of changes to ARM 17.8.901—Definitions: The State is making minor clerical changes, updating citations and revising the numbering to conform to State requirements. The specific sections the State is revising include: ARM 17.8.901(1), (11), (12) and (14). We are proposing to approve these changes.

b. Review of changes to ARM 17.8.902—Incorporation by Reference: The State is updating citations, making wording consistent throughout and changing the order of subsections to a more logical sequence in ARM 17.8.902(1). We are proposing to approve these changes.

c. Review of changes to ARM 17.8.905—Additional Conditions of Air Quality Preconstruction: The State is updating citations in ARM 17.8.905(1)(c). We are proposing to approve these changes.

## 6. Changes to Sub-Chapter 10—Preconstruction Permit Requirements for Major Stationary Sources or Major Modifications Locating Within Attainment or Unclassified Areas

a. Review of changes to ARM 17.8.1002—Incorporation by Reference: The State is updating citations, making wording consistent throughout and changing the order of subsections to a more logical sequence in ARM 17.8.1002(1). We are proposing to approve these changes.

## IV. Announcement of NSPS Delegation

EPA is announcing that on January 9, 2004, pursuant to section 111(c) of the Act, we delegated the authority to the State of Montana to implement and enforce the NSPS. The January 9, 2004 letter follows:

Ref: 8P—AR  
Honorable Judy Martz, Governor of Montana,  
State Capitol, Helena, Montana 59620–0801.

Dear Governor Martz: On August 20, 2003, the State submitted a revision to the Administrative Rules of Montana (ARM) 17.8.102. Specifically, the State revised its rules to incorporate the July 1, 2002 Code of Federal Regulations. This revision, in effect, updates the citation of the incorporated Federal New Source Performance Standards (NSPS) to July 1, 2002.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those NSPS, so long as the State's regulations are equivalent to the Federal regulations. EPA reviewed the pertinent statutes and regulations of the State of Montana and determined that they provide an adequate

and effective procedure for the implementation and enforcement of the NSPS by the State of Montana. Therefore, pursuant to Section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR Part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of Montana as follows:

(A) Responsibility for all sources located, or to be located, in the State of Montana subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60. The categories of new stationary sources covered by this delegation are all NSPS subparts in 40 CFR Part 60, as in effect on July 1, 2002. *Note this delegation does not include the emission guidelines in subparts Cb, Cc, Cd, Ce, BBBB and DDDD. These subparts require state plans which are approved under a separate process pursuant to Section 111(d) of the Act.*

(B) Not all authorities of NSPS can be delegated to States under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) Approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. Therefore, of the NSPS of 40 CFR Part 60 being delegated in this letter, the enclosure lists examples of sections in 40 CFR Part 60 that cannot be delegated to the State of Montana.

(C) The DEQ and EPA will continue a system of communication sufficient to guarantee that each office is always fully informed and current regarding compliance status of the subject sources and interpretation of the regulations.

(D) Enforcement of the NSPS in the State will be the primary responsibility of the DEQ. If the DEQ determines that such enforcement is not feasible and so notifies EPA, or where the DEQ acts in a manner inconsistent with the terms of this delegation, EPA may exercise its concurrent enforcement authority pursuant to section 113 of the Act, as amended, with respect to sources within the State of Montana subject to NSPS.

(E) The State of Montana will at no time grant a variance or waiver from compliance with NSPS regulations. Should DEQ grant such a variance or waiver, EPA will consider the source receiving such relief to be in violation of the applicable Federal regulation and initiate enforcement action against the source pursuant to section 113 of the Act. The granting of such relief by the DEQ shall also constitute grounds for revocation of delegation by EPA.

(F) If at anytime there is a conflict between a State regulation and a Federal regulation (40 CFR Part 60), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

(G) If the Regional Administrator determines that a State procedure for enforcing or implementing the NSPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the DEQ.

(H) Acceptance of this delegation of presently promulgated NSPS does not commit the State of Montana to accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the State's request of August 20, 2003.

(I) Upon approval of the Regional Administrator of EPA Region VIII, the Director of DEQ may subdelegate his/her authority to implement and enforce the NSPS to local air pollution control authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.

(J) The State of Montana must require reporting of all excess emissions from any NSPS source in accordance with 40 CFR 60.7(c).

(K) Performance tests shall be scheduled and conducted in accordance with the procedures set forth in 40 CFR Part 60 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent and alternate test methods as specified in 40 CFR 60.8(b)(2) and (3), the State may approve minor changes in methodology provided these changes are reported to EPA Region VIII. The Administrator also retains the right to change the opacity standard as specified in 40 CFR 60.11(e).

(L) Determinations of applicability such as those specified in 40 CFR 60.5 and 60.6 shall be consistent with those which have already been made by the EPA.

(M) Alternatives to continuous monitoring procedures or reporting requirements, as outlined in 40 CFR 60.13(i), may be approved by the State with the prior concurrence of the Regional Administrator.

(N) If a source proposes to modify its operation or facility which may cause the

source to be subject to NSPS requirements, the State shall notify EPA Region VIII and obtain a determination on the applicability of the NSPS regulations.

(O) Information shall be made available to the public in accordance with 40 CFR 60.9. Any records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of these regulations shall be made available to the designated representatives of EPA upon request.

(P) All reports required pursuant to the delegated NSPS should not be submitted to the EPA Region VIII office, but rather to the DEQ.

(Q) As 40 CFR Part 60 is updated, Montana should revise its regulations accordingly and in a timely manner and submit to EPA requests for updates to its delegation of authority.

EPA is approving Montana's request for NSPS delegation for all areas within the State except for the following: Lands within the exterior boundaries of the Northern Cheyenne, Rocky Boys, Blackfeet, Crow, Flathead, Fort Belknap, and Fort Peck Indian Reservations; and any other areas which are Indian Country within the meaning of 18 U.S.C. 1151.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of Montana will be deemed to accept all the terms of this delegation. EPA will publish an information notice in the **Federal Register** in the near future to inform the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please contact me or have your staff contact Richard Long, Director of our Air and Radiation Program. We can both be reached at (800) 227-8917.

Sincerely yours,  
Robert E. Roberts,  
Regional Administrator.

Enclosure.

cc: Jan Sensibaugh, Director, Montana  
Department of Environmental Quality.  
John Wardell, 8MO.

Enclosure to Letter Delegating NSPS in 40 CFR Part 60, Effective Through July 1, 2002, to the State of Montana.

#### EXAMPLES OF AUTHORITIES IN 40 CFR PART 60 WHICH CANNOT BE DELEGATED

40 CFR subparts	Section(s)
A .....	60.8(b)(2) and (b)(3), and those sections throughout the standards that reference 60.8(b)(2) and (b)(3); 60.11(b) and (e).
Da .....	60.45a.
Db .....	60.44b(f), 60.44b(g) and 60.49b(a)(4).
Dc .....	60.48c(a)(4).
Ec .....	60.56c(i), 60.8.
J .....	60.105(a)(13)(iii) and 60.106(i)(12).
Ka .....	60.114a.
Kb .....	60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).
O .....	60.153(e).
S .....	60.195(b).

## EXAMPLES OF AUTHORITIES IN 40 CFR PART 60 WHICH CANNOT BE DELEGATED—Continued

40 CFR subparts	Section(s)
DD .....	60.302(d)(3).
GG .....	60.332(a)(3) and 60.335(a).
VV .....	60.482–1(c)(2) and 60.484.
WW .....	60.493(b)(2)(i)(A) and 60.496(a)(1).
XX .....	60.502(e)(6).
AAA .....	60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e) and 60.539.
BBB .....	60.543(c)(2)(ii)(B).
DDD .....	60.562–2(c).
GGG .....	60.592(c).
III .....	60.613(e).
JJJ .....	60.623.
KKK .....	60.634.
NNN .....	60.663(f).
QQQ .....	60.694.
RRR .....	60.703(e).
SSS .....	60.711(a)(16), 60.713(b)(1)(i) and (ii), 60.713(b)(5)(i), 60.713(d), 60.715(a) and 60.716.
TTT .....	60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e) and 60.725(b).
VVV .....	60.743(a)(3)(v)(A) and (B), 60.743(e), 60.745(a) and 60.746.
WWW .....	60.754(a)(5).
CCCC .....	60.2030(c) identifies authorities in Subpart CCCC that cannot be delegated to the State.

**V. Proposed Action**

EPA is proposing to approve the following changes to the Administrative Rules of Montana (ARM) that were submitted on April 18, 2003 and effective on December 27, 2002: ARM 17.8.302(f); 17.8.601(1), (7) and (10); 17.8.604(1) (except the phrase in 604(1)(a) “or unless approval is granted by the department on a case-by-case basis”); 17.8.605(1); 17.8.606(3) and (4); 17.8.610(4); 17.8.612(4) and (5); and 17.8.614(1).

EPA is proposing to approve the following changes to the ARM that were submitted on August 20, 2003 and effective on April 11, 2003: ARM 17.8.101(2), (8), (9), (12), (19), (20), (22), (23), (30) and (36); 17.8.102; 17.8.103(1); 17.8.106; 17.8.110(2); 17.8.302(1); 17.8.801(1), (3), (4), (6), (20), (21), (22), (24), (27) and (28); 17.8.802(1); 17.8.818(2), (3) and (6); 17.8.819(3); 17.8.821; 17.8.901(1), (11), (12) and (14); 17.8.902(1); 17.8.905(1)(c); and 17.8.1002(1). We are also proposing to approve the deletion of the definition in ARM 17.8.101(43).

EPA is proposing to disapprove the following change to the ARM that was submitted on April 18, 2003 and effective on December 27, 2002: the phrase “or unless approval is granted by the department on a case-by-case basis” in ARM 17.8.604(1)(a).

EPA is not acting on the following changes to the ARM that were submitted on August 20, 2003 and effective on April 11, 2003: ARM 17.8.401 and 17.8.402. These revisions will be addressed in a separate action.

Section 110(l) of the Clean Air Act 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 Montana SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act. The April 18, 2003 submittal revises the open burning rules. However, as discussed earlier, we do not believe the changes will impact the NAAQS. The August 20, 2003 submittal merely makes administrative amendments to the State’s Administrative Rules of Montana. Therefore, section 110(l) requirements are satisfied.

**VI. Statutory and Executive Order Reviews***A. Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.”

*B. Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all “collections of information” by EPA. The Act defines “collection of information” as a requirement for “answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*” 44 U.S.C. 3502(3)(A). Because this proposed rule does not impose an information collection burden, the Paperwork Reduction Act does not apply.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies 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 small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals and disapproval under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the Federal SIP approval/disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*D. Unfunded Mandates Reform Act*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to

accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to partially approve and partially disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *E. Executive Order 13132, Federalism*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to partially approve and partially disapprove a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This action does not involve or impose any requirements that affect Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions

intended to mitigate environmental health or safety risks.

#### *H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

#### **List of Subjects**

##### *40 CFR Part 52*

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

##### *40 CFR Part 60*

Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

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



Dated: July 13, 2004.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

[FR Doc. 04-16448 Filed 7-19-04; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Part 1600

[Docket No. WO-350-2520-24 1A]

RIN 1004-AD 57

#### Land Use Planning

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would modify the BLM's planning regulations for three reasons. It defines cooperating agency and cooperating agency status. It clarifies the responsibility of managers to offer this status to qualified agencies and governments and to respond to requests for this status. Finally, it makes clear the rule of cooperating agencies in the various steps of BLM's planning process.

The rule is needed to emphasize the importance of working with federal and state agencies and local and tribal governments through cooperating agency relationships in developing, amending, and revising the Bureau's resource management plans. BLM's current planning regulations do not mention the cooperating agency relationship.

**DATES:** You should submit your comments on or before September 20, 2004. The BLM may not necessarily consider comments postmarked or received by messenger or electronic mail after the above date in the decision-making process on the final rule.

#### ADDRESSES:

Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia, 22153, Attention: RIN 1004-AD57.

Personal or messenger delivery: Room 401, 1620 L Street, NW., Washington, DC, 20036.

Direct Internet: [www.blm.gov/nhp/news/regulatory/index.htm](http://www.blm.gov/nhp/news/regulatory/index.htm)

Internet e-mail: [WOCComment@BLM.gov](mailto:WOCComment@BLM.gov) (Include "Attn: AD57").

Federal eRulemaking Portal: <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Robert Winthrop at (202) 785-6597 or

Mark Lambert at (202) 452-7763.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

#### SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Why Are We Proposing This Rule?
- IV. Section-by-Section Analysis
- V. Procedural Matters

#### I. Public Comment Procedures

##### A. How Do I File Comments?

You may submit your comments by any one of several methods:

- You may mail your comments to: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia, 22153, Attention: RIN 1004-AD57.
- You may deliver comments to 1620 L Street, NW., Suite 401, Washington, DC 20036.
- You may comment directly via the Internet by accessing our automated commenting system located at [www.blm.gov/nhp/news/regulatory/index.htm](http://www.blm.gov/nhp/news/regulatory/index.htm) and following the instructions there.
- You may e-mail your comment to: [WOCComment@blm.gov](mailto:WOCComment@blm.gov) (Include "Attn: AD57" in the subject line).

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

The Department of the Interior may not necessarily consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

##### B. May I Review Comments Others Submit?

BLM intends to post all comments on the Internet. If you are requesting that your comment remain confidential, do not send us your comment at the direct internet address or the e-mail address because we immediately post all comments we receive on the internet. Also, comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**: Personal or messenger delivery" during regular business hours (7:45 a.m. to 4:15

p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name and address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### II. Background

Cooperative agency status provides a formal framework for governmental units—local, state, tribal, or federal—to engage in active collaboration with a lead federal agency to implement the requirements of the National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. 4321, *et seq.* The goals of the cooperating agency relationship include:

- Gaining early and consistent involvement;
- incorporating local knowledge of economic and social conditions;
- addressing intergovernmental issues;
- avoiding duplication of effort; and
- building relationships of trust and collaboration for long-term mutual gain.

To focus our efforts and those of our cooperating agencies, at the start of the land use planning process BLM should indicate general goals of the land use plan, including potential land allocation parameters consistent with statutory and regulatory requirements.

The Council on Environmental Quality (CEQ) defines cooperating agency in regulations implementing NEPA, particularly at 40 CFR 1501.6 and 1508.5. The regulations specify that a federal agency qualifies as a cooperating agency because of "jurisdiction by law or special expertise" in federal actions significantly affecting the quality of the human environment. A state agency, local government, or tribal government having similar qualifications may also serve as a cooperating agency. The Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1712(c)(9)) mandates that to the extent practical and consistent with laws governing public lands, BLM coordinate the planning it undertakes with the plans of other federal agencies, state agencies, and local and tribal governments. As proposed here, the cooperating agency relationship complements FLPMA's coordination requirement. It would require BLM,