

• *Hand Delivery/Courier:* U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Claudia Vergnani Vaupel, Office of Air, Waste and Toxics, AWT-107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Claudia Vergnani Vaupel at telephone number: (206) 553-6121, e-mail address: [vaupel.claudia@epa.gov](mailto:vaupel.claudia@epa.gov), fax number: (206) 553-0110, or Gina Bonifacino at telephone number: (206) 553-2970, e-mail address: [bonifacino.gina@epa.gov](mailto:bonifacino.gina@epa.gov), or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. 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. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 10, 2008.

**Michelle Pirzadeh,**

*Acting Regional Administrator, EPA Region 10.*

[FR Doc. E8-14519 Filed 6-26-08; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2006-0040; FRL-8685-9]

### Approval, Disapproval, and Promulgation of Air Quality Implementation Plans; Montana; Kraft Pulp Mill Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to partially approve and partially disapprove the Kraft Pulp Mill Rule and Visible Air Contaminants Rule that the Governor of Montana submitted to us on April 14, 1999. EPA is also proposing to partially approve the recodification of the Kraft Pulp Mill Rule that the Governor submitted to us on September 19, 1997. These revisions recodify and make changes to the State's Kraft Pulp Mill Rule, including the establishment of certain new opacity requirements for kraft pulp mills, and modify the Visible Air Contaminant Rule requirements for recovery furnaces at kraft pulp mills. The intended effect of this action is to approve and make federally enforceable those portions of the rules that meet Clean Air Act requirements, and to disapprove those portions of the rules that are inconsistent with the Clean Air Act. The EPA is taking this action under section 110 of the Clean Air Act (Act).

**DATES:** Comments must be received on or before July 28, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2006-0040, by one of the following methods:

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

- *E-mail:* [videtich.callie@epa.gov](mailto:videtich.callie@epa.gov) and [russ.tim@epa.gov](mailto:russ.tim@epa.gov).

- *Fax:* (303) 312-6064 (please alert the individual listed in **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

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

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

**Instructions:** Direct your comments to Docket ID No. EPA-R08-OAR-2006-0040. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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

**CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Tim Russ, Air Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6479, or russ.tim@epa.gov.

#### **SUPPLEMENTARY INFORMATION:**

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##### *Definitions*

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

- (i) The word *Act* or initials *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 *NAAQS* means National Ambient Air Quality Standard.
- (iv) The initials *SIP* mean or refer to State Implementation Plan.
- (v) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

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

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

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

B. Follow directions—The agency may ask you to respond to specific

questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

#### **II. Background of the State Submittals**

On April 14, 1999 the Governor of Montana submitted a SIP revision that contained changes to the State's Kraft Pulp Mill Rule, Visible Air Contaminant Rule, and Incorporation by Reference Rule that had been adopted by the Montana Board of Environmental Review (MBER) on May 19, 1995 and December 11, 1998<sup>1</sup>. Montana's Kraft Pulp Mill Rule, currently codified at ARM 17.8.321, applies to only one source, Smurfit-Stone Container in Missoula, Montana. The SIP revision changes opacity limits at Smurfit-Stone Container's recovery furnaces #3, #4, and #5, as described more fully below.

##### *a. MBER's May 19, 1995 Revisions*

The revisions MBER adopted on May 19, 1995 added definitions for "cross recovery furnace," "recovery furnace," and "straight kraft recovery furnace," (ARM 16.8.1413(1)(b), (f) and (h)); made minor revisions to ARM 16.8.1413(7); and added ARM 16.8.1413(8) through (12).<sup>2</sup> ARM 16.8.1413(8) through (12) contained opacity limits on recovery furnaces as well as the compliance monitoring methods for the opacity limitations and reporting requirements. The revised rule resulted in a 35% opacity limit on recovery furnace #3 and a 30% opacity limit on recovery furnaces #4 and #5. The revised rule also required Smurfit-Stone to install

continuous opacity monitors (COMS) on the three recovery furnace stacks.

Additionally, on May 19, 1995, the MBER adopted a new provision (ARM 16.8.1404(4)(f) later recodified as ARM 17.8.304(4)(f) and submitted to us on September 19, 1997<sup>3</sup>), which provided that Montana's general opacity requirements in ARM 16.8.1404 did not apply to recovery furnaces at kraft pulp mills. These general opacity requirements require sources installed on or before November 23, 1968 to meet a 40% opacity limitation and sources installed after November 23, 1968 to meet a 20% opacity limitation.

##### *b. MBER's December 11, 1998 Revisions*

On December 11, 1998, MBER adopted further changes and additions to the Kraft Pulp Mill Rule, including changes to the May 1995 opacity limits applicable to recovery furnaces #4 and #5. These changes and additions were codified at ARM 17.8.321(9) through (16). ARM 17.8.321(9) (applicable to recovery furnace #4) requires that, for recovery furnaces installed after November 23, 1968, no person may cause or authorize emissions that exhibit 20% opacity or greater averaged over 6 consecutive minutes for more than 6% of the 6-minute time periods during which a source is operating in a calendar quarter. ARM 17.8.321(10) (applicable to recovery furnace #5) requires that, for recovery furnaces installed after September 4, 1976, no person may cause or authorize emissions that exhibit 20% opacity or greater averaged over 6 consecutive minutes for more than 3% of the 6-minute time periods during which a source is operating in a calendar quarter. ARM 17.8.321(11) defines excess opacity emissions. ARM 17.8.321(12) indicates that sources subject to ARM 17.8.321(9) and (10) may not emit opacity greater than 20% averaged over 24 hours. ARM 17.8.321(13) requires recovery furnaces and associated air pollution control equipment to be operated in accordance with good air pollution control practices during excess opacity emissions. Finally, ARM 17.8.321(14), (15), and (16) contain revisions to the compliance monitoring methods and reporting requirements for kraft pulp mills.

<sup>1</sup> On August 13, 2001 (66 FR 42427), we approved the changes to the Incorporation by Reference Rule (ARM 17.8.302) that MBER adopted on May 19, 1995; no further discussion of the Incorporation by Reference Rule is included in this action.

<sup>2</sup> These rules were later recodified; ARM 16.8.1413(1) through (12) were changed to ARM 17.8.321(1) through (12). This recodification was submitted to us on September 19, 1997 as part of a general recodification of Montana's air rules.

<sup>3</sup> In a separate rulemaking action published on August 13, 2001 (66 FR 42427), we approved most of the recodification of the Administrative Rules of Montana submitted on September 19, 1997. We did not approve the codification of ARM 17.8.321, Kraft Pulp Mill Rule, or ARM 17.8.304(4)(f) of the Visible Air Contaminants Rule. In our August 13, 2001 action, we indicated that we would address the revisions to ARM 17.8.304(4)(f) and 17.8.321 at a later date.

### III. EPA Analysis of the State Submittals

*a. ARM 17.8.321(1) Through (7), Adopted May 19, 1995, Effective August 11, 1995, and Submitted April 14, 1999*

The State merely added definitions, made editorial changes, and recodified the rule. Because the changes are consistent with Clean Air Act requirements, we are proposing to

approve into the SIP ARM 17.8.321(1) through (7) (formerly codified as ARM 16.8.1413(1) through (7)). We are also proposing that ARM 17.8.321(1) through (7) will replace the old codified version of the Kraft Pulp Mill Rule (ARM 16.8.1413(1) through (7), effective December 31, 1972) that is currently in the SIP.

*b. ARM 17.8.321(8), Adopted May 19, 1995, Effective August 11, 1995, Submitted April 14, 1999; and ARM 17.8.321(9) and (10), Adopted December 11, 1998, Effective February 12, 1999, and Submitted April 14, 1999*

The table below shows the opacity limits in ARM 17.8.321(8), (9) and (10) as compared to the existing SIP opacity limits for Smurfit-Stone's three recovery furnaces.

| Smurfit-Stone recovery furnace impacted | Installation date      | Opacity limit six-minute average (existing SIP-Approved rule, ARM 17.8.304) | Opacity limit *** six-minute average (revised rule, ARM 17.8.321) | Exceedance allowance with revised rule                                                     |
|-----------------------------------------|------------------------|-----------------------------------------------------------------------------|-------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Furnace #3 .....                        | On or before 11/23/68. | 40% * .....                                                                 | 35% .....                                                         | None.                                                                                      |
| Furnace #4 .....                        | After 11/23/68 .....   | ARM 17.8.304(1) .....                                                       | ARM 17.8.321(8) .....                                             | 6% of the 6-minute periods during which a source is operating within any calendar quarter. |
|                                         |                        | 20% * .....                                                                 | 20% .....                                                         |                                                                                            |
|                                         |                        | ARM 17.8.304(2) .....                                                       | ARM 17.8.321(9) **** .....                                        | 3% of the 6-minute periods during which a source is operating within any calendar quarter. |
| Furnace #5 .....                        | After 9/4/76 .....     | 35% ** .....                                                                | 20% .....                                                         |                                                                                            |
|                                         |                        | ARM 17.8.304(4) .....                                                       | ARM 17.8.321(10) **** .....                                       |                                                                                            |

\* Sources not allowed to exceed opacity limit except a maximum opacity of 60% is permissible for not more than one 4-minute period in any 60 consecutive minutes during the building of new fires, cleaning of grates, or soot blowing (ARM 17.8.304(3)).

\*\* ARM 17.8.304(4)(d) indicates that the 20% opacity standard in ARM 17.8.304(2) does not apply to "those new stationary sources listed in ARM 17.8.340 for which a visible emission standard has been promulgated." ARM 17.8.340 cross-references EPA's New Source Performance Standards (NSPS). Under the State's interpretation, Furnace #5 is thus subject to the NSPS opacity standard for kraft pulp mills instead of the 20% SIP standard. The NSPS opacity standard is 35% with a 6% quarterly exceedance allowance. See 40 CFR 60.284(d) and (e).

\*\*\* Sources not allowed to exceed opacity limit except for any exceedance allowance.

\*\*\*\* ARM 17.8.321(12) contains an additional requirement that applies to recovery furnaces #4 and #5: Opacity of 20% or greater as averaged over 24 hours is not permitted.

Among other things, EPA evaluates SIP revisions against section 110(l) of the Act. Section 110(l) of the Act provides that we cannot approve a revision to a SIP if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the Act.

Our evaluation of the changes to ARM 17.8.321(8), (9), and (10) with respect to section 110(l) of the Act is as follows:

1. *ARM 17.8.321(8)*: We are proposing to approve ARM 17.8.321(8) because it does not contain an opacity exceedance allowance and it imposes a more stringent opacity limit than the existing SIP on recovery furnaces installed on or before November 23, 1968. Thus, no increase in particulate matter emissions is expected from this change. Accordingly, this revision would not interfere with any applicable requirements concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the Act.

However, we are concerned that the second sentence of ARM 17.8.321(8), which applies to Smurfit-Stone recovery furnace #3, could be read more broadly than is appropriate. That sentence indicates that the opacity limit in ARM

17.8.321(8) "supersedes any other opacity limitation contained in this chapter, including ARM 17.8.304 and 17.8.340." ARM 17.8.340 requires compliance with the New Source Performance Standards (NSPS) in 40 CFR part 60. In our view, a SIP rule cannot "supersede" a federal standard such as the NSPS; instead, the NSPS is another requirement that may apply to a source. A source is obligated to comply with the SIP's opacity provisions for recovery furnaces and the NSPS.

Accordingly, we note that while ARM 17.8.321(8) states that its opacity limit supersedes "any other opacity limitation contained in this chapter" (emphasis added), it does not say that its opacity limit supersedes the federally-established opacity limits contained in 40 CFR Part 60. Thus, it is our interpretation that ARM 17.8.321(8) does not supersede the requirements of 40 CFR Part 60; instead, we interpret ARM 17.8.321(8) as establishing an additional standard. To the extent ARM 17.8.321(8) and 40 CFR Part 60 are both applicable, the source must comply with both. In this case, because ARM 17.8.321(8) is more stringent than the current NSPS opacity standards applicable to kraft pulp mill recovery furnaces, compliance with ARM

17.8.321(8) should ensure compliance with the NSPS opacity standard.

2. *ARM 17.8.321(9)*: We are proposing to disapprove ARM 17.8.321(9). Although the opacity limit of 20% in ARM 17.8.321(9) is the same numeric opacity limit that is contained in the approved SIP, ARM 17.8.321(9) contains an exceedance allowance that is not in the approved SIP. The exceedance allowance allows the source to exceed its opacity limit a certain percentage of time each quarter; in ARM 17.8.321(9), the exceedance allowance is 6% of the 6-minute time periods during which the source is operating. While the source is also subject to an average daily opacity limit of 20%, per ARM 17.8.321(12), our analysis indicates that even with this restriction, the opacity limit in ARM 17.8.321(9) would be less stringent than the existing SIP opacity limit (which is based on a six-minute average, not daily) and could lead to an increase in particulate matter emissions, as calculated using the source-supplied correlation between opacity and particulate matter. Our analysis considers potential effects on attainment of the PM<sub>10</sub> and PM<sub>2.5</sub> NAAQS and compliance with the PM<sub>10</sub> increment under the Clean Air Act's Prevention of Significant Deterioration (PSD) provisions.

Regarding the PM<sub>10</sub> NAAQS, we note that the PM<sub>10</sub> limit on Smurfit-Stone recovery furnace #4 was relied on to help demonstrate attainment of the PM<sub>10</sub> NAAQS in Missoula County, Montana. Therefore, to show compliance with the requirements of section 110(l) of the CAA, it would be necessary to demonstrate that the revision to the opacity limit would not interfere with continued attainment of the PM<sub>10</sub> NAAQS and that the PM<sub>10</sub> limits on recovery furnace #4 would be met during the exceedance allowance, assuming the 20% restriction on the average daily opacity contained in ARM 17.8.321(12).<sup>4</sup>

Relative to this issue, the Montana Department of Environmental Quality (MDEQ) provided testimony to the MBER for its proposed revisions to the Kraft Pulp Mill Rule. In its testimony, the MDEQ attempted to show the effect of an opacity exceedance allowance on the PM<sub>10</sub> mass emissions for Smurfit-Stone's recovery furnace #4. The MDEQ concluded that the mass emissions allowed by the State's proposed changes to the Kraft Pulp Mill Rule would be comparable to those allowed by the current SIP. In order to make this comparison, the MDEQ assumed the average opacity during use of the exceedance allowance would not exceed the 20% standard by more than 10%; thus, 30% was the estimated average opacity during exceedance periods. Additionally, MDEQ estimated particulate emissions using a correlation equation developed by Smurfit-Stone<sup>5</sup> and assuming average air flow to the recovery furnaces.

We believe this approach is flawed for two reasons. First, during Smurfit-Stone's use of the exceedance allowance, the Kraft Pulp Mill Rule does not limit exceedances to 30% opacity; thus, capping the exceedances at 30% is expected to underestimate the predicted

particulate emissions. Second, using average, rather than maximum, air flow to the recovery furnaces may also underestimate predicted particulate emissions. Any demonstration to show that the PM<sub>10</sub> emission limits, and hence the PM<sub>10</sub> NAAQS, would be met should use worst-case scenarios.

Using worst case scenarios, EPA conducted its own analysis of potential PM<sub>10</sub> emissions from recovery furnace #4. Like MDEQ, we used Smurfit-Stone's correlation equation for recovery furnace #4. However, we used worst-case assumptions for air flow and opacity levels. Smurfit-Stone's furnace-specific correlation equation is used by Smurfit-Stone and the State to calculate particulate emissions from the furnace and is based on the opacity of furnace emissions and air flow to the furnace. According to the State, the equation is as follows:

*Recovery Furnace #4: Particulate emissions (pounds/day) = Q\*C\*K1\*K2*

Where:

Q = stack exit air flow in dry standard cubic feet per minute (DSCFM) =  $0.2322 * (\text{total air}) + 14637$  (total air = air flow into the boiler (pounds/hour));

C = particulate concentration in grains/dry standard cubic foot (DSCF) =  $(-0.1303 * \ln(1 - \text{opacity})) + 0.0008$ ; opacity represented as a decimal (10% opacity would be 0.10 in this equation);

K1 = conversion factor (1 pound/7000 grains); and

K2 = conversion factor (1440 minutes/day).

In our analysis, we relied on the following considerations: With a 6% per quarter exceedance allowance, recovery furnace #4 could exceed the 20% opacity limit up to approximately 131 hours per quarter (8760 hours per year/4 quarters per year \* 6% = 131 hours per quarter.) Thus, for a single 24 hour period, recovery furnace #4 could exceed the 20% opacity limit every six-minute period during the 24 hour period and still have the ability to comply with its exceedance allowance for the quarter. This means that, on a 24-hour basis, ARM 17.8.321(12)'s 20% daily average opacity limit for recovery furnace #4 is more controlling than the exceedance allowance.

Accordingly, in our analysis we attempted to determine whether compliance with the 20% daily average opacity limit would ensure compliance with the daily particulate emission limits at recovery furnace #4. Using the correlation equation, potential opacity readings, and maximum gas flow rate, we found that meeting the 20% daily average opacity limit would not assure that the 24-hour PM<sub>10</sub> emission limits on recovery furnace #4 would be met.

Our analysis is contained in the docket to this action.

In addition, the State did not provide us with any basis for concluding that increases in PM<sub>2.5</sub> emissions would not interfere with attainment of the PM<sub>2.5</sub> NAAQS, and that increases in PM<sub>10</sub> emissions would not jeopardize the PM<sub>10</sub> increment.<sup>6</sup> Based on the State's submittal and our own evaluation, we are unable to conclude that the revision in ARM 17.8.321(9) would not interfere with attainment of the PM<sub>10</sub> and PM<sub>2.5</sub> NAAQS or jeopardize the PM<sub>10</sub> increment. Thus, we are proposing to disapprove ARM 17.8.321(9).

3. *ARM 17.8.321(10)*: Because the 20% opacity limit in ARM 17.8.321(10) is more stringent than the 35% opacity limit in the approved SIP, and ARM 17.8.321(10)'s exceedance allowance (3% per quarter) is more stringent than the existing SIP rule's exceedance allowance (6% per quarter), we are proposing to approve ARM 17.8.321(10). No increase in particulate matter emissions is expected from this change. Thus, this revision would not interfere with any applicable requirements concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the Act.

c. *ARM 17.8.321(11) Through (16)*

ARM 17.8.321(11) indicates that excess opacity emissions for recovery furnaces installed on or before November 23, 1968 means any 6-minute average of 35% or greater and for recovery furnaces installed after November 23, 1968 means any 6-minute average of 20% or greater. ARM 17.8.321(12) indicates that for recovery furnaces subject to ARM 17.8.321(9) and (10), no person may cause or allow emissions that exhibit a 20% opacity or greater as averaged over a 24-hour period. ARM 17.8.321(13) requires recovery furnaces and associated air pollution control equipment to be operated in accordance with good air pollution control practices during any period of excess opacity emissions. Finally, ARM 17.8.321(14), (15), and (16) require recovery furnaces subject to ARM 17.8.321(8), (9), and (10) to install and operate COMS pursuant to certain requirements, and to report excess opacity emissions.

<sup>6</sup> In a September 25, 1998 letter to the State, we indicated that an evaluation of the impact on the PM<sub>10</sub> increment must occur because a relaxation of the opacity limit could result in increases in actual emissions from the source. 40 CFR 51.166(a)(2), states "If a SIP revision would result in increased air quality deterioration over any baseline concentration, the plan revision shall include a demonstration that it will not cause or contribute to a violation."

<sup>4</sup> Opacity has long been used as an indicator of compliance with emission limits; if opacity increases, PM emissions are also likely to increase. 40 CFR 51.212 requires that SIPs include opacity limits as a means to detect violations of rules and regulations. Similarly, the NSPS imposes opacity limits but provides the option for sources to petition EPA for a higher opacity limit if the source can show that it complied with all other applicable limits during performance tests under 40 CFR 60.8 but failed to meet its opacity limit. See 40 CFR 60.11(e)(6). Our concern is that a relaxation in the kraft pulp mill opacity limit could result in undetected exceedances of the particulate emission limits if compliance with the opacity limit would not necessarily reflect compliance with the PM limits.

<sup>5</sup> Smurfit-Stone has conducted studies to correlate particulate emissions with opacity readings at recovery furnaces #4 and #5, and the resulting correlation equations are used to determine compliance with particulate limits at recovery furnaces #4 and #5.

We note that ARM 17.8.321(15) indicates that COMS will be the primary measure of compliance with the opacity limits in the rule, but that EPA Method 9 may be used as a measure of compliance when there is a reason to believe the COMS data are not accurate or when COMS data are unavailable. We do not believe this language was intended to preclude the use of Method 9 readings as credible evidence of compliance in circumstances other than those specified in the rule, and we propose to interpret the rule accordingly.

Because the above provisions will not reduce the stringency of the existing federally-approved SIP, we consider them to be consistent with the requirements of section 110(l) of the Act. Therefore, we are proposing to approve ARM 17.8.321(11) through (16).

*d. ARM 17.8.304(4)(f)*

As part of the April 14, 1999 submittal to us, the Governor submitted revisions to ARM 17.8.304, the Visible Air Contaminants Rule. On May 19, 1995, MBER added subsection (f) to ARM 16.8.1404(4) (now codified as ARM 17.8.304(4)(f)). ARM 17.8.304(4)(f) excludes recovery furnaces at kraft pulp mills from the statewide general opacity requirements. We are proposing to disapprove the addition of this paragraph because we are proposing to disapprove ARM 17.8.321(9). If we were to approve the addition of paragraph (4)(f), and disapprove the State's new opacity requirements in ARM 17.8.321(9), kraft pulp mill recovery furnaces installed between November 23, 1968 and September 4, 1976 would not be subject to any EPA-approved SIP opacity limits.

#### IV. Proposed Action

We are proposing action on the revisions to ARM 17.8.304, "Visible Air Contaminants," and ARM 17.8.321, "Kraft Pulp Mill Rule," that the Governor of Montana submitted to us on April 14, 1999, and on the recodification of the Kraft Pulp Mill Rule that the Governor submitted to us on September 19, 1997.

We are proposing to approve the recodification of, and revisions to, the Kraft Pulp Mill Rule found in ARM 17.8.321(1) through (7) (formerly codified ARM 16.8.1413(1) through (7)). We are also proposing that ARM 17.8.321(1) through (7), if approved, will replace the old codified version of the Kraft Pulp Mill Rule (ARM 16.8.1413(1) through (7), effective December 31, 1972) that is currently in the SIP. We are also proposing to

approve the provisions in ARM 17.8.321(8) and (10) through (16).

We are proposing to disapprove the provisions of the Kraft Pulp Mill Rule found in ARM 17.8.321(9). We are also proposing to disapprove ARM 17.8.304(4)(f).

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before we take final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to us as discussed in prior sections of this proposed rule.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve and disapprove state law as meeting and not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve and disapprove pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely

proposes to approve and disapprove portions of a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 4, 2008.

**Carol Rushin,**

*Deputy Regional Administrator, Region 8.*  
[FR Doc. E8-14622 Filed 6-26-08; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 383, 384, 390, and 391

[Docket No. FMCSA-1997-2210]

RIN 2126-AA10

#### Medical Certification Requirements as Part of the Commercial Driver's License; Availability of Supplemental Document

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Proposed rule; availability of supplemental document.

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