

ExxonMobil's exhibit A, submitted on May 4, 2000.

- Minor changes in sections 3, 3(A) and 3(B) (only the introductory paragraphs); and sections 3(E)(3), 6(B)(7), 7(B)(1)(d), 7(B)(1)(j), 7(C)(1)(b), 7(C)(1)(d), 7(C)(1)(f), and 7(C)(1)(l) of ExxonMobil's exhibit A, submitted on May 4, 2000.

*We are limitedly approving and limitedly disapproving the following provisions:*

- Provisions related to the fuel gas combustion emission limitations at ExxonMobil in sections 3(B)(2), 4(B), and 6(B)(3) of ExxonMobil's exhibit A, submitted on July 29, 1998 and section 3(A)(1) of ExxonMobil's exhibit A, submitted on May 4, 2000.

- Provisions related to ExxonMobil's coker CO-boiler emission limitation in sections 2(A)(11)(d), 3(B)(1) and 4(C) of ExxonMobil's exhibit A, submitted on May 4, 2000.

- Provisions related to the burning of SWS overheads at Cenex in sections 3(B)(2) and 4(D) (excluding "or in the flare" and "or the flare" in both sections), 3(A)(1)(d), and 4(B) of Cenex's exhibit A, submitted on July 29, 1998, and method #6A-1 of attachment #2 of Cenex's exhibit A, submitted on May 4, 2000.

We caution that if sources are subject to more stringent requirements under other provisions of the Act (e.g., section 111 new source performance standards; Title I, Part C, (prevention of significant deterioration); or SIP-approved permit programs under Title I, Part A), our approval and limited approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other more stringent requirements. Also, our action on this SIP is not meant to imply any sort of applicability determination under other provisions of the Act (e.g., section 111; Title I, Part C; or SIP-approved permit programs under Title I, Part A).

## II. Background

On May 2, 2002, 67 FR 22242, we proposed action on portions of the State of Montana's July 29, 1998 submittal and all of the May 4, 2000 submittal. No comments were received on our proposed action. We are finalizing our action as proposed. For further information regarding the basis for this action, the reader should refer to our proposed action.

Once we approve a SIP, or parts of a SIP, the portions approved are legally enforceable by us and citizens under the Act. Once we limitedly approve/disapprove a SIP, or parts of a SIP, the portions limitedly approved/

disapproved are also legally enforceable by us and citizens under the Act. Under a limited approval/disapproval action, we approve and disapprove the entire rule even though parts of it do and parts do not satisfy requirements under the Act. The rule remains a part of the SIP, however, even though there is a disapproval, because the rule strengthens the SIP. The disapproval only concerns the failure of the rule to meet specific requirements of the Act and does not affect incorporation of the rule as part of the approved, federally enforceable SIP. By disapproving parts of the plan, we are determining that the requirements necessary to demonstrate attainment in the area have not been met and we may develop a plan or parts of a plan to assure that attainment will be achieved.

EPA believes partially and limitedly approving the Billings/Laurel SO<sub>2</sub> SIP meets the requirements of section 110(l) of the Act. The provisions of the plan that we are partially and limitedly approving strengthen the Montana SIP by providing specific emission limits for several SO<sub>2</sub> sources in Billings/Laurel. This will achieve progress toward attaining the SO<sub>2</sub> NAAQS.

## III. 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 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 partial and limited approval rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. 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).

Moreover, EPA's limited disapproval will not have a significant impact on a substantial number of small entities because the limited disapproval action only affects two industrial sources of air pollution in Billings/Laurel, Montana: Cenex Harvest Cooperatives and ExxonMobil Company, USA. Only a limited number of sources are impacted by this action. Furthermore, as explained in this action, the submission does not meet the requirements of the Clean Air Act and EPA cannot approve the submission. The limited disapproval will not affect any existing State requirements applicable to the entities. Federal disapproval of a State submittal does not affect its State enforceability. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

### D. Unfunded Mandates Reform Act

Under section 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 partial and limited approval and limited disapproval actions do not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal