

this is problematic because it is extremely unlikely that one would capture worst case conditions that may occur in future September periods. Three months of data is not enough to find even slightly adverse conditions. The State believes that since maintenance is only allowed in September using three years of onsite meteorological data for September should adequately represent the types of meteorological conditions that would be encountered during the maintenance procedures. We do not agree. EPA's Modeling Guidelines requires five years of National Weather Service meteorology data be used in modeling to assure that the most adverse meteorological conditions are considered in the analysis. See Guideline on Air Quality Models, 40 CFR part 51, appendix W, section 9.3.1. Three months of data is clearly insufficient.

Lastly, the modeling assumed a background concentration of 17 $\mu\text{g}/\text{m}^3$. This value was taken from the monitor near the plant and not the monitor in Columbia Falls. We are not convinced that the 17 $\mu\text{g}/\text{m}^3$ value is an appropriate value to be used for background concentration. Maximum ambient concentrations measured in Columbia Falls over the past several years in the August to October time frame have been on the order 16 to 48 $\mu\text{g}/\text{m}^3$.

Concerns With the Maximum Achievable Control Technology (MACT) Requirements

EPA has two concerns regarding the interaction of this rule with the National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants (the MACT standard). First, we are concerned that by adopting this rule, the State of Montana may impact its automatic delegation of the MACT standard (40 CFR subpart LL, at ARM 17.8.103(1)(j) and 17.8.342) because the new rule could be interpreted to alter the requirements of the delegated MACT standard. Although the MACT standard adopted by Montana is not being revised, the new rule has a direct impact on the requirements of the MACT standard. EPA's MACT standard does not have any provision for exempting excess emissions during a maintenance event. Any excess emissions have to be reported and enforcement discretion used in determining what, if any, penalty is appropriate for the event. The MACT standard was automatically delegated to the State under the condition that the State's rule is identical to the EPA rule (40 CFR

63.91(a)(1)). If changes are made, the automatic delegation could be withdrawn and the State would have to undergo a formal delegation process in order to receive delegation for this MACT standard (40 CFR 63.91(a)(2)). This process would include a demonstration that the changed rule is at least as stringent as the EPA rule. Second, we are concerned that by adopting ARM 17.8.335, the State has rules with conflicting requirements—one set in the MACT standard adoption and one set in this SIP rule, leading to confusion for the source and public as to which one applies. We intend to engage the State in discussion to clarify this matter.

IV. Proposed Action

For the reasons identified above, EPA is proposing to disapprove the SIP revision submitted by the State of Montana on January 16, 2003. The submittal requests that ARM 17.8.335, Maintenance of Air Pollution Control Equipment For Existing Aluminum Plants, be added to the SIP. We are continuing to evaluate the impacts of the new rule on the delegation of the MACT standard, 40 CFR subpart LL, at ARM 17.8.103(1)(j) and 17.8.342, to the State. We are soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

V. 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 rule will not have a significant impact on a substantial number of small entities because EPA's proposed disapproval action only affects one industrial source of air pollution; Columbia Falls Aluminum Corporation. Only one source is 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 proposed disapproval will not affect any existing State requirements applicable to the entity. Federal disapproval of a State submittal does not affect its State enforceability. Therefore, because the Federal SIP disapproval does not create any new requirements nor impact a substantial number of small entities, 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 approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more