

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT-001-0024, MT-001-0025, MT-001-0026; FRL-6883-6]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan; Montana; East Helena Lead State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to partially approve and partially disapprove the East Helena Lead (Pb) State Implementation Plan (SIP) revisions submitted by the Governor of Montana on August 16, 1995, July 2, 1996, and October 20, 1998. The EPA is proposing to grant a simultaneous partial approval and partial disapproval of these SIP revisions because, while they strengthen the SIP, they also do not fully meet the Act provisions regarding plan requirements for nonattainment areas. The intended effect of this action is to make federally enforceable those provisions that EPA is proposing to partially approve, and to not make federally enforceable those provisions that EPA is proposing to partially disapprove. The EPA is taking this action under sections 110, 179, and 301 of the Clean Air Act (Act).

DATES: Written comments must be received by November 9, 2000.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202-2466. Copies of the State documents relevant to this action are available for public inspection at the Air and Waste Management Bureau, Montana Department of Environmental Quality, 1520 E. 6th Avenue, Helena, Montana, 59620-0901.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, EPA Region VIII, (303) 312-6493 or Laurie Ostrand, EPA, Region VIII, (303) 312-6437.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we", "our", or "us" is used, we mean EPA.

Table of Contents

- I. Background
- II. Criteria for Approval
- III. Evaluation of the State's Submittals
 - A. Why is EPA Proposing to Partially Approve the State of Montana's Plan?
 - 1. August 16, 1995 SIP Revision
 - 2. July 2, 1996 SIP Revision
 - 3. October 20, 1998 SIP Revision
 - B. Why is EPA Proposing to Partially Disapprove the State of Montana's Plan?
 - C. What Happens When EPA Partially Approves and Partially Disapproves the State of Montana's Plan?
 - D. Emission Inventory
 - 1. ASARCO
 - 2. East Helena Area
 - 3. American Chemet
 - E. Reasonably Available Control Measures (RACM)/Reasonably Available Control Technology (RACT)
 - F. Emission Limit Requirements
 - G. Enforceability
 - H. Reasonable Further Progress (RFP)
 - I. Contingency Measures
 - J. Attainment of the Pb NAAQS
- IV. Request for Public Comment
- V. Administrative Requirements
 - A. Executive Order 12866
 - B. Executive Order 13045
 - C. Executive Order 13084
 - D. Executive Order 13132
 - E. Regulatory Flexibility
 - F. Unfunded Mandates

I. Background

On October 5, 1978, we promulgated primary and secondary National Ambient Air Quality Standards (NAAQS) for Pb and its compounds, measured as elemental Pb (40 CFR 50.12). The primary and secondary standards were set at 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), maximum arithmetic mean, averaged over a calendar quarter. On July 9, 1984, we approved a revision to the Montana SIP which set forth a Pb control strategy to provide for attainment and maintenance of the Pb NAAQS in East Helena. In response to continuing violations of the Pb NAAQS following implementation of the July 9, 1984 SIP, on October 1, 1988, we sent a letter to the Governor of Montana, providing notification that the Pb SIP for East Helena was inadequate to attain and maintain the Pb NAAQS. We published this notification on December 2, 1988 in 53 FR 48642. Pursuant to the new authority in the 1990 amendments to the Act, on November 6, 1991, we designated the East Helena area as a nonattainment area for Pb. This designation was effective on January 6, 1992 and required the State to submit a Part D SIP by July 6, 1993. The SIP must provide for attainment of the Pb NAAQS as expeditiously as practicable, but no later than January 6, 1997.

The Montana Department of Environmental Quality (MDEQ)

developed the Pb SIP for East Helena in consultation with the ASARCO primary Pb smelter, the major Pb source in East Helena, and American Chemet, a paint pigment plant. The State's efforts have been coordinated with us to ensure compliance with SIP requirements. On August 16, 1995, the Governor of Montana submitted the first Pb SIP revision. This submittal consists of (1) a Montana Board of Environmental Review (MBER) approved order which adopted the stipulation between MDEQ and ASARCO, as well as controlled emissions on some of the streets of East Helena, and (2) a MBER approved order which adopted the stipulation between MDEQ and American Chemet. On July 2, 1996, the Governor of Montana submitted the second Pb SIP revision. This submittal consists of MBER orders and stipulations, between MDEQ and ASARCO, approved on April 12, 1996 and June 21, 1996. The Governor of Montana submitted the third Pb SIP revision on October 20, 1998 which included an August 28, 1998 board order adopting the stipulation between MDEQ and ASARCO. The third Pb SIP revision, dated October 20, 1998, was submitted to make the SIP consistent with permit conditions in Montana Air Quality Permits #2557-08, dated January 3, 1997, and #2557-09, dated April 6, 1998. On April 28, 2000, MDEQ submitted a formatting revision to the SIP correcting a typographical error in the footnotes of the SIP.

II. Criteria for Approval

These Pb SIP revisions were reviewed using the criteria established by the Act. The requirements for all SIPs are contained in section 110(a)(2) of the Act. Section 172(c) of the Act specifies the provisions applicable to areas designated as nonattainment for any of the NAAQS. Further guidance and criteria are set forth in the "State Implementation Plans for Lead Nonattainment Areas; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (58 FR 67748).

III. Evaluation of the State's Submittal

Our Technical Support Document (TSD) for this action discusses our criteria for deciding whether to approve or disapprove the East Helena Pb SIP and whether or not the State of Montana's submittals satisfy those criteria. The TSD also discusses most of the issues we raised on various drafts and final submittals of the East Helena Pb SIP revisions and how the State of Montana addressed these issues. See the TSD for a more detailed review of the

Pb SIP and how it satisfies the Act's requirements.

A. Why Is EPA Proposing To Partially Approve the State of Montana's Plan?

We are proposing to partially approve the East Helena Pb SIP revisions, submitted by the Governor of Montana on August 16, 1995, July 2, 1996, and October 20, 1998. Except for those provisions that we are proposing to partially disapprove, we believe the submitted plans satisfy the Act's requirements for Pb nonattainment areas.

1. August 16, 1995 SIP Revision

On August 16, 1995, the Governor of Montana submitted the first Pb SIP revision. This submittal consists of (1) a MBER approved order which adopted the stipulation between MDEQ and ASARCO to limit Pb emissions from ASARCO's Pb smelting operations as well as controlled emissions on some of the streets of East Helena, and (2) a MBER approved order which adopted the stipulation between MDEQ and American Chemet to limit Pb emissions from the #1 Copper Furnace Baghouse Stack.

2. July 2, 1996 SIP Revision

On July 2, 1996, the Governor of Montana submitted the second Pb SIP revision. This submittal contains a series of orders approved by the MBER adopting stipulations between MDEQ and ASARCO. An April 12, 1996 board order and stipulation allows ASARCO operational flexibility, while still assuring attainment and maintenance of the NAAQS for Pb in the East Helena area. A June 21, 1996 board order and stipulation revises ASARCO's method for handling furnace Pb based on safety and engineering concerns.

On March 24, 1998, we sent MDEQ comments on this Pb SIP revision asking for clarification on emission limits and inventory, air modeling, ambient data, department discretion, and other general issues. Based on the November 16, 1999 response from MDEQ, we have determined the SIP revision is acceptable, except for the department discretion issues and enforceability concerns with two test methods. We are proposing to grant a partial disapproval due to the department discretion issues and enforceability concerns with two test methods in the East Helena Pb SIP.

3. October 20, 1998 SIP Revision

On October 20, 1998, the Governor of Montana submitted the third Pb SIP revision which included a June 12, 1998 board order adopting the stipulation between MDEQ and ASARCO. These

modifications allow ASARCO to change the emission control and ventilation system for a specific operation. These changes to the emission control system will not result in any changes in emission limitations at the ASARCO facility. On April 28, 2000, MDEQ submitted a formatting revision to the SIP correcting a typographical error in the footnotes of the SIP.

On September 9, 1998, the MDEQ responded to our comments on the draft version of this Pb SIP revision. We were concerned the proposed changes contravened our stack height rules, and questioned ASARCO's possible use of dispersion techniques, such as changes in volumetric flow rate and final exhaust gas plume rise. The MDEQ adequately documented its basis for concluding that the proposed changes do not constitute prohibited dispersion techniques and assured us that the proposed changes comply with the stack height rules. We have concluded, based on the information MDEQ provided, that these revisions result in a negligible change in volumetric flow rate and final exhaust gas plume rise, and result in no change in the operation of specific equipment or other parameters that might affect the exhaust gas stream. Therefore, we agree that the changes at ASARCO do not contravene section 123 of the Act or our stack height rules.

Section 110(k) of the Act addresses our actions on submissions of SIP revisions. The Act also requires States to observe certain procedures in developing SIP revisions. Section 110(a)(2) of the Act requires that each SIP revision be adopted after reasonable notice and public hearing. We have evaluated the State's submissions and determined that the necessary procedures were followed.

B. Why Is EPA Proposing To Partially Disapprove The State of Montana's Plan?

We are proposing to partially disapprove this SIP revision, because it does not fully meet the Act provisions regarding plan submissions and requirements for nonattainment areas. The current version of East Helena's Pb SIP does not conform to the requirement of section 110(a)(2) of the Act that SIP limits must be enforceable nor to the requirement of section 110(i) that the SIP can only be modified through the SIP revision process. In our March 24, 1998 letter to MDEQ, we raised concerns about places in the stipulation where MDEQ has the discretion to modify existing provisions, or add future documents or compliance monitoring methods to the Pb SIP. The stipulations were not clear whether any

of these changes would be submitted as SIP revisions or by any other process for us to review and approve. We indicated in places where the stipulation allowed MDEQ to exercise discretion, the words "and EPA" must be added. The State did not revise the SIP to address our concern and in its November 16, 1999 response, MDEQ indicated that the department discretion issues would be addressed at a later date. We are proposing to partially disapprove the SIP because of the provisions which allow department discretion and two provisions which contain enforceability issues related to the test method.

C. What Happens When EPA Partially Approves and Partially Disapproves the State of Montana's Plan?

By partially approving the SIP, we are making those portions of the State's submittal federally enforceable (and enforceable by citizens under the Act). These portions of the SIP that we partially disapprove are not made federally enforceable. We believe that the proposed partial approval of the East Helena Pb SIP, except for those provisions that we are proposing to partially disapprove, satisfy the Act's criteria for Pb nonattainment SIPs. Even though we are proposing to partially disapprove portions of the SIP, the State is not required to revise the SIP to fully meet the Act's Pb nonattainment requirements. Therefore, because the State is not required to complete any further SIP revisions as a result of the partial disapproval, sanctions and Federal Implementation Plan clocks (FIP) under sections 179(a) and 110(c), respectively, will not be started if we finalize our proposal to partially disapprove the East Helena Pb SIP.

D. Emission Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The MDEQ identified three major sources of Pb in the East Helena area: the ASARCO Smelter complex; re-entrained dust from the roads of East Helena; and the American Chemet copper oxide manufacturing facility.

1. ASARCO

The North American Weather Consultants (NAWC) conducted a detailed Pb emission inventory of the ASARCO smelter facility in the summer and fall of 1990. The NAWC developed a complete testing protocol describing test locations and actual test methods. The final emission inventory is located

in the "ASARCO East Helena Primary Lead Smelter Task 5 Summary Report Volumes 1-5," NAWC, May 1992. We reviewed the testing protocol and emissions inventory in detail and provided numerous comments to the State. The State and ASARCO responded to most of our comments. We believe the report provides, for the most part, a complete and accurate Pb emission inventory of the entire facility for use in dispersion modeling studies.

2. East Helena Area

The MDEQ conducted a base year Pb emission inventory of the town of East Helena. The final report is entitled "East Helena Lead Emission Inventory" and dated February 1992. This effort focused mainly on the Pb emissions from re-entrained road dust but also included Pb emission estimates from automobile exhaust, wind erosion of barren ground, and agricultural tillage. The base year selected for this study ran from July 1, 1990 through June 30, 1991. Results of the study show that re-entrained road dust accounts for 93.6% of the total annual Pb emissions, while automobile tailpipe emissions contribute 3.8%. The remaining 2.6% of the total Pb emissions comes from parking lots, unpaved roads, wind erosion, and agricultural sources.¹

3. American Chemet

The MDEQ conducted an emissions inventory of the American Chemet facility between July 1, 1990 and June 30, 1991. The MDEQ used historical testing data, along with a log of actual hours of operation, and material processed, to estimate Pb emissions during the study period. The MDEQ inventoried a total of 16 point sources, including scrubber and baghouse exhausts, during the study period. A supplemental report prepared by the Department, entitled "American Chemet Corporation 1990 Emission Inventory," contains complete details of the

emission inventory for American Chemet.

Results of the emission inventory showed that only one point source, the #1 Copper Furnace Baghouse Stack (previously referred to as the pyrometallurgical process baghouse stack), had Pb emissions significant enough to be considered in the Pb SIP revision for East Helena. None of the other sources at this facility were considered further in the Pb SIP. We support the emission inventories prepared for the sources in the Pb nonattainment area because they appear to be accurate and MDEQ has addressed our previously identified concerns.

E. Reasonably Available Control Measures (RACM)/Reasonably Available Control Technology (RACT)

Section 172(c)(1) of the Act mandates that SIPs provide for the implementation of RACM as expeditiously as practicable, including RACT. Our Addendum to the General Preamble for the implementation of Title I of the Act defines RACT for Pb as a control technology which is necessary to achieve the NAAQS (58 FR 67750, December 22, 1993). The same document provides that RACM for Pb should be determined by evaluating the available control measures for reasonableness, considering their technological feasibility, and the cost of control in the area to which the SIP applies. In determining what is reasonably available (for RACM), our guidance indicates that areas should evaluate all the measures contained in Appendix 1 to the Lead Addendum to the General Preamble, and provide a reasoned justification for rejection of any available control measure. Based on our comparison of the available control measures (identified in Appendix 1) and those incorporated into this Pb SIP, we find that, for the most part, ASARCO is implementing most of the available measures. Therefore, we believe the State has demonstrated that the control measures applied to ASARCO, American Chemet, and the streets of East Helena are reasonable and will maintain the Pb NAAQS.

F. Emission Limit Requirements

The control strategy for the Pb SIP requires ASARCO to enclose various buildings or areas, install baghouses, develop a new technology for handling furnace Pb, capture fugitive emissions, build dust conveying and handling systems, and eliminate some emission sources. In addition, there are emission limitations on various emission points, process weight limitations, time-of-day restrictions and wind speed limitations

on material handling, minimum ventilation requirements on building ventilation systems, and property access restrictions. There is also a five percent visible emission limitation on the paved and unpaved roads and areas within the ASARCO facility, and a requirement to treat the unpaved areas and sweep the paved areas to reduce fugitive Pb emissions.

The MDEQ has offered American Chemet two options as part of the control strategy. If American Chemet chooses not to build a new stack, it is subject to a more stringent emission limit on its existing stack. If it chooses to build a higher stack, it has a less stringent emission limit on the new stack. Regardless of the option chosen, modeling has shown that the area will continue to attain the Pb NAAQS. Finally, American Chemet will also adopt a limit on the Pb content of its plant feed material.

With respect to the East Helena road dust, MDEQ requires ASARCO to sample road dust on paved public streets and roads, and maintain the streets so that they meet the quarterly average Pb loading limits.

G. Enforceability

All measures and other elements in this Pb SIP revision must be enforceable by the State and us (see sections 172(c)(6), 110(a)(2)(A), and 57 FR 13556). The ASARCO and American Chemet stipulations explicitly provide for applicability of the regulations, compliance dates, compliance periods, recordkeeping requirements, test methods, and malfunction provisions. In our judgement, these provisions are sufficiently clear and prescriptive to meet reasonable standards of enforceability, with two exceptions. The current version of East Helena's Pb SIP does not conform to requirements of the Act nor our policy with respect to department discretion and enforceability. In our March 24, 1998 letter to MDEQ, we raised concerns about places in the stipulation where MDEQ has the discretion to modify existing provisions or add future documents or compliance monitoring methods to the Pb SIP. The stipulations were not clear whether any of these changes would be submitted as SIP revisions or by any other process for us to review and approve. We indicated in places where the stipulation allowed MDEQ to exercise discretion, the words "and EPA" must be added. The provisions containing department

¹ In responding to our March 24, 1998 letter, MDEQ could not find documentation of the methods utilized to calculate the East Helena area values in the attainment demonstration. The MDEQ recalculated the post-control emissions (attainment demonstration) for the paved roads and parking lots in East Helena. In the recalculation, MDEQ found that the sector-specific emission rates are less than the corresponding values used in the attainment demonstration, except for sector #49. Although sector #49 emission rates are now calculated to be higher (20 percent higher by one method, one percent higher by another method) than those used in the attainment demonstration, MDEQ does not believe they are so much higher that the attainment demonstration is invalid. We believe that the recalculated values are acceptable and that any future modeling for East Helena should rely on the recalculated emission inventory for the East Helena paved roads and parking lots.

discretion are discussed in Table 1 below:

TABLE 1.—DEPARTMENT DISCRETION

Provision No.	Description
ASARCO Stipulation Provision 15 and American Chemet Stipulation Provision 20.	Indicates that stipulations may be modified when sufficient grounds exist. For example, if the State demonstrates through modeling or other means that an alternative plan could still meet the NAAQS, the plan could be modified. Although our March 24, 1998 letter may have indicated that these provisions would be acceptable if MDEQ could confirm our interpretations, we now believe these provisions need to be revised in the same way that the State revised similar stipulations in the Billings SIP.
ASARCO Stipulation Provision 16.	Indicates that revisions to attachments of the stipulation can occur, once approved by MDEQ. The stipulation is not clear as to whether MDEQ approval means the revised attachments will be deemed incorporated into the SIP. We believe that since the attachments are a part of the SIP and pertain mostly to enforceability provisions, any revision to an attachment should be evaluated for significance ² and if determined to be significant, the revision must be approved as a SIP revision or approved through the Title V process. ³ We suggested to MDEQ that where the "Department" appears in the stipulations "and EPA" should be added.
ASARCO Exhibit A, Section 6.	References Attachment 6 Quality Assurance/Quality Control (QA/QC) and Standard Operating Procedures (SOP) for Continuous Opacity Monitoring Systems. Any revision to an attachment and provision should be evaluated for significance, ⁴ and if determined to be significant, the revision must be approved as a SIP revision or approved through the Title V process. EPA has suggested to MDEQ that where the "Department" appears in the stipulations "and EPA" should be added.
ASARCO Exhibit A, Section 7(A)(2).	Indicates certain test methods are to be used or other methods approved by MDEQ. Any revision to a testing method or provision should be evaluated for significance, ⁵ and if determined to be significant, the revision must be approved as a SIP revision or approved through the Title V process. EPA has suggested to MDEQ that where the "Department" appears in the stipulations "and EPA" should be added.
ASARCO Exhibit A, Section 11(C).	Indicates if the Baghouse Maintenance Plan, Attachment 7, is revised it needs to be reviewed and approved by MDEQ. Any revision to an attachment should be evaluated for significance, ⁶ and if determined to be significant, the revision must be approved as a SIP revision or approved through the Title V process. EPA has suggested to MDEQ that where the "Department" appears in the stipulations "and EPA" should be added.
ASARCO Exhibit A, Section 12(A)(7).	Indicates the Baghouse Maintenance Plan, Attachment 7, will need further revisions. Once revised, it will be reviewed and approved by MDEQ. Any revision to an attachment should be evaluated for significance, ⁷ and if determined to be significant, the revision must be approved as a SIP revision or approved through the Title V process. EPA has suggested to MDEQ that where the "Department" appears in the stipulations "and EPA" should be added.
ASARCO Exhibit A, Section 12(B).	Indicates if attachments are revised they need to be reviewed and approved by MDEQ. Any revision to an attachment should be evaluated for significance, ⁸ and if determined to be significant, the revision must be approved as a SIP revision or approved through the Title V process. EPA has suggested to MDEQ that where the "Department" appears in the stipulations "and EPA" should be added.

In addition to the department discretion issues, we believe that sections 2(A)(22) and 2(A)(28), of ASARCO Exhibit A, contain enforceability problems. These sections, which discuss how moisture content and silt content will be determined, indicate that sampling will be performed by specified methods or equivalent methods. The definition is not clear who will determine that the equivalent methods are acceptable. Any revision to a testing method or provision should be evaluated for significance and if determined to be significant, the revision must be approved as a SIP

revision or approved through the Title V process. (See footnote 2 above.)

Because these provisions could allow changes in requirements without EPA and public review or EPA approval, and could allow use of test methods not accepted by us, the East Helena Pb SIP revisions present Federal enforceability issues and thus fail to comply with the general enforceability provisions of section 172(c)(6) of the Act. Therefore, we are proposing to partially approve and partially disapprove the Pb SIP revision under section 110(k)(3) of the Act. With this partial approval and partial disapproval, we are incorporating into the federally

approved SIP all provisions of the stipulation, exhibits, and attachments except those provisions that allow the Department or sources to modify the SIP without seeking SIP approval through us. (Please see the proposed regulatory text at the end of this notice for the exact provisions we are proposing to partially disapprove.) We note that portions of the SIP we are proposing to partially approve indicate that under certain circumstances ASARCO may need to revise attachments to Exhibit A. Since we are not proposing to approve the Department's discretion to allow these revisions unilaterally, we interpret these provisions to mean that revisions

² We interpret "evaluated for significance" to mean that the State must submit to us all modifications to SIP text (including minor and clerical corrections or modifications) and all MDEQ approvals of alternative requirements and methodologies. If the modification to text or alternative requirement or methodology is proposed as a "minor modification" (or clerical correction) we will inform the State within 45 days from the date of submittal of our determination whether the modification or alternative is major or minor, and if it is minor, of our determination within 45 days does not mean that the modification or alternative is minor and is approved.) If we do not approve the modification of text or alternative requirement or

mentodology as minor, the State must adopt the modification as a SIP revision in accordance with section 110(a)(2) of the Act and submit it to us for approval. We will then act on the SIP revision rulemaking under the Administrative Procedure Act.

³ As indicated in our March 24, 1998 letter, to use the Title V approach, the stipulation or SIP document should contain enabling language that would allow the SIP to be revised through the Title V permit process. Our March 5, 1996 memorandum, "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program," (White Paper) suggests enabling language

in Attachment B II. This White Paper (section II.A and Attachment A) discuss the streamlining process that must be followed in order to revise SIP's through the Title V permit. Note, however, that until the state is actually using Title V permits for these sources, a source-specific SIP revision would be necessary.

⁴ See footnote 2 above.

⁵ See footnote 2 above.

⁶ See footnote 2 above.

⁷ See footnote 2 above.

⁸ See footnote 2 above.

to the attachments for Exhibit A will be adopted at the State level and submitted as a SIP revision to us for approval. Additionally, we do not believe that our proposed partial disapproval of the above-mentioned provisions would render the SIP more stringent than the State of Montana intends, since our action does not change the stringency of any of the substantive requirements the State of Montana has imposed and is currently able to enforce under the SIP.

H. Reasonable Further Progress (RFP)

The Pb SIP must provide for RFP, defined in section 172(c)(2) of the Act as such reductions in emissions of the relevant air pollutant as are required by Part D, or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. As discussed in the Lead Addendum to the General Preamble, we construe RFP as "adherence to an ambitious compliance schedule" which is expected to periodically yield significant emission reductions, and, as necessary, linear progress. The Pb SIP provides for an ambitious compliance schedule but does not quantify the achievable emission reductions for each measure, since most of the measures should be implemented by the attainment date and not on a staggered schedule before the attainment date. However, since the attainment date of January 6, 1997 has passed and all evidence indicates that the area is attaining the Pb NAAQS, we conclude this Pb SIP has met the RFP requirements.

I. Contingency Measures

As provided in section 172(c)(9) of the Act, all nonattainment area SIPs must include contingency measures. Contingency measures should consist of other available measures that are not part of the area's control strategy for attaining the NAAQS. These measures must take effect without further action by the state or us, upon a determination that the area has failed to meet RFP or attain the Pb NAAQS by the applicable statutory deadline. The MDEQ will implement the contingency measures for the East Helena Pb SIP following a Pb NAAQS violation after the first calendar quarter of 1997, or if there is a lack of RFP. The contingency measures consist of two tiers, Tier I and Tier II. The MDEQ has designed the two-tier approach to address possible multiple violations, and to target any significant additional sources of Pb as predicted by the model.

Tier I contingency measures contain measures such as reducing outdoor storage of sinter material, ceasing

operation during the night shift, imposing a more stringent Pb loading limit on the East Helena paved roads, paving or treating some unpaved streets in East Helena, and reducing spills on East Helena streets. The Tier II contingency measures contain measures such as imposing an even more stringent Pb loading limit on the East Helena paved roads, eliminating all storage and handling of sinter outdoors, and paving or covering 50,000 square feet of surface area within the ASARCO facility. If ASARCO implements these measures as a result of a failure to make RFP, once the RFP deficiency has been corrected, the contingency measures will be lifted. If these measures are implemented due to a violation of the Pb NAAQS, the measures will remain in effect until the Board approves a revised Pb SIP. We believe the Pb SIP meets the contingency measures requirements.

J. Attainment of the Pb NAAQS

Section 192(a) of the Act requires that SIPs must provide for attainment of the Pb NAAQS as expeditiously as practicable but not later than five years from the date of an area's nonattainment designation. Through modeling, the State has demonstrated that the emission points (at ASARCO and American Chemet), and the area emissions from the streets of East Helena, at their allowable limits, will protect the Pb NAAQS, *i.e.*, there will be no violations of the Pb NAAQS. Subsequent to the initial modeled attainment demonstration, there have been a few changes to the control strategy, but we believe they will not cause or contribute to a violation of the NAAQS. First, ASARCO increased the percent Pb per pot processed which correlates to an increase in the Pb emission limit at the Laboratory Assay Stacks. In our March 24, 1998 letter to MDEQ, we requested that MDEQ provide us with the modeling diskettes. In its November 16, 1999 response, MDEQ indicated there are no diskettes because it did not rerun the model, but simply extracted the values from the previous model, and scaled up the predicted concentrations. We have determined this to be sufficient because: (1) The emission point is one of the smaller sources, (2) there is a linear relationship between the percent Pb per pot processed and the Pb emission limit, (when percent Pb per pot processed increases, the Pb emission limit increases at the same rate) and (3) when the limit is scaled up, there was not an exceedance of the Pb NAAQS.

Secondly, American Chemet may elect to raise its stack. The American Chemet stipulation allows American

Chemet to choose between one of two emission limits depending on the stack height (20 meters (m) or 8.8 m). The July 1995 air modeling report shows the American Chemet Copper Furnace stack was only modeled at 20 m. In our March 24, 1998 letter to MDEQ, we questioned if the American Chemet Copper Furnace stack was modeled at the 8.8 m stack height. In its November 16, 1999 response, MDEQ indicated the stack was modeled at its current height of 8.8 m in the 1993 modeling effort. The 1993 modeling report and diskettes were forwarded to us in 1994. We have evaluated the modeled ambient impacts from the 8.8 m stack in conjunction with the 1995 modeled ambient impacts and believe the attainment modeling demonstration is sufficient and satisfies our concerns. The 1993 study showed that the Pb NAAQS could be attained when the American Chemet stack is modeled at 8.8 m. There is very little difference in total predicted Pb concentrations between an 8.8 m stack height and a 20 m stack height, because this source represents less than 0.5 percent of the emissions that were modeled in the attainment demonstration. The difference in modeled concentration is negligible.

Finally, in its November 16, 1999 letter, MDEQ indicated it recalculated the East Helena area emissions because it could not recreate how the control emission inventory (attainment inventory) was generated in the past. Except for one road segment, all other East Helena paved roads and parking lots were recalculated to have fewer emissions than those used in the attainment demonstration. We accept the recalculation and do not think it is necessary to remodel for that one road segment, because it appears likely that the emission increases on the road section would be more than offset in the modeling results by the emission decreases from the parking lots and other road sections. The net result would likely be slightly lower predicted Pb concentrations at the highest concentration receptor sites. With these changes, the attainment modeling shows the SIP will protect the Pb NAAQS. The most sensitive receptor in the modeling domain was modeled at 1.47 $\mu\text{g}/\text{m}^3$ of Pb, demonstrating compliance with the Pb NAAQS of 1.50 $\mu\text{g}/\text{m}^3$. However, any future permit or SIP action that involves modeling must fully incorporate all the revisions mentioned above.⁹

⁹In addition, any future permit or SIP action must assure that emissions from the Acid Dust Bin Baghouse Stack (17P) must be modeled as an independent source and at a stack height equal to 65 meters. Please see TSD for further discussion.

Under section 179(c)(1), we have the responsibility for determining whether a nonattainment area has attained the Pb NAAQS. We must make an attainment determination as expeditiously as practicable, but no later than 6 months after the attainment date for the area.

The attainment date for East Helena was January 6, 1997. We will make the attainment determination for a nonattainment area based solely on an area's air quality data. Based on the air quality data currently in the AIRS database and pursuant to section 179(c)(1) of the Act, we have determined that the East Helena Pb nonattainment area has attained the Pb NAAQS through calendar year 1999.

While we may determine that an area's air quality data indicate the area may be meeting the Pb NAAQS for a specified period of time, this does not eliminate the State's responsibility under the Act to continue to implement the requirements under the approved Pb SIP. Even if we determine that an area has attained the standard, the area will remain designated as nonattainment until the State has requested, and we approve the State's request, for re-designation to attainment. In order for an area to be re-designated to attainment, the State must comply with the requirements listed under sections 107(d)(3)(E) and 172(a) of the Act.

IV. Request for Public Comment

We are soliciting public comment on all aspects of this proposed SIP rulemaking action. Send your comments in duplicate to the address listed above in the front of this Notice. We'll consider your comments in deciding our final action if your letter is received before November 9, 2000.

V. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

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.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

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 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 approves 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.

E. Regulatory Flexibility

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 partial approval will not have a significant impact on a substantial number of small entities because SIP approvals under sections 110 and 301 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. Therefore, because the Federal SIP approval 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).

This proposed partial disapproval rule will not have a significant impact on substantial number of small entities because this partial disapproval only affects two sources, ASARCO and American Chemet. Only a limited number of sources are impacted by this action. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Furthermore, as explained in this notice, the submission does not meet the requirements of the Clean Air Act and EPA cannot approve the submission. EPA has no option but to partially disapprove the submittal. The limited approval will not affect any existing State requirements applicable to small entities. Federal disapproval of a State submittal does not affect its State enforceability.

F. Unfunded Mandates

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 to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes approval of 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.

List of Subjects in 40 CFR Part 52

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

Dated: September 28, 2000.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

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

Subpart BB—Montana

2. Section 52.1370 is proposed to be amended by adding paragraph (c)(51) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(51) The Governor of Montana submitted the East Helena Lead SIP revisions with letters dated August 16, 1995, July 2, 1996, and October 20, 1998. The revisions address regulating lead emissions from ASARCO, American Chemet, and re-entrained road dust from the streets of East Helena.

(i) Incorporation by reference.

(A) Board order issued on August 28, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and ASARCO including exhibit A and attachments to the stipulation, excluding the following:

(1) The words, “or an equivalent procedure” in the second and third sentences in section 2(A)(22) of exhibit A;

(2) The words, “or an equivalent procedure” in the second and third sentences in section 2(A)(28) of exhibit A;

(3) The sentence, “Any revised documents are subject to review and approval by the Department as described in section 12,” from section 6(E) of exhibit A;

(4) The words, “or a method approved by the Department in accordance with the Montana Source Testing Protocol and Procedures Manual shall be used to measure the volumetric flow rate at each location identified,” in section 7(A)(2) of exhibit A;

(5) The sentence, “Such a revised document shall be subject to review and approval by the Department as described in section 12,” in section 11(C) of exhibit A;

(6) The sentences, “This revised Attachment shall be subject to the review and approval procedures outlined in Section 12(B). The Baghouse

Maintenance Plan shall be effective only upon full approval of the plan, as revised. This approval shall be obtained from the Department by January 6, 1997. This deadline shall be extended to the extent that the Department has exceeded the time allowed in Section 12(B) for its review and approval of the revised document,” in section 12(A)(7) of exhibit A;

(7) Section 12(B) of exhibit A.

(B) June 21, 1996 stipulation of the Montana Department of Environmental Quality and ASARCO including exhibit A and attachments to the stipulation, excluding paragraphs 15 and 16 of the stipulation.

(C) Board order issued on August 4, 1995, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and American Chemet including exhibit A to the stipulation, excluding paragraph 20 of the stipulation.

(ii) Additional Material.

(A) All portions of the August 16, 1995 East Helena Pb SIP submitted other than the orders, stipulations and exhibit A’s and attachments to the stipulations.

(B) All portions of the July 2, 1996 East Helena Pb SIP submitted other than the orders, stipulations and exhibit A’s and attachments to the stipulations.

(C) All portions of the October 20, 1998 East Helena Pb SIP submitted other than the orders, stipulations and exhibit A’s and attachments to the stipulations.

(D) Montana Air Quality Permit #2557–08, dated January 3, 1997.

(E) Montana Air Quality Permit #2557–09, dated April 6, 1998.

(F) November 16, 1999 letter from Art Compton, Division Administrator, Planning, Prevention and Assistance Division, Montana Department of Environmental Quality, to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII.

(G) September 9, 1998 letter from Richard A. Southwick, Point Source SIP Coordinator, Montana Department of Environmental Quality, to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII.

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