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), because it merely approves a state request for an attainment date extension, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

Because EPA's role concerning today's action is only to approve a state request for an attainment date extension, provided that such request meets the criteria of the Clean Air Act, and to make determinations required of EPA by the CAA, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), relating to the use of voluntary consensus standards, do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This 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.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 18, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 6, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

40 CFR part 52, of chapter I, title 40 is 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 TT—Utah

2. Section 52.2322 is added to read as follows:

§ 52.2322 Extensions.

* * * * *

(a) The Administrator, by authority delegated under section 188(d) of the Clean Air Act, as amended in 1990, extends for one year (until December 31, 1995) the attainment date for the Salt Lake County PM_{10} nonattainment area. The Administrator, by authority delegated under section 188(d) of the Clean Air Act, as amended in 1990, extends for two years (until December 31, 1996) the attainment date for the Utah County PM_{10} nonattainment area.

(b) [Reserved]

[FR Doc. 01–15031 Filed 6–15–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0024, MT–001–0025, MT–001–0026; FRL–6986–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is partially approving and partially disapproving 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 partially approving and partially disapproving these SIP revisions because, while they strengthen the SIP, they also do not fully meet the Act's provisions regarding plan requirements for nonattainment areas. The intended effect of this action is to make federally enforceable those provisions that EPA is partially approving, and *not* make federally enforceable those provisions that EPA is partially disapproving. The EPA is taking this action under sections 110, 179, and 301 of the Clean Air Act (Act).

EFFECTIVE DATE: This final rule is effective July 18, 2001.

ADDRESSES: 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 and copies of the Incorporation by Reference material at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

Definitions

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

(i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(iii) The initials Pb mean or refer to the element lead.

(iv) The initials MDEQ mean or refer to the Montana Department of Environmental Quality.

(v) The initials SIP mean or refer to State Implementation Plan.

(vi) The words State or Montana mean the State of Montana, unless the context indicates otherwise.

I. Background

On November 6, 1991 (56 FR 56694), we designated the East Helena area as nonattainment for Pb. This designation was effective on January 6, 1992 and required the State to submit a part D SIP by July 6, 1993. On August 16, 1995, July 2, 1996 and October 20, 1998 the Governor of Montana submitted SIP revisions to meet the part D SIP requirements. We proposed to partially approve and partially disapprove the State's submittals on October 10, 2000 (65 FR 60144). Refer to the October 10, 2000 proposed rulemaking for a complete discussion of our review of the State submittals.

On November 27, 2000, the Governor of Montana submitted additional revisions to the East Helena Pb SIP. We are addressing the November 27, 2000 submittal in a separate action published today. See discussion below in section II.E.

II. EPA's Action on the State of Montana's Submittal

A. Why Is EPA Partially Approving Parts of the State of Montana's Plan?

In our October 10, 2000 proposed rulemaking, we proposed to partially approve the East Helena Pb SIP revisions. Apart from comments suggesting we fully approve the plan, we did not receive any adverse comments on our proposal to partially approve the SIP. We still believe it is appropriate to partially approve the SIP. See our proposed rulemaking action (65 FR 60144) for a more detailed discussion of our evaluation of the State's submittal.

Apart from those provisions we are disapproving, we are approving all other provisions of the SIP. We are approving the other parts of the SIP because we believe they meet our SIP approval criteria and provide enforceable emission limitations on Pb sources in East Helena. We caution that if sources are subject to more stringent requirements under other provisions of the Act (e.g., section 111, part C, or SIP-approved permit programs under part A), our partial approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other, more stringent requirements. Also, our partial approval of the SIP is not meant to imply any sort of applicability determination under other provisions of the Act (e.g., section 111, part C, or SIP-approved permit programs under part A).

B. Why Is EPA Partially Disapproving Parts of the State of Montana's Plan?

In our October 10, 2000 proposed rulemaking, we proposed to partially disapprove portions of the East Helena Pb SIP. We have considered the comments received and still believe we should partially disapprove the SIP as proposed. We refer the reader to the comments received and our responses in section III, below.

We are partially disapproving the SIP revisions, because they do not fully meet the Act's provisions regarding plan submissions and requirements for nonattainment areas. The current version of East Helena's Pb SIP does not entirely 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 be modified only through the SIP revision process. In a 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 did not make 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 that, 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 concerns and in a November 16, 1999 letter to us the MDEQ indicated that the department discretion issues would be addressed at a later date. We are partially disapproving the SIP because of the provisions that allow department discretion and two other provisions that contain enforceability issues related to a test method.

The conditions allowing department 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 that these provisions need to be revised in the same way that the State revised similar provisions in stipulations in the Billings SIP.
Asarco Stipulation Provision 16	Indicates that revisions to attachments of the stipulation can be made, once approved by MDEQ. The stipulation does not make clear whether MDEQ approval means that the revised attachments will be deemed incorporated in to 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 [1] and if determined to be significant, the revision must be approved as a SIP revision or approved through title Title V process.[2] 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 [3], 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.

TABLE 1.—DEPARTMENT DISCRETION—Continued

Provision No.	Description
Asarco Exhibit A, Section 7(A)(2)	Indicates that certain test methods are to be used, or other methods as approved by MDEQ. Any revision to a testing method or provision should be evaluated for significance [4], and it 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 that 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 [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 12(A)(7)	Indicates that 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 [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(B)	Indicates that if attachments are revised they need to 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.

[1] ''Evaluated for significance'' means that the State must submit to us all modifications to the SIP text (including minor and clerical corrections or modifications) and all MDEQ approvals of alternative requirements and methodologies. If the modification to the 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 approval of the modification or alternative. (We caution that our failure to make such determination within 45 days does not mean that the modification or alternative is either minor or approved.) If we do not approve the modification of text, alternative requirement, or alternative methodology 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 in accordance with the provision of Title I of the Act, pursuant to notice and comment rulemaking.

[2] As indicated in our March 24, 1998 letter, to use the Title V approach, the stipulation or SIP document must 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. The White Paper (section II.A and Attachment A) discusses the streamlining process that must be followed in order to revise SIPs through the Title V permit. Note, however, that until the State is actually issuing Title V permits for these sources, a source-specific SIP revision would be necessary.

[3] See footnote 1 above.

[4] See footnote 1 above.

[5] See footnote 1 above.

[6] See footnote 1 above.

[7] See footnote 1 above.

In addition to the department discretion issues, we believe that sections 2(A)(22), 2(A)(28), and 5(G)[8] 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 as to 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 1 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 requirements of section 172(c)(6) of the Act. Therefore, we are partially approving and partially disapproving 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 Section IV (''Summary of EPA's Final Action'') below.) We note that portions of the SIP we are approving indicate that under certain circumstances Asarco may need to revise attachments to Exhibit A. Since we are not approving the Department's discretion to allow these revisions unilaterally, we interpret these provisions to mean that revisions of 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 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 through the SIP.

[8] In our October 10, 2000 proposal notice we identifiefd concerns with only sections 2(A)(22) and 2(A)(28) and not section 5(G). However, since the proposal notice we have found the same concern in 5(G) as in the other sections.

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

By partially approving the SIP, we are making the approved portions of the State's submittal federally enforceable (and enforceable by citizens under the Act). Those portions of the SIP that we disapprove are not made federally enforceable. We believe that the approved portions of the East Helena Pb SIP, except for those provisions that we are disapproving, satisfy the Act's criteria for Pb nonattainment SIPs. Even though we are disapproving 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 (FIP) clocks under sections 179(a)

and 110(c), respectively, will not be started by our partial disapproval of the East Helena Pb SIP.

D. Miscellaneous

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 make the attainment determination for a nonattainment area based solely on an area's air quality data.[9] 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 that the area is 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 of 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 redesignation to attainment. In order for an area to be redesignated to attainment, the State must comply with the requirements provided in sections 107(d)(3)(E) and 172(a) of the Act.

Finally, in our notice of proposed rulemaking we proposed certain regulatory text. We noted an error in our proposed regulatory text and in this final action are correcting that error. Specifically, in the proposed regulatory text at § 52.1370(c)(51)(i)(A) we indicated that we were incorporating by reference the stipulation, exhibit A and attachments (excluding certain provisions) adopted by Board order on August 28, 1998. We believe we should not have included exhibit A and attachments, because a closer look at the August 28, 1998 Board order indicates that it is incorporating changes made only in ''the attached stipulation.'' The ''attached stipulation'' shows changes in the 1996 stipulation and does not include exhibit A or attachments. Also at § 52.1370(c)(51)(i)(B) we indicated that we were incorporating by reference the stipulation, exhibit A and attachments (excluding certain provisions) adopted by Board order on June 21, 1996. The excluded provisions should have included both those identified in § 52.1370(c)(51)(i)(B) and those identified in § 52.1370(c)(51)(i)(A). We have corrected this by moving exclusions identified in § 52.1370(c)(51)(i)(A) in the notice of proposed rulemaking to § 52.1370(c)(51)(i)(B) in this notice of final rulemaking. We also have removed § 52.1370(c)(51)(ii)(D) and § 52.1370(c)(51)(ii)(E) from our notice of proposed rulemaking in response to comments. Please see section III, ''What Comments Were Received on EPA's Proposed Action and How Is EPA Responding to Those Comments?'' The final regulatory text at the end of this notice has been revised to incorporate the changes mentioned above.

[9] See Guidance Memorandum from Sally L. Shaver, Director, Office of Air Quality Planning and Standards, OAQPS, to Regional Air Division Directors, entitled ''Attainment Determination Policy for Lead Nonattainment Areas,'' dated June 22, 1995.

E. Why Is EPA Completing a Separate Direct Final Rulemaking on the East Helena Lead SIP?

Subsequent to our October 10, 2000 proposed rulemaking, the State of Montana submitted another revision to the East Helena Pb SIP. We believe the revisions submitted on November 27, 2000 are minor, and we have completed a direct final rulemaking to approve them into the SIP (see the separate direct final rulemaking on the East Helena Pb SIP also published in today's edition of the **Federal Register**). Since the State revised portions of the plan on which we proposed action, we believe we should act on the new provisions at the same time we take final action on our proposed rulemaking so that the end result will be a federally approved plan that is consistent with the current State plan (except for those provisions of the plan that we are partially disapproving).

III. What Comments Were Received on EPA's Proposed Action and How Is EPA Responding to Those Comments?

We proposed to partially approve and partially disapprove the SIP due to concerns about various provisions in the SIP that allow department discretion to alter the SIP. We received two comments opposing our proposed action to partially approve and partially disapprove the SIP due to department discretion. We have considered the comments received and believe it is still appropriate to partially disapprove the SIP as submitted. In addition, we received two comments pertaining to the regulatory text we had proposed at the end of our notice and the appropriateness of incorporating certain documents under the ''additional material'' section. We have considered the comments we received and have revised our proposed regulatory text somewhat. The following is a summary of the comments we received and our response to the comments:

(1) *Comment:* We received two comments concerning our position on department discretion, claiming that future changes to equipment and processes will contravene the specific language of the SIP but will have no direct effect on the facility's emissions or the State's attainment demonstration. The commenters believe that the State should be able to make these changes without triggering the SIP review process and that the foundation of the Act is a partnership between EPA and the State which assigns primary responsibility to the State for ensuring compliance with the National Ambient Air Quality Standards (NAAQS). In addition, one of the commenters believes that the Act allows us to call for a SIP revision (a ''SIP Call'' under section 110(k)(5) of the Act) when the State's exercise of that discretion weakens the SIP.

Response: Section 110(i) of the Act (42 U.S.C. 7410(i)) prohibits States and EPA, except in certain limited circumstances, which do not apply to the East Helena Pb SIP, from taking any action to modify a requirement of a SIP except by SIP revisions. We do not agree that Montana or EPA should be free to make changes to SIPs that may contravene the specific language of the SIP but have no direct effect on the facility's emissions or the State's attainment demonstration. Section 110(i) by its terms requires that changes in SIP requirements must be made by the SIP revision process. That process gives the public the opportunity to review and comment on the reasonableness and adequacy of the requirements that are to be imposed, and gives us an opportunity to review all changes. Also, we do not find a SIP Call to be a satisfactory alternative. We believe we should address the question of appropriate SIP revisions in advance rather than waiting to determine that a State's exercise of a department discretion has weakened the SIP.

(2) *Comment:* We received a comment in regard to the Montana Board of Environmental Review approving a new SIP revision in September 2000, which had not yet been submitted to EPA for review and approval. Because the version of the SIP proposed in our rulemaking (See 65 FR 60144) is different than the current SIP enforced by the State, we were asked to defer our final approval until the most recent Pb SIP revision could be included.

Response: Elsewhere in today's **Federal Register**, we are acting on the

subsequent SIP revision to approve the submittal as a direct final rule.

(3) *Comment:* We received two comments concerning our proposed language in 40 CFR 52.1370(c)(51)(ii) that would include two Montana Air Quality Permits and two letters from MDEQ to EPA Region 8. The two commenters are concerned that, if they are included as ''additional material'' in the regulatory text of the Montana SIP, any change to the conditions, provisions, and limitations contained in the two permits identified in 40 CFR 52.1370(c)(51)(ii), could only be accomplished via the SIP revision process.

Response: We agree with the comments in regard to the proposed language in 40 CFR 52.1370(c)(51)(ii) concerning the two Montana Air Quality Permits. In the final rule we are removing the Montana Air Quality Permits from the proposed language in 40 CFR 52.1370(c)(51)(ii). The two letters from MDEQ to EPA Region 8, however, should remain a part of the additional material. These letters were submitted to us by MDEQ to help us interpret portions of the East Helena Pb SIP and are key to our decision to partially approve and partially disapprove the East Helena Pb SIP.

(4) *Comment:* One commenter questioned whether the existing language in the Asarco stipulation is sufficient to enable adopting equivalent alternative requirements in the Pb SIP through the Title V process. The language in the SIP reads:

> The requirements of this Stipulation may also be modified by equivalent alternative requirements implemented through the state operating permit program under authorization of Title V of the Federal Clean Air Act. The procedures for implementing equivalent alternative requirements must meet federal requirements for modifications of SIPs through the state operating permits. Equivalent alternative requirements may be adopted only after a demonstration that their adoption will assure attainment and maintenance of the NAAQS.

Response: We do not believe that the existing enabling language is sufficient to revise the Pb SIP through the Title V process. We believe that, at a minimum, the enabling language should include procedures to make sure that any SIP revisions through the Title V process follow the significant permit revisions process; satisfy the provisions and terms of 40 CFR 70.6(a)(1)(iii); and establish procedures for determining equivalency. In addition, the enabling language should indicate which provisions of the Pb SIP can be revised through the Title V permit process.

(5) *Comment:* We received one comment requesting clarification regarding the process for obtaining EPA approval for changes in the department discretion provisions. The commenter read the **Federal Register** notice, in light of the Technical Support Document, to provide that: (1) All modifications to SIP text and MDEQ approval of alternative requirements and methodologies must be submitted to EPA; (2) EPA will determine, for each submittal, whether the modification is a minor modification and notify the MDEQ of its determination within 45 days; (3) if the change is not approved as minor, it must be approved as a SIP revision; provided, however, that if the SIP is amended to allow it, non-minor changes may be approved, in the alternative, through the Title V permit process. The commenter asked that we confirm whether or not this understanding is accurate and that we clarify what standard will be applied to determine whether a proposed change is a minor modification.

Response: The commenter's understanding is correct and is consistent with footnotes 1 and 2 of this document. We intend to use the March 30, 1993 memorandum from Gilbert H. Wood, Chief, Emissions Measurement Branch, Office of Air Quality Planning and Standards, to the Emission Measurement Branch, entitled ''Handling Requests for Minor/Major Modifications/Alternative Testing and Monitoring Methods or Procedures Approvals and Disapprovals' (the Gil Wood memo) for determining whether a proposed change is a minor modification, at least until the Gil Wood memo is superceded by more current guidance. We will include a copy of the Gil Wood memo in the docket for this SIP action.

IV. Summary of EPA's Final Action

After reviewing the comments received we still believe it is appropriate to partially approve and partially disapprove the East Helena Pb SIP. Apart from those provisions we are disapproving, we are approving all other aspects of the East Helena Pb SIP. The specific provisions we are disapproving pertain to department discretion provisions in the SIP or provisions that allow sources to modify certain aspects of the plan.

We are disapproving the following phrases, words, or section in exhibit A of the stipulation by the MDEQ and Asarco adopted by order issued on June 21, 1996, by the Montana Board of Environmental Review:

(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 words, ''or an equivalent procedure'' in the second sentence in section 5(G) of exhibit A;

(4) 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;

(5) 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;

(6) 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;

(7) 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;

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

We are disapproving paragraphs 15 and 16 of the stipulation by the MDEQ and Asarco adopted by order issued on June 21, 1996 by the Montana Board of Environmental Review.

We are disapproving paragraph 20 of the stipulation by the MDEQ and American Chemet adopted by order issued on August 4, 1995 by the Montana Board of Environmental Review.

We are also correcting and modifying the proposed regulatory text as indicated in sections II.D and II.E above.

Finally, pursuant to section 179(c)(1), we are determining that the East Helena nonattainment area has attained the Pb NAAQS. As indicated above, 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, redesignation to attainment.

We caution that if sources are subject to more stringent requirements under other provisions of the Act (e.g., section 111, part C, or SIP approved permit programs under part A), our partial approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting those other, more stringent requirements. Also, our partial approval of the SIP is not meant to imply any sort of applicability determination under other provisions of the Act (e.g., section 111, part C, or SIP approved permit programs under part A).

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 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.

D. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does 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 partial approval rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 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).

Moreover, EPA's partial disapproval rule will not have a significant impact on a substantial number of small entities because the partial disapproval action affects only two sources of air pollution in East Helena, Montana: 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 action, 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 partial disapproval will not affect any existing State requirements applicable to the entities. Federal disapproval of a State submittal does not affect its State enforceability.

F. Unfunded Mandates

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 approval and partial disapproval actions promulgated do 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 partially approves and partially disapproves 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.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

H. National Technology Transfer and Advancement Act

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

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

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 16, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is 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 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 August 13, 1998 stipulation of the Montana Department of Environmental Quality and Asarco.

(B) Board order issued on June 26, 1996, by the Montana Board of Environmental Review adopting and incorporating the June 11, 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, and 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 words, ''or an equivalent procedure'' in the second sentence in section 5(G) of exhibit A;

(4) 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;

(5) 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;

(6) 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;

(7) 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;

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

(C) Board order issued on August 4, 1995, by the Montana Board of Environmental Review adopting and incorporating the June 30, 1995 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) 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.

(E) 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.

[FR Doc. 01–15142 Filed 6–15–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. MT–001–0030a; FRL–6985–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action approving revisions to the East Helena Lead (Pb) State Implementation Plan (SIP) submitted by the Government of Montana on November 27, 2000. The revisions make minor modifications to Asarco's control strategy in the Pb SIP. The intended effect of this action is to make the revisions federally enforceable. The EPA is taking this action under sections 110 and 301 of the Clean Air Act (Act).

DATES: This rule is effective on August 17, 2001. without further notice, unless EPA receives adverse comment by July 18, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), 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 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

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

SUPPLEMENTARY INFORMATION:

Definitions

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

(i) The words or initials Act of 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 Pb mean or refer to the element lead.

(iv) The initials MDEQA mean or refer to the Montana Department of Environmental Quality.

(v) The initials SIP mean or refer to State Implementation Plan.

(vi) The words State or Montana mean the State of Montana, unless the context indicates otherwise.

Background

On November 6, 1991 (56 FR 56694), we designated the East Helena area as nonattainment for Pb. This designation was effective on January 6, 1992 and required the State to submit a Part D SIP by July 6, 1993. On August 16, 1995, July 2, 1996 and October 20, 1998 the Governor of Montana submitted SIP revisions to meet the Part D SIP requirements. On October 10, 2000 (65 FR 60144) we proposed to partially approve and partially disapprove these State submittals. In a separate action published today we are finalizing our proposal to partially approve and partially disapprove the State submittals.

Subsequent to our October 10, 2000 proposed rulemaking, the State of Montana submitted another revision to the East Helena Pb SIP on November 27, 2000. Since the State's November 27, 2000 submittal revises portions of the plan on which we proposed action, we believe we should act on the new provisions at the same time we take final action on our proposed rulemaking, so that the end result will be a federally approved plan that is consistent with the current State plan (except for those provisions of the plan that we are partially disapproving in a separate action published today).

Review of State's November 27, 2000 Submittal

With the November 27, 2000 submittal, the State is revising the control strategy for the Asarco lead smelter in East Helena, Montana, by removing reference to the Pb bullion granulating process in the Dross Building from the control plan and by renaming several emission points and a process vessel at the Asarco facility. The revisions were effective at the State level on September 15, 2000.

Pb Granulating Process Changes

When the State developed the Pb SIP for East Helena (SIP submitted on August 16, 1995), at the request of Asarco, the SIP referenced a new granulating technology in the Dross Building. We proposed approval of this SIP on October 10, 2000 (65 FR 60144). Subsequently, Asarco found that the granulating technology did not work well and discontinued its use, reverting back to conventional drossing technology in 1997. The MDEQ has concluded that discontinuing the granulating technology and reverting back to the conventional technology will not change any of the inputs or assumptions in the modeling demonstration used to demonstrate compliance with the National Ambient Air Quality Standards (NAAQS) for Pb in East Helena. Additionally, the MDEQ has concluded that changing the drossing process will not have an effect on actual levels of fugitive Pb emissions from the Dross Plant building or on actual levels of Pb emissions from the Dross Plant baghouse stack. The MDEQ reached these conclusions based on the following information:

- The subject drossing activities are conducted entirely within the Dross Plan building;
- The Dross Plant building is completely enclosed and ventilated to the Dross Plant baghouse;
- There will be no change in the fugitive emission rate with the conventional technology; and
- There will be no change in emissions from the Dross Plant baghouse stack.

We have reviewed the MDEQ's conclusions and supporting documentation; we agree that there will be no change in levels of emissions from