FOR FURTHER INFORMATION CONTACT: Brad Lund, Office of Inspection and Control, 202–927–0192.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs is amending § 101.3, Customs Regulations (19 CFR 101.3), to expand the geographical limits of the ports of entry of Hilo and Kahului, Hawaii.

The expanded boundaries of the port of Hilo will include the entire island of Hawaii. The expanded boundaries of the port of Kahului will include the entire island of Maui. Expansion of the port limits for these two islands will improve service to the public and will make better use of staffing resources.

Comments

Customs published a Notice of Proposed Rulemaking in the **Federal Register** (59 FR 43313) on August 23, 1994, which invited the public to comment on proposed changes to the limits of the ports as described above.

Seventeen comments were received, all of which approved of the proposed expansions. Accordingly, the amendments are being published in final as they were proposed.

Revised Port Limits

The revised port limits for the port of Hilo are as follows:

In the State of Hawaii: The entire island of Hawaii.

The revised port limits for the port of Kahului are as follows:

In the State of Hawaii: The entire island of Maui.

Regulatory Flexibility Act and Executive Order 12866

Although Customs solicited public comments on these port extensions, no notice of proposed rulemaking was required because the port extensions relate to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as these port extensions are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson. Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

Accordingly, Part 101 of the Customs Regulations is amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The general authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. The list of Customs regions, districts and ports of entry in § 101.3(b) is amended by adding the reference ''T. D. 95–11'', alongside both ''Hilo'' and ''Kahului'' in the column headed ''Ports of entry'' in the Honolulu, Hawaii District of the Pacific Region.

George J. Weise,

Commissioner of Customs.

Approved: December 29, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–2075 Filed 1–26–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

Drug Products Containing Certain Active Ingredients Offered Over-the-Counter (OTC) for Certain Uses

CFR Correction

In title 21 of the Code of Federal Regulations, parts 300 to 499, revised as of April 1, 1994, on page 63, in § 310.545, paragraph (a)(7), the entry for ''Menthol'' is corrected by removing the parenthetical phrase.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT23–1–6402a; FRL–5128–1]

Approval and Promulgation of Air Quality Implementation Plans; Montana; State Implementation Plan for East Helena SO_2 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA fully approves the State implementation plan (SIP) submitted by the State of Montana to achieve attainment of the primary National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2). The SIP was submitted by Montana to satisfy certain federal requirements for an approvable nonattainment area SO_2 SIP for East Helena. The effect of EPA's final action is to make the East Helena Primary SO_2 NAAQS SIP federally enforceable.

DATES: This final rule is effective March 28, 1995, unless adverse comments are received by February 27, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be addressed to Meredith A. Bond, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; and Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620–0901; and U.S. EPA Air & Radiation Docket Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Meredith Bond at (303) 293–1764.

SUPPLEMENTARY INFORMATION:

I. Background

East Helena, Montana, is a small community located about 5 miles east of the State capitol, Helena. The major industrial source affecting the SO_2 concentrations in the ambient air is the Asarco, Incorporated, primary lead smelter. The following summarizes the regulatory history of the East Helena SO_2 nonattainment area.

On September 19, 1975, EPA approved the revision to the Montana SIP which sets forth a sulfur oxide control strategy to provide for attainment and maintenance of the SO_2 NAAQS near Asarco in East Helena (40 FR 43216).

The Clean Air Act Amendments of 1977 provided for non-attainment designations for areas violating the NAAQS. On March 3, 1978, EPA designated the East Helena area as nonattainment for SO_2 based on historical ambient monitoring data

showing primary standard violations (43 FR 8962).

Prior to this official SO_2 nonattainment designation, the Montana Department of Health and Environmental Sciences (MDHES) and Asarco had been working on a plan to reduce SO_2 emissions from the East Helena facility. The main focus of this plan was the construction of a double contact sulfuric acid plant to control SO_2 emissions from the sintering process. Following construction of the acid plant in July 1977, SO_2 concentrations in the rural areas around East Helena decreased dramatically. However, there were still violations being monitored at the Kennedy Park site.

In response to the Part D SIP requirements of the 1977 CAA Amendments, on April 24, 1979, Montana submitted a SIP revision for the East Helena SO_2 nonattainment area. This SIP revision identified the continued monitored violations as being caused by low-level emissions from three 110-foot stacks serving the smelter's blast furnace operations. The control strategy included replacing the three 110-foot stacks with a single 425-foot stack (for which Asarco claimed stack height credit of 375 feet), and setting daily and six-hour emission limits on the new stack. On November 20, 1980, EPA conditionally approved the SIP revision (45 FR 76685). EPA's action was conditioned upon adequate demonstration of good engineering practice (GEP) stack height for the blast furnace stack, and revised dispersion modeling if GEP height was determined to be below 375 feet.

Asarco completed a field tracer study demonstration in 1982, and subsequently proceeded to complete construction of its new stack based on the study results justifying a stack height of 375 feet as necessary to overcome the effects of downwash causing monitored ambient SO_2 violations near the smelter.

On July 5, 1983, EPA proposed to approve the SIP and GEP demonstration as satisfying the conditional approval requirements (48 FR 30696). But, final action was not taken due to pending litigation concerning the federal stack height regulations. As a result of this litigation, the federal stack height regulations were revised on July 5, 1985. Among other things, these revisions changed the requirements for justifying stack heights above the formula height established in 40 CFR 51.100(ii)(2). For this reason, several years later Asarco abandoned its efforts to take credit for the additional blast furnace stack height above formula height. EPA's stack height analysis and findings for the Asarco facility stacks are discussed further later in this document.

The SIP was further revised with respect to East Helena in order to provide for a catalyst screening procedure at Asarco's acid plant. EPA approved this revision on May 1, 1984 (54 FR 18482).

The 1990 Clean Air Act Amendments [1] (''1990 Amendments''), effective November 15, 1990, reaffirmed the nonattainment designation of East Helena with respect to the primary and secondary SO_2 NAAQS, under section 107(d)(4)(B). See 56 FR 56706 (Nov. 6, 1991) and 40 CFR 81.327 (specifying designation for East Helena). Section 191 required that any state which was lacking an approved SIP for an area designated nonattainment with respect to the national *primary* ambient air quality standard for SO_2 must resubmit a plan meeting the requirements of the amended Act within 18 months of enactment of the amendments, thus by May 15, 1992. For the secondary SO_2 NAAQS SIP for East Helena, EPA established November 15, 1993, as the submittal due date in an action published in the **Federal Register** on October 7, 1993 (58 FR 52237).

The air quality planning requirements for SO_2 nonattainment areas are set out in subparts 1 and 5 of part D of title I of the Act.[2] The amended Clean Air Act requires nonattainment area SIP submittals to contain, among other things, provisions to assure that reasonable available control measures (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) are implemented, and that provide for attainment of the primary SO_2 standards within 5 years of enactment of the 1990 Amendments, or November 15, 1995 (see Sections 172(c) and 192(b) of the Act). EPA has issued detailed guidance that describes the Agency's preliminary interpretations regarding SO_2 nonattainment area SIP requirements. [57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992) (hereafter called the ''General Preamble'')]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's action and the supporting rationale.

II. This Action

The primary SO_2 NAAQS SIP for East Helena was developed by the MDHES in consultation with Asarco, the major SO_2 source in East Helena. The State's efforts have been coordinated with EPA to ensure compliance with SIP requirements. The Montana Board of Health and Environmental Sciences (MBHES) approved a stipulation between the MDHES and Asarco on March 18, 1994, to limit SO_2 emissions from that company's lead smelting operations. This binding agreement was submitted to EPA on March 30, 1994, as part of a revision of the Montana SIP. This SIP revision addresses only the 24-hour and annual primary SO_2 NAAQS; Montana will address the 3-hour secondary SO_2 NAAQS in a forthcoming submittal. Hence, this action addresses only the primary SO_2 NAAQS.

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–66). In this action, EPA is approving the primary SO_2 NAAQS SIP revision for the East Helena, Montana, nonattainment area which was due on May 15, 1992, and was submitted by the Governor of Montana on March 30, 1994. EPA is also approving the stack height demonstrations for the Asarco, East Helena, primary lead smelter. EPA believes that the East Helena plan meets the applicable requirements of the Act.

Since the East Helena Primary SO_2 NAAQS SIP was not submitted by May 15, 1992, as required by section 191 of the Act, EPA made a finding that the State failed to submit the SIP, pursuant to section 179 of the Act, and notified the Governor in a letter dated June 16, 1992. See 57 FR 48614 (October 27, 1992). After the East Helena Primary SO_2 NAAQS SIP was submitted on March 30, 1994, EPA found the submittal complete pursuant to section 110(k)(1) of the Act and notified the Governor accordingly in a letter dated May 12, 1994. This completeness determination corrected the State's deficiency and, therefore, terminated the sanctions clock under section 179 of the Act.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (''the Act''). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. Sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' and, as appropriate, in today's notice and supporting information.

developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(1) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment on the implementation plan for East Helena, the State of Montana, after providing adequate notice, held a public hearing on March 18, 1994, to address the stipulation between the MDHES and Asarco, and the East Helena primary SO_2 NAAQS SIP. Following the public hearing, the stipulation and SIP were adopted by the State. The Governor of Montana submitted the SIP to EPA on March 30, 1994. The SIP submittal was reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V. The submittal was found to be complete, and a letter dated May 12, 1994, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

2. Accurate 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 emission inventory also should include a comprehensive, accurate, and current inventory of allowable emissions in the area.

The MDHES identified two major sources of SO_2 in the East Helena area: the Asarco Smelter complex and the Ash Grove cement plant. Emission inventory information for the Ash Grove Kiln stack was derived from an engineering calculation to determine potential SO_2 emissions. Assuming all heat input to the kiln is supplied by 6% sulfur coke, a potential emission rate of 2.7 tons SO_2/day was used for this facility in this SIP revision. Actual SO_2 emissions for this source are approximately 1.0 ton per day.

A detailed SO_2 emission inventory of the Asarco smelter facility was conducted in the fall of 1991. A complete testing protocol was approved by EPA along with the final emission inventory report. The report provided a complete and accurate SO_2 emission inventory of the entire facility for use in dispersion modeling studies.

In general, the SO_2 emission sources were separated into three major categories: Point sources, volume sources, and fugitive sources. The results of the point source tests confirmed Asarco's three major sources of SO_2 emissions to be the Sinter Plant Baghouse stack, Acid Plant stack, and Blast Furnace Baghouse stack. Volume and fugitive sources were also quantified.

The MDHES also maintains an annual SO_2 emission inventory for the Asarco facility. This inventory does not include all sources that were measured in the field sampling study, but does include the major sources of SO_2 emissions. Totals for 1990 (including only the three major point sources) were 17,491.0 tpy; totals for 1991 (with building volume and fugitive area sources included) were 18,031.7 tpy. Thus, annual SO_2 emissions for the Asarco facility are approximately 18,000 tpy. For the Ash Grove kiln stacks, emissions for the same years were less than 280 tpy.

EPA is approving the emissions inventory because it is accurate and comprehensive and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act. For further details see the TSD.

3. RACM (Including RACT)

As noted, the initial SO_2 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented as expeditiously as possible (see section 172(c)(1)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13547 and 13560–13561), and defines RACT for SO_2 as that control technology which is necessary to achieve the NAAQS.

The Asarco, East Helena, primary lead smelter was identified as the major source of the SO_2 nonattainment problem in East Helena. The control strategy includes setting operational SO_2 emission limits for several of the major emission points of the Asarco facility.

Asarco developed a set of emissions parameters for combined emissions from the two largest SO_2 emission points, the sinter and blast furnace stacks, in order to provide maximum operating flexibility while still protecting the NAAQS. The set of compliance parameters for combined emissions from the Blast Furnace Stack and Sinter Plant Stack consists of the following relationships:

for:

$0<S\leq 22.93,\ B=29.64-(0.180)\ S$

$22.93<S\leq 54.54,\ B=38.74-(0.577)\ S$

$54.54<S\leq 60.27,\ B=76.60-(1.271)\ S$

where:

B=Daily emissions of SO_2 from the Blast Furnace Stack in tons per calendar day

S=Daily emissions of SO_2 from the Sinter Plant Stack in tons per calendar day

In addition to the compliance parameters for combined emissions from the sinter and blast furnace stacks, the March 18, 1994, stipulation also sets absolute SO_2 emission limitations for the sinter and blast furnace stacks at 60.27 tons per calendar day and 29.64 tons per calendar day, respectively. Daily emissions of SO_2 from the Acid Plant Stack shall not exceed 4.30 tons per calendar day. SO_2 emissions from the Concentrate Storage and Handling Building Stack (including the exhaust from the new Sinter Plant Ventilation System baghouse) shall not exceed 46.00 pounds per hour or 0.552 tons per calendar day. All of these emission limits, including the compliance parameters for the combined emissions of the sinter and blast furnace stacks, were effective September 1, 1994.

Two additional emission limitations on minor stack sources at the Asarco facility take effect June 30, 1995: SO_2 emissions from the Crushing Mill Baghouse Stacks #1 and #2 shall not exceed 0.19 and 0.37 tons per calendar day, respectively.

The stipulation details the use of continuous emission monitoring systems to determine compliance with the emission limitations for the sinter plant stack, blast furnace stack, and acid plant stack. Emission testing provisions for the remaining stacks are also specified.

Provisions have also been incorporated into the stipulation to insure that sulfur dioxide emissions from miscellaneous volume and fugitive sources do not increase beyond their current levels. Those provisions include: limiting fugitive emissions of

[3] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

SO_2 from the Sinter (D&L) Building by restricting openings to the building enclosure; maintaining and operating all processes and systems within the Cottrell Penthouse, Mist Precipitator Building, and Pump Tank Building such that conditions which contribute to volume source SO_2 emissions from these sources are not significantly worsened compared to conditions existing during the preparation of the January 20, 1992, emission inventory report; and maintaining and operating all processes and systems associated with the Acid Plant Scrubber Towers such that conditions which contribute to volume source SO_2 emissions from this source are not significantly worsened compared to conditions existing during the preparation of the January 20, 1992, emission inventory report.

A more detailed discussion of the control strategy can be found in the TSD for this action. EPA has reviewed the State's documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of Montana's SO_2 nonattainment plan will result in the attainment of the primary SO_2 NAAQS by November 15, 1995. By this action EPA is approving the East Helena primary SO_2 plan's RACM (including RACT) in its entirety, noting that additional dispersion modeling and control strategy evaluation will be necessary in the future to address the secondary, 3-hour standard.

4. Demonstration

The initial SO_2 nonattainment areas are required to submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable, but no later than November 15, 1995. EPA-approved dispersion models ISCST and RTDM were used to predict ambient SO_2 concentrations around the Asarco facility. The primary SO_2 NAAQS are 365 micrograms per cubic meter ($\mu g/m^3$) (0.14 parts per million (ppm)), averaged over a 24-hour period and not to be exceeded more than once per year, and 80 $\mu g/m^3$ (0.03 ppm) annual arithmetic mean (see 40 CFR 50.4). The demonstration for East Helena indicates that the primary SO_2 NAAQS will be attained by November 15, 1995. For a more detailed description of the attainment demonstration and the control strategies used, see the TSD for this action.

5. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6) and 110(a)(2)(A) of the Act and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). Nonattainment area plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP (see section 110(a)(2)(C) of the Act).

The specific control measure contained in the SIP are addressed above in section 3, ''RACM (including RACT).'' The March 18, 1994, stipulation between the MDHES and Asarco has been approved by the MBHES in accordance with section 75–2–301 of the Montana Clean Air Act and effectuated by a MBHES order, and since the MDHES can enforce MBHES orders, the MDHES has independent enforcement powers. The Montana Clean Air Act grants authority to the MDHES to enforce orders of the Board (section 75–2–112, Montana Code Annotated (MCA)). Sections 75–2–412 and 75–2–413, MCA, authorize the MDHES to seek criminal and civil penalties for violations of any Board order in the amount of $10,000.00 per day of violation, respectively. In addition, Section 75–2–431, MCA, authorizes the MDHES to seek noncompliance penalties for any violation of a Board order. Noncompliance penalties shall be no less than the economic value which a delay in compliance may have for the owner of such a source, including the capital costs of compliance and debt service over a normal amortization period (not to exceed ten years of operation) and maintenance costs foregone as a result of noncompliance.

EPA believes that the State's existing air enforcement program will be adequate to ensure implementation of this SIP revision. The TSD for this action contains further information on enforceability requirements, responsibilities, and resources intended to support effective implementation of the control measures.

6. Reasonable Further Progress

Section 171(l) of the amended Act defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by [part D] or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' As discussed in the General Preamble, for SO_2, there is usually a single ''step'' between pre-control nonattainment and post-control attainment. Therefore, for SO_2, with its discernible relationship between emissions and air quality and significant and immediate air quality improvements, RFP is construed as ''adherence to an ambitious compliance schedule.''

Asarco became responsible for the reporting requirements outlined in the SIP after July 1, 1994. The emission and process limitations outlined above became effective on September 1, 1994. These timelines allow Asarco sufficient opportunity to implement the control strategy, and to gain operating experience before the requirements become effective. The emission limitations went into effect September 1, 1994, a date far in advance of the November 15, 1995 attainment date. EPA concurs that this program constitutes adherence to an ambitious compliance schedule and therefore demonstrates reasonable further progress.

7. Contingency Measures

Section 172(c)(9) of the amended Act defines contingency measures as measures in a SIP which are to be implemented if an area fails to make RFP or fails to attain the NAAQS by the applicable attainment date. Contingency measures become effective without further action by the State or EPA, upon determination by EPA that the area has failed to either make reasonable further progress or to attain the SO_2 NAAQS by the applicable statutory deadline. For SO_2 programs, EPA interprets ''contingency measures'' to mean that the State agency has a comprehensive program to identify sources of violations of the SO_2 NAAQS and to undertake an aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreements pending the adoption of revised SIP's. (See 57 FR 13547, April 16, 1992.)

The East Helena control strategy is based upon a dispersion modeling analysis which indicates that the Primary SO_2 NAAQS will be protected. The use of continuous emission monitoring systems will ensure that the emission limitations in the plan are not exceeded. In addition, a compliance network of ambient air monitoring stations will be maintained around the smelter at locations associated with predicted maximum concentrations. This monitoring system should quickly identify any violations of the NAAQS, if they should occur.

If violations should occur, the MDHES would immediately begin negotiations with Asarco to reach agreement on control measures to

correct the problem. Asarco would then implement those measures to assure compliance as expeditiously as possible. Additionally, the MDHES has emergency powers under Section 75.2.402 of the Montana Clean Air Act to require curtailment of a source if the source is causing imminent danger to human health or safety.

III. Stack Height Analysis

A. Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by Section 123 of the CAA. These regulations were challenged in the U.S. Court of appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, revising certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition, and on July 18, 1984, the Court of Appeals mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and promulgated on July 8, 1985 (50 FR 27892). The revisions redefined a number of specific terms including ''excessive concentrations,'' ''dispersion techniques,'' ''nearby,'' and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of the CAA, all States were required to: (1) Review and revise, as necessary, their SIPs to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, States were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of the EPA stack height regulations promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, States were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

Subsequent to the July 8, 1985 promulgation, the stack height regulations were again challenged in *NRDC* v. *Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations for the most part, but remanding three provisions to the EPA for reconsideration. These are: Grandfathering stack height credits for sources that raise their stacks prior to October 1, 1983, up to the height permitted by GEP formula height (40 CFR 51.100 (kk)(21)), dispersion credit for sources originally designed and constructed with merged or originally designed and constructed with merged or multi-flue stacks, (40 CFR 51.100 (hh)(2)(ii)(A)), and grandfathering credit for the refined (H + 1.5 L) formula height for sources unable to show reliance on the original (2.5H) formula (40 CFR 51.100 (ii)(2)).

B. State of Montana Submissions

EPA promulgated approval of a SIP revision which revised the Administrative Rules of Montana governing stack height and dispersion techniques on June 7, 1989 (54 FR 24334). In that same action, EPA approved Montana's stack height demonstration analyses with the exception of the Asarco East Helena lead smelter facility stacks. This is the first time that EPA is taking action on the Asarco stacks.

C. Asarco, East Helena Stack Height Demonstration

EPA received a stack height review from Montana with a letter dated November 25, 1985, and a subsequent submittal dated January 28, 1986. With regard to the Asarco stack heights, the State found that no existing emission limitations were affected by stack height credits above GEP or any other dispersion technique prohibited by EPA regulations.

EPA has determined that Montana's inventory of the Asarco facility at East Helena is complete and has carefully reviewed the State's findings. EPA concurs with those findings, which are summarized in the table below. A detailed discussion of the Asarco stack height analysis can be found in the TSD for this action.

Stack I.D.	Actual stack height (m)	Applicable GEP formula	GEP height (m)
Sinter	128	Grand-fathered (1939).	.....
Blast Furnace.	130	de minimis ...	65
Zinc Furnace	107	(*)	(*)

*Source is shut down. New permit will be required to reopen zinc plant.

IV. Final Action

EPA is approving the East Helena primary SO_2 NAAQS SIP submitted to EPA on March 30, 1994. Among other things, the State of Montana has demonstrated that the East Helena SO_2 nonattainment area will attain the primary SO_2 NAAQS by November 15, 1995. EPA is also approving stack height demonstrations for the Asarco, East Helena, primary lead smelter.

Because EPA considers this action noncontroversial and anticipates no adverse comments, this final approval is made without prior proposal. This action will be effective March 28, 1995. However, if adverse comments are received by February 27, 1995, then EPA would withdraw this final approval action and this notice would instead stand as a proposed rule. EPA would then address the comments in a subsequent final promulgation notice.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

The OMB has exempted this regulatory action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify 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 government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and Subchapter I, Part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on a substantial number of small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory 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. E.P.A.*,427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410 (a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 28, 1995. 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 Act, section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 14, 1994.

William P. Yellowtail,

Regional Administrator.

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. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(37) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(37) The Governor of Montana submitted a SIP revision meeting the requirements for the primary SO_2 NAAQS State Implementation Plan (SIP) for the East Helena, Montana nonattainment area with a letter dated March 30, 1994. The submittal was to satisfy those SO_2 nonattainment area SIP requirements due for East Helena on May 15, 1992.

(i) Incorporation by reference.

(A) Stipulation signed March 15, 1994, between the Montana Department of Health and Environmental Sciences (MDHES) and Asarco, Incorporated, which specifies SO_2 emission limitations and requirements for the company's primary lead smelter located in East Helena, MT.

(B) Board order issued on March 18, 1994, by the Montana Board of Health and Environmental Sciences approving and adopting the control strategy for achieving and maintaining the primary SO_2 NAAQS in the East Helena area.

[FR Doc. 95–2017 Filed 1–26–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL105–1–6841a; FRL–5139–5]

Approval and Promulgation of Implementation Plans for Ozone; Illinois

AGENCY: U. S. Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) approves the State Implementation Plan (SIP) revision request submitted by the State of Illinois on October 25, 1994, for the purpose of requiring the installation of pressure/vacuum (P/V) relief valves on storage tank vent pipes at certain gasoline dispensing operations in the Chicago and Metro-East St. Louis (Metro-East) ozone nonattainment areas. The rationale for the approval is set forth in this final rule; additional information is available at the address indicated. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this direct final rule, USEPA will withdraw this direct final rule and address the comments received in a subsequent final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. No additional opportunity for public comment will be provided. Unless this direct final rule is withdrawn no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective March 28, 1995 unless notice is received by February 27, 1995 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the USEPA's technical analysis are available for inspection at the following address: (It is recommended that you telephone Francisco Acevedo at (312) 886–6061 before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Pressure/Vacuum SIP revision is available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room 1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Francisco Acevedo (312) 886–6061.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act requires all moderate and above ozone nonattainment areas to achieve a 15 percent reduction of 1990 emissions of volatile organic material by 1996. In Illinois, the Chicago and the Metro-East areas are classified as ''Severe'' and ''Moderate'' nonattainment for ozone, respectively, and as such subject to the 15 percent Rate of Progress (ROP) requirement.

The Illinois Environmental Protection Agency (IEPA) developed and submitted a plan to USEPA on November 15, 1993 outlining the VOC emission control measures which will be implemented in order to satisfy the 15 percent ROP requirements. On January 21, 1994, USEPA found the Illinois Plan incomplete because it did not contain all the necessary components necessary for approval. On November 22, 1994, IEPA resubmitted the 15 percent ROP plan and USEPA is currently reviewing the plan. One of the measures identified for both the Chicago and Metro-East plans is the introduction of storage tank breathing controls for gasoline dispensing facilities. The Chicago ozone