

SUMMARY: This rule delegates authority to the Assistant Attorney General for Administration to accept official-capacity subpoenas directed to the Attorney General. This action is being undertaken to promote administrative efficiency.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT:

Rafael A. Madan, Attorney-Advisor, Office of the General Counsel, Justice Management Division, U.S. Department of Justice, (202) 514-3452.

SUPPLEMENTARY INFORMATION: Currently, 28 CFR 0.77(j) authorizes the Assistant Attorney General for Administration to accept official-capacity process, except subpoenas, directed to the Attorney General. Because the Assistant Attorney General for Administration does not have authority to accept official-capacity subpoenas directed to the Attorney General, the Justice Management Division's Office of General Counsel, acting for the Assistant Attorney General for Administration, at present conducts a preliminary review (to determine facial validity) of all such subpoenas that are served at the Main Justice Building in Washington, D.C., and escorts the process servers through the building to named individuals, usually on the Attorney General's staff, who have specific authority to accept them. This procedure will be significantly disrupted by the relocation of Justice Management Division's Office of General Counsel out of the Main Justice Building. Thus, for administrative convenience, the Attorney General has determined to delegate authority to the Assistant Attorney General for Administration to accept such subpoenas.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant impact on a substantial number of small business entities. This rule is not considered to be a "significant regulatory action" within the meaning of section 3(f) of Executive Order 12866, nor does it have federalism implications warranting the preparation of a federalism assessment in accordance with Executive Order 12612. This rule pertains to agency management and is not subject the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b). This rule is not considered to have a significant impact on family formation, maintenance, or general well-being in accordance with Executive Order 12606.

List of Subjects in 28 CFR part 0

Authority delegations (Government agencies); Government employees; Organization and functions (Government agencies); Whistleblowing. Accordingly, 28 CFR part 0 is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 is amended to read as follows:

Authority: 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515-519.

2. Section 0.77 of subpart 0 of title 28 of the Code of Federal Regulations is amended by revising paragraph (j) to read as follows:

§ 0.77 Operational functions.

* * * * *

(j) Accepting service of summonses, complaints, or other papers, including, without limitation, subpoenas, directed to the Attorney General in his official capacity, as a representative of the Attorney General, under the Federal Rules of Civil and Criminal Procedure or in any suit within the purview of subsection (a) of section 208 of the Department of Justice Appropriation Act, 1953 (66 Stat. 560 (43 U.S.C. 666(a))).

* * * * *

Dated: July 7, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95-17514 Filed 7-17-95; 8:45 am]

BILLING CODE 4110-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Completing Reviews and Audits of Royalty Payments

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of guidance.

SUMMARY: The extent of the time periods covered by audits of royalty payments has been a matter of considerable controversy between the Minerals Management Service (MMS) and the minerals industry for several years. During the 1980's, MMS increased audit activities in compliance with the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1711). The resulting orders issued to companies for royalty underpayments often covered periods more than six years old. Many

companies have challenged MMS orders on statute of limitations grounds and their theories have been asserted in Federal court cases and in a large number of administrative appeals.

In order to be more responsive to the public we serve, the MMS, in consultation with affected states, Indian tribes, and the minerals industry, has developed guidance regarding the extent of the time periods to be covered when reviewing and auditing royalty payments. Copies of this guidance may be obtained by contacting the Office of the Deputy Associate Director for Compliance at (303) 231-3641.

FOR FURTHER INFORMATION CONTACT: Mr. David Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS-3101, Denver, Colorado, 80225-0165, telephone number (303) 231-3432, fax number (303) 231-3194.

Dated: July 12, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95-17774 Filed 7-17-95; 8:45 am]

BILLING CODE 4310-MR-P

POSTAL SERVICE

39 CFR Part 265

Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Inspection Service Where the Postal Service or the United States Is Not a Party

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service has established procedures for Postal Service employees within the Postal Inspection Service to respond to subpoenas, summonses, and court orders to produce records or give testimony in cases where the Postal Service is not a party. The purpose of this rule is to minimize disruption of normal Postal Inspection Service functions caused by compliance with those demands, maintain control over release of public information, prevent the disclosure of information that should not legally be disclosed, prevent the Postal Service from being misused for private purposes, and otherwise protect the interests of the United States. These procedures prohibit postal employees within or assigned to the Postal Inspection Service from complying with subpoenas, summonses, and other court orders in cases where

the Postal Service is not a party unless authorized by certain authorizing officials.

EFFECTIVE DATE: July 18, 1995.

FOR FURTHER INFORMATION CONTACT: James M. Parrott, Associate Counsel, Office of the Chief Postal Inspector, (202) 268-4417.

SUPPLEMENTARY INFORMATION: On June 6, 1995, the Postal Service published in the **Federal Register** (60 FR 29806-29809) a notice for public comment on a proposed rule to establish procedures for employee compliance with subpoenas, summonses, or other court orders where the Postal Service is not a party. The rule amends 39 CFR 265 to provide that postal employees within or assigned to the Postal Inspection Service must follow certain rules for the release of information in the form of documents or testimony. Giving testimony or releasing a document in legal proceedings where the Postal Service or the United States is not a party must be authorized beforehand. Such employees may comply with subpoenas, summonses, and court orders after consulting Inspection Service legal counsel and with authorization by specified authorizing officials. The release of the information must be in compliance with applicable laws and regulations and not be against the interest of the United States.

No comments were received by the closing date of July 6, 1995. The Postal Service therefore adopts the rule below as originally published on June 6, 1995.

Several federal agencies have enacted regulations that give them the authority to control the release of documents and testimony in legal proceedings where the agency is not a party. Courts have recognized that federal agencies may limit compliance in these situations. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). Additionally, subpoenas, summonses, and orders issued by state courts, legislatures, or legislative committees that attempt to assert jurisdiction over federal agencies are inconsistent with the Supremacy Clause of the U.S. Constitution. A federal regulation regarding compliance with those subpoenas reinforces this principle. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967).

This rule does not apply to situations in which the United States, the Postal Service, or any federal agency is a party in action; Congressional requests, summonses, or subpoenas; consultative services and technical assistance rendered by the Inspection Service in the course of its normal functions;

employees serving as expert witnesses; employees making appearances in their private capacity; and when it has been determined by an authorizing official that it is in the public interest.

New § 265.13 of title 39 of the Code of Federal Regulations is the Postal Service regulation concerning the compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service or the United States is not a party. This section has also been written to reflect the changes in organization that the Inspection Service has undergone. As an example, the position of Regional Chief Inspector no longer exists within the Inspection Service. Current regulations identify that official as responsible for authorizing testimony or the production of documents pursuant to a subpoena, summons, or court order where the Postal Service, the United States, or another federal agency is not a party. Now, the authorizing official, in most cases, is the Postal Inspector in Charge of the affected field Division.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Government employees, Release of information.

Accordingly, 39 CFR part 265 is amended as set forth below.

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

2. The heading of § 265.11 is revised to read as follows:

§ 265.11 Compliance with subpoena duces tecum, court orders, and summonses.

3. Paragraphs (b) and (c) of § 265.11 are removed and paragraph (b) is reserved.

4. A new § 265.13 is added to read as follows:

§ 265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service, the United States, or any other federal agency is not a party.

(a) *Applicability of this section.* The rules in this section apply to all federal, state, and local court proceedings, as well as administrative and legislative proceedings, other than:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Consultative services and technical assistance rendered by the Inspection Service in executing its normal functions;

(4) Employees serving as expert witnesses in connection with professional and consultative services under § 447.23 of this chapter and under title 5, Code of Federal Regulations, part 7001, provided that employees acting in this capacity must state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(5) Employees making appearances in their private capacities in proceedings that do not relate to the Postal Service (e.g., cases arising from traffic accidents, domestic relations) and do not involve professional or consultative services; and

(6) When in the opinion of the Counsel or the Counsel's designee, Office of the Chief Postal Inspector, it has been determined that it is in the best interest of the Inspection Service or in the public interest.

(b) *Purpose and scope.* The provisions in this section limit the participation of postal employees within or assigned to the Inspection Service, in private litigation, and other proceedings in which the Postal Service, the United States, or any other federal agency is not a party. The rules are intended to promote the careful supervision of Inspection Service resources and to reduce the risk of inappropriate disclosures that might affect postal operations.

(c) *Definitions.* For the purposes of this section:

(1) *Authorizing official* is the person responsible for giving the authorization for release of documents or permission to testify.

(2) *Case or matter* means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the United States, the Postal Service, or another federal agency is not a named party.

(3) *Demand* includes any request, order, or subpoena for testimony or the production of documents.

(4) *Document* means all records, papers, or official files, including, but not limited to, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analyses, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, computer discs, and sound or mechanical reproductions;

(5) *Employee or Inspection Service employee*, for the purpose of this section only, refers to a Postal Service employee currently or formerly assigned to the Postal Inspection Service, student interns, contractors and employees of contractors who have access to Inspection Service information and records.

(6) *Inspection Service* means the organizational unit within the Postal Service as outlined in § 224.3 of this chapter.

(7) *Inspection Service Legal Counsel* is an attorney authorized by the Chief Postal Inspector to give legal advice to members of the Inspection Service.

(8) *Inspection Service Manual* is the directive containing the standard operating procedures for Postal Inspectors and certain Inspection Service employees.

(9) *Nonpublic* includes any material or information not subject to mandatory public disclosure under § 265.6(b).

(10) *Official case file* means official documents that relate to a particular case or investigation. These documents may be kept at any location and do not necessarily have to be in the same location in order to constitute the file.

(11) *Postal Inspector reports* include all written reports, letters, recordings, or other memorializations made in conjunction with the duties of a Postal Inspector.

(12) *Testify or testimony* includes both in-person oral statements before any body conducting a judicial or administrative proceeding and statements made in depositions, answers to interrogatories, declarations, affidavits, or other similar documents.

(13) *Third-party action* means an action, judicial or administrative, in which the United States, the Postal Service, or any other federal agency is not a named party.

(d) *Policy*. (1) No current or former employee within the Inspection Service may testify or produce documents concerning information acquired in the course of employment or as a result of his or her relationship with the Postal Service in any proceeding to which this section applies (see paragraph (a) of this section), unless authorized to do so. Authorization will be provided by:

(i) The Postal Inspector in Charge of the affected field Division, or designee, for Division personnel and records, after that official has determined through consultation with Inspection Service legal counsel that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(ii) The Chief Postal Inspector or designee for Headquarters employees and records, after that official has

determined through consultation with Inspection Service legal counsel, that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(2) Consideration shall be given to:

(i) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(ii) Relevant legal standards for disclosure of nonpublic information and documents;

(iii) Inspection Service rules and regulations and the public interest;

(iv) Conservation of employee time; and

(v) Prevention of the expenditure of Postal Service resources for private purposes.

(3) If additional information is necessary before a determination can be made, the authorizing official may, in coordination with Inspection Service legal counsel, request assistance from the Department of Justice.

(e) *Compliance with subpoena duces tecum*. (1) Except as required by part 262 of this chapter, produce any other record of the Postal Service only in compliance with a subpoena *duces tecum* or appropriate court order.

(2) Do not release any record containing information relating to an employee's security or loyalty.

(3) Honor subpoenas and court orders only when disclosure is authorized.

(4) When authorized to comply with a subpoena *duces tecum* or court order, do not leave the originals with the court.

(5) Postal Inspector reports are considered to be confidential internal documents and shall not be released unless there is specific authorization by the Chief Postal Inspector or the Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel.

(6) The Inspection Service Manual and other operating instructions issued to Inspection Service employees are considered to be confidential and shall not be released unless there is specific authorization, after consultation with Inspection Service legal counsel. If the requested information relates to confidential investigative techniques, or release of the information would adversely affect the law enforcement mission of the Inspection Service, the subpoenaed official, through Inspection Service legal counsel, may request an *in camera, ex parte* conference to determine the necessity for the release of the information. The entire Manual should not be given to any party.

(7) Notes, memoranda, reports, transcriptions, whether written or recorded and made pursuant to an official investigation conducted by a

member of the Inspection Service, are the property of the Inspection Service and are part of the official case file, whether stored with the official file.

(f) *Compliance with summonses and subpoenas ad testificandum*. (1) If an Inspection Service employee is served with a third-party summons or a subpoena requiring an appearance in court, contact should be made with Inspection Service legal counsel to determine whether and which exemptions or restrictions apply to proposed testimony. Inspection Service employees are directed to comply with summonses, subpoenas, and court orders, as to appearance, but may not testify without authorization.

(2) Postal Inspector reports or records will not be presented during testimony, in either state or federal courts in which the United States, the Postal Service, or another federal agency is not a party in interest, unless authorized by the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, who will make the decision after consulting with Inspection Service legal counsel. If an attempt is made to compel production, through testimony, the employee is directed to decline to produce the information or matter and to state that it may be exempted and may not be disclosed or produced without the specific approval of the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division. The Postal Service will offer all possible assistance to the courts, but the question of disclosing information for which an exemption may be claimed is a matter of discretion that rests with the appropriate official. Paragraph (e) of this section covers the release of Inspection Service documents in cases where the Postal Service or the United States is not a party.

(g) *General procedures for obtaining Inspection Service documents and testimony from Inspection Service employees*. (1) To facilitate the orderly response to demands for the testimony of Inspection Service employees and production of documents in cases where the United States, the Postal Service, or another federal agency is not a party, all demands for the production of nonpublic documents or testimony of Inspection Service employees concerning matters relating to their official duties and not subject to the exemptions set forth in paragraph (a) of this section shall be in writing and conform to the requirements outlined in paragraphs (g)(2) and (g)(3) of this section.

(2) Before or simultaneously with service of a demand described in paragraph (g)(1) of this section, the

requesting party shall serve on the Counsel, Office of the Chief Postal Inspector, 475 L'Enfant Plaza SW., Washington, DC 20260-2181, an affidavit or declaration containing the following information:

- (i) The title of the case and the forum where it will be heard;
- (ii) The party's interest in the case;
- (iii) The reasons for the demand;
- (iv) A showing that the requested information is available, by law, to a party outside the Postal Service;
- (v) If testimony is sought, a summary of the anticipated testimony;
- (vi) If testimony is sought, a showing that Inspection Service records could not be provided and used in place of the requested testimony;
- (vii) The intended use of the documents or testimony; and
- (viii) An affirmative statement that the documents or testimony is necessary for defending or prosecuting the case at issue.

(3) The Counsel, Office of the Chief Postal Inspector, shall act as agent for the receipt of legal process for demands for production of records or testimony of Inspection Service employees where the United States, the Postal Service, or any other federal agency is not a party. A subpoena for testimony or for the production of documents from an Inspection Service employee concerning official matters shall be served in accordance with the applicable rules of civil procedure. A copy of the subpoena and affidavit or declaration, if not previously furnished, shall also be sent to the Chief Postal Inspector or the appropriate Postal Inspector in Charge.

(4) Any Inspection Service employee who is served with a demand shall promptly inform the Chief Postal Inspector, or the appropriate Postal Inspector in Charge, of the nature of the documents or testimony sought and all relevant facts and circumstances.

(h) *Authorization of testimony or production of documents.* (1) The Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel, shall determine whether testimony or the production of documents will be authorized.

(2) Before authorizing the requested testimony or the production of documents, the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division shall consider the following factors:

- (i) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;
- (ii) Relevant legal standards for disclosure of nonpublic information and documents;

- (iii) Inspection Service rules and regulations and the public interest;
- (iv) Conservation of employee time; and

- (v) Prevention of expenditures of government time and resources solely for private purposes.

(3) If, in the opinion of the authorizing official, the documents should not be released or testimony should not be furnished, that official's decision is final.

(4) Inspection Service legal counsel may consult or negotiate with the party or the party's counsel seeking testimony or documents to refine and limit the demand, so that compliance is less burdensome, or obtain information necessary to make the determination whether the documents or testimony will be authorized. If the party or party's counsel seeking the documents or testimony fails to cooperate in good faith, preventing Inspection Service legal counsel from making an informed recommendation to the authorizing official, that failure may be presented to the court or other body conducting the proceeding as a basis for objection.

(5) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in paragraph (g)(2) of this section or to such parts as deemed appropriate by the authorizing official.

(6) If the authorizing official allows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or receipt of documents by the least disruptive methods to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(i) While giving a deposition, the employee may, at the option of the authorizing official, be represented by Inspection Service legal counsel.

(ii) While completing affidavits, or other written reports or at any time during the process of preparing for testimony or releasing documents, the employee may seek the assistance of Inspection Service legal counsel.

(7) Absent written authorization from the authorizing official, the employee shall respectfully decline to produce the requested documents, testify, or, otherwise, disclose the requested information.

(8) If the authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this

section, and respectfully decline to testify or produce any document on the basis of the regulations in this section.

(9) The employee shall appear as ordered by the subpoena, summons, or other appropriate court order, unless:

- (i) Legal counsel has advised the employee that an appearance is inappropriate, as in cases where the subpoena, summons, or other court order was not properly issued or served, has been withdrawn, discovery has been stayed; or

- (ii) Where the Postal Service will present a legal objection to furnishing the requested information or testimony.

(i) *Inspection Service employees as expert or opinion witnesses.* No Inspection Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's duties or functions at the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the Counsel, Office of the Chief Postal Inspector, may approve such testimony in private litigation. An Inspection Service employee may not testify as such an expert or opinion witness without the express authorization of the Counsel, Office of the Chief Postal Inspector. A litigant must first obtain authorization of the Counsel, Office of the Chief Postal Inspector, before designating an Inspection Service employee as an expert or opinion witness.

(j) *Postal liability.* This section is intended to provide instructions to Inspection Service employees and does not create any right or benefit, substantive or procedural, enforceable by any party against the Postal Service.

(k) *Fees.* (1) Unless determined by 28 U.S.C. 1821 or other applicable statute, the costs of providing testimony, including transcripts, shall be borne by the requesting party.

(2) Unless limited by statute, such costs shall also include reimbursement to the Postal Service for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges, and any necessary travel expenses as follows:

- (i) The Inspection Service is authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the Postal Service for the cost of responding to a demand, may include the costs of time expended by Inspection Service employees, including attorneys, to process and respond to the demand; attorney time for reviewing the

demand and for legal work in connection with the demand; expenses generated by equipment used to search for, produce, and copy the requested information; travel costs of the employee and the agency attorney, including lodging and per diem where appropriate. Such fees shall be assessed at the rates and in the manner specified in § 265.9.

(ii) At the discretion of the Inspection Service where appropriate, fees and costs may be estimated and collected before testimony is given.

(iii) The provisions in this section do not affect rights and procedures governing public access to official documents pursuant to the Freedom of Information Act, 5 U.S.C 552a.

(l) *Acceptance of service.* The rules in this section in no way modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95-17326 Filed 7-17-95; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT25-1-6541a; FRL-5251-8]

Approval and Promulgation of Air Quality Implementation Plans; Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is acting on revisions to the State Implementation Plan (SIP) submitted by the Governor of Montana on May 17, 1994. The submittal included, among other things, revisions to the State's construction permitting regulations to comply with Federal requirements and revisions to address outstanding rule deficiencies, as well as a request that the existing regulations in the SIP be replaced with the October 1979 recodification of the Administrative Rules of Montana (ARM). EPA is approving all of the regulations included in this submittal, with the exception of the two director's discretion provisions regarding hydrocarbon emissions which EPA is disapproving, the odor control rules and the sulfur oxide rules for lead smelters on which EPA is taking no action, and the variance provisions which EPA will be acting on in a separate notice. Also, EPA is not approving the submitted

versions of two provisions of the State's open burning rules which EPA previously disapproved. The previously-approved versions of these rules remain part of the SIP. In addition, EPA is only partially approving the State's nonattainment permitting rules for the Kalispell PM-10 nonattainment area. Last, EPA is approving Montana's construction permit rules for sources of hazardous air pollutants under section 112(l) of the Clean Air Act.

DATES: This final rule is effective on September 18, 1995, unless adverse or critical comments are received by August 17, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations: Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466; and Air Quality Division, Montana Department of Health and Environmental Sciences, P.O. Box 200901, Cogswell Building, Helena, Montana 59620-0901.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART-AP, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466, (303) 293-1765.

SUPPLEMENTARY INFORMATION:

I. Background

On May 17, 1994, the Governor of Montana submitted comprehensive revisions to the Montana SIP. Specifically, the submittal included the following revisions to the State's regulations:

(1) Revisions to the nonattainment new source review (NSR) permitting program by the addition of new ARM 16.8.1701-1705 and 16.8.1801-1806 to meet the requirements of 40 CFR 51.165 and the amended Clean Air Act (Act), as required for all of the State's nonattainment areas;

(2) Revisions to the prevention of significant deterioration (PSD) permitting program in ARM 16.8.945-963 to bring the State's PSD rules up to date with the Federal PSD requirements in 40 CFR 51.166 and with some of the new requirements of the amended Act;

(3) Revisions to the general NSR permitting requirements in ARM 16.8.1101-1120 to address outstanding EPA concerns and to reflect the major source preconstruction permitting requirements in subchapters 9, 17, and 18 of title 16, chapter 8 of the ARM;

(4) Revisions to address commitments in Montana's PM-10 SIPs including, among other things, revisions to: (1) The State's NSR rules as discussed above; (2) the source testing requirements in ARM 16.8.708-709; (3) the New Source Performance Standards (NSPS) in ARM 16.8.1423; and (4) the National Emission Standards for Hazardous Air Pollutants (NESHAPs) in ARM 16.8.1424;

(5) Revisions to the wood waste burner emission rule in ARM 16.8.1407 to address EPA's December 4, 1992 disapproval of the previous revision to this rule (see 57 FR 57345);

(6) Revisions to the general definitions for Montana's air program rules in ARM 16.8.701; and

(7) Miscellaneous revisions to other source-category emission control rules in ARM 16.8.1401, 1425, and 1427-1428.

Also as part of this submittal, the State submitted the entire State air quality rules which were recodified in October of 1979 to be incorporated into the SIP. Although the State recodified its rules in 1979, the State never formally submitted the recodified rules to replace the existing rules approved by EPA in the SIP. Only rules to which revisions were made after 1979 have been submitted to EPA and approved in the SIP. Therefore, in this submittal, the State submitted its entire air quality regulations to be incorporated into the SIP and to replace the existing State rules approved in the SIP.

A. Nonattainment NSR and PSD Requirements of the Act

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). 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 part D advanced in this notice and the supporting rationale. A brief discussion of the specific elements required in a State's nonattainment NSR program is also included in Section II.B. of this document.

EPA is currently developing rule revisions to implement the changes under the 1990 Clean Air Act Amendments (1990 Amendments) in the NSR provisions of parts C and D of title I of the Act. The EPA anticipates