DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91

[Docket No. FAA–1999–5925; Notice No. 99–15]

RIN 2120–AG82

Reduced Vertical Separation Minimum; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to the notice of proposed rulemaking, published in the **Federal Register** on July 8, 1999 (64 FR 37018). That proposed rulemaking to enable the implementation of Reduced Vertical Separation Minimum (RVSM) in Pacific oceanic airspace. The introduction of RVSM in Pacific oceanic airspace would make more fuel and time efficient flight levels and tracks available to operators and would enhance airspace capacity.

FOR FURTHER INFORMATION CONTACT: Roy Grimes, 202–267–3734.

Correction of Publication

In proposed rule FR Doc. 99–17360, beginning on page 37018 in the **Federal Register** issue of July 18, 1999, make the following correction:

1. On page 37018, in column 1, in the heading section, beginning in line 4, correct the ''Notice No. 99–10'' to read ''Notice No. 99–15''.

Issued in Washington, DC on July 21, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–19179 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA–1999–5924; Notice No. 99–13]

RIN 2120–AG83

Year 2000 Airport Safety Inspections; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This document contains a correction to the notice of proposed rulemaking published in the **Federal Register** on July 8, 1999 (64 FR 37026). That NPRM proposed rulemaking to require certain airports to conduct a one-time readiness check of certain airfield equipment and systems starting January 1, 2000, and report the results of these checks to the FAA. In addition, that proposal temporarily revised the time period these airport operators have to repair or replace certain emergency equipment.

FOR FURTHER INFORMATION CONTACT: Robert E. David, Airport Safety and Operators Division (AAS–300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8721.

Correction of Publication

In proposed rule FR Doc. 99–17359 beginning on page 37026 in the **Federal Register** issue of July 8, 1999, make the following corrections:

1. On page 37026, in column 1, in the heading, beginning in line 4, ''SFAR No. 85–]'' should read ''Notice No. 99–13]''.

2. In the **SUPPLEMENTARY INFORMATION:** Availability of NPRMs'' section on page 37026, in column 2, the first paragraph, beginning in line 9, remove the last phrase'', or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (800) 322–2722 or (202) 267–5948)''.

3. On page 37029, in column 1, 9 lines from top of column, add the following language ''And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this rulemaking does not meet the standards for a 'significant regulatory action' under section 3(f) of Executive Order 12866 and under the Department of Transportation's Regulatory Policies and Procedures for Simplification, Analysis, and Review of Regulations (44 FR 11034, February 26, 1979) and, therefore, is not subject to review by the Office of Management and Budget. Additionally, this proposed rule would not have a significant impact on a substantial number of small entities; would not constitute a barrier to international trade, and does not contain a significant intergovernmental or private sector mandate.''.

Issued in Washington, DC, on July 21, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–19042 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. MT–001–0007, MT 001–0008, MT–001–0009 and MT–001–0010; FRL–6408–8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve, conditionally approve and partially disapprove the Billings/Laurel sulfur dioxide (SO2) State Implementation Plan (SIP) revisions submitted by the State of Montana in response to a SIP Call. EPA is also proposing a regulatory scheme for sanctions. The SIP revisions establish, and require seven sources to meet and monitor compliance with, emission limitations for SO2 emissions in the Billings/Laurel area. The intended effect of this action is to make federally enforceable those provisions that EPA is proposing to approve, to conditionally approve those provisions that the State has committed to correct, to disapprove those provisions that are not approvable, and to establish the sequence of sanctions if EPA's proposed disapproval becomes a final action. EPA is taking this action under sections 110 and 179 of the Clean Air Act (Act).

DATES: Written comments must be received by August 27, 1999.

ADDRESSES: Mail written comments (in duplicate if possible) to Richard R. Long, Director, Air Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202.

Docket: You can inspect the official docket concerning this action, docket #R8–99–01, at the Air Program Office, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202 (call Laurie Ostrand to make an appointment at (303) 312–6437). You also can review materials concerning this action (although not the official docket) at EPA

Region VIII's Montana Office, Federal Building, 301 S. Park, Helena, Montana 59620 (call Betsy Wahl to make an appointment at (406) 441–1130, ext. 234) and at the Parmly Billings Library, 510 N. Broadway, Billings, Montana (406) 657–8391. Note that the materials at EPA's Montana Office and the Parmly Billings Library may not be as complete as the official docket at EPA's Denver Office.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region VIII, (303) 312–6437 or Dawn Tesorero, EPA, Region VIII, (303) 312–6883.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of EPA's Proposed Actions

Apart from those provisions we are proposing to disapprove or conditionally approve (see discussions below), we are proposing to approve all other aspects of the Billings/Laurel SO2 SIP, which the State of Montana submitted in response to our SIP Call. See Background section V.D. We caution that if we were to find it too difficult to enforce certain variable (or pro-rated) emission limitations at several of the sources or if data were not available to determine the emission limitations on a regular basis, we would reconsider our approval. Also, if we were to determine that the State-only provisions, as implemented, appeared to limit or constrain or otherwise have a chilling effect on the Montana Department of Environmental Quality's (MDEQ's) enforcement of the SIP, we would reconsider our approval or take other appropriate action under the Act. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act. 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 approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other more stringent requirements. Also, our action on this 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).

We are proposing to disapprove the following provisions of the Billings/Laurel SO2 SIP:

- The escape clause (paragraph 22 in the Exxon and Montana Sulphur & Chemical Company (MSCC) stipulations and paragraph 20 in the Cenex, Conoco, Montana Power, Yellowstone Energy Limited Partnership (YELP), and Western Sugar stipulations).
- The MSCC stack height credit and emission limitations on the sulfur recovery unit (SRU) 100-meter stack (paragraph 1 of the Exxon stipulation, paragraphs 1 and 2 of the MSCC stipulation, and section 3(A)(1)(a) and (b) and 3(A)(3) of the MSCC exhibit [1]).
- The emission limitation on MSCC's auxiliary vent stacks, section 3(A)(4) of MSCC's exhibit.
- The attainment demonstration because of the improper stack height credit and emission limitations at MSCC.
- The attainment demonstration for lack of flare emission limitations at Cenex, Conoco, Exxon, and MSCC.
- The attainment demonstration because of the proposed disapproval of the emission limitation for MSCC's auxiliary vent stacks.
- The Reasonably Available Control Measures (RACM) (including Reasonably Available Control Technology (RACT)) and Reasonable Further Progress (RFP) requirements for Cenex.
- The provisions that allow sour water stripper emissions to be burned in the flare at Cenex and Exxon (sections 3(E)(4) and 4(E) of Exxon's exhibit and sections 3(B)(2) and 4(D) of Cenex's exhibit, only as they apply to flares).

We are proposing to conditionally approve the following provisions of the Billings/Laurel SO2 SIP based on the State of Montana's commitment to adopt and submit adequate compliance monitoring methods:

- YELP's emission limitations (in sections 3(A)(1) through (3) of YELP's exhibit).
- Exxon's coker carbon monoxide (CO)-boiler emission limitation (in section 3(B)(1) of Exxon's exhibit).
- Exxon's F–2 crude/vacuum heater stack emission limitations and attendant compliance monitoring methods (in sections 3(E)(4) and 4(E) (only as they apply to the F–2 crude/vacuum heater stack), 3(A)(2), 3(B)(3), and attachment 2, of Exxon's exhibit).

[1] The SIP was submitted in the form of stipulations, exhibits and attachments for each source covered by the plan. The majority of the requirements are contained in the exhibits. Throughout this document when we refer to an exhibit, we mean the exhibit A to the stipulation for the specified source.

• Exxon's fuel gas combustion emission limitations and attendant compliance monitoring methods (in sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3) of Exxon's exhibit).

• Cenex's combustion sources emission limitations and attendant compliance monitoring methods (in sections 3(B)(2) and 4(D) (only as they apply to the main crude heater), 3(A)(1)(d), 4(B), and attachment 2, of Cenex's exhibit).

Finally, we are proposing that the regulatory scheme issued for sanctions generally, under 40 CFR 52.31, should also apply here if our proposed partial disapproval of the SIP becomes a final action or if EPA adopts final conditional approvals that later convert to disapprovals. We are also proposing to apply the sanction rule's provisions regarding the timing of sanctions to this action. We also ask for comment on whether we should impose sanctions under section 110(m) of the Act so that they become effective immediately upon the effective date of our partial disapproval or of a conversion from conditional approval to disapproval, and on the geographic scope of such discretionary sanctions should the Agency decide to impose them.

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

Definitions

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

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

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

Technical Support Document (TSD)

Our TSD for this action discusses our criteria for deciding whether to approve or disapprove the SIP and whether or not the State of Montana's submittals satisfy those criteria. The TSD also discusses most of the issues we raised on various drafts and final submittals of the Billings/Laurel SIP for SO2 and how the State of Montana addressed these issues. (See document #III.B–1.[2])

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

Apart from those provisions we are proposing to disapprove or conditionally approve (see discussions below), we are proposing to approve all other aspects of the SIP. We are proposing to approve these other aspects of the SIP because we believe they meet our SIP approval criteria and provide enforceable emission limitations on sources in the Billings/Laurel area. We caution that if we were to find it too difficult to enforce certain variable (or pro-rated) emission limitations at several of the sources or if data were not available to determine the emission limitations on a regular basis, we would reconsider our approval. Also, if we were to determine that the State-only provisions, as implemented, appeared to limit or constrain or otherwise have a chilling effect on MDEQ's enforcement of the SIP, we would reconsider our approval or take other appropriate action under the Act. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act. Also, 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 approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other more stringent requirements. Also, our 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).

We evaluated the SIP submittals against the following provisions in sections 110(a)(2) and 172(c) of the Act that SIPs are required to meet:

- Notice and public hearing.
- Enforceable emission limitations.
- Ambient air quality data.
- Enforcement program and stationary source regulations.
- Interference with any other state.
- Assurance of adequacy of personnel, funding, authority.
- Emission monitoring.
- Emergency powers.
- SIP revisions.

Unless identified below in ''Why Is EPA Proposing to Disapprove or Conditionally Approve Parts of the State of Montana's Plan,'' all other requirements of sections 110(a)(2) and 172(c) have been met. We are proposing to approve the SIP as satisfying those requirements or finding that no action is required because certain provisions have previously been approved into the Montana SIP. Refer to our TSD for a detailed discussion of the Act's requirements, how they have been satisfied, and our proposed actions.

Following is a discussion of the major issues we raised concerning the Billings/Laurel SIP for SO2 and how the State of Montana addressed those issues.

1. Quarterly Data Recovery Rate (QDRR)

In earlier SIP submittals (i.e., those submitted prior to the July 29, 1998 submittal), the exhibits required most sources to meet only a 90% QDRR for the continuous emission monitoring system (CEMS), or limited the number of hours in a calendar quarter when valid hourly SO2 emission rate data were unavailable to 192 hours. QDRR means the percentage of time in each quarter that the CEMS is up and running and generating data about SO2 emissions. We believed we could not propose to approve the SIP unless the State of Montana revised the exhibits to indicate that the exhibits do not preclude the MDEQ from taking enforcement action for a QDRR that is less than 100% but equal to or greater than 90%, and unless the State of Montana deleted the section of the exhibits pertaining to 192 hours. With the July 29, 1998 submittal of the SIP, the State of Montana has revised the QDRR requirements as we requested. Specifically, the exhibits now indicate that notwithstanding the numerical QDRR requirements, sources are to use best efforts to achieve the highest QDRR that is technically feasible. The State of Montana deleted the reference to the 192-hour short quarters. Instead, the exhibits now indicate that, for quarters in which operating hours are reduced (short quarters), a determination of whether a source violated the QDRR shall include consideration of whether the reduced operating hours made compliance with the numerical QDRR unreasonable.

The July 29, 1998 submittal of the SIP addresses our prior concerns. We interpret the submittal as requiring sources to achieve the highest data recovery that's technically feasible. Any loss of CEMS data will need to be adequately documented and justified by sources. We interpret the July 1998 submittal to allow the MDEQ, us, and citizens to take enforcement action for QDRR's that are between 90 and 100%, if CEMS data loss is not adequately documented and justified. We believe that the MDEQ shares our interpretation of the QDRR requirements. See transcripts of the June 12, 1998 hearing before the Board of Environmental Review, page 6, starting on line 14 where an MDEQ representative indicated ''[W]e have revised that control plan such [that] it is clear now that obtaining data 100 percent of the time is indeed a requirement of the control plan.'' These transcripts are part

[2] All referenced documents are contained in the docket for this action, docket #R8–99–01.

of the ''Record of Adoption'' material that was submitted by the Governor with the SIP revision on July 29, 1998. (See document #II.E–3.)

Based on the July 1998 submittal and our interpretation above, we are proposing to approve the SIP as it applies to the QDRR provisions in all the exhibits for all seven sources.

2. Hydrogen Sulfide (H2S) Continuous Emission Monitoring Systems (CEMS) at Cenex

H2S CEMS are used at some sources to monitor compliance with the SO2 emission limitations on fuel gas-fired units. H2S concentrations above 300 ppm would exceed the level at which the monitors could record (i.e., be off-scale) and would result in errors in estimating SO2 emissions. We believed we could not propose to approve the SIP unless the State of Montana revised the earlier exhibits (i.e., those submitted prior to the July 29, 1998 submittal) to restrict the H2S concentration to a value that could be monitored by the H2S CEMS. We believed the limitation must be established such that the CEMS used to monitor compliance with the limitation will meet the required performance specifications.

In lieu of restricting H2S concentrations to a range the CEMS can record, the July 29, 1998 submittal of the SIP requires Cenex to use an alternative method to monitor compliance when the CEMS are off-scale.

We believe the Cenex exhibit, submitted on July 29, 1998, provides an acceptable approach to determine H2S concentrations in the refinery fuel gas at Cenex. We are proposing to approve the SIP as it applies to Cenex's method for determining H2S in the refinery fuel gas.

3. Combined Emission Limitations

Several sources have combined emission limitations for heaters and boilers. We believed we could not propose to approve the SIP as written unless these limitations were justified under our Economic Incentive Program (EIP) or Emissions Trading Policy Statement. In our June 3, 1997 letter to MDEQ, we completed an evaluation of the stipulations in comparison with the discretionary EIP requirements contained in 40 CFR part 51, subpart U, which we promulgated on April 7, 1994 (59 FR 16690). (See document #II.C–8.) We believed the stipulations and exhibits met the discretionary EIP requirements. However, since our initial evaluation of the combined emission limitations under the discretionary EIP, we have come to believe that the compliance monitoring method for Exxon's refinery fuel-gas combustion emissions limitation (combined emission limitation) is not acceptable. See discussion below under section II.C.4., ''Exxon's fuel gas combustion emission limitations and attendant compliance monitoring method'' and in section III.C.(2)(d) of our TSD. In addition, we raised concerns with Cenex's method for measuring sour water stripper emissions when burned in the main crude heater. See discussion below under section II.C.5., ''Cenex Sour Water Stripper (SWS)'' and in section III.C(2)(l) of our TSD. The Governor has committed to address our concerns. (See document #II.E–5.) Therefore, we are proposing to conditionally approve Exxon and Cenex's combined emission limitation and proposing to fully approve the combined emission limitations for heaters and boilers at Conoco and Western Sugar as meeting the discretionary EIP requirements.

4. Montana Sulphur & Chemical Company (MSCC) 30-Meter Stack

We believe the earlier version of the MSCC exhibit (i.e., the exhibit submitted prior to the July 29, 1998 submittal) did not provide an adequate means to monitor compliance with the 30-meter stack emission limitation. With the July 29, 1998 submittal of the SIP, the MSCC exhibit now restricts the units that can exhaust to the SRU 30-meter stack. Specifically, MSCC's exhibit requires that only units burning low sulfur fuel gas or natural gas and only those units/boilers listed in MSCC's exhibit can be exhausted through the SRU 30-meter stack. MSCC's exhibit also provides that other units/boilers could be vented to the SRU 30-meter stack only if (1) they are ''like-kind'' boilers or simply replace the fuel burning potential of the listed boilers; (2) MSCC obtains the necessary permits or a determination by the MDEQ that a permit isn't necessary and the additional unit is fired exclusively on pipeline-quality natural gas, ''LP'' gas, or the equivalent in pounds of sulfur per BTU; or (3) the SO2 emissions from the SRU 30-meter stack are being monitored by parametric methods approved by the MDEQ and EPA, or by a CEMS. We confirmed with the MDEQ that the expression '' 'like-kind' boilers or simply replaces the fuel burning potential of the listed boilers'' means that any replacement boiler must have the same or lower potential to emit SO2 as the boiler being replaced. A boiler having a greater potential to emit SO2 than an existing boiler could not be used to replace it.

MSCC's exhibit, contained in the July 1998 submittal of the SIP, does not provide any new means to determine compliance with the 12 lb/3-hr SO2 emission limitation for the SRU 30-meter stack. MSCC's exhibit requires MSCC to report the date and time period when emissions are exhausted through the SRU 30-meter stack, report which operating units are exhausted from the stack, and include engineering estimates of three-hour emissions and daily emissions from the stack.

MSCC's exhibit requires that only units burning low sulfur fuel gas or natural gas be exhausted through the 30-meter stack. MSCC's exhibit does not define ''low sulfur fuel gas.'' We interpret ''low sulfur fuel gas'' to be properly sweetened fuel gas. Based on our interpretation, burning unsweetened refinery fuel gas in one of the named units when it is exhausting to the 30-meter stack would be considered a violation of the stipulation and SIP. MDEQ's September 3, 1998 letter indicates that MDEQ believes MSCC does not need further emissions monitoring for the 30-meter stack because, among other reasons, MSCC fires its boilers on the same sweetened refinery fuel gas that it provides to Exxon, and when the amine unit is working properly, the H2S concentration in the refinery fuel gas is less than 100 ppmv. We inferred from that discussion that MDEQ also interpreted ''low sulfur fuel gas'' to mean properly sweetened fuel gas. In a letter dated May 20, 1999, the MDEQ indicated that they interpret ''low sulfur fuel gas'' to be sweetened refinery fuel gas or its equivalent in pounds of sulfur dioxide per million British thermal units (lbs-SO2/MMBtu) of heat input. (See document #II.E–14.)

Because of our interpretations discussed above and MDEQ's confirmation of our interpretation in the letter dated May 20, 1999, we are proposing to approve the SIP as it applies to the emission limitation for the 30-meter stack at MSCC. Note, however, that we are concerned that there is no definition of ''low sulfur fuel gas'' in MSCC's exhibit. We may consider creating such a definition when we complete a Federal implementation plan (FIP) to fill in the gaps for the SIP provisions that we are proposing to disapprove.

5. Variable Emission Limitations [3]

Novel Control Strategy. The State of Montana has adopted a novel control

[3] We believe that the variable emission limitations are not a dispersion technique, as defined by 40 CFR 51.100(hh)(1), for the following reasons: First,

strategy for three of the seven sources in the Billings/Laurel area. For MSCC and Montana Power, emission limitations vary depending on the ''buoyancy flux'' of the SO2 gas plume as it exits the stack. Buoyancy flux is a function of gas flow rate and gas temperature in the stack, which vary within certain parameters. To determine the emission limitation on a real-time basis for each three-hour and twenty-four hour compliance period, MSCC and Montana Power rely on data from continuous flow-rate monitors and in-stack thermometers. For the fluid catalytic cracking (FCC) unit at Exxon, emission limitations vary depending on the feed rate to the FCC unit. To determine the emission limitation on a real-time basis for each three-hour and twenty-four hour compliance period, Exxon relies on data from a continuous feed rate meter. To determine whether a unit is meeting the particular emission limitation for the relevant time period, actual emissions of SO2 will be monitored by continuous emission monitors located in the stacks.

This strategy is both complex and flexible. The strategy is complex, in that it is based on computer dispersion modeling involving many variables and it requires constant attention by plant operators not only to keep pollution within allowable limitations but also to determine what those limitations may be. The strategy is flexible, in that it allows sources to maximize emissions when favorable stack conditions enable the gas plume to rise and thus have less impact on ambient concentrations of SO2 near the ground. Our proposed approval of this novel strategy was carefully considered. It is based on MDEQ's assurances that the variable limitations can be enforced and that MDEQ has adequate resources to monitor compliance, including review of monitoring data.

Our Initial Concern. Our initial concern about the concept of a variable emission limitation focused on MDEQ's ability to model and enforce the limitation. After consulting with other Regional Offices and EPA's Office of Air Quality Planning and Standards (OAQPS), we believe that, while technically more difficult, it is feasible to model all the inputs and determine whether or not the NAAQS can be attained with variable emission limitations. With respect to whether variable limitations can be enforced, we believe they can be because all the stacks with variable limitations have continuous emission monitoring systems (CEMS). CEMS provide MDEQ and us with the level of information necessary to make a compliance determination at all times. However, we realize that enforcing a variable emission limitation may be more difficult than enforcing a fixed emission limitation. Since the State of Montana wants to pursue this innovative strategy, we are willing to propose approval of the SIP as it applies to these provisions. However, as discussed below, if variable limitations were to prove too difficult for MDEQ or us to enforce, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

Our Follow-up Concern. Our follow-up concern about the variable emission limitations was how to determine the appropriate emission limitation if continuous monitors were not functioning (the variable emission limitations at MSCC and Montana Power are based on the stack flow rate and temperature; at Exxon, on the FCC feed rate). We believed we could not propose to approve the SIP unless the State of Montana revised the exhibits to indicate that when data needed to determine the appropriate emission limitation are missing, the most stringent limitation applicable to the source would apply. Additionally, we indicated that for those variable limitations that rely on temperature probes, the MDEQ needed to provide assurances that they were adequate.

To address our concerns about establishing emission limitations when data are missing, the State of Montana submitted a SIP revision on July 29, 1998. In the July 29, 1998 submittal, the exhibits require sources to install and maintain back-up monitoring systems. However, the back-up systems are not completely redundant. If the back-up system fails or fails to measure and record flow and temperature data, the exhibits specify a data substitution method to determine the applicable emission limitation.

We believe that the back-up monitoring systems should assure that data are available to determine the emission limitations and only in rare cases should the data substitution method be needed to determine the appropriate emission limitation. However, if we were to find that the back-up monitoring systems were not functioning properly and not assuring on a regular basis that data were available to determine the emission limitations, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

In a letter dated May 20, 1999, MDEQ assured us that the temperature probes used to determine the buoyancy flux emission limitation are located in a representative location in the stack and that there are proper Quality Assurance/Quality Control (QA/QC) requirements for the temperature probes. (See document #II.E–14.)

Our Proposed Approval. Because the State of Montana has addressed our concerns about determining emission limitations when CEMS data are not available, we are proposing to approve the SIP as it applies to the variable emission limitations at Montana Power and Exxon. We are not proposing to approve the SIP as it applies to the variable emission limitation at MSCC due to the stack height issue discussed in section II.B.(2) below and in section III.C.(2)(q) of our TSD. Our proposed approval for Montana Power and Exxon has several caveats. As mentioned previously, we realize that the variable emission limitations may be more difficult to enforce than a fixed emission limitation. We believe that the back-up monitoring methods should generally assure that data will be available to determine the emissions limitations. However, we will perform close oversight as MDEQ implements this SIP, particularly the variable emission limitation control strategy. If we were to find that the variable limitations are not practically enforceable by the MDEQ or us, that the back-up monitoring systems are not sufficient to assure on a regular basis that data are available to determine the emission limitations, or that MDEQ is unable to adequately review and assure the quality of the monitoring data on which both limitations and compliance are based, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of

---

the variable emission limitations are not based on atmospheric conditions or ambient concentrations of a pollutant, and are thus not dispersion techniques under 40 CFR 51.100(hh)(1)(ii). Second, with respect to Montana Power and MSCC, the SO2 emissions for each source are limited to 5,000 tons per year or less. Therefore, 40 CFR 51.100(hh)(1)(iii) does not apply. See 40 CFR 51.100(hh)(2)(v). With respect to Exxon, the emission limitation varies as throughput to the FCC unit varies. The variable emission limitation is based on historical source operations and stack data, not on manipulating process or exhaust gas parameters to increase final exhaust gas plume rise. Therefore, the variable emission limitation is not a dispersion technique as defined in 40 CFR 51.100(hh) and thus is not prohibited by section 123 of the Act.

the Act or take other appropriate action under the Act.

6. Department Discretion

In our June 3, 1997 letter to MDEQ (see document #II.C–8), we raised a concern about places in the stipulations, exhibits and attachments where the Department has the discretion to modify existing provisions in the SIP, approve into the SIP future documents or compliance monitoring methods, or make other determinations that affect the SIP without obtaining our approval. The stipulations, exhibits and attachments were not clear whether any of these changes would be submitted as SIP revisions or through any other process for us to review and approve. We indicated that certain revisions to the SIP could occur through the Title V significant permit modification process if the SIP contained enabling language that would allow it to be revised through that process. We referenced our March 5, 1996 ''White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program'' as guidance the State of Montana should follow when using the Title V permit process to revise the SIP.

Finally, we indicated that in places where the stipulations, attachments and exhibits allowed the Department to make certain decisions, the words ''and EPA,'' must be added.

In our March 6, 1998 letter to MDEQ (see document #II.C–10), we provided further guidance on how the stipulations, exhibits and attachments must be revised to address the department discretion concerns.

With the July 29, 1998 submittal of the SIP, the State of Montana has revised the stipulations, exhibits and attachments to address our concerns. The stipulations describe a process that the State of Montana will follow when modifying the SIP by implementing alternative requirements or making text changes to the stipulations, exhibits and attachments.

We believe that the July 1998 submittal addresses our concern about department discretion to change the SIP. The stipulations contain the following language: ''To the extent allowed under federal requirements, minor and clerical corrections may be made by mutual agreement of the parties, without the necessity for formal approval by EPA.'' We want to make clear that, once we approve the SIP, the federally approved SIP may only be revised with our approval. See section 110(i) of the Act, 42 U.S.C. 7410(i). The one exception is through the Title V permitting process consistent with EPA's March 5, 1996 ''White Paper Number 2 for Improved Implementation of the part 70 Operating Permits Program.'' Thus, in proposing approval of portions of the SIP, we want to clarify that the ''parties'' to the stipulations may not make minor and clerical corrections to the federally effective SIP without our approval, or without following the Title V procedures described below.

Consistent with the foregoing, we interpret the stipulations to require the following process for modifying the SIP text and approving alternative requirements and methodologies: the State of Montana must submit to us all modifications to SIP text (including minor and clerical corrections or modifications) and all MDEQ approvals of alternative requirements and methodologies. If the modification to text or alternative requirement or methodology is proposed as a ''minor modification'' (or clerical correction) we will inform the State of Montana 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 minor and is approved.) If we do not approve the modification of text or alternative requirement or methodology as minor, the State of Montana 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 provisions of Title I of the Act, pursuant to notice and comment rulemaking under the Administrative Procedure Act.

The stipulations provide for the possible use of Title V permit revision procedures to achieve certain types of SIP text modifications or approvals of alternative requirements or methodologies. Specifically, the modification or approval must pertain to testing, monitoring, recordkeeping, calculation, reporting, or operating requirements or methodologies. 40 CFR 70.6(a)(1)(iii) provides that the State of Montana may use Title V significant permit revision procedures to achieve the SIP revision if the following conditions have been met: the MDEQ has issued a Title V permit to the source, the State of Montana has adopted enabling regulatory language for making SIP changes through Title V procedures, we have approved such language in the Montana SIP, and we do not object to the specific modification at issue. In our March 5, 1996 ''White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program,'' we have described various criteria for such enabling regulatory language; in particular, such SIP language must require that any alternative SIP requirements established through a Title V permit be at least as stringent as the otherwise-applicable SIP requirement.

All changes to the SIP, whether minor or significant, must be reflected in the Title V permit for the source as ''applicable requirements'' under 40 CFR 70.2. Therefore, as changes are made to the SIP, MDEQ will need to modify the Title V permit through appropriate permit revision procedures.

Based on the July 1998 submittal of the SIP and our interpretation of the modification process, we are proposing to approve these provisions of the stipulations, exhibits and attachments.

7. Clarifying Interpretations

In a June 5, 1998 letter to MDEQ (see document #II.E–7), we identified several places where the State of Montana could make the stipulations and exhibits clearer. In a September 3, 1998 letter to us (see document II.E–9), the MDEQ agreed that, while it would be helpful to make the suggested changes, the stipulations had already been signed without the modifications we suggested. In the future the MDEQ will evaluate whether to make the suggested changes.

Because the SIP has not been modified as we had suggested in our June 5, 1998 letter to the MDEQ, we are providing our interpretations of several provisions in the stipulations. Based on the MDEQ's September 3, 1998 letter, we believe that the MDEQ agrees with our interpretations.

(a) Paragraph 16 of the Exxon and Montana Sulphur & Chemical Company (MSCC) stipulations and paragraph 14 of the other sources' stipulations contain this statement: ''The Stipulation Requirements shall supersede any less stringent corresponding conditions pertaining to SO2 sources in any currently existing permit.'' The term ''Stipulation Requirements'' was defined and used in several places in prior versions of the stipulations. It appears to have been replaced by the phrase, ''requirements in the Stipulation, Exhibit A, and Attachments,'' everywhere in the current stipulations except in paragraph 16 for Exxon and MSCC and paragraph 14 for the other sources. Additionally, paragraph (B) of section 9 of exhibit A appears to define ''Stipulation Requirements'' as a ''limitation, condition, or other requirement contained herein.'' Therefore, we interpret ''Stipulation Requirements'' in

paragraph 16 for Exxon and MSCC and paragraph 14 for the other sources to mean any ''requirement in the Stipulation, Exhibit A, and Attachments.''

(b) Paragraph 12 of the Exxon and MSCC stipulations and paragraph 10 of the other sources' stipulations use the word ''revision'' to describe a change made to an attachment. We understand that changes to attachments, like all other changes to SIP documents, are subject to the procedures for modification set forth in Paragraph 19 of the Exxon and MSCC stipulations and paragraph 17 of the other sources' stipulations.

(c) In Montana Power's exhibit, we interpret the reporting requirements of section 7(B)(1)(f), which read, ''The electronic report shall contain daily calibration data from the CEMS required by section 6(B)(1) and (2), or if applicable, section 6(B)(3),'' to mean, ''The electronic report shall contain daily calibration data from CEMS required by section 6(B)(1) and (2), *and* if applicable, section 6(B)(3).''

In addition to (a), (b) and (c) above, in a January 15, 1999 letter to MDEQ, we requested that the MDEQ confirm our interpretations on several issues. (See document #II.E–10.) The MDEQ responded on May 20, 1999. (See document #II.E–14.) These issues are discussed below.

(d) We interpret the February 7, 1998 date in section 3(E)(3) of Exxon's exhibit to be February 7, 1997. This paragraph is referencing an order signed by the Montana Board of Environmental Review (MBER). Earlier information submitted by MDEQ indicates that the order referenced was dated February 7, 1997. We believe the February 7, 1998 date to be a typographical error. MDEQ confirmed this in its May 20, 1999 letter.

(e) We interpreted a parenthetical in section 3(A)(1) of the Exxon exhibit to mean that Exxon is prohibited from exhausting coker unit flue gas from the coker CO-boiler stack at the same time either or both of YELP's boilers are operating (except during startup and shutdown of YELP).[4] This prohibition does not appear in the exhibit, however, but in an air quality permit issued to Exxon by MDEQ on June 17, 1996, which states: ''Exxon shall, *any time* the Yellowstone Energy Limited Partnership (YELP) facility is operating, send *all* of its coker process gas to either or both of YELP's boilers. During startup and shutdown conditions at YELP, Exxon shall supply the maximum amount of coker process gas that YELP can accept'' (see document #II.F–12, paragraph A of Section II: Limitations and Conditions). We asked MDEQ to clarify this prohibition.

In the May 20, 1999 letter to us, MDEQ responded that ''pursuant to the attainment demonstration modeling it is not necessary to prohibit coker unit flue gases from being exhausted from the coker CO-boiler stack at the same time that YELP is operating. The prohibition against simultaneous emissions was developed during prevention of significant deterioration of air quality (PSD) permitting of the YELP facility, and was necessary to obtain offsets allowing YELP into the airshed under PSD. Since the prohibition is not necessary for attainment of the NAAQS, it is the Department's position that the prohibition does not belong in Exxon's exhibit A, and the parenthetical should be deleted.''

Because simultaneous emission from Exxon and YELP have been shown by modeling to demonstrate attainment of the NAAQS, we agree with the MDEQ that the prohibition in the parenthetical is not necessary for the Billings/Laurel SO2 SIP. However, if Exxon is subject to more stringent requirements under other provisions of the Act, such as the permit condition quoted above which appears in a permit issued under Montana's state-wide SIP, then our approval of this SIP would not excuse Exxon from meeting those other more stringent requirements.

(f) MSCC's exhibit indicates that units burning low sulfur fuel gas or natural gas can be exhausted through the 30-meter stack. MSCC's exhibit does not define ''low sulfur fuel gas.'' We interpret ''low sulfur fuel gas'' to be properly sweetened fuel gas (e.g., fuel gas which has been treated in an amine unit to remove H2S). Based on our interpretation, burning unsweetened refinery fuel gas in one of the named units when it is exhausting to the 30-meter stack would be considered a violation of MSCC's exhibit and the SIP. The MDEQ's September 3, 1998, letter indicates that the Department believes MSCC does not need further emissions monitoring on the 30-meter stack because, among other reasons, MSCC fires its boilers on the same sweetened refinery fuel gas that it provides to Exxon and that when the amine unit is working properly, the H2S concentration in the refinery fuel gas is less than 100 ppmv. We inferred from that discussion that MDEQ also interpreted ''low sulfur fuel gas'' to mean properly sweetened fuel gas. In a letter dated May 20, 1999, the MDEQ indicated that they interpret ''low sulfur fuel gas'' to be sweetened refinery fuel gas or its equivalent in pounds of sulfur dioxide per million British thermal units (lbs-SO2/MMBtu) of heat input. (See document #II.E–14.) Note, however, that we are concerned that there is no definition of ''low sulfur fuel gas'' in MSCC's exhibit. We may consider creating such a definition when we complete a FIP to fill in the gaps for the SIP provisions that we are proposing to disapprove.

(g) Finally, we interpret our approval of the SIP, including emission limitations and other requirements, as not excusing sources from meeting other potentially more stringent requirements under other provisions of the Act (e.g., section 111, part C or SIP-approved permit program under part A). In a conversation on April 28, 1999, the MDEQ agreed with our interpretation. Also, our action on this 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 program under part A).

B. Why Is EPA Proposing to Disapprove Parts of the State of Montana's Plan?

Certain provisions of the Billings/Laurel SO2 SIP do not satisfy our requirements for SIPS. In addition, the SIP lacks certain enforceable requirements necessary to demonstrate attainment and maintenance of the NAAQS. The parts of the Plan proposed for disapproval are the following:

1. Escape Clause

Each stipulation contains a paragraph which allows a source to withdraw its consent to the stipulation. The ''escape clause'' reads as follows:

> Notwithstanding any other provision of this Stipulation, [the named source's] and the Department's consent to be bound by the terms of this Stipulation is conditioned upon the adoption of SO2 emission control strategies, for all the affected industries in this matter, which are in their common terms substantially similar to one another. This condition of substantial similarity extends only to the initial control strategies, adopted by the Board or by the U.S. EPA as a Federal Implementation Plan, and which are adopted in response to the EPA letter of March 4, 1993 calling for revision of the Billings/Laurel SO2 SIP. This condition of substantial similarity does not extend to subsequent revisions of such initial emissions control strategies, but does extend to and include any revisions of such initial emissions control strategies resulting from any challenge or appeal of the initial adopted emissions control strategies. In the event that an initial control strategy is finally adopted by the Board or EPA, for any of the affected industries in this matter, which is not

[4] The parenthetical states, ''(fuel gas combustion emissions only since under this configuration coker unit flue gas is prohibited from exhausting through the stack)''.

substantially similar in its common terms to this Stipulation or Exhibit A, either [the named source] or the Department may, in writing delivered to the other party and to the other affected industries in this matter within 60 days of receiving written notice of the adoption, withdraw its consent to this Stipulation.

We are proposing to disapprove the SIP as it applies to the escape clause because, if sources invoke the escape clause, the MDEQ would no longer have a plan to implement. Specifically, we are proposing to disapprove the following: paragraph 22 in the Exxon and MSCC stipulations; paragraph 20 in the Cenex, Conoco, Montana Power, YELP, and Western Sugar stipulations. If sources invoke the escape clause after our final action on the SIP, we expect to address this scenario by issuing another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or taking other appropriate action under the Act. Additionally, if we disapprove the escape clause, the provisions of the SIP that we approve will remain federally enforceable even if one or more of the sources invoke the escape clause. While our proposed disapproval of the escape clause eliminates the risk of a source's future attempt to nullify the SIP, we do not believe our disapproval would render the SIP more stringent than the State of Montana intends, since it does not change the stringency of any of the substantive requirements the State of Montana has imposed and is currently able to enforce under the SIP.

2. MSCC Stack Height Credit and Emission Limitations on the Sulfur Recovery Unit (SRU) 100-Meter Stack

We are proposing to disapprove MSCC's stack height credit and emission limitations (paragraph 2 of the MSCC stipulation and sections 3(A)(1)(a) and (b) and 3(A)(3) of the MSCC exhibit) used in the attainment demonstration modeling for the Billings/Laurel area. We believe it is necessary to propose to disapprove MSCC's emission limitations because the State of Montana has set limits based on an amount of stack height credit for MSCC that is not supportable under section 123 of the Act or our stack height regulations.

(a) Introduction

In enacting section 123 of the Act, Congress recognized that stationary sources could reduce local concentrations of pollutants in the air either through source controls or through the use of tall stacks to disperse the pollutants. Congress chose to restrict the extent to which sources could use dispersion as a means to meet the NAAQS, because Congress was concerned with the potential negative impacts on downwind areas associated with long-range transport of pollutants.

To effect this restriction, Congress did not limit the height of stacks that sources may build, but instead limited the height that may be credited to stacks in dispersion modeling used to demonstrate attainment and maintenance of the NAAQS. Our regulations implement Congress's decision. By crediting too much of MSCC's stack height in the Billings attainment demonstration, the State of Montana is allowing MSCC to substitute dispersion for emissions reduction as a means to attain the SO2 NAAQS, in contravention of Congressional intent and our regulations.

(b) Stack Height Requirements

Section 123 of the Act provides that the ''degree of emission limitation required for control of any air pollutant under an applicable implementation plan * * * shall not be affected in any manner by * * * so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator) * * * [G]ood engineering practice means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles * * *''

Section 123 of the Act required us to promulgate regulations to carry out the purposes of section 123. We first promulgated stack height regulations in February 1982. These regulations were challenged in *Sierra Club* v. *Environmental Protection Agency*, 719 F.2d 436 (D.C. Cir. 1983). In that case, the U.S. Court of Appeals for the D. C. Circuit reversed certain provisions, upheld other provisions, and ordered us to reconsider still other provisions of the stack height regulations.

We promulgated revised stack height regulations on July 8, 1985 (50 FR 27892). These revised regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). The court's opinion affirmed the regulations in large part. The court remanded three provisions that are not relevant to this action.

Our stack height regulations, codified at 40 CFR 51.100 and 51.118, provide that the degree of emission limitation required for pollutant control under an applicable SIP shall not be affected by stack height in excess of good engineering practice (GEP) stack height. The central component of the regulations consists of a definition of the term ''good engineering practice stack height.'' GEP stack height is the greater of (1) 65 meters (known as ''de minimis'' stack height), (2) the height calculated using a formula specified by the regulations (''formula height''), or (3) the height demonstrated using fluid modeling or a field study (''non-formula height'' or ''above-formula height''). 40 CFR 51.100(ii)(1)–(3).

We issued our SIP Call to the State of Montana to revise the Billings/Laurel SIP in 1993. Following the SIP Call, MSCC constructed its 100 meter stack and sought to gain credit in the Billings/Laurel SIP for the full height of the stack.

MSCC asserted various theories for gaining a 100 meter stack height credit. Among other things, MSCC argued that the 100 meter stack was grandfathered, that 100 meters represented the formula height based on the stack support structure, and that 100 meters represented the formula height based on nearby structures. The State of Montana rejected all of these arguments and they are therefore not relevant to this proposal.

Ultimately, MSCC performed fluid modeling to attempt to justify an above-formula stack height credit. *See* CPP Report 95–1235, entitled ''Fluid Modeling for Good Engineering Practice Stack Height for the Montana Sulphur and Chemical Company Main Stack (SRU),'' dated February 22, 1996 (document # II.F–1). Our stack height regulations, at 40 CFR 51.100(ii)(3), define GEP stack height for fluid modeling purposes as:

> The height demonstrated by a fluid model * * * approved by the EPA, State or local control agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

The regulations, at 40 CFR 51.100(kk)(1), go on to define ''excessive concentrations'' for purposes of above-formula fluid modeling demonstrations as follows:

> [A] maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard.

The regulations further specify that, ''the allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source performance standard (NSPS) that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible.'' If the source successfully demonstrates that the applicable NSPS is infeasible, the regulations then provide that ''an alternative emission rate shall be established in consultation with the source owner or operator.'' 40 CFR 51.100(kk)(1). The preamble to the regulations indicates that such an alternative emission rate is to be established under our Best Available Retrofit Technology guidance. *See* 50 FR 27898, fn. 6, July 8, 1985. (See document #II.A–16.)

We have consistently read the language of the regulations to require sources that wish to obtain above-formula stack height credit to actually adhere to the NSPS or alternative emission limit used in the fluid modeling demonstration. Sources must be well-controlled as a condition of obtaining above-formula stack height credit. *See, e.g.,* 50 FR 27898 (document #II.A–16); memorandum dated November 27, 1990 from John Calcagni to Irwin L. Dickstein regarding ''Stack Height Questions'' (document #II.F–13); letter dated April 20, 1989 from Gerald A. Emison to John P. Proctor (document #II.A–7); memorandum dated October 28, 1985 from Darryl D. Tyler, Director, Control Program Development Division, OAQPS, to Air Management Division Directors, Regions I–X, regarding ''Implementation of Stack Height Regulations—Presumptive NSPS Emission Limit for Fluid Modeling Stacks Above Formula GEP Height'' (document #II.A–3); Response to Comments on the November 9, 1984, Proposed Stack Height Rules, prepared July 1985 by EPA's Office of Air Quality Planning and Standards, at 29, 37, 61 (document #II.A–8); our Notice of denial of petitions for reconsideration of the stack height regulations, 51 FR 15885, at 15886 (document #II.A–9); Support Document for Response to Petitions for Reconsideration of the Stack Height Regulations, March 1986 (document #II.A–11); memorandum from Assistant Administrator for Air and Radiation to The Administrator regarding ''Denial of Petitions for Reconsideration of the Stack Height Regulations—Action Memorandum'' (document #II.A–10); Guideline for Determination of Good Engineering Practice Stack Height (Revised) (Technical Support Document For the Stack Height Regulations), EPA–450/4–80–023R, June 1985, Table 3.1, item G (document #II.A–12); memorandum dated June 19, 1985 from Eric O. Ginsburg, Policy Development Section, OAQPS, to Files, entitled ''Conference Call With OMB to Discuss Concerns about the Stack Height Regulations,'' which was included in the docket for our stack height regulations (document #II.A–13); memorandum dated June 26, 1985 from D. H. Stonefield, Chief, Policy Development Section, OAQPS, to Docket A–83–49, entitled ''Stack Height Regulation Discussions OMB'' (document #II.A–14).

(c) MSCC's Fluid Modeling Analysis

Based on MSCC's fluid modeling demonstration, the State of Montana adopted SO2 emission limitations [5] for MSCC's main stack based on a stack height credit of 97.5 meters. *See* August 9, 1996 Order of the Montana Board of Environmental Review Concerning Montana Sulphur & Chemical Company, (contained in Vol. III, Chapter 25, Section 56.9.3.9, State of Montana Air Quality Control Implementation Plan), Findings of Fact, paragraph 3 (document #II.C–2).

While MSCC's contractor, CPP, used a scaled NSPS emission rate in the MSCC fluid modeling demonstration, the State of Montana's SIP revision does not require MSCC to meet the NSPS SO2 emission rate as an operating limit for its main stack. Instead, the SIP submission contains different SO2 limits for the main stack that are unrelated to, and significantly higher than, the NSPS emission rate.

In establishing MSCC's SIP limits for the main stack, the State of Montana did not follow 40 CFR 51.100(kk)(1)'s requirements for establishing an alternative to the NSPS limit: MSCC did not show the infeasibility of the NSPS limit, the State of Montana did not establish an alternative limit in accordance with our BART guidelines, MSCC did not use such BART limit in fluid modeling, and the State of Montana did not use such BART limit as an upper bound for MSCC's SIP emission limit. Thus, the SIP revision is inconsistent with section 123 of the Act and our stack height regulations. The TSD for this action discusses this more fully. (See document #III.B–1.)

In addition, the State of Montana approved the 97.5 meter stack height credit based on a flawed fluid modeling demonstration.

First, for purposes of its fluid modeling demonstration, MSCC's contractor treated the support structure for the stack as a ''nearby structure.'' The fluid modeling demonstration evaluates the effect of the source, nearby structures, and nearby terrain (''nearby'' is defined at 40 CFR 51.100(jj)) on downwash from the stack through a set of paired model runs, one in which the source and all nearby structures and terrain features are included, and one in which the source and all nearby structures and terrain features are removed from the scale mockup of the facility. The stack itself is included in both sets of model runs. Results of the two sets are then compared to determine the amount of downwash that is being created by the source, nearby structures, and nearby terrain features.

For the model runs in which nearby structures were removed from the scale mockup, MSCC's contractor also removed the stack's support structure from the scale mockup; i.e., MSCC's contractor modeled downwash from the support structure. The support structure is like a tin can, approximately eight feet in diameter, that surrounds the stack tube and supports it. MSCC has asserted that the support structure creates downwash and that it is appropriate to model for such downwash because the support structure is ''nearby.''

While the support structure is clearly within the distance that 40 CFR 51.100(jj) defines as ''nearby'' with respect to separate structures, our position is that the stack's support structure is integral to the stack itself, and that it is inappropriate to use part of the stack structure to justify a greater stack height credit. Otherwise, sources might purposefully design their stacks with support structures that create downwash as a means to avoid emissions control, in essence using a tall stack to justify itself.

To the extent MSCC designed a stack that creates excessive downwash, MSCC is obligated to address such effects through emissions control rather than dispersion. Thus, in conducting its fluid modeling, MSCC's contractor should have included the support structure as part of the scale mockup of the stack in both sets of model runs. We informed the MDEQ of our position on this issue in letters dated January 31, 1996, March 15, 1996, and July 18, 1996 [6] (see

[5] The State of Montana developed multiple SO2 limits for MSCC's main stack. The limit at any point in time is dependent on the temperature and flow rate of the gases in the stack.

[6] In a June 27, 1994 letter to Jeffrey T. Chaffee, we indicated that the support structure could not be used to determine formula stack height credit, but that its effects could be considered in a fluid modeling demonstration. That letter was issued without full consideration of regulatory

Continued

document #'s II.F–19, II.F–20 and II.C–5, respectively).

Put another way, before MSCC erected the 100 meter stack, the support structure did not exist; it was creating no downwash, wakes, or eddy effects that necessitated the construction of the 100 meter stack. The construction of a new structure near a stack may allow a source to seek greater stack height credit, but it is contrary to Congressional intent to allow the construction of a new stack to create a downwash situation that did not previously exist and justify its own stack height credit.

Second, the portion of MSCC's fluid modeling that the State of Montana approved [7] only showed an exceedance of the annual Montana Ambient Air Quality Standard (MAAQS) for SO2, but not the annual NAAQS. *See* memorandum from John Coefield, Technical Services Unit, Montana Air Quality Division, to Files, regarding ''Montana Sulphur and Chemical Company (MSCC) GEP stack height demonstration,'' dated March 1, 1996 (document #II.C–4); the State's Record of Adoption for the Billings/Laurel SO2 SIP, Transcript of Proceedings, August 9, 1996, pages 5, 6, Testimony of Bob Raisch (see document #II.C–3); August 9, 1996 Order of the Montana Board of Environmental Review Concerning Montana Sulphur and Chemical Company, (contained in Vol. III, Chapter 25, Section 56.9.3.9, State of Montana Air Quality Control Implementation Plan), Findings of Fact, paragraph 3 (see document #II.C–2). The annual MAAQS for SO2 is a more stringent standard (lower number) than the annual NAAQS for SO_2 (52 μg/m^3 rather than 80 μg/m^3). In a fluid modeling demonstration, use of a lower number makes it easier to show an exceedance and, thus, makes it easier to show an excessive concentration and justify a higher stack height credit.

We do not believe it is proper to use a MAAQS exceedance to justify above-formula stack height credit. This is because we interpret the stack height regulations to require a showing of an exceedance of the NAAQS. This is consistent with Congressional intent that above-formula stack height credit only be given in rare circumstances.

Furthermore, even assuming for the sake of argument that it may sometimes be appropriate to use a standard in a fluid modeling demonstration that is more stringent than the NAAQS, the fluid modeling demonstration must at least show an exceedance of an ambient air quality standard that the SIP addresses and that is otherwise cognizable under the Act. The 52 μg/m^3 SO_2 MAAQS is not addressed by the State of Montana's Billings/Laurel SO2 SIP revision and is not otherwise cognizable under the Act. For purposes of the Billings/Laurel SO_2 SIP, the MDEQ conducted dispersion modeling to show attainment of the 80 μg/m^3 SO2 NAAQS only, not the lower MAAQS. In addition, assuming the MAAQS is exceeded in the Billings/Laurel area, we are unaware of any mechanism that would permit us to require additional source controls to ensure attainment or maintenance of the MAAQS.

The MDEQ's approach is logically inconsistent—in effect, the MDEQ has deemed the MAAQS important to protect when MSCC is seeking above-formula stack height credit, but has deemed the MAAQS irrelevant when MSCC's and other sources' emissions limitations are set in the SIP. We do not believe Congress intended sources to gain greater stack height credit and thereby avoid emissions controls in the SIP through such an artificial reduction in the benchmark used in fluid modeling, especially where the rest of the SIP is not designed in order to attain or maintain that benchmark. Therefore, although the MAAQS may in theory be a more protective standard, by allowing the use of the MAAQS for purposes of MSCC's fluid modeling demonstration, the MDEQ has applied the stack height requirements in a way that renders them less stringent than Congress intended.

(d) Conclusion

For the foregoing reasons, we are proposing to disapprove the 97.5 meter stack height credit the State of Montana has allowed MSCC for its 100-meter stack (paragraph 2 of the MSCC stipulation), the SO2 emissions limitations the State of Montana has included in the SIP for such stack (section 3(A)(1)(a) and (b) and section 3(A)(3) of MSCC's exhibit), and, consequently, the State of Montana's attainment demonstration.

3. Language in Exxon and MSCC's Stipulations Related to Incorporation of Earlier Stipulations and Apportionment of the Airshed

Paragraph 1 of the Exxon and MSCC stipulations discusses a contested case hearing and resultant February 2, 1996 stipulation and incorporates the February 2, 1996 stipulation by reference. We don't believe it is appropriate to incorporate the February 2, 1996 stipulation into the SIP because it discusses procedures and schedules for developing emission limitations for Exxon and MSCC which have subsequently been developed and which, for MSCC, are not approvable (see discussion on stack height issue at MSCC in section III.B.2, above, and in section III.C.(2)(q) of our TSD). Paragraph 1 of the Exxon and MSCC stipulations also contains a statement that the company enters into the stipulation ''in part, to preserve [the company's] rights to apportionment of the airshed resulting from the present SIP revision.'' Insofar as this statement implies that the companies or other air pollution sources are entitled to a property interest in the ambient air in the Billings/Laurel area or enjoy a right to pollute the ambient air, this statement conflicts with the purpose and statutory obligations of the Act and has no basis under federal law. Therefore, we are proposing to disapprove paragraph 1 of the Exxon and MSCC stipulations.

4. MSCC Auxiliary Vent Stacks

It came to our attention that the Railroad Boiler and H–1, H1–A, H1–1 and H1–2 units (heaters) at MSCC all had auxiliary vent stacks to exhaust emissions. It was unclear whether these auxiliary vent stacks were still functional and allowed to be used under the stipulation; sections 3(B)(3) and (4) of the MSCC exhibit appear to provide an exemption for minor sources, which these sources could be considered to be.

The July 29, 1998 submittal of the SIP provided additional modeling showing that emissions from the auxiliary vent stacks would not impact the attainment demonstration when the emissions are limited to 12 lbs of SO2/3-hours. The July 29, 1998 submittal of the SIP includes the 12 lbs of SO2/3-hours limitation on the auxiliary vent stacks.

We were concerned, however, that this emission limitation might not be enforceable. There is no CEMS for these emission points. Instead, MSCC's exhibit requires MSCC to report the date

---

requirements and was superseded by our later letters to the State of Montana. It is inappropriate to consider the effects of the support structure in determining stack height credit, whether it is through application of the formula or through fluid modeling, because part of the stack cannot be used to justify the need for the stack.

[7] MSCC used a number of approaches in its fluid modeling study to attempt to demonstrate above-formula stack height credit. The State of Montana approved only one of those approaches, and rejected the others. Because the State of Montana rejected MSCC's other approaches to fluid modeling, those other approaches are not before us as part of the Billings/Laurel SO_2 SIP revision and are not relevant to this proposal. Even for the approach the State of Montana approved, MDEQ had to redo a portion of the analysis because CPP, MSCC's contractor, did not follow the guidance MDEQ provided. *See* letter from John A. Coefield, Supervisor, Technical Services Unit, to Larry Zink, MSCC, and memorandum from John Coefield, Technical Services Unit, to Files, regarding ''Montana Sulphur and Chemical Company (MSCC) GEP stack height demonstration,'' both documents dated March 1, 1996 (document #II.C–4).

and time period that emissions are exhausted from the auxiliary vent stacks, report the operating units whose emissions are exhausted from the auxiliary vent stacks, and include engineering estimates of the three-hour emissions and daily emissions from the auxiliary vent stacks. Based on discussions with MDEQ staff, we understand that there could be situations in which, if the fuel gas burned were high in H2S concentration and some or all of the boilers were exhausting from the auxiliary vent stacks, MSCC could not meet the emission limitation. See discussion of the 30-meter stack at MSCC in section II.A.4 above.

We are proposing to disapprove the MSCC auxiliary vent stacks emission limitation (section 3(A)(4) of MSCC's exhibit). We believe it is necessary to propose to disapprove this emission limitation because, unlike the 30-meter stack emission limitation, the exhibit does not require that only low sulfur fuel gas or natural gas be burned in the boilers and heaters that are exhausting from auxiliary vent stacks. Without a restriction on the fuel burned in the boilers and heaters when they are exhausting from auxiliary vent stacks, there is the potential for the emission limitation to be exceeded.

5. Attainment Demonstration [8]

For us to fully approve a SIP, the SIP must show that the NAAQS will not be violated, *i.e.*, that the area demonstrates attainment. Attainment demonstrations are usually carried out with computer models that are approved by us. The computer models take numerous factors into consideration to predict the effects that emissions from various sources will have on levels of pollutants in the air. Models consider the typical meteorology and topography of the area, as well as physical parameters at a plant site, *e.g.*, the height, temperature, and velocity at which pollutants are emitted. Based on these factors, as well as restrictions placed on sources to control their emissions, models are used to predict the highest pollution levels that can be expected to occur in the future.

a. Improper Stack Height Credit and Emission Limitation at MSCC

The MDEQ used EPA-approved dispersion models to demonstrate attainment of the SO2 NAAQS in the Billings/Laurel area. However, the modeling for the July 29, 1998 submittal of the SIP relied on emission limitations at MSCC that were established with a stack height credit that exceeded the good engineering practice (GEP) stack height. As discussed above, we are proposing to disapprove the emission limitations and stack height credit for the 100-meter stack at MSCC. We are also proposing to disapprove the attainment demonstration because it relies on improper emission limitations and stack height credit.

b. Lack of Flare Emission Limitations

With the July 29, 1998 submittal of the SIP, the State of Montana removed all reference to flare emission limitations from the exhibits submitted for Federal approval. In June 1998, the MBER adopted ''Additional State Requirements'' (hereinafter referred to as ''State-only provisions'') for each of the seven sources in the Billings/Laurel area. The State-only provisions include flare emission limitations and reporting requirements for the four sources that have flares (Exxon, Conoco, Cenex, and MSCC). Because the State-only provisions were not submitted for inclusion in the Billings/Laurel SO2 SIP, they may be enforced only by the MDEQ. We believe we cannot propose to approve the SIP as it applies to the attainment demonstration without federally enforceable emission limitations on flares, for several reasons.

First, the attainment demonstration is based on limited emissions from flares. To account for non-emergency use of flares, the computer modeling assumed a limit of 150 pounds of SO2/3 hours for each source for flaring. Our SIP requirements, 40 CFR part 51, subpart G, discuss control strategy requirements for SIPs. ''Control strategy,'' defined at 40 CFR 51.100(n), ''means a combination of measures designated to achieve the aggregate reduction of emissions necessary for attainment and maintenance of national standards * * *.'' Subpart G, at section 51.112, indicates that each plan must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for timely attainment and maintenance of the national standards that it implements. These demonstrations are usually performed through modeling. Further, 40 CFR 51.281 indicates that all emission limitations and other measures necessary for attainment and maintenance of any national standard must be adopted as rules and regulations enforceable by the State agency. Finally, copies of all such rules and regulations must be submitted with the plan. Therefore, because attainment of the NAAQS in the Billings/Laurel area, as demonstrated through modeling, assumes that flare emissions are limited, we believe that the SIP must include enforceable emission limitations for flares.

Second, based on MDEQ correspondence and ongoing discussions, we understand that emissions other than emissions from upsets and malfunctions (i.e., otherwise routine emissions) occur at the flares. (See document #'s II.B–18 and II.E–9.) Because routine emissions occur at the flares, we believe it is appropriate to establish enforceable emission limitations for flares.

Finally, without emission limitations on flares, it appears that sources could direct emissions from other process units to the flares to avoid violating an emission limitation or other requirement. It does not appear that sources could be penalized through the SIP if such circumvention occurred.

Since flare emissions were considered part of the attainment demonstration and since there appear to be routine emissions from flares, we believe the SIP should contain enforceable emission limitations for these emission points. Therefore, we are proposing to disapprove the SIP as it applies to the attainment demonstration for lack of enforceable emission limitations for flares.

c. Proposed Disapproval of MSCC Auxiliary Vent Stacks Emission Limitation

As indicated above, we are proposing to disapprove the emission limitation on the auxiliary vent stacks in MSCC's exhibit because MSCC's exhibit does not require that only low sulfur fuel gas or natural gas be burned in the boilers and heaters that are exhausting from auxiliary vent stacks. The attainment demonstration relies on the auxiliary vent stacks emission limitation at MSCC. Since we are proposing to disapprove the limit, we believe it is also necessary to propose to disapprove the attainment demonstration.

[8] We recently learned that an improper stack height was used for the flare stack at Exxon for both the State of Montana's and our modeling. These modeling efforts used a stack height of 60.4 meters when in fact the actual stack height is 50.3 meters. Any future modeling done for the Billings/Laurel airshed, including modeling for the FIP, should use the correct flare stack height at Exxon. Finally, we have learned that there may be some other minor emission points at sources that were not considered in the MDEQ's attainment demonstration modeling (or our confirmation of the modeling) or that were not limited by the SIP. We may evaluate the need to model and/or limit these other minor emission points when we complete our FIP. We believe it is appropriate to proceed with the actions laid out in this document in spite of the recently discovered concerns with the Exxon flare height and other minor sources because we are proposing to disapprove the attainment demonstration.

6. Burning of Sour Water Stripper (SWS) Emissions in the Flare at Cenex and Exxon

With the July 29, 1998 submittal of the SIP, Cenex and Exxon's exhibits now allow SWS emissions to be burned in the flare. As discussed above, flare emission limitations were deleted from the July 1998 submittal. Therefore, SWS emissions, if burned in the flare, are unregulated. We believe that unless flares have an enforceable emission limitation, it is unacceptable to allow SWS emissions to be burned in the flare. Because we believe that allowing SWS emissions to be burned in the unregulated flare is not an acceptable approach, we are proposing to disapprove the SIP as it applies to those provisions of the Cenex exhibit (i.e, sections 3(B)(2) and 4(D), only as they apply to flares) and the Exxon exhibit (i.e., sections 3(E)(4) and 4(E), only as they apply to flares).

7. Reasonably Available Control Measures (RACM) Including Reasonably Available Control Technology (RACT) and Reasonable Further Progress (RFP) at Cenex

As indicated earlier, we are proposing to disapprove the attainment demonstration for the SIP. Because we are proposing to disapprove the attainment demonstration, we are proposing to conclude that the RACM (including RACT) and RFP requirements have not been met in the Laurel SO2 nonattainment area. See discussion in sections III.C.(15) and (16) of our TSD for further information.

C. Why Is EPA Proposing To Conditionally Approve Parts of the State of Montana's Plan?

Under section 110(k)(4) of the Act, we may conditionally approve a plan based on a commitment from the State of Montana to adopt specific enforceable measures by a specified date certain that does not exceed one year from our final conditional approval. If the State of Montana fails to meets its commitment, the approval is automatically converted to a disapproval. Specifically, if the State of Montana fails to adopt and submit any of the provisions for the commitments identified below, we will issue a letter to the State of Montana which informs the State that the conditional approval, for the specific provisions identified below, will automatically convert to a limited approval/limited disapproval. We will not institute notice-and-comment rulemaking before issuing the letter because we are now notifying the public that our conditional approval of any of the SIP provisions identified below will convert to limited approval/limited disapproval if the State of Montana fails to meet a commitment for a specified provision. Subsequently, a notice to that effect will be published in the **Federal Register** and appropriate language will be inserted into the Code of Federal Regulations.

If the State of Montana makes a complete submittal by the specified timeframe or before we finalize this conditional approval, we will evaluate that submittal to determine if it may be approved and take final rulemaking action on that submittal.

1. YELP's Emission Limitations

a. Re-written Emission Limitation

With the exhibits submitted by the State of Montana in 1995, 1996 and 1997, several emission limitations varied at Exxon during the startup and shutdown of YELP. Basically, Exxon is subject to a higher emission limitation (at the FCC Coker CO-boiler stack and the FCC CO-boiler stack) when YELP is starting up, shutting down, or not operating than when YELP is operating. We were concerned that the initial attainment demonstration modeling did not accurately represent the relationship between Exxon and YELP.

With the July 29, 1998 submittal of the SIP, the MDEQ remodeled and revised YELP's exhibit to address this issue. The modeling showed that there could be simultaneous emissions at Exxon and YELP without exceeding the NAAQS, except during the hours between 9:00 pm and 6:00 am. Therefore, the YELP exhibit contains time-of-day restricted emission limitations that YELP must achieve during periods when the Exxon coker CO-boiler is burning coker gas. See discussion under modeling, section III.C.12 of our TSD.

We believe the revised strategy is acceptable for the following reasons:

- The MDEQ's dispersion modeling and our confirmation of the modeling (see modeling discussion in section III.C.12 of our TSD) show that with the time-of-day restrictions the area can still show attainment of the NAAQS. We believe that the modeling was performed appropriately. The modeling report, entitled ''Simultaneous Emissions Modeling Sulfur Dioxide Exxon Coker and YELP,'' was submitted with the July 1998 submittal (see document #II.E–3).
- We do not consider time-of-day restrictions to be a dispersion technique as defined by 40 CFR 51.100(hh)(1)(ii) because the time-of-day restricted emission limitations are based on historical meteorological data and do not vary according to atmospheric conditions or ambient concentrations of a pollutant.
- We believe the emission limitations are enforceable because YELP is required to operate CEMS. Specifically, SO2 concentration and flow CEMS are required on the stack that is subject to the time-of-day restrictions. The CEMS will be able to determine the SO2 emissions at all times. Additionally, a flow CEM is required to measure flow from the Exxon coker unit process stream. The latter flow monitor will provide information to determine whether or not YELP is receiving Exxon's coker unit flue gas.

Additionally, in a March 2, 1999 letter to MDEQ (see document # II.E–11), we raised the concern that the YELP emission limitations may not be practically enforceable. Specifically, the YELP emission limitations in section 3 of YELP's exhibit are based on whether or not Exxon's coker CO-boiler is burning coker gas. It is our understanding that there is no monitor to record whether or not the Exxon coker CO-boiler is burning coker gas. We believe that the YELP emission limitations must be written in the same format as the emission limitations in Exxon's exhibit. Thus, YELP's emission limits must be expressed in terms of whether or not YELP is receiving Exxon coker unit flue gas because there is a monitor that can record this condition.

In a letter dated March 24, 1999, the Governor committed to address our concerns with YELP's emission limitations by March 31, 2000. (See document #II.E–5.)

Because the State of Montana has committed to revise YELP's exhibit to rewrite the emission limitations to make them practically enforceable, we are proposing to conditionally approve the July 29, 1998 submittal of the SIP as it applies to YELP's emission limitations at sections 3(A)(1) and (2) of YELP's exhibit. We realize, however, that the time-of-day restricted emission limitations may be somewhat more difficult to enforce than a simple fixed limitation. If we were to find that the time-of-day restricted emission limitations were too difficult for the MDEQ or us to enforce, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

b. Pro-Rated Emission Limitation

The YELP exhibit provides that for any 3-hour period during the course of a calendar day when both the time-of-day restricted emission limitation and the unrestricted emission limitation apply (time-of-day and unrestricted emission limitations discussed above), a

new emission limitation for the 3-hour period will apply. The new limitation will be determined by pro-rating, on an hourly basis, the time-of-day restricted emission limitation and the unrestricted emission limitation. We do not believe that YELP's exhibit adequately addresses how the emission limitation will be pro-rated in practice or what emission limitations will be pro-rated. In a letter dated March 24, 1999, the Governor of Montana committed to revise the YELP stipulation to address this concern by March 31, 2000. (See document #II.E–5.)

Because the State of Montana has committed to revise YELP's exhibit to more clearly define how and what limitations will be pro-rated, we are proposing to conditionally approve the July 29, 1998 submittal of the SIP as it applies to YELP's emission limitations in section 3(A)(3) YELP's exhibit. We realize, however, that the pro-rated emission limitations may be somewhat more difficult to enforce than a simple fixed limitation. If we were to find that the pro-rated emission limitations were too difficult for the MDEQ or us to enforce, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

2. Exxon's Coker Carbon Monoxide (CO)-Boiler Emission Limitation

In the July 29, 1998 submittal, Exxon's exhibit has *not* been revised to provide a method to monitor emissions from the coker CO-boiler. In a letter dated March 24, 1999, the Governor provided a commitment to develop and submit a compliance method for this emission point by March 31, 2000.[9] (See document #II.E–5.)

We are proposing to conditionally approve the SIP as it applies to the coker CO-boiler stack emission limitation, section 3(B)(1) of Exxon's exhibit, based on the Governor's commitment to adopt a compliance monitoring method for the coker CO-boiler stack emission limitation.

[9] Note that the Governor initially submitted a commitment with the July 29, 1998 submittal of the SIP to develop the necessary compliance monitoring method by December 31, 1998. Due to difficulties in developing the method, on October 26, 1998, the Governor revised his commitment, with a deadline of June 30, 1999 (see document # II.E–4). Again, on March 24, 1999, the Governor revised his commitment with a deadline of March 31, 2000. See document # II.E–5.) We believe that since we had not taken action on the initial commitment, it was acceptable for the Governor to revise the commitment.

3. Exxon's F–2 Crude/Vacuum Heater Stack Emission Limitations and Attendant Compliance Monitoring Methods

The July 29, 1998 submittal of the SIP revised attachment 2 of Exxon's exhibit, which describes the analytical method used to determine the H2S concentration in the sour water. The H2S concentration in the sour water is needed to determine compliance with the F–2 crude/vacuum heater stack emission limitations. In a letter dated January 15, 1999, we identified concerns with the revised attachment 2. In a letter dated March 24, 1999, the Governor committed to revise attachment 2 to address our concerns by March 31, 2000. (See document #'s II.E–10 and II.E–5, respectively.) We are proposing to conditionally approve the SIP as it applies to the F–2 crude/vacuum heater stack emission limitation and the attendant compliance monitoring methods, sections 3(E)(4) and 4(E) [only as they apply to the F–2 crude/vacuum heater stack], 3(A)(2), 3(B)(3), and attachment 2, of Exxon's exhibit, based on the Governor's commitment to revise attachment 2 of Exxon's exhibit, which provides the method used to monitor compliance with the F–2 crude/vacuum heater stack emission limitation.

4. Exxon's Fuel Gas Combustion Emission Limitations and Attendant Compliance Monitoring Method

The July 29, 1998 SIP submittal does not completely address earlier concerns we raised regarding the compliance monitoring method for Exxon's fuel gas combustion emission limitations. In a letter dated January 15, 1999, we indicated that we still believed the compliance monitoring method for the fuel gas combustion emission limitation at Exxon was inadequate because H2S concentration in the refinery fuel-gas fired units could exceed the levels which the H2S CEMS could monitor. (See document #II.E.10)

On March 24, 1999, the Governor submitted a commitment to address our concerns with the H2S CEMS at Exxon by March 31, 2000. (See document #II.E–5.)

We are proposing to conditionally approve the SIP as it applies to Exxon's refinery fuel-gas combustion emission limitations and attendant compliance monitoring methods, in sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3) of Exxon's exhibit, because of the Governor's commitment to address our concerns with the method for monitoring compliance with the emission limitation.

5. Cenex Sour Water Stripper (SWS)

The earlier Cenex exhibits (i.e., those submitted prior to the July 29, 1998 submittal) did not provide a means to monitor compliance with the combined boiler/heater emissions limitation if emissions from the existing SWS unit were directed to the main crude heater since compliance with the combined emissions limitation was monitored by fuel usage and sulfur content of the fuel. In the July 29, 1998 submittal of the SIP, the State of Montana has incorporated into attachment 2 a method for monitoring compliance when SWS emissions are burned in the main crude heater. This method is similar to the method used by Exxon to determine SWS emissions. We expressed concerns about the method used to determine SWS emissions in a letter dated January 15, 1999. (See document #II.E–10.) In a letter dated March 24, 1999, the Governor of Montana committed to revise Cenex's SWS test method to address our concerns by March 31, 2000. (See document #II.E–5.) We are proposing to conditionally approve the SIP as it applies to the combustion sources emission limitations and attendant compliance monitoring method in sections 3(B)(2) and 4(D) (only as they apply to the main crude heater), 3(A)(1)(d), 4(B), and attachment 2, of Cenex's exhibit.

D. What Happens When EPA Approves Parts of the State of Montana's Plan?

Once we approve a SIP, it is legally enforceable by us and citizens under the Act.

E. What Happens When EPA Disapproves Parts of the State of Montana's Plan?

Once we disapprove a SIP, it is still enforceable at the State level but not at the Federal level. By disapproving parts of the plan, we are determining that the requirements necessary to demonstrate attainment have not been met and we may develop a plan or parts of a plan to assure that attainment will be achieved in the area. Also, in some cases, once we disapprove a plan, sanctions may be imposed.

III. Other Issues Pertaining to State Authority

A. How Do the State-Only Provisions Affect EPA's Actions?

In June 1998, the MBER adopted ''Additional State Requirements'' for each of the seven sources in the Billings/Laurel area. These requirements (hereinafter referred to as the ''State-only provisions'') were not submitted for inclusion in the SIP and are

enforceable only by the State of Montana. Among the State-only provisions are requirements for the affected companies to develop and submit to the MDEQ the following documents: Corrective Action Plan, Alternative Monitoring Plan, Quality Assurance Project Plans, and Standard Operating Procedures document. By the terms of the State-only provisions, these documents will affect how the MDEQ makes certain compliance determinations. For example, for purposes of monitoring whether a source has satisfied the quarterly data recovery rate (QDRR) requirement of the Billings/Laurel SO2 SIP, the MDEQ will rely on a source's Standard Operating Procedures manual to specify what is an ''adequate spare parts inventory.'' What is ''timely and appropriate action to correct a failure in the CEMS'' will be outlined in the source's Corrective Action Plan, Quality Assurance Project Plan, and Standard Operating Procedures document. ''Short-term corrective measures'' and ''long-term corrective measures'' for CEMS failure will be specified in a similar fashion. When a CEMS fails, the source will correct or replace the CEMS ''as expeditiously as practicable and within a period not to exceed six months'' according to a schedule already established in the source's Corrective Action Plan.

Since the State-only provisions were not included in the Billings/Laurel SO2 SIP, we are not acting to propose to approve or disapprove these provisions nor are we relying on these provisions in proposing to approve or disapprove other provisions in the submitted SIP. Nothing in this action should be construed as making any determination or expressing any position regarding the State-only provisions or their impact on the SIP. State-only provisions can affect only State enforcement of the SIP and cannot have any impact on federal enforcement authorities. We may at any time invoke our authority under the Act, including, for example, sections 113, 114, or 167, to enforce the requirements of the Billings/Laurel SO2 SIP independent of any State enforcement effort. We may take action to enforce the SIP regardless of any State compliance determination or any constraint on State enforcement discretion which the State-only provisions may impose. In addition, citizen enforcement under section 304 of the Act is likewise unaffected by the State-only provisions.

If we were to determine that the State-only provisions, as implemented, appeared to limit, constrain, or otherwise have a chilling effect on state enforcement of the SIP, we would reconsider our approval or take other appropriate action under the Act. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act.

B. How Does Montana's Environmental Audit Act Affect EPA's Actions?

On May 5, 1997, the Governor of Montana signed a bill enacted by the legislature that creates immunity under State law from penalties for violations discovered during a voluntary environmental audit and creates a judicial privilege under State law for information contained in an environmental audit report. This bill has not been submitted to EPA as part of Montana's SIP.

Nothing in our proposed action should be construed as making any determination or expressing any position regarding the State of Montana's audit privilege and penalty immunity law, the Voluntary Environmental Audit Act, 75–1–101 *et seq.*, M.C.A. (H.B. 293, effective October 1, 1997), or its impact upon any provision in the SIP including the proposed revision at issue here. Our proposed action does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of the State of Montana's audit privilege and immunity law. The State of Montana's audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. We may at any time invoke our authority under the Act, including for example, sections 113, 114, or 167, to enforce the requirement or prohibitions of the State of Montana's plan, independent of any state enforcement effort. In addition, citizen enforcement under section 304 of the Act is likewise unaffected by a state audit privilege or immunity law.

IV. Other Rulemaking Actions

A. How Does This Proposed Rulemaking Relate to EPA's SIP Call?

Our March 4, 1993 SIP Call letter (see document # II.G–1) stated that the SIP Call was not final Agency action subject to judicial review, and that a final Agency action would occur when we made a binding determination regarding the State's response to the SIP Call. With this document we are proposing action on the State of Montana's response to the March 4, 1993 SIP Call; we will make a binding determination regarding Montana's response to the SIP Call if and when we take final rulemaking action based on this proposal.

B. Why Is EPA Proposing Sanctions?

Under section 179(a)(3)(B) of the Act, if we disapprove in whole or in part a submission of a SIP revision required under the Act, one of the sanctions specified in section 179(b) applies, unless the deficiency has been corrected within 18 months after our disapproval. Section 179(b) specifies two sanctions available to the Administrator: (1) withholding of certain highway funding under section 179(b)(1); and (2) application of a 2:1 offset ratio to new or modified stationary sources of emissions for which a new source review permit is required under part D of title I.

We have promulgated final regulations to implement section 179 of the Act. See 59 FR 39832 (August 4, 1994); 40 CFR 52.31 (the ''sanctions rule''). The regulations specify the order in which sanctions will apply when states do not submit a part D SIP or SIP revision or implement an approved part D SIP or SIP revision, or we disapprove a part D SIP or SIP revision. The sanctions rule does not, however, address the imposition of sanctions in the case of state failure to submit or implement a SIP in response to a SIP Call under section 110(k)(5) of the Act, or where we disapprove such a SIP. Since we are proposing to partially disapprove the SIP revision the State of Montana has submitted in response to our SIP Call, which would render our SIP Call binding, we believe it is appropriate to propose the order of sanctions for the State of Montana's failure to comply with the SIP Call, in the event that we finalize our proposal to disapprove portions of the SIP. We believe that the regulatory scheme promulgated for sanctions generally, under 40 CFR 52.31, should also apply here, for the same reasons as discussed in the sanctions rule (see 59 FR 39832). Thus, we are proposing to apply the 2:1 offset sanction within 18 months of the effective date of a final partial disapproval of the SIP and the highway sanction six months after the imposition of the offset sanction. We believe that the rationale for this approach in the sanctions rule (see 59 FR 39832) applies with equal force here. In addition, we're considering whether the particular circumstances here—namely that the State of Montana submitted the required SIP revision in September 1995 one year after our SIP Call's deadline for submittal, and subsequently amended the submission in 1996, 1997, and 1998 without ever establishing a fully

approvable SIP—may merit acceleration of sanctions. That is, we request comment on whether we should provide for the immediate application of sanctions under section 110(m) of the Act if we finalize our proposal to partially disapprove the SIP or if a conditional approval converts to disapproval. In addition, we request comment on whether we should provide for application of sanctions in other areas of the State, outside the Laurel nonattainment area, under section 110(m) of the Act, if we finalize our proposal to partially disapprove the SIP or if a conditional approval converts to disapproval.

V. Background

A. What Is a State Implementation Plan (SIP)?

The 1970 Act established the air quality management process as a basic philosophy for air pollution control in this country. Under this system, we establish air quality goals (NAAQS) for common pollutants. States develop control programs (termed SIPS) to attain and maintain these NAAQS. We approve SIPS if they adequately accomplish the following:

- Demonstrate attainment and maintenance of the applicable NAAQS.
- Describe a control strategy.
- Contain legally enforceable regulations.
- Include an emissions inventory.
- Include procedures for new source review.
- Outline a program for monitoring.
- Show adequate resources.
- Meet other requirements specific to the pollutant being considered.
- Are adopted according to the State's and our procedural requirements, including public input.

Under this air quality management process, we do not dictate to the States the control strategies that are needed to demonstrate attainment and maintenance. States are provided the flexibility to determine what is appropriate in terms of controlling a particular pollutant. We provide technical assistance when needed.

B. What Are the Sulfur Dioxide (SO2) National Ambient Air Quality Standards (NAAQS)?

On April 30, 1971, we issued primary and secondary NAAQS for sulfur oxides (SO_x) (measured as sulfur dioxide (SO2)) (40 CFR 50.4). The primary standards were set at 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. The secondary standard was set at 1,300 $\mu g/m^3$ (0.5 ppm) averaged over a period of 3 hours and not to be exceeded more than once per year. See our TSD to this action for more information on the SO2 NAAQS.

C. What Is the Regulatory History in Billings/Laurel, Montana?

The SO2 problems in the Billings/Laurel area go back over twenty years. On July 8, 1976 (41 FR 28002), we announced in the **Federal Register** that the SIP for the Billings air quality maintenance area (AQMA) was inadequate to provide for the maintenance of the SO2 NAAQS. The Billings AQMA encompasses Carbon, Stillwater, Sweet Grass, Yellowstone and Big Horn (excluding the Northern Cheyenne Indian Reservation) counties.

The Governor of Montana submitted a SIP revision on January 26, 1978, which included a stipulation (discussed below). (The January 26, 1978 SIP can be found in our docket for our action taken on September 6, 1979, 44 FR 51977.) However, the SIP revision did not include a demonstration that the known NAAQS violations would be corrected.

In the interim, the Act was amended in 1977, changing our approach for areas not attaining the NAAQS. Section 107 required us to officially designate areas violating the NAAQS as nonattainment.

On March 3, 1978 (43 FR 8962), Laurel was designated as nonattainment for the primary SO2 NAAQS. See also 40 CFR 81.327. The nonattainment area consists of an area with a two-kilometer radius around the Cenex Petroleum Refinery. This designation was based on measured and modeled violations of the NAAQS. We reaffirmed this nonattainment designation on September 11, 1978 (43 FR 40412).

On September 6, 1979 (44 FR 51977), we approved the revisions to the Montana SIP submitted on January 26, 1978. The revision included a stipulation between the Montana Department of Health and Environmental Science and Cenex. Other companies that were parties to the stipulation include Exxon, Conoco, Montana Power, Western Sugar and Montana Sulphur & Chemical Company. Since the January 26, 1978 SIP submittal did not include a demonstration that the NAAQS violations in Laurel would be corrected, we contracted with Pacific Environmental Science (PES) to quantify the emission reductions expected from Cenex. Based on an October 1978 report by PES and diffusion modeling performed by the State of Montana, we believed that the NAAQS would be attained in Laurel after full implementation of the control program proposed at Cenex. (PES's October 1978 report and the State of Montana's diffusion modeling report can be found in our docket for our action taken on September 6, 1979, 44 FR 51977.)

On January 10, 1980 (45 FR 2034), we approved the Laurel plan, submitted in 1978, as meeting the part D requirements of the Act.

D. Why Did EPA Call for a SIP Revision?

The 1990 Act maintains the requirement that states revise SIPs once inadequacies have been identified. Section 110(k)(5) of the Act states that ''whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant NAAQS, * * * the Administrator shall require the state to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the state of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions.''

Results from two different dispersion modeling studies—the study for the Billings Gasification, Inc. (BGI) (now YELP) permit and the GeoResearch, Inc. (GRI) study commissioned by the Billings City Council and subsequently refined by the State of Montana—both showed projected violations of the NAAQS for sulfur dioxide (SO2) at various receptor points in the Billings and Laurel area. In the Laurel area, the receptor points were outside the existing nonattainment area boundary. (See document #'s III.G–12 and III.G–13 for copies of the GRI and BGI study reports.)

In both the BGI and GRI modeling studies, the analysis was performed using the modeling techniques and data bases recommended in our ''Guideline on Air Quality Modeling (Revised),'' found in 40 CFR part 51, appendix W. Major sources of SO2 in the Billings/Laurel area (the Conoco, Exxon, and Cenex refineries, Montana Power, Montana Sulfur and Chemical Company, and Western Sugar) all contributed to high ambient concentrations of SO2. The modeling studies predicted violations using actual emissions from these sources, allowable emissions (the higher levels allowed under then-current permits), and potential emissions (maximum capacity, at the time, of a stationary source to emit a pollutant under its physical and operational design). These results led us to believe that the SIP was inadequate

and should be revised. Therefore, on March 4, 1993, we issued a letter to the Governor of Montana calling for the State of Montana to revise its SIP for the Billings/Laurel area to assure attainment and maintenance of the SO2 NAAQS. (See 58 FR 41430, August 4, 1993, and document #'s II.G–1 and II.G–3.)

E. What Did the State of Montana Submit in Response to EPA's SIP Call?

Our 1993 SIP Call called for the State of Montana to submit a SIP revision for the Billings/Laurel area by September 4, 1994. On September 6, 1995, the Governor of Montana submitted a SIP revision in response to the SIP Call (see document # II.B). The SIP was later amended with revisions submitted on August 27, 1996, April 2, 1997 and July 29, 1998 (see document #'s II.C., II.D., and II.E., respectively).

F. What Sources Does the SIP Affect?

The major SO2 emitting industries in the Billings area are the Conoco and Exxon Petroleum Refineries, Western Sugar Company, the Montana Power Company J.E. Corette Plant, Montana Sulphur & Chemical Company, and Yellowstone Energy Limited Partnership. The major SO2 emitting industry in the Laurel area is the Cenex Petroleum Refinery. Although Laurel and Billings are 15 miles apart, the industries in Billings have some impact on the air quality in Laurel and the industry in Laurel has some impact on the air quality in Billings.

The Billings/Laurel SO2 SIP regulates most of the SO2 emission points at the above-mentioned sources.

VI. Request for Public Comment

We are soliciting public comment on all aspects of this proposed SIP rulemaking action. Send your comments in duplicate to the address listed in the front of this Notice. We'll consider your comments in deciding our final action if your letter is received before August 27, 1999.

VII. 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 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule does not create a mandate on state, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. This proposed rule, if made final, will have the effect of making existing, state-enforceable requirements federally enforceable against seven industrial sources of air pollution. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

C. 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 E.O. 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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to E.O. 13045 because it partly approves a state rule implementing a Federal standard.

D. Executive Order 13084

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

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's proposed rule does not create a mandate on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed approval and conditional approval rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this proposed 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 a 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).

If the proposed conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of a state submittal does not affect its state-enforceability. Moreover, EPA's proposed disapproval of a submittal will not have a significant impact on a substantial number of small entities because the disapproval action only affects seven industrial sources of air pollution: Cenex, Conoco, Inc., Exxon Company, USA, Montana Power Company, Montana Sulphur & Chemical Company, Western Sugar Company, and Yellowstone Energy Limited Partnership. 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.

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 approval action being proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. Accordingly, no budgetary impact statement is required.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 20, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

40 CFR Part 52, subpart BB of chapter I, title 40 is proposed to be amended as follows:

PART 52—[AMENDED]

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

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

Subpart A—General Provisions

2. Section 52.32 is amended by designating the existing text as (a) and by adding paragraph (b) to read as follows:

§ 52.32 Sanctions following findings of SIP inadequacy.

* * * * *

(b) By letter dated March 4, 1993, pursuant to sections 110(a)(2)(H) and 110(k)(5) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H) and 7410(k)(5), EPA informed the Governor of Montana that the Sulfur Dioxide State Implementation Plan (SIP) for the Billings-Laurel area was substantially inadequate to attain and maintain the sulfur dioxide National Ambient Air Quality Standards (NAAQS) and called for the State of Montana to revise the SIP as necessary to assure attainment and maintenance of the sulfur dioxide NAAQS. The Governor of Montana submitted sulfur dioxide SIP revisions for the Billings-Laurel area to EPA on September 6, 1995, August 27, 1996, April 2, 1997, and July 29, 1998. EPA partially disapproved these SIP revisions on [Effective date of disapproval] (see 40 CFR 52.1370(c)(47)). By virtue of EPA's partial disapproval, sanctions, as described in section 179(b) of the Clean Air Act, 42 U.S.C. 7509(b), apply to the Billings-Laurel area pursuant to section 179(a)(3)(B) of the Clean Air Act, 42 U.S.C. 7509(a)(3)(B). These sanctions shall apply to the Billings-Laurel area in the sequence set forth in § 52.31(d)(1) and in accordance with the terms of § 52.31. [Effective date of disapproval] shall be deemed the date of the finding described in §§ 52.31(d) and (e).

Subpart BB—Montana

3. Section 52.1370 is amended by adding paragraph (c)(47) To read as follows:

§ 52.1370 Identification of plan

* * * * *

(c) * * *

(47) The Governor of Montana submitted sulfur dioxide SIP revisions for Billings/Laurel on September 6, 1995, August 27, 1996, April 2, 1997 and July 29, 1998. On March 24, 1999, the Governor submitted a commitment to revise the SIP.

(i) Incorporation by Reference

(A) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Cenex Harvest Cooperatives including the stipulation and exhibit A and attachments to the stipulation except for paragraph 20 of the stipulation and the portions of sections 3(B)(2) and 4 (D), of exhibit A that apply to flares.

(B) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Conoco including the stipulation and exhibit A and attachments to the stipulation, except for paragraph 20 of the stipulation.

(C) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Exxon including the stipulation and exhibit A and attachments to the stipulation, except for paragraphs 1 and 22 of the stipulation, and the portions of sections 3(E)(4) and 4(E) of exhibit A that apply to flares.

(D) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Montana Power Company including the stipulation and exhibit A and attachments to the stipulation, except for paragraph 20 of the stipulation.

(E) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Montana Sulphur & Chemical Company including the stipulation and exhibit A and attachments to the stipulation, except for paragraphs 1, 2 and 22 of the stipulation, and sections 3(A)(1)(a) and (b), 3(A)(3), and 3(A)(4) of exhibit A.

(F) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Western Sugar Company including the stipulation and exhibit A and attachment to the stipulation,

except for paragraph 20 of the stipulation.

(G) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Yellowstone Energy Limited Partnership including the stipulation and exhibit A and attachments to the stipulation except for paragraph 20 of the stipulation.

(ii) Additional Material.

(A) All portions of the September 6, 1995 Billings/Laurel SO2 SIP submittal other than the stipulations and exhibit A's and attachments to the stipulations.

(B) All portions of the August 27, 1996 Billings/Laurel SO2 SIP submittal other than the stipulations and exhibit A's and attachments to the stipulations.

(C) All portions of the April 2, 1997 Billings/Laurel SO2 SIP submittal other than the stipulations and exhibit A's and attachments to the stipulations.

(D) All portions of the July 29, 1998 Billings/Laurel SO2 SIP submittal that are not covered in section 52.1370(c)(47) above other than the stipulations and exhibit A's and attachments to the stipulations.

(E) April 28, 1997 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Richard R. Long, Director, Air Program, EPA Region VIII.

(F) January 30, 1998 letter from Mark Simonich, Director, Montana Department of Environmental Quality to Richard R. Long, Director, Air Program, EPA Region VIII.

(G) August 11, 1998 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Kerrigan G. Clough, Assistant Regional Administrator, EPA Region VIII.

(H) September 3, 1998 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Richard R. Long, Director, Air Program, EPA Region VIII.

(I) March 24, 1999 commitment letter from Marc Racicot, Governor of Montana, to William Yellowtail, EPA Regional Administrator.

(J) May 20, 1999 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII.

[FR Doc. 99–19270 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 3

[IB Docket No. 98–96, FCC 99–150]

Biennial Review

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document examines the development of a transition plan to ensure that the transition from the Commission to privately owned accounting authorities in the settlement of accounts for maritime mobile, maritime satellite, aircraft and hand-held terminal radio services. The Commission seeks further comment in this proceeding on how best to implement this privatization. The Commission initiated this proceeding pursuant to the Telecommunications Act of 1996, which directs the Commission to undertake a review every even-numbered year of all regulations that apply to providers of telecommunications services to determine whether any such regulation is no longer necessary.

DATES: Comments are due on or before August 23, 1999; and reply comments are due on or before September 8, 1999. Written comments by the public on the proposed information collections are due September 27, 1999.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th St., SW, Washington, DC 20554. A copy of any comments on the proposed information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th St., SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Copes, Attorney-Advisor, Multilateral and Development Branch, Telecommunications Division, International Bureau, (202) 418–1478. For additional information concerning the proposed information collection contained in the FNPRM contact John Copes at (202) 418–1478, or via the Internet at jcopes@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's FNPRM, FCC 99–150, adopted on June 21, 1999, and released on July 13, 1999. The full test of the FNPRM is available for inspection and copying during normal business hours in the Federal Communications Commission, Reference Information Center (Room CY–A257), 445 12th St., SW, Washington, DC 20554 The complete text of the FNPRM may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th St., NW Washington, DC 20036, (202) 857–3800. The FNPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Summary of FNPRM

1. In July 1998, the Commission adopted a Notice of Proposed Rulemaking (63 FR 39800, July 24, 1998) (NPRM) to streamline further the regulations and authorization of privately owned accounting authorities that settle accounts in the maritime mobile and maritime mobile-satellite radio services.

2. On June 21, 1999, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking (FCC 99–150) to make final the proposals in its July 1999 NPRM and to institute a transition period leading to the handing over of its functions to private accounting authorities. A final rule relating to this proceeding is published elsewhere in this issue of the **Federal Register**. In the Report and Order (R&O) portion of the document, the Commission affirmed its proposal to withdraw from performing the functions of an accounting authority and to rely solely upon the private accounting authorities to provide account-settlement services for maritime and satellite communications.

3. In the FNPRM, the Commission declined to appoint another accounting authority to take over the function of ''accounting authority of last resort'' that the Commission has traditionally performed. The Commission has traditionally not required U.S. users of maritime and satellite communications to designate a specific accounting authority to settle its accounts with foreign cost stations. Rather, the Commission has been willing to accept accounts from such foreign coast stations and to attempt to locate the user, send them the bill and remit their payment. The Commission noted that, upon the Commission's withdrawal as an accounting authority, there would be no one to accept such accounts and that it would be necessary to designate someone as the new accounting authority of last resort or to provide some other alternative, such as a formula to divide undesignated