

**§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or diseases associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.**

(a) \* \* \*

(6) *Diseases associated with exposure to certain herbicide agents.* (i) For the purposes of this section, the term "herbicide agent" means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era, specifically: 2,4-D; 2,4,5-T and its contaminant TCDD; cacodylic acid; and picloram.

(ii) The diseases listed at § 3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service, except that chloracne or other acneform disease consistent with chloracne and porphyria cutanea tarda shall have become manifest to a degree of 10 percent or more within a year after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service.

(iii) A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the Vietnam era and has a disease listed at § 3.309(e) shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. The last date on which such a veteran shall be presumed to have been exposed to an herbicide agent shall be the last date on which he or she served in the Republic of Vietnam during the Vietnam era. "Service in the Republic of Vietnam" includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

\* \* \* \* \*

**§ 3.307 [Amended]**

3. In § 3.307(a), the first sentence of the introductory text, remove the words "a disease associated with service in the Republic of Vietnam" and insert, in their place, the words "a disease associated with exposure to certain herbicide agents".

4. In § 3.309, paragraph (e) and its heading are revised to read as follows:

**§ 3.309 Disease subject to presumptive service connection.**

\* \* \* \* \*

(e) *Disease associated with exposure to certain herbicide agents.* If a veteran was exposed to an herbicide agent during active military, naval, or air service, the following diseases shall be

service-connected if the requirements of § 3.307(a)(6) are met even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of § 3.307(d) are also satisfied:

Chloracne or other acneform disease consistent with chloracne  
Hodgkin's disease  
Non-Hodgkin's lymphoma  
Porphyria cutanea tarda  
Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

**Note:** The term "soft-tissue sarcoma" includes the following:

Adult fibrosarcoma  
Dermatofibrosarcoma protuberans  
Malignant fibrous histiocytoma  
Liposarcoma  
Leiomyosarcoma  
Epithelioid leiomyosarcoma (malignant leiomyoblastoma)  
Rhabdomyosarcoma  
Ectomesenchymoma  
Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)  
Proliferating (systemic) angioendotheliomatosis  
Malignant glomus tumor  
Malignant hemangioepithelioma  
Synovial sarcoma (malignant synovioma)  
Malignant giant cell tumor of tendon sheath  
Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas  
Malignant mesenchymoma  
Malignant granular cell tumor  
Alveolar soft part sarcoma  
Epithelioid sarcoma  
Clear cell sarcoma of tendons and aponeuroses  
Extraskeletal Ewing's sarcoma  
Congenital and infantile fibrosarcoma  
Malignant ganglioneuroma

**§ 3.311a [Amended]**

5. Section 3.311a is removed and § 3.311b is redesignated as § 3.311.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MT12-1-5695; FRL-4737-7]

**Clean Air Act Approval and Promulgation of PM<sub>10</sub> Implementation Plan for Montana**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes full approval of the State implementation plan (SIP)

submitted by the State of Montana to achieve attainment of the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>). The SIP was submitted by Montana to satisfy certain federal requirements for an approvable nonattainment area PM<sub>10</sub> SIP for Butte. The State has committed to complete several actions for this SIP, including issues regarding its New Source Review and Prevention of Significant Deterioration regulations, test methods, emergency episode plan, operating permit program, and contingency measures. EPA will propose separate action on these commitments when the State fulfills them.

In addition, EPA is proposing to correct a previous error in describing the boundary for the Butte nonattainment area.

**DATES:** Comments on this proposed action must be received in writing by October 28, 1993.

**ADDRESSES:** Comments should be submitted to Amy Platt, Air Programs Branch, SIP Section (8ART-AP), Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405; and Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620-0901.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt at (303) 293-1769.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Butte, Montana area was designated nonattainment for PM<sub>10</sub> and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.<sup>1</sup> See 56 FR 56694 (Nov. 6, 1991), 40 CFR 81.327 (Silver Bow County-Butte). The air quality planning requirements for moderate PM<sub>10</sub> nonattainment areas are set out in subparts 1 and 4 of part D;

<sup>1</sup> The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, et seq.

title I of the Act.<sup>2</sup> The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM<sub>10</sub> nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale. In this action on the Montana moderate PM<sub>10</sub> SIP for the Butte nonattainment area, EPA is proposing to apply its interpretations considering the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on today's proposal.

Those States containing initial moderate PM<sub>10</sub> nonattainment areas (those areas designated under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modelling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM<sub>10</sub> also apply to major stationary sources of PM<sub>10</sub> precursors except where the Administrator determines that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the

NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM<sub>10</sub> nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM<sub>10</sub> by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 that become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM<sub>10</sub> NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13510-13512 and 13543-13544. EPA will address these requirements, as appropriate, in future actions.

## II. This Action

EPA is proposing approval of the Butte PM<sub>10</sub> SIP, which includes the Butte/Silver Bow Air Pollution Control Program, as adopted by the State of Montana on March 20, 1992 and submitted by the Governor of Montana to EPA on July 9, 1992. To address deficiencies identified by EPA, commitments were adopted by the State after a public hearing on December 21, 1992, and submitted to EPA on January 13, 1993 as additional tasks to be completed to correct the deficiencies in the Butte and statewide SIP (a more detailed discussion of these commitments can be found in the Technical Support Document (TSD) for this document). One commitment regarding revising the demonstrations of attainment and maintenance to properly handle background concentrations, and another commitment regarding clarification that the statewide emergency episode plan applies in Butte were fulfilled by the State with the submittal of technical corrections to EPA on May 17, 1993. The remaining commitments do not impact the attainment or maintenance demonstrations, credited control strategies in the Butte PM<sub>10</sub> SIP, or other federal Clean Air Act SIP requirements for the Butte moderate PM<sub>10</sub> nonattainment area due to EPA on November 15, 1991. Therefore, EPA will propose separate action on these remaining commitments once the State fulfills them. If the State fails to fulfill its commitments, EPA will take appropriate action.

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-13566). In today's action, EPA is proposing to grant approval of those elements of the Butte PM<sub>10</sub> plan that were due on

November 15, 1991, and submitted by the State on July 9, 1992 and May 17, 1993. EPA believes that the Butte plan meets the applicable requirements of the Act.

In addition, EPA is proposing to correct the nonattainment area boundary description for Butte in order to address an error in the previous description.

Since the Butte PM<sub>10</sub> SIP was not submitted by November 15, 1991, as required, EPA made a finding of failure to submit pursuant to section 179 of the Act and notified the Governor in a letter dated December 16, 1991. See 57 FR 19906, 19908 (May 8, 1992). After the Butte PM<sub>10</sub> SIP was submitted on July 9, 1992, EPA found the submittal complete pursuant to section 110(k)(1) of the Act and notified the Governor accordingly in a letter dated January 15, 1993. This completeness determination corrected the State's deficiency and turned off the sanctions clock under section 179 of the Act.

## A. Analysis of State Submission

### 1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.<sup>3</sup> Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment on the implementation plan for Butte, the State of Montana, after providing adequate notice, held a public hearing on November 15, 1991, for the local air pollution control program, and on March 20, 1992 to address the Butte PM<sub>10</sub> SIP. Following the public

<sup>2</sup> Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM<sub>10</sub> nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

<sup>3</sup> Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

hearings, the local air pollution control plan and the Butte PM<sub>10</sub> SIP were adopted by the State. The Butte PM<sub>10</sub> SIP, which incorporates the local air pollution control program, was submitted to EPA by the Governor in a letter dated July 9, 1992. Due to EPA comments regarding PM<sub>10</sub> SIPs for other Montana nonattainment areas, the State included commitments with the Butte submittal to address statewide deficiencies (New Source Review/Prevention of Significant Deterioration regulations, test methods, and an operating permit program), along with Butte-specific commitments regarding revising the attainment and maintenance demonstrations to properly handle background concentrations, clarifying that the state emergency episode plan applies in Butte, and adopting contingency measures.

In letters to the State dated August 19, and October 16, 1992, EPA identified deficiencies with the submittal. These deficiencies were adequately addressed in letters from the State dated September 3, and November 25, 1992, and in technical corrections submitted on May 17, 1993.

In an October 7, 1992 letter from Doug Skie, EPA to Jeff Chaffee, Montana Air Quality Bureau, EPA notified the State that its commitments would need to be taken through the public hearing process, which would delay EPA's completeness determination. The State held a public hearing on December 21, 1992, and resubmitted the commitments as an official Governor's submittal in a letter dated January 13, 1993. Two of these Governor's commitments—to revise the attainment and maintenance demonstrations to properly handle background concentration and to clarify that the state emergency episode plan applies in Butte—were fulfilled in the May 17, 1993 submittal. Even though all of the Governor's commitments have not been fulfilled to date, EPA believes it is appropriate to propose approval of this SIP because the remaining commitments do not affect the attainment or maintenance demonstrations, any of the control strategies adopted by the State, or any other federal Clean Air Act SIP requirements for the Butte moderate

PM<sub>10</sub> nonattainment area due on November 15, 1991.

EPA will continue to track the State's progress in fulfilling the remaining Governor's commitments. A detailed description of the Butte/Silver Bow commitments is contained in the TSD for this action.

The Butte PM<sub>10</sub> SIP was reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The submittal was found to be complete and a letter dated January 15, 1993 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. EPA proposes to approve the Montana PM<sub>10</sub> SIP submittal for Butte, as dated July 9, 1992, with technical corrections submitted May 17, 1993, and invites public comment on the action.

## 2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory also should include a comprehensive, accurate, and current inventory of allowable emissions in the area. See, for example, section 110(a)(2)(K). Because the submission of such inventories is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the demonstration submission (see 57 FR 13539).

Butte's base year emissions inventory was developed for July 1, 1987 through June 30, 1988. The results were as follows. Annually, area sources account for 61.0% of the PM<sub>10</sub> emissions with re-entrained road dust the largest contributor. Residential wood burning, another area source, accounts for 5.4% of the PM<sub>10</sub> emissions in the Butte/Summit Valley area. Montana Resources, Inc., a major source operating an open pit copper and molybdenum mine, crushing and milling operation and concentrator, is the largest point source contributing

37.1% of the valley-wide emissions. The facility contributes 95.0% of the industrial emissions, of which 66.3% is haul road fugitives (another area source). The other major point source in the area is Rhone-Poulenc, an elemental phosphorus plant, which contributes 1.9% of the PM<sub>10</sub> emissions in Butte.

Seasonally, re-entrained road dust is the primary source in the winter, spring, summer and fall. The greatest contribution from residential wood burning occurs during the winter when wood combustion is most prevalent. On a valley-wide basis, the largest PM<sub>10</sub> emission sources during the winter months in order of significance are: Re-entrained road dust from paved roads (54.3%), all point sources (36.5%), residential wood burning (7.7%), and re-entrained road dust from unpaved roads (1.2%). In the spring, re-entrained road dust from paved roads is the most important source at 55.8%, then industrial emissions at 37.2%, residential wood burning at 3.6%, and dust from unpaved roads at 3.0%.

EPA is proposing to approve the emissions inventory because it is accurate and comprehensive and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.<sup>4</sup> For further details see the TSD.

## 3. Control Strategy

As noted, the initial moderate PM<sub>10</sub> nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

Five sources/source categories were identified as contributing to the PM<sub>10</sub> nonattainment problem in Butte. In the following table, an outline is presented of these sources/source categories, their control measures and associated emissions reduction credit, and effective dates.

| Source/source categories | Control measure                             | PM <sub>10</sub> emissions reduction | Effective dates |
|--------------------------|---------------------------------------------|--------------------------------------|-----------------|
| Re-entrained road dust.  | Butte/Silver Bow Resolution No. 1307 .....  | .....                                | 3/6/91.         |
|                          | Sanding & chip sealing standards, and ..... | 5%.                                  |                 |

<sup>4</sup> EPA issued guidance on PM<sub>10</sub> emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM<sub>10</sub> SIP

Development Guideline. The guidance provided in this document appears to be consistent with the amended Act.

| Source/source categories     | Control measure                                                                                                             | PM <sub>10</sub> emissions reduction                                         | Effective dates                |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|--------------------------------|
| Residential wood combustion. | Street sweeping and flushing requirements .....                                                                             | 49%.                                                                         | 8/3/88.                        |
|                              | Combined controls .....                                                                                                     | 52% or 5.4 tons/day fewer PM <sub>10</sub> emissions in the winter & spring. |                                |
|                              | Butte/Silver Bow Ordinance No. 330: Regulation controlling residential wood burning and idling diesel vehicles/locomotives. | 80% or 2400 lbs/day .....                                                    |                                |
|                              | Montana Smoke Management Plan .....                                                                                         | (no credit taken) .....                                                      |                                |
| Prescribed burning.          | Permit modifications                                                                                                        |                                                                              | 4/28/88.                       |
|                              | Montana Resources, Inc.: <sup>1</sup> .....                                                                                 |                                                                              |                                |
|                              | (a) limit winter PM <sub>10</sub> emissions from haul trucks and support vehicles.                                          | 92% or 2795.6 tons fewer winter allowable PM <sub>10</sub> emissions.        |                                |
|                              | (b) limit winter PM <sub>10</sub> diesel exhaust emissions .....                                                            | 79% or 23.8 tons fewer winter allowable PM <sub>10</sub> emissions.          |                                |
| Industry .....               | (c) limit winter PM <sub>10</sub> emissions from ore dump, molybdenum dryer and lime handling.                              | 81% or 59.8 tons fewer winter allowable PM <sub>10</sub> emissions.          | 3/10/92.                       |
|                              | Combined controls .....                                                                                                     | 2879.2 tons fewer winter allowable PM <sub>10</sub> emissions.               |                                |
|                              | Rhone-Poulenc: reduce allowable plant-wide emissions.                                                                       | 96.7% or 4123.8 tons/year fewer allowable PM <sub>10</sub> emissions.        |                                |
|                              | Federal tailpipe standards .....                                                                                            | 15.0% (1988 through 1994 time period); 0.2% (1995 through 1997 time period). |                                |
| Motor vehicle exhaust.       |                                                                                                                             |                                                                              | Ongoing due to fleet turnover. |

<sup>1</sup> As with RACM (including RACT) provisions in the SIP, the control measures implemented at Montana Resources, Inc. are described further in the TSD.

A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation of why certain available control measures were not implemented can be found in the TSD. EPA has reviewed the State's documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of Montana's PM<sub>10</sub> nonattainment plan for Butte will result in the attainment of the PM<sub>10</sub> NAAQS by December 31, 1994. By this notice EPA is proposing to approve the Butte PM<sub>10</sub> plan as satisfying the RACM (including RACT) requirement and is proposing to approve the entire control strategy as it is necessary for expeditious attainment of the PM<sub>10</sub> NAAQS.

#### 4. Demonstration

As noted, the initial moderate PM<sub>10</sub> nonattainment areas must submit a demonstration (including air quality modelling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or the State must show that attainment by December 31, 1994 is impracticable (see section 189(a)(1)(B) of the Act). Montana conducted an attainment demonstration using receptor modelling (CMB) and emissions rollback modelling analysis for Butte. The 24-hour PM<sub>10</sub> NAAQS is 150 micrograms/cubic meter ( $\mu\text{g}/\text{m}^3$ ), and the standard is attained when the expected number of days per calendar year with a 24-hour average

concentration above 150  $\mu\text{g}/\text{m}^3$  is equal to or less than one (see 40 CFR 50.6). The annual PM<sub>10</sub> NAAQS is 50  $\mu\text{g}/\text{m}^3$ , and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50  $\mu\text{g}/\text{m}^3$  (id.).

The demonstration for Butte indicates that the 24-hour PM<sub>10</sub> NAAQS will be attained in 1995<sup>2</sup> at 144.3  $\mu\text{g}/\text{m}^3$ . Although the design concentration for the annual standard is below the NAAQS and an attainment demonstration was not necessary (i.e., Butte is in attainment for the annual standard), the State performed one anyway. The demonstration indicated that an annual concentration of 42.1  $\mu\text{g}/\text{m}^3$  is achieved by 1995, showing continued attainment of the annual PM<sub>10</sub> NAAQS. The demonstration also showed that the PM<sub>10</sub> NAAQS will be maintained in future years by predicting a 24-hour design concentration of 144.2  $\mu\text{g}/\text{m}^3$ , and an annual design concentration of 41.6  $\mu\text{g}/\text{m}^3$  for the year 1998. The control strategies used to achieve these design concentrations are summarized in the section titled "RACM (including RACT)." For a more detailed description of the attainment

<sup>2</sup> The Clean Air Act calls for attainment by December 31, 1994. Section 188(c)(1). EPA interprets the State's demonstration as providing for attainment by January 1, 1995. EPA is proposing to approve the State's demonstration on the basis of the de minimis differential between the two dates. The State should promptly inform EPA if EPA has in any manner misinterpreted the date by which the State has demonstrated attainment in the Butte nonattainment area.

demonstration and the control strategies used, see the TSD for this notice.

#### 5. PM<sub>10</sub> Precursors

The control requirements that are applicable to major stationary sources of PM<sub>10</sub> also apply to major stationary sources of PM<sub>10</sub> precursors, unless EPA determines such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (57 FR 13539-13540 and 13541-13542). An analysis of air quality and emissions data for the Butte nonattainment area indicates that exceedances of the NAAQS are attributable chiefly to direct particulate emissions from re-entrained road dust and residential wood burning (i.e., area sources). Neither the emissions inventory nor the CMB analysis for Butte revealed any major stationary sources of PM<sub>10</sub> precursors. Consequently, EPA is proposing to determine that major sources of precursors of PM<sub>10</sub> do not contribute significantly to PM<sub>10</sub> levels in excess of the NAAQS. The consequence of this finding is to exclude any such sources from the applicability of PM<sub>10</sub> nonattainment area control requirements. Further discussion of the analyses and supporting rationale for EPA's finding are contained in the TSD accompanying this notice. Note that while EPA is proposing to make a general finding for this area, today's proposed finding is based on the current

character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. EPA intends to issue future guidance addressing the effect of such potential changes in the significance of precursor emissions in an area.

#### 6. Quantitative Milestones and Reasonable Further Progress

The PM<sub>10</sub> nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). The State of Montana's PM<sub>10</sub> SIP indicates that the Montana Department of Health and Environmental Sciences (MDHES) and the Butte/Silver Bow Health Department (BSHD) will submit to EPA a milestone report consistent with federal guidelines by December 31, 1994.<sup>6</sup>

All exceedances of the PM<sub>10</sub> standard will be evaluated and a determination made as to the source of the exceedance. Changes in the air quality program to prevent further exceedances and a timetable for implementation will be developed. Any other EPA requirements for RFP reports will be incorporated as necessary.

#### 7. Enforceability Issues

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

The specific control measures contained in the SIP are addressed above in section 3, "RACM (including RACT)." The Butte/Silver Bow air pollution control ordinances, as included in the SIP, are legally enforceable by BSHD. There are penalties for noncompliance with

Ordinance No. 330 (the mandatory residential wood combustion curtailment program) that increase with each violation. Resolution No. 1307 (concerning re-entrained road dust) requires Butte/Silver Bow to comply with the terms of the resolution. A stipulation between the MDHES, the Montana Department of Transportation (MDOT), and Butte/Silver Bow requires MDOT to comply with the resolution.

The Butte/Silver Bow Air Pollution Control Program and the associated local ordinances, resolutions and stipulations are also enforceable by the MDHES, if the BSHD fails to administer the program. Since the program has been approved by the Montana Board of Health and Environmental Sciences (MBHES) in accordance with section 75-2-301 of the Montana Clean Air Act and effectuated by a MBHES order, and since the MDHES can enforce MBHES orders, the MDHES has independent enforcement powers. Enforcement provisions are found in the Clean Air Act of Montana, sections 75-2-401-429, Montana Code Annotated.

The emission limits for Montana Resources, Inc. are enforceable by the MDHES through air quality permit #1749-04 with a final modification date of March 20, 1992. Rhone-Poulenc's emission limits are enforceable by the MDHES through air quality permit #1636A with a final modification date of October 26, 1991. Section 75-2-401 of the Montana Clean Air Act allows the MDHES to seek civil penalties for a violation of a permit limitation. Administrative Rules of Montana (ARM) 16.8.1112 allows the MDHES to revoke a permit for a violation of a permit limitation. These regulations are contained in the ARM 16.8.101 through 16.8.1602 and violations of these rules are punishable by civil penalties in an amount up to \$10,000 per day and criminal penalties in an amount up to \$1,000 per day.

If a State relies on a local government for the implementation of any plan provision, then, according to section 110(a)(2)(E)(iii) of the Act, the State must provide necessary assurances that the State has responsibility for ensuring adequate implementation of such plan provision. A State would have responsibility to ensure adequate implementation when, for example, the State has the authority and resources to implement the provision, and the local entity has failed to do so.

The Butte/Silver Bow Air Pollution Control Program was established in accordance with the requirements of section 75-2-301 of the Montana Clean Air Act, as amended (1991). A stipulation between the MDHES and the

Butte/Silver Bow Council of Commissioners was signed on October 8, 1991 to delineate responsibilities and authorities between the MDHES and the local authorities. On November 15, 1991, the MBHES held a public hearing, approved the Butte/Silver Bow local program, and issued a board order effectuating the program. On March 20, 1992, the MBHES held a public hearing and: (a) Approved the PM<sub>10</sub> emission control plan for the Butte and vicinity PM<sub>10</sub> nonattainment area, and (b) incorporated the Butte/Silver Bow local air pollution control program and the PM<sub>10</sub> emission control plan for the Butte area into the Montana SIP. The ordinances, stipulation, and board order were submitted to EPA with the Butte PM<sub>10</sub> SIP.

The State also submitted a State Assistant Attorney General's opinion interpreting the authority of the MDHES to enforce any state and local air quality provisions if a local air quality program fails to do so. In practice, the MBHES issues a board order when it approves a local program or amendments to a program. Since the Montana Clean Air Act authorizes the MDHES to enforce board orders issued by the MBHES, the MDHES has the authority to assume jurisdiction over, and implement, a local program so approved. However, the Montana Clean Air Act also requires a hearing before the MBHES before such an assumption of jurisdiction and authority can be made.

The Butte/Silver Bow ordinances are in effect now, as are the State's permit modifications for Montana Resources, Inc. and Rhone-Poulenc. The State of Montana has a program that will ensure that the measures contained in the Butte PM<sub>10</sub> SIP are adequately enforced. EPA believes that the State's and Butte's existing air enforcement program will be adequate. The TSD for this notice contains further information on enforceability requirements, responsibilities, and personnel and funding intended to support effective implementation of the control measures.

#### 8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See generally 57 FR 13510-13512 and 13543-13544. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon EPA's determination that the area has

<sup>6</sup> Thus, this report will be submitted coincident with the December 31, 1994 attainment date. The de minimis timing differential between the first milestone submittal date (i.e., November 15, 1994) and attainment date make it administratively impracticable to require separate submittals. See generally 57 FR 13539.

failed to make RFP or attain the PM<sub>10</sub> NAAQS by the applicable statutory deadline. The Butte nonattainment area SIP contains steps to be taken if attainment of the PM<sub>10</sub> standard is not achieved; however, for the reasons described below, these steps do not adequately satisfy the contingency measures requirement.

As currently outlined in the SIP if attainment is not achieved, the sanding material and sweeping resolution will be changed to an ordinance requiring the use of liquid deicer in the nonattainment area by both Butte/Silver Bow and MDOT. A stove replacement program will be adopted if additional controls are needed for the residential wood burning curtailment program.

Since the SIP does not provide for these measures to take effect without further action should EPA determine that Butte has failed to achieve RFP or to attain the PM<sub>10</sub> standard by December 31, 1994, EPA is taking no action at this time on the Butte contingency measures. The State has until November 15, 1993 to submit its contingency measures.

#### 9. Correction to the Nonattainment Area Boundary

The Butte nonattainment area boundary as codified on November 6, 1991 (56 FR 56736) is currently defined with a detailed legal description for Silver Bow County-Butte in 40 CFR 81.327. Prior to enactment of the 1990 Amendments to the Clean Air Act, Butte was a "Group I" PM<sub>10</sub> area. Section 107(d)(4)(B)(i) of the Act provides that each former Group I area identified in 52 FR 29383 (August 7, 1987) or modified before enactment of the 1990 Amendments (see 55 FR 45799, October 31, 1990) is designated nonattainment for PM<sub>10</sub> by operation of law upon enactment of the 1990 Amendments.

In announcing those former Group I areas designated nonattainment for PM<sub>10</sub> pursuant to section 107(d)(4)(B)(i), EPA corrected errors it had made in identifying and/or modifying Group I areas in its October 31, 1990 Federal Register notice. 56 FR 37654 (August 8, 1991). Butte was one such area. 56 FR 37659. However, EPA's correction was incomplete. In a September 10, 1990 letter from Jeffrey Chaffee, Montana Department of Health and Environmental Sciences, to Douglas Skie, EPA Region VIII, the legal description for the Butte area was prefaced by the words "the following area of Butte-Silver Bow excluding the territorial limits of the City of Walkerville." EPA inadvertently omitted this language and is proposing to correct the error at this time. See section 110(k)(6) of the Act. Therefore,

the corrected description of the Butte moderate PM<sub>10</sub> nonattainment area should read as follows:

#### Silver Bow County-Butte

The following area of Butte-Silver Bow excluding the territorial limits of the City of Walkerville: Beginning at the Northwest corner of Section 2, T.3N., R.8W., thence Easterly to Northeast corner Section 5, T.3N., R.7W.; then Southerly to Northwest corner Section 9, T.3N., R.7W.; thence Easterly to Northeast corner Section 10, T.3N., R.7W.; thence Southerly to Southeast corner Section 22, T.2N., R.7W.; thence Westerly to Southwest corner Section 19, T.2N., R.7W.; thence Northerly to Northwest corner Section 19, T.2N., R.7W.; thence Westerly to Southwest corner Section 14, T.2N., R.8W.; thence Northerly to Southwest corner Section 35, T.3N., R.8W.; thence Westerly to Southwest corner Section 34, T.3N., R.8W.; thence Northerly to Northwest corner Section 27, T.3N., R.8W.; thence Westerly to Southwest corner Section 20, T.3N., R.8W.; thence Northerly to Northwest corner Section 17, T.3N., R.8W.; thence Easterly to Northwest corner Section 14, T.3N., R.8W.; thence Northerly to the point of beginning.

EPA is proposing to make this correction to the boundary description currently in 40 CFR 81.327. This action does not modify any other aspect of the nonattainment designation, classification or boundary for the Butte area codified at 40 CFR 81.327.

#### III. Implications of Today's Action

EPA is proposing to approve those elements of the PM<sub>10</sub> SIP for the Butte, Montana nonattainment area that were due on November 15, 1991 and submitted to EPA on July 9, 1992, with technical corrections submitted to EPA on May 17, 1993. Among other things, the State of Montana has demonstrated that the Butte moderate PM<sub>10</sub> nonattainment area will attain the PM<sub>10</sub> NAAQS by December 31, 1994, and will maintain the standard at least three years beyond the attainment year. Included in the May 17, 1993 technical corrections was the fulfillment of two Governor's commitments (regarding a clarification that the statewide emergency episode plan applies in Butte and a revision to the attainment and maintenance demonstrations to handle background concentrations properly). EPA will propose separate action on the remaining commitments, which were submitted by the Governor of Montana in a letter dated January 13, 1993, when the State fulfills them.

As noted, additional submittals for the initial moderate PM<sub>10</sub> nonattainment areas (i.e., nonattainment new source review program requirements and contingency measures) are due

independent of the SIP requirements addressed in today's action. EPA will determine the adequacy of any such submittal as appropriate.

EPA is also proposing to correct the boundary description for the Butte nonattainment area to rectify a previous error.

#### IV. Request for Public Comments

The EPA is requesting comments on all aspects of this proposal. As indicated at the outset of this notice, EPA will consider any comments received by October 28, 1993.

#### V. Executive Order (EO) 12291

Under Executive Order 12291, this action is not "Major." OMB has exempted this rule from the requirements of section 3 of E.O. 12291.

#### VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

#### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: September 7, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93-23753 Filed 9-27-93; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Part 2720

[WO-690-02-4120-24 1A]

RIN 1004-AB86

#### Conveyance of Federally Owned Mineral Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

**SUMMARY:** This proposed rule would amend 43 CFR part 2720 in order to streamline and clarify the procedures for conveying Federally-owned mineral interests to the owner of the surface estate overlying the mineral interests. Section 209 of the Federal Land Policy and Management Act allows such conveyances when there are no known mineral values present, or when the reservation of the mineral rights is interfering with or precluding appropriate nonmineral development of the land that would be more beneficial than mineral development. The rule is necessary because the wording of the existing regulation has caused considerable confusion on the part of both the public and public land managers, and has been interpreted to require expensive mineral surveys in many cases where such surveys were unnecessary. The proposed rule will simplify the conveyance of Federally-owned mineral interests.

**DATES:** Comments should be submitted by November 29, 1993. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

**ADDRESSES:** Comments should be sent to: Director (140), Bureau of Land Management, room 555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Clyde Topping, (202) 452-0380.

**SUPPLEMENTARY INFORMATION:** Five sections of Subpart 2720 are proposed to be amended in this proposed rule. The

proposed amendments in three of these sections—sections 2720.0-6, 2720.1-3, and 2720.3—are minor clarifications in language. Section 2720.0-6 would be amended to make it clear that conveyance of mineral rights is dependent on the lands having no known value for minerals. Section 2720.1-3 would be amended merely to correct a printing error in the existing regulation, and to provide that an authorized officer may rely on reports prepared by or reviewed and approved by the Bureau of Land Management (BLM) to determine whether there are any known values in the land. Section 2720.3 would be amended to make it clear that payment by the purchaser of mineral rights under section 209 of FLPMA is required to include both the fair market value of the rights conveyed and the administrative costs to the public of making the conveyance.

The two principal amendments proposed in this rule are in the definition of "known mineral values" in section 2720.0-5 Definitions, and in the explanations of circumstances excusing an exploration program to determine fair market value in section 2720.2. Both sections have been subject to misinterpretation. These misinterpretations and confusions have generated excessive BLM administrative costs, unnecessary private exploration costs, and difficulties in transferring mineral rights to surface owners under section 209 of FLPMA.

In § 2720.0-5, the definition of "known mineral values" is proposed to be amended to remove the reference to "lands prospectively valuable for mineral occurrence". "Known mineral value" means valuable in the private market sense; the problem with the original definition was that some readers believed that the words "prospectively valuable" referred to the BLM land classification term "prospectively valuable" which means mineralized to certain degrees or criteria. The tendency of some readers to infer that all lands classified as "prospectively valuable" are lands with "known mineral value" generates delay and confusion, because lands designated "prospectively valuable" include many lands that are not valuable in the market sense. In addition, this confusion at times leads to the implication that all these lands must be valuable in the market sense even if there is no evidence that this is the case. This in turn is reported to have led in some cases to proposals that applicants undertake unneeded and expensive exploration programs to prove the market value of such mineral rights.

The other significant modification to be made is related to the one above and is found in § 2720.2, which explains when an exploratory program is required. This section was sometimes interpreted to mean that any mineral rights that might have other than "nominal value" were required to be evaluated through an expensive exploration program before being transferred. As explained above, this was at times interpreted to mean all land classified as "prospectively valuable" required an exploration program no matter how uneconomic. The proposed rule would clearly provide that expensive exploration programs are not required of applicants if it is determined by the authorized officer that a prudent investor would not be justified in making such an investment in expectation of future returns or if an exploration program is not required to determine fair market value.

An authorized officer is required to collect certain information from an existing or prospective record owner of the surface of land who desires to purchase Federally-owned mineral interests in that land to determine whether a disposition should be made. The basis for this collection is required to be codified in the Code of Federal Regulations, along with an estimate of the time required to prepare and submit the information, and a statement as to the use of the information. For this reason, § 2720.0-9, Information collection, has been added.

The principal authors of this proposed rule are Clyde Topping and Amy Lueders of the Division of Minerals Policy Analysis and Economic Evaluation, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not

individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The rule, by clarifying provisions that have been misinterpreted in the past, would obviate unneeded and expensive mineral exploration programs to prove the market value of reserved mineral rights that are not valuable in the market sense. The rule would impose no costs, and would make the regulatory process less cumbersome. For the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule does not require the taking of any property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirements contained in part 2720 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0153.

The Department has certified to the Office of Management and Budget that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

#### List of Subjects in 43 CFR Part 2720

Administrative practice and procedure, Public lands-mineral resources, Public lands-sale.

For the reasons stated in the preamble, and under the authorities stated below, part 2720 of group 2700,

subchapter B, chapter II, title 43 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 2720—CONVEYANCE OF FEDERALLY-OWNED MINERAL INTERESTS

##### Subpart 2720—Conveyance of Federally-Owned Mineral Interests

1. The authority Citation for part 2720 is revised to read as follows:

Authority: 43 U.S.C. 1719 and 1740.

2. Section 2720.0-5(b) is revised to read as follows:

##### § 2720.0-5 Definitions.

\* \* \* \* \*

(b) "Known mineral values" means mineral values in lands with underlying geologic formations that are valuable for developing or producing natural mineral deposits. The presence of such mineral deposits with potential for mineral development may be known, or may be inferred based on geologic information.

\* \* \* \* \*

3. Section 2720.0-6 is amended by revising the first sentence thereof to read as follows:

##### § 2720.0-6 Policy.

As required by the Federal Land Policy and Management Act, conveyance of a federally reserved mineral interest shall be made only upon a determination that it has no known mineral value, or if it can be clearly demonstrated that the mineral reservation is interfering with or precluding appropriate nonmineral development of the lands and that nonmineral development is a more beneficial use than mineral development. \* \* \*

4. Section 2720.0-9 is added to read as follows:

##### § 2720.0-9 Information collection.

(a) The information collection requirements contained in part 2720 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0153. The information is being collected to permit the authorized officer to determine if disposition of Federally-owned mineral interests should be made. The information collected will be used to make these determinations. A response is required to obtain a benefit.

(b) Public reporting burden for this information is estimated to average 10 hours per response, including the time for reviewing regulations, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004-0153, Washington, DC 20503.

5. Section 2720.1-3 is amended by redesignating the final sentence of paragraph (b)(2) as the concluding text of paragraph (b), and revising it to read as follows:

##### § 2720.1-3 Action on application.

\* \* \* \* \*

(b) \* \* \* \* \*  
The authorized officer in reaching a determination as to whether there are any known mineral values in the land and, if so, the estimated costs of an exploratory program, if one is needed, shall rely upon reports on minerals prepared by or reviewed and approved by the Bureau of Land Management.

\* \* \* \* \*

6. Section 2720.2 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

##### § 2720.2 Determination that an exploratory program is not required.

\* \* \* \* \*

(b) An exploratory program shall not be required to prove the presence of mineral values where it is determined by the authorized officer that a prudent person would not be justified in making exploration expenditures with expectations of returns from the mineral production.

(c) An exploratory program shall not be required if an authorized officer determines that, for the mineral interests covered by the application, sufficient information to determine its fair market value is already available.

7. Section 2720.3 is amended by revising the fourth sentence of paragraph (a), and paragraph (b) in its entirety, to read as follows:

##### § 2720.3 Action upon determination of the fair market value of the mineral interests.

(a) \* \* \* \* \* The notice shall require that payment, including both the fair market value of the Federal mineral interests and the remaining administrative costs owed, be made within 90 days after the date of mailing the notice. \* \* \*

(b) Mineral rights on lands for which an exploratory program is not required under this subpart shall be conveyed upon payment of fair market value for those mineral interests and all

administrative costs of processing the application to acquire the mineral rights.

Dated: August 20, 1993.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 93-23707 Filed 9-27-93; 8:45 am]

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