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

III. Stack Height Analysis

A. Background

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

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

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

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

months of the EPA stack height regulations promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, States were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO₂) in excess of 5,000 tons per year. These limits correspond to the *de minimis* stack height and the de minimis SO₂ emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

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

B. State of Montana Submissions

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

C. Asarco, East Helena Stack Height Demonstration

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

dispersion technique prohibited by EPA regulations.

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

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

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

IV. Final Action

EPA is approving the East Helena primary SO₂ NAAQS SIP submitted to EPA on March 30, 1994. Among other things, the State of Montana has demonstrated that the East Helena SO₂ nonattainment area will attain the primary SO₂ NAAQS by November 15, 1995. EPA is also approving stack height demonstrations for the Asarco, East Helena, primary lead smelter.

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

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

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities