provisions to certain rulemaking concerning contracts (see 41 U.S.C. 418b). These statutory provisions do not impose notice-and-comment provisions for rulemaking concerning public property.

One commenter indicated that we should retain the notice-and-comment provisions for rulemaking concerning public property and contracts. We are committed to compliance with all legal requirements concerning rulemaking, including APA requirements. However, we believe that self-imposition of any other procedures for rulemaking should be done on a case-by-case basis and we do not believe that it is necessary or prudent to self-impose additional requirements by regulation.

The commenters also argued in favor of retaining § 1.12 based on issues relating to certain ''non-legislative rules'' (rules of agency management; interpretative rules; general statements of policy; rules of organization, procedure, or practice). In this regard, the provisions of 5 U.S.C. 553 contain exemptions from the notice-and-comment requirements for ''non-legislative rules.'' The commenters argued that § 1.12 added notice-and-comment requirements for rulemaking regarding such ''non-legislative rules'' and further included specific reasons to support the desirability of having additional notice-and-comment for such types of rulemaking.

Rulemaking documents establishing ''non-legislative rules'' are issued by the Secretary and concurred in by the General Counsel. The provisions of § 1.12 included internal instructions which stated: ''Exceptions to the policy of permitting public participation in the regulatory development may be authorized by the Secretary or one of the Secretary's deputies if adequately justified and concurred in by the General Counsel.'' The next sentence, in part, states: ''Such exceptions, unless public comment is required by statute, may be recommended when: (a) The proposed regulations consist of interpretative rules, general statements of policy, or rules of Department of Veterans Affairs organization procedure or practice * * *.'' The mere finding that a rulemaking proceeding concerned a ''non-legislative'' rule met the ''adequately justified'' standard for foregoing the notice-and-comment procedures. The elimination of § 1.12 would bring VA practice into conformity with the requirements generally imposed on the rest of government, i.e., notice-and-comment issues would be governed by the provisions of 5 U.S.C. 553. Eliminating the regulatory provisions imposing internal procedural steps increases government efficiency and would not result in the diminution of the substantive rights of any party.

Furthermore, the removal of § 1.12 is warranted because it has generated much confusion, particularly with respect to ''non-legislative rules.'

Accordingly, based on the rationale set forth in the proposed rule and this document, we are removing § 1.12.

This rulemaking action concerns VA policy and internal VA procedures. Although we provided notice-and-comment concerning this rulemaking proceeding it was not required under the provisions of the APA and, consequently, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nevertheless, the Secretary of Veterans Affairs certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This rule will not have a direct effect on small entities.

There is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Claims, Freedom of information, Government contracts, Government employees, Government property, Reporting and recordkeeping requirements.

Approved: February 24, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 1.12 [Removed]

2. Section 1.12 and the undesignated center heading preceding § 1.12 are removed.

[FR Doc. 97–5341 Filed 3–4–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–015–1015a; FRL–5682–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Asarco Glover, Missouri, lead emission control plan submitted by the state of Missouri on August 14, 1996. The plan was submitted by the state to satisfy certain requirements under the Clean Air Act (CAA) to reduce lead emissions sufficient to bring the Glover area into attainment with the National Ambient Air Quality Standard (NAAQS) for lead.

DATES: This action is effective May 5, 1997 unless by April 4, 1997 adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Josh Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, the only significant source of lead contributing to violations of the lead NAAQS in the Glover area is a primary lead smelter owned and operated by the American Smelting and Refining Company (Asarco). The smelter processes lead concentrate recovered from lead mines into pure lead or lead compounds to meet its customer's specifications. The facility's refining capacity is approximately 140,000 tons of refined lead per year.

The original Glover lead State Implementation Plan (SIP) was approved by the EPA in 1981.

Subsequent to SIP approval, the EPA conducted modeling which predicted continued violations of the standard. Asarco and Missouri prepared several SIP revisions; however, these revisions were not approved because modeling still showed violations in some areas defined as ''ambient air.'

In 1987, the state began to record violations of the lead standard three miles from the facility. These data prompted Region VII to request more monitors in closer proximity to the source. On November 5, 1990, the EPA requested that the state of Missouri revise the SIP for this facility based on modeling conducted for 1983 through 1987, and based on monitored violations during 1988, 1989, and 1990.

On November 6, 1991, the EPA designated the Liberty and Arcadia Townships which surround the Glover facility as nonattainment for lead. This designation became effective on January 6, 1992.

The attainment plan was required to be submitted 18 months after the designation or by July 6, 1993. The state failed to make the required submission and on August 2, 1993, the EPA notified the Governor by letter of this fact. This notice initiated sanctions clocks in accordance with section 179 of the CAA and the Federal Implementation Plan (FIP) clock in accordance with section 110 of the CAA.

Under section 179 of the CAA, the EPA must impose sanctions on a nonattainment area for which the state has failed to submit a plan which has been determined complete by the EPA. The first of two sanctions must be implemented within 18 months after the date of the finding (or in this case, not later than January 2, 1995), and the second sanction must be implemented within 6 months after the implementation of the first sanction (or in this case, not later than August 2, 1995).

On August 4, 1994 (59 FR 39832), the EPA published a rulemaking which identifies the order of sanctions as follows: the first sanction to be imposed is the 2:1 offset sanction which requires 2:1 offsets for emission increases of the nonattainment pollutant from certain new or modified major sources within the nonattainment area; the second sanction to be imposed is the highway funding sanction. Under this sanction, Federal highway funds are withheld from the nonattainment area, unless the funds are for exempt projects.

Furthermore, section 110(c) of the Act obligates the EPA to promulgate a FIP within two years of a finding that the state has failed to submit the required plan. The EPA must approve a plan submitted by the state in order to stop the FIP clock.

In a January 27, 1995, letter, the EPA notified the Governor of the imposition of the mandatory offset sanction on February 2, 1995, barring a complete submission. And in an August 1, 1995, letter, the EPA notified the Governor of the imposition of the mandatory highway funding sanction on August 2, 1995, barring a complete submission.

Both sanctions were imposed until September 18, 1996, when the EPA was able to find that the state's August 14, 1996, submittal was complete, thus lifting the sanctions.

II. Criteria for Approval

The state's August 14, 1996, submission was reviewed using the criteria established by the CAA. The requirements for all SIPs are contained in section 110(a)(2) of the CAA. Subpart 1 of Part D of Title I of the CAA, and in particular section 172(c), specifies the provisions necessitated by designation of an area as nonattainment for any of the NAAQS. Further guidance and criteria are set forth in Subpart 5 of Part D, the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498), and in the ''Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (58 FR 67748).

III. Review of State Submittal

A. Control Strategy

The control strategy must contain provisions to ensure that Reasonably Available Control Technology (RACT), including Reasonably Available Control Measures (RACM), for area sources are implemented (see section 172(c)(1) of the CAA). See 57 FR 13549 and 58 FR 67748 for the EPA's interpretation of RACM and RACT requirements.

The state's selection of control strategies for the SIP was based on an evaluation of controls provided to the state by Asarco and its contractors. In this study, Asarco evaluated 19 fugitive emission control strategies and 29 process and stack-related control strategies. Asarco selected what it considered to be the most implementable and cost-effective options from this list which would bring the area into attainment with the lead NAAQS. The state concurred with Asarco's assessment that these controls constituted RACT. Detailed information regarding Asarco's control option selection process can be found in the EPA's technical support document (TSD).

The attainment modeling assisted Asarco and the state in focusing the control strategy by indicating which sources or groups of sources were the greatest contributors to the ambient concentrations.

Sinter plan fugitive emissions were identified as the single largest contributor to the violations with an estimated contribution of 91 percent. The sinter plant scrubber stack, the sinter plan ventilation baghouse stack, and the in-plant roads were also identified as significant contributors.

The sinter plant is the first process point for the lead concentrate at the lead smelter. Fugitive emissions from the sinter plant building are created by sources inside the building as well as by losses from point source ventilation systems. Emissions caused by material conveyance, crushing, and screening exit the building through open sides and roof monitors. This plan requires increased efficiency of materials handling by the reduction of transfer steps, and the enclosure and ventilation of the sinter plant.

The sinter plant scrubber cleans ventilation gases from the crushing and mixing of virgin feedstock for the sinter machine. The emissions from the scrubber currently exit the roof of the sinter building through the wet scrubber stack. The plan requires that these gases, once processed by the scrubber, be routed to the sinter machine updraft fans to be used as process air for the sinter feedstock bed. The gases will ultimately be captured by the sinter machine ventilation hoods and routed to the process gas baghouse.

The sinter plant wheelabrator ventilation baghouse cleans the point source ventilation gases from the crushing and sorting of sinter produced from the sinter machine. These gases exit the roof of the sinter building through the baghouse stack. This plan will require that baghouse gases be rerouted to the intake of the sinter machine updraft fans to be used as process gases and ultimately collected by the sinter machine hoods and routed to the process gas baghouse.

Finally, the plan requires compliance with state and Federally approved work practices to minimize fugitive emissions from in-plant roadways, stockpiles, baghouse unloading, and other sources. These work practices require additional trafficway paving, sweeping, dust supression, and materials handling practices to reduce fugitive emissions.

Once approved, these work practices may be modified only through Federal approval of a SIP revision.

B. Attainment Demonstration

Section 192(a) of the CAA requires that SIPs must provide for attainment of the lead NAAQS as expeditiously as practicable, but not later than five years from the date of an area's nonattainment designation. The lead nonattainment designation for the Liberty and Arcadia Townships became effective on January

6, 1992; therefore, the latest attainment date permissible by statute is January 6, 1997.

The Industrial Source Complex Short-Term Model was used to demonstrate attainment and maintenance of the lead NAAQS. The procedures recommended in the EPA's *Guideline on Air Quality Models (Revised)*, EPA 450/2–78–027R, July 1986, and *Supplement A to the Guideline on Air Quality Models (Revised)*, EPA 450/2–78–027R, July 1987, were followed. This modeling predicts attainment of the Federal lead standard by January 1, 1997, with the implementation of the control strategy. See the TSD for more information.

C. Emission Inventory and Air Quality Data

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area.

Asarco, the state, and the EPA undertook a comprehensive study to develop an accurate baseline emission inventory and dispersion model. This inventory was quantified through stack testing, evaluation of equipment and procedures, the EPA emission estimation methods, and engineering judgment. The attainment emission inventory was derived from the baseline inventory with the control strategy applied. Both inventories are included in the state's submittal.

The state's submittal also provides a historical summary of the air quality data for the Glover area collected from 1984 through the most current quarter.

D. Reasonable Further Progress (RFP)

The SIP must provide for RFP [see section 172(c)(2) of the Act]. The state's Consent Decree specifies an implementation schedule which requires a logical stepwise implementation of emissions control projects. This schedule results in a continual decrease of lead emissions through the implementation of the last projects, scheduled to be completed by December 31, 1996. The EPA believes that the RFP demonstration meets the requirements of section 172(c)(2) and the relevant guidelines in the ''Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (58 FR 67748).

E. New Source Review (NSR)

Section 172(c)(5) requires that nonattainment areas be subject to the NSR permitting requirements of section 173. Missouri NSR regulations were originally approved pursuant to Part D of the Act on May 9, 1980 (45 FR 30626). The 1990 Amendments to the Act added other requirements pursuant to the review and approval of new and modified sources. Missouri incorporated these requirements into its regulations, and the EPA approved this SIP revision on February 29, 1996 (61 FR 7714). Therefore, the state's rules presently meet the requirements of sections 172(c)(5) and 173. The EPA proposed changes to the Part D NSR regulations on July 23, 1996 (61 FR 38250). Missouri may be required to revise its NSR regulations to conform to the final EPA requirements, when finalized.

F. Contingency Measures

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs must include contingency measures. Contingency measures should consist of specific emission control measures that are not part of the area's control strategy. These measures must take effect without further action by the state or the EPA, upon a determination that the area has failed to meet RFP or attain the lead NAAQS by the applicable attainment date.

There are seven contingency measures established in item 2.C. of the state's Consent Decree. These measures are: (1) construct and utilize a truck wash, (2) expand the in-plant road sprinkler system, (3) withdraw unloading building air for sinter plant make-up air, (4) comply with more stringent stack emission limitations, (5) cool lead bullion pots before dumping into receiving kettles, (6) modify refinery skims handling in blast furnace area, and (7) increase efficiency of sinter plant ventilation baghouse. In accordance with the Consent Decree, contingency measure number 1 would be implemented by Asarco within 30 days from receipt of notice by Missouri that the area failed to attain the standard. In the case that an additional violation is recorded, measures 2, 3, and 4 would be implemented in the following quarter and, in the case that a further violation is recorded, measures 5, 6, and 7 would be implemented. No triggers were set for contingency measure implementation in the case that the area failed to maintain RFP, based on circumstances unique to this lead SIP. The plan was adopted by the state well into Asarco's implementation of the control strategy, and the impending attainment date would not allow much evaluation of Asarco's maintenance of RFP by the state prior to the statutory deadline for attainment of the standard.

G. Enforceability

All measures and other elements in the SIP must be enforceable by the state and the EPA (see sections 172(c)(6), 110(a)(2)(A), and 57 FR 13556). The state submittal includes rule 10 CSR 10–6.120 and Consent Decree Case No. CV596–98CC, which contain all of the control and contingency measures, with enforceable dates for implementation. This Consent Decree also contains language regarding stipulated penalties. While the EPA is approving this language, Federal enforcement actions and related activities would be initiated by the EPA pursuant to its authority under the CAA.

As mentioned above, a Work Practice Manual was also included in the state's submission as an integral part of the enforceable plan to achieve attainment of the standard. These work practices are designed to limit the fugitive emissions at the facility, and are enforced through recordkeeping requirements. Noncompliance with the established work practices is a violation of the state's rule and the terms of the Consent Decree. The EPA approves the Work Practice Manual with the understanding that any change to the Work Practice Manual requires a revision to the Missouri SIP.

IV. Implications of This Action

This SIP revision will significantly revise the current SIP. The modeling performed in support of the SIP revision indicates that the emissions control strategy will result in attainment of the NAAQS for lead by January 1, 1997.

V. Final Action

Pursuant to sections 110 and 172 of the CAA, this is a direct final action which approves the lead plan submitted by the state of Missouri on August 14, 1996, in response to the designation of the Liberty and Arcadia Townships as nonattainment for lead. This SIP revision meets the requirements of section 110 and Part D of Title I of the CAA and 40 CFR Part 51.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action is effective May 5, 1997 unless, by April 4, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a

subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action is effective May 5, 1997.

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

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5. U.S.C. § 600 et seq., the 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, the EPA may certify that the rule will not have a significant 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 CAA 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, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the 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 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the 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 private sector, of $100 million or more. Under section 205, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action 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. This Federal action approves preexisting requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 16, 1997.

Dennis Grams,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401—7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(95) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(95) Plan revisions were submitted by the Missouri Department of Natural Resources on August 14, 1996, which reduce lead emissions from the Asarco primary lead smelter located within the lead nonattainment area defined by the boundaries of the Liberty and Arcadia Townships located in Iron County, Missouri.

(i) Incorporation by reference.

(A) Rule 10 CSR 10–6.120, Restriction of Emissions of Lead From Primary Lead Smelter—Refinery Installations, except subsection 2(B) and 2(C), and section 4, effective June 30, 1996.

(B) Consent Decree Case Number CV596–98CC, STATE OF MISSOURI ex. rel. Jeremiah W. (Jay) Nixon and the Missouri Department of Natural Resources v. ASARCO, INC., Missouri Lead Division, effective July 30, 1996, with Exhibits A, C, D, E, F, and G.

(ii) Additional material.

(A) Narrative SIP material submitted on August 14, 1996. This submittal includes the emissions inventory and the attainment demonstration.

[FR Doc. 97–5132 Filed 3–4–97; 8:45 am]

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