

responses on the regulations between May and the end of July 2001. Those proposals that would not in fact require statutory amendments have been provided to the Department for consideration.

In acting on these proposals and minor changes from the Department, we intend to advance the Administration's management reform priorities by taking steps that will provide immediate, concrete and measurable results in the near term. In reforming the Federal Government, President Bush has called for an "active, but limited" role for the Federal Government that empowers citizens to make decisions, ensures results through accountability, and promotes innovation through competition. To advance these goals, we intend to place priority on changes that will reduce the expense and difficulty of complying with the current Federal student financial assistance regulations, reduce the operating costs of administering the programs through greater use of e-commerce, simplify processes and improve service, and effect other changes that will improve program management and the integrity of the student financial assistance programs.

#### Structure of the Committees

We anticipate having two negotiating committees. The ultimate goal of negotiated rulemaking is to reach a consensus on proposed regulations through discussion and negotiation among interested and affected parties, including the Department of Education. With this in mind, we will conduct these negotiations within a structure that is designed to meet this goal fairly and efficiently. One negotiating committee will focus on student loan issues while the other will focus on other program issues. Our goal is to establish committees that are large enough to allow significantly affected parties to be represented while keeping the committees' size manageable.

Nominations of individuals from coalitions of individuals and organizations representing the constituencies identified below are strongly encouraged. Moreover, the Department encourages nominations of individuals who are actively involved in administering the Federal student financial assistance programs or whose interests are significantly affected by the regulations. The committees may also create subgroups on particular topics that would involve additional individuals who are not members of the committees. Individuals who are not selected as members of the committees will be able to attend the meetings, have

access to the individuals representing their constituency, and will also be able to participate in informal working groups on various issues between the meetings. The meetings will be open to the public.

The Department has identified the constituencies listed below as having interests that are significantly affected by the subject matter of the negotiated rulemakings. The Department anticipates that individuals representing each of these constituencies will participate as members of one or both of the negotiated rulemaking committees. These constituencies are:

- Students.
- Legal assistance organizations that represent students
- Financial aid administrators at institutions of higher education.
- Business officers and bursars at institutions of higher education and institutional servicers (including collection agencies).
- Institutions of higher education eligible to receive Federal assistance under Title III, Parts A and B and Title V of the HEA, which includes Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, and other institutions with a substantial enrollment of needy students as defined in Title III.
- Two-year public institutions of higher education.
- Four-year public institutions of higher education.
- Private, non-profit institutions of higher education.
- Private, for-profit institutions of higher education.
- Guaranty agencies and guaranty agency servicers (including collection agencies).
- Lenders, secondary markets, and loan servicers.

While an individual selected to represent a constituency may be a representative of a group, institution, or industry participant, the individual will be expected to represent the interests of the entire constituency on the committee and to confer with other individuals and representatives of groups within that constituency.

- Nominations should include:
- The name of the nominee and a description of the interests that he or she represents.
  - Evidence of support from individuals or groups of the constituency that he or she will represent.
  - The nominee's commitment that he or she will actively participate in good

faith in the development of the proposed regulations.

#### Schedule for Negotiations

We will hold a total of three meetings of each committee, all of which will be held at the Department of Education in Washington, DC. The following is the tentative schedule for negotiations for the committees. This schedule is subject to change.

Meeting 1: Week of January 14, 2002

Meeting 2: Week of March 4, 2002

Meeting 3: Week of April 22, 2002

The committee will use electronic mail to exchange documents and discuss proposals between meetings.

The schedule outlined above is expected to allow sufficient time for us to provide the public with a 60-day comment period for the proposed regulations, as well as to provide sufficient time to address any issues raised in the comment period, while meeting the November 1 statutory deadline for publishing student financial assistance regulations.

#### Electronic Access to This Document

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To use the PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: <http://www.access.gpo.gov/nara/index.html>.

**Program Authority:** 20 U.S.C. 1098a.

Dated: December 3, 2001.

**Rod Paige,**

*Secretary of Education.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MO 0134-1134; FRL-7112-9]

#### Approval and Promulgation of Implementation Plans; State of Missouri

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the Doe Run primary lead smelters in Herculaneum and Glover, Missouri (Doe Run-Herculaneum and Doe Run-Glover). The SIP submitted by the state satisfies the applicable requirements under the Clean Air Act (CAA) and demonstrates attainment of the National Ambient Air Quality Standards (NAAQS) for lead for the Doe Run-Herculaneum area. Approval of this revision will ensure that the Federally approved requirements are current and consistent with state regulations and requirements. The revision for Doe Run-Glover merely reflects a change in ownership of the smelter. If EPA receives adverse comments, the comments will be addressed in the subsequent final rule.

**DATES:** Comments must be received on or before January 4, 2002.

**ADDRESSES:** Written comments should be mailed to James F. Hirtz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** James Hirtz at (913) 551-7472, or E-Mail him at hirtz.james@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever, "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

### Background and Submittal Information

- What is a SIP?
- What is the background for Doe Run-Herculaneum?
- What is the Federal Approval process for a SIP?
- What does Federal approval of a state regulation mean to me?
- What is being addressed in this document?

### EPA's Proposed Actions

- Have the requirements for approval of a SIP revision been met under section 172 of the CAA?
- What actions are we proposing today?

### Background and Submittal Information

#### What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP. Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

#### What Is the Background for Doe Run-Herculaneum?

On June 3, 1986, EPA issued a call for a revision to the Missouri SIP in response to violations of the NAAQS for lead in the vicinity of the Doe Run primary lead smelter in Herculaneum, Missouri. Doe Run-Herculaneum is the largest primary lead smelter in the United States with a production capacity of 250,000 tons of refined lead per year. The NAAQS for lead is 1.5 micrograms ( $\mu\text{g}$ ) of lead per cubic meter ( $\text{m}^3$ ) of air averaged over a calendar quarter. The state submitted a SIP revision on September 6, 1990, and EPA granted limited approval for Missouri's 1990 SIP revision on March 6, 1992 (57 FR 8076), pending submission of a supplemental SIP revision meeting the applicable requirements (Part D of Title I of the CAA as amended in 1990).

A revised SIP meeting the part D requirements was subsequently submitted in 1994. The plan established June 30, 1995, as the date by which the Herculaneum area was to have attained compliance with the lead standard. However, the plan did not result in attainment of the standard, and observed lead concentrations in the Herculaneum area continued to show violations of the standard. Therefore, on August 15, 1997, after taking and responding to public comments, EPA published a document in the **Federal Register** finding that the Herculaneum nonattainment area had failed to attain the lead standard by the June 30, 1995, deadline (62 FR 43647).

On January 10, 2001, Missouri submitted a revised SIP to EPA for the Doe Run-Herculaneum area. The SIP revision was found complete on January 12, 2001. The SIP establishes August 14, 2002, as the attainment date for the area and satisfies the part D requirements of the CAA. The revised plan also contains a control strategy to address the violations of the NAAQS which occurred after implementation of the control measures in the 1995 SIP revision. EPA believes that the dispersion and receptor modeling demonstrate that the selected control measures will result in attainment of the NAAQS for lead.

#### What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

#### What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

## What Is Being Addressed in This Document?

### *Doe Run-Herculaneum*

#### 1. Control Strategy

As required by 40 CFR part 51, subpart N, each SIP must contain legally enforceable compliance schedules and provide for compliance as soon as practicable. The Doe Run-Herculaneum SIP calls for full implementation of the control strategy by July 31, 2002. Implementation of the control strategy will result in approximately a 99 percent reduction in fugitive lead emissions from sources that are modeled as contributing significantly to nonattainment in the Herculaneum area.

The SIP contains two regulatory documents: (1) A Missouri Department of Natural Resources (MDNR) lead rule, (10 CSR 10–6.120) adopted by Missouri Air Conservation Commission (MACC) on December 7, 2000, containing emission limits and a Work Practice Manual which specifies operating procedures for specific plant processes at the Doe Run-Herculaneum facility; and (2) an executed Consent Judgment between the state of Missouri, Missouri Department of Natural Resources (MDNR), and MACC with Doe Run-Herculaneum. This judgment sets forth the administrative requirements for the implementation of the control measures at the Doe Run-Herculaneum facility. The plan includes contingency measures to be implemented within 6 months following a violation of the lead standard, after the attainment date of August 14, 2002. The reader is referred to the EPA prepared technical support document for a more complete discussion of the specific control measures to be implemented in the SIP.

#### 2. Attainment Demonstration

Section 192(a) of the CAA requires that SIPs must provide for attainment of the lead NAAQS as expeditiously as practicable but no later than five years from the date of an area's nonattainment designation. This five-year period also applies as the new attainment date following a finding of failure to attain the lead NAAQS. (See sections 179(d)(3), 172(a)(d), and 192(a).) MDNR submitted a revised SIP that met the part D requirements in 1994, and which established June 30, 1995, as the new attainment date for the Herculaneum area. Violations of the NAAQS for lead were still observed and EPA published a notice in the **Federal Register** on August 15, 1997, finding that the Herculaneum area failed to attain the lead standard. The determination became effective on September 14, 1997.

The SIP submitted established an attainment date of August 14, 2002, which is within the statutory five-year period. EPA has determined that the state's attainment date is as expeditious as practicable.

In support of the revision to the Doe Run-Herculaneum lead SIP, a dispersion and receptor modeling methodology was developed to predict ambient lead concentrations. The dispersion model that was chosen was the steady state EPA Gaussian plume Industrial Source Complex Short-Term model (ISCST3, version 99155). The receptor modeling that was chosen was Chemical Mass Balance (CMB) receptor model version 7. The CMB model was used to qualitatively evaluate the dispersion model to increase confidence in the modeling results and the control strategy.

The 2000 SIP revision emission inventory relies heavily on source testing and the utilization of the CMB receptor model to provide probable source contribution estimates (SCE) for the major source categories. These categories were defined by common chemistry of the source's particulate emissions. The model is a "best fit" statistical model that estimates the most probable source contribution by comparing the finger prints, or characteristics, of the emission sources with the measured ambient values.

Actual value dispersion modeling was conducted in order to (1) determine the model's ability to replicate actual lead concentrations monitored during the study, and thereby serve as a basis for developing future control strategies, and (2) provide a set of SCEs for reconciliation with those obtained from the CMB receptor model. The actual value modeling was conducted with the actual emission rates, stack parameters, and local meteorological data collected during the study period. The background value of 0.13  $\mu\text{g}/\text{m}^3$  was added to the predicted air dispersion concentrations. The maximum predicted concentration by the ISCST3 model, including background, is 1.456  $\mu\text{g}/\text{m}^3$ , which is below the NAAQS for lead at 1.5  $\mu\text{g}/\text{m}^3$ .

#### 3. 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.

Development of a comprehensive and accurate emissions inventory was necessary to support modeling and control strategy efforts. An hourly

emissions inventory was developed in order to provide input to the ISCST3 dispersion model. These rates were estimated using equations developed from source testing at the facility or from published emission factors.

Speciated emissions data was necessary to provide input to the CMB receptor model. Where possible, these data were obtained during source sampling efforts to identify fugitive emission sources located at the facility. In other cases, it was obtained from grab samples collected at various locations within the facility or from representative sources.

The state submittal provides a historical summary of the air quality from 1982 through the second calendar quarter of 2000. The average quarterly ambient lead concentrations at several monitors continue to remain above the NAAQS. The reader is referred to the EPA prepared technical support document for a summary of ambient monitoring data collected for the Doe Run Herculaneum site.

#### 4. Reasonably Available Control Measures (RACM) Including Reasonable Available Control Technology (RACT)

The submittal must contain provisions to assure that RACM (including RACT) are implemented (see section 172(c)(1) of the CAA). (See 57 FR 13498 and 57 FR 13560 dated April 1, 1992, for EPA's interpretation of the RACM and RACT requirements.) Section 172(c)(1) of the CAA requires the implementation of all RACM which include emissions reduction through the adoption of RACT as expeditiously as practicable for all areas in nonattainment to attain the national primary ambient air quality standard. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available to demonstrate attainment for the area. EPA believes that measures which do not advance the date for attainment need not be implemented.

In the previous SIP (1993), Doe Run-Herculaneum prepared a RACT/RACM evaluation, and the plant has not changed significantly nor is it expected to significantly increase its emissions through production increases. All RACT/RACM measures were implemented as part of the previous SIP. In addition, the requirements under 40 CFR part 63, subpart TTT, the Federal Maximum Achievable Control Technology (MACT) Standards for Primary Lead Smelters, now apply for Doe Run-Herculaneum. This MACT required the preparation and use of a

standard operating procedures manual for all baghouses used to control process, process fugitive, or fugitive dust emission sources for lead. We note that Missouri is currently in the process of addressing a number of issues relating to the delivery of lead concentrate to the Doe Run-Herculaneum facility for processing, and is considering measures to decrease or eliminate lead fugitive emissions from truck hauling. Missouri has analyzed the air quality impact of the delivery system (primarily involving the transport and unloading of concentrate from trucks) and has determined that the air quality impacts of fugitive emissions from this process are minimal. Missouri also reran the attainment demonstration modeling to determine the impact, if any, due to the contribution of fugitive emissions from the truck hauling operation. Missouri concluded that the air quality impact was insignificant, and did not impact the attainment demonstration. Missouri continues to address other environmental concerns relating to truck hauling, primarily relating to soil contamination. However, based on the state's conclusions that the air quality impacts are negligible, and therefore further air pollution controls would not expedite attainment, EPA does not believe that further consideration of the emissions associated with truck hauling is necessary for purposes of the CAA requirements regarding RACT/RACM. In light of the above MACT requirements as well as enforceable limitations for fugitive emissions and the installation of process controls imposed by the state rule and Consent Judgement referenced previously, it would be unnecessary for EPA to have Doe Run-Herculaneum reevaluated RACT/RACM requirements. An assessment of these control measures with dispersion and receptor modeling indicate no additional measures will expedite attainment.

#### 5. Reasonable Further Progress (RFP)

Section 172(c)(2) of the CAA requires that the SIP must provide for RFP as defined in section 171(1) of the CAA. Section 171(1) defines RFP as annual incremental reductions in emissions of the relevant air pollutants as are required by Part D, or may reasonably be required by EPA to ensure attainment of the applicable NAAQS by the applicable date. Part D does not further require specific RFP measures for lead.

Doe Run-Herculaneum has demonstrated RFP as required by section 172(c)(2) of the CAA. For example, Doe Run-Herculaneum is under a compliance schedule, required by regulation and by the Consent

Judgement, for implementing (1) installation of emission control equipment; (2) enclosure and ventilation projects to reduce lead emissions; (3) process throughput restrictions and hours of operation limitation; (4) work practice standards; and (5) contingency measures. EPA does not believe that additional incremental reductions are needed to meet the RFP requirement, since all controls to reduce lead emissions are to be implemented within the year, and must be fully implemented by July 31, 2002. The Work Practice Manual establishes process limits and control requirements for the plant and provides a guide to plant operators on how to minimize emissions from certain plant operations. This manual was incorporated into the lead rule (10 CSR 10-6.120), and adopted by the MACC on December 7, 2000, with the effective date of the rule being March 30, 2001.

#### 6. New Source Review (NSR)

Part D of Title I of the CAA requires that the submittal include a permit program for the construction and operation of new and modified major stationary sources. Missouri rule 10 CSSR 10-6.020 identifies the current specific descriptions of the lead nonattainment areas in Missouri, including the area in which the Doe Run facility is located. Rule 10 CSR 10-6.020 is utilized in conjunction with Missouri rule 10 CSR 10-6.060 which requires a permit for construction of, or major modification to, an installation with potential to annually emit one hundred (100) tons or more of a nonattainment pollutant, or a permit for a modification at a major source with potential to annually emit one thousand two hundred (1,200) pounds of lead. These rules have previously been approved by EPA as part of the SIP.

#### 7. Contingency Measures

Pursuant to section 172(c)(9) of the CAA, contingency measures have been prepared that can be implemented if EPA determines that the nonattainment area has failed to make reasonable further progress or fails to attain the NAAQS by the statutory deadline.

The state submission specifies an attainment date for the Herculaneum area of August 14, 2002, as set in the state SIP. If the area has a violation of the NAAQS during this quarter (July 1 to September 30, 2002), or any quarter thereafter, the contingency controls will be implemented after Doe Run-Herculaneum is notified by EPA and/or MDNR. Contingency measures which include enclosures and installing additional process controls will be

implemented within 6 months following the calendar quarter in which the violation occurred.

In the event there is a second violation of the quarterly lead standard of  $1.5 \mu\text{m}^3$ , after implementation of the initial contingency measures, Doe Run-Herculaneum has also agreed to curtail production utilizing one of three emission and/or production curtailing methods: Method (1), reduce main non-stack emissions by 20 percent; Method (2), limit production to 50,000 short tons/quarter of refined lead produced; and, Method (3), adopt Method 1 and limit production of refined lead production based upon the following formula:

$$P = 50,000 + (500 \times (1 - A/E) \times 100)$$

P = refined lead production in short tons/quarter

A = The aggregate actual quarterly emissions from all fugitive and stack lead emission sources at the facility in tons; except from the main stack (30001)

E = the aggregate estimated quarterly emissions from all fugitive and stack lead emission sources at the facility in tons; except from the main stack (30001); where A/E can't be less than .8 or more than 1.0.

Doe Run-Herculaneum will also maintain current bids on the materials necessary to implement each contingency measure. Doe Run-Herculaneum also may substitute any such controls if Doe Run-Herculaneum can demonstrate to MDNR and EPA that the alternative control measures would equal or exceed controls in the current SIP. Changes to these contingency measures would require a public hearing at the state level, and EPA approval as a formal SIP revision. These measures will help ensure compliance with the lead NAAQS and meet the requirements of section 172(c)(9) of the CAA.

#### 8. Enforceability

All measures and other elements in the SIP must be enforceable by the state and EPA (see sections 172(c)(6), and 110(a)(2)(A) of the CAA, and 57 FR 13556). The state submittal includes a Consent Judgement and the lead rule (10 CSR 10-6.120). The lead rule also incorporates a Work Practice Manual, which specifies operating procedures for specific plant processes.

The state submittal includes a Consent Judgment entered into by the state and the Company which contains all of the control and contingency measures with enforceable dates for implementation. Control measures employed by Doe Run-Herculaneum

involve engineering modifications to the facility which include: Enclosure projects, improved ventilation systems being routed to stacks, improved material handling conveyors, and installation of air pollution control equipment (baghouses). The Company expects to spend approximately \$8,500,000 on these projects to control and reduce fugitive air emissions of lead that are affecting the ambient air standard for lead in the Herculaneum area. These control measures will be implemented by July 31, 2002.

#### *Doe Run-Glover*

The Missouri SIP submission contains a state rule and a Consent Decree which pertain to the Doe Run Company's Glover lead smelter in Iron County, Missouri. Until 1998, this facility was owned by the ASARCO Company. Due to the change in ownership, the state found it necessary to revise a state rule and the Consent Decree which referred to the facility by ownership name.

The state rule, 10 CSR 10-6.120, "Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations," was revised in paragraph (2)(A) to change the owner name from ASARCO to Doe Run Company. No other revisions pertaining to this facility were made in this rule revision. This revision was adopted by the Missouri Air Conservation Commission on December 7, 2000, and became effective in the state on March 30, 2001.

There was also a SIP-approved Consent Decree for this facility with ASARCO. This Consent Decree was also revised to reflect the change in ownership and to update certain provisions. These changes included: (1) Recognizing that the required capital improvements made by ASARCO had indeed already been made; (2) adding language that will terminate the Consent Decree upon redesignation of the Glover area attainment with the understanding that a new enforceable agreement will be in place at that time to ensure continued operation of the controls. This is acceptable to EPA since a maintenance plan would be required prior to any redesignation of the area to attainment, and the maintenance plan would contain all requirements, including enforceable requirements of any document which replaces the Consent Decree, which are necessary to ensure continued attainment of the area for the lead NAAQS; and (3) provision was added which allows the Consent Decree to be modified if both parties agree, or if there is a change in ownership. These provisions were added to avoid having to go back to court to amend the Consent Decree.

#### **EPA's Proposed Actions**

*Have the Requirements for Approval of a SIP Revision Been Met Under Section 172 of the CAA?*

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations and part D and is consistent with the guidance set forth in the "State Implementation Plans for Lead Nonattainment Areas; Addendum to the General Preamble for the Implementation of the Clean Air Act Amendments of 1990" (58 FR 67748).

#### *What Actions Are We Proposing Today?*

EPA is proposing to find that the Doe Run-Herculaneum nonattainment area SIP submitted by Missouri on January 10, 2001, meets the requirements of section 110, and part D of the CAA and 40 CFR part 51. EPA is also proposing to approve the SIP submission which relates to the Doe Run-Glover facility which is described above.

#### **Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or

more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 23, 2001.

**Nat Scurry,**

*Acting Regional Administration, Region 7.*

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