

retail outlets about material that it has determined is not sexually explicit. Purchasing agents and managers of retail outlets shall continue to follow their usual purchasing and stocking practices unless instructed otherwise by the Board.

(f) material which has been determined by the Board to be sexually explicit may be submitted for reconsideration every 5 years. If substantive changes in the publication standards occur earlier, the purchasing agent or manager of a retail outlet under DoD jurisdiction may request a review.

§ 235.7 Information requirements.

The Chair, Resale Activities Board of Review, shall submit to the PDUSD (P&R) an annual report documenting the activities, decisions, and membership of the Board. Negative reports are required. The annual report shall be due on October 1st of each year. The annual report required by this part is exempt from licensing. Licensing requirements are contained in DoD 8910.1–M.²

Dated: December 13, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–24160 Filed 12–16–05; 8:45 am]

BILLING CODE 5001–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2005–MO–0007; FRL–8009–6]

Finding of Substantial Inadequacy of Implementation Plan; Call for Missouri State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to our authority in the Clean Air Act to call for plan revisions, EPA is proposing to find that the Missouri State Implementation Plan for lead is substantially inadequate to attain or maintain the National Ambient Air Quality Standard for lead in the portion of Jefferson County within the city limits of Herculaneum, Missouri. The specific State Implementation Plan deficiencies, which form the basis for this proposed finding, are described below. If EPA finalizes this proposed finding of substantial inadequacy, Missouri will be required to revise its State Implementation Plan to correct these deficiencies by a date which will

be specified in the final rule. If the state fails to submit a revised State Implementation Plan by the deadline, it will be subject to sanctions under the provisions of the Clean Air Act.

DATES: Comments must be received on or before January 18, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2005–MO–0007, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. E-mail: *algoe-eakin.amy@epa.gov*.
3. Mail: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. Hand Delivery or Courier. Deliver your comments to: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2005–MO–0007. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the

www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942 or by e-mail at *algoe-eakin.amy@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:

- What is the background for Doe Run-Herculaneum?
- What is the basis for the proposed finding? How can Missouri correct the inadequacy and when must the correction be submitted?
- What action is EPA proposing?

What is the background for Doe Run-Herculaneum?

EPA established the National Ambient Air Quality Standard (NAAQS) for lead on October 5, 1978 (43 FR 46246). The standard for lead is set at a level of 1.5 micrograms (µg) of lead per cubic meter (m³) of air, averaged over a calendar quarter.

During the 1980s and 1990s, Missouri submitted and EPA approved a number of SIP revisions for lead to address ambient lead problems in various areas of the state. One such area was in Herculaneum, Missouri, which is the site of the Doe Run primary lead smelter. Doe Run-Herculaneum is the largest and only currently operating primary lead smelter in the United States.

The city of Herculaneum was designated nonattainment for lead in 1991 (40 CFR 81.326), pursuant to new authorities provided by the Clean Air Act Amendments of 1990 (CAA or Act), and the state became subject to new State Implementation Plan (SIP) requirements in part D, Title I of the Act, added by the 1990 amendments. A revised SIP meeting the part D requirements was subsequently

² See footnote 1 Sec. 235.1(b).

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 notice 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 established August 14, 2002, as the attainment date for the area and satisfied the nonattainment area requirements in the CAA. EPA approved the 2001 SIP on May 16, 2002 (67 FR 18497). The SIP contained control measures to reduce lead emissions to attain the standard, and contingency measures, as required by section 172(c)(9) of the Act, to achieve emission reductions in the event of future violations. Control measures included: (1) The use of a standard operating procedures manual for all baghouses used to control process, process fugitive, or fugitive dust emission sources for lead; (2) installation of emission control equipment; (3) enclosure and ventilation projects to reduce lead emissions; (4) process throughput restrictions and hours of operation limitation; and (5) work practice standards. In addition, the plan outlined contingency measures that would be implemented in the event that there were future violations of the lead standard in Herculaneum. The first contingency measure included enclosures and installation of additional process controls. This measure was to be implemented within six months following the calendar quarter in which the violation occurred. If there was a second violation of the quarterly lead standard, after the implementation of the initial contingency measure, Doe Run-Herculaneum would 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; where A/E cannot be less than .8 or more than 1.0.

Since the April 16, 2002, **Federal Register** rule, which approved the state implementation plan revisions, Doe Run-Herculaneum has implemented both of these contingency measures. The first contingency measure was implemented by Doe Run, prior to any actual violations of the lead NAAQS. Specifically, Doe Run completed the following measures to address the first contingency measure requirement. Doe Run completed modification to the cooler baghouse dilution air intake on December 31, 2002, completed modification to roof monitor in the Sinter Plant Mixing Room with passive filters on October 31, 2003, completed enclosure of north end of the railcar unloader building to prevent wind blow-through fugitive emissions on April 31, 2004, completed enclosure of the north end number 1 trestle and bin storage area on July 31, 2002, and completed modification of inlet ducting to number 3 baghouse by removing number 12 fan restriction from ducting on December 31, 2001. The second contingency measure was implemented as a result of the second violation of the lead standard in the second calendar quarter of 2005. The option selected by Doe Run-Herculaneum, under the second contingency measure, is to limit production to 50,000 tons per quarter of finished lead.

During the first three calendar quarters of 2005, Doe Run's production was 42,289 tons of finished lead, 29,757 tons of finished lead, and 40,619 tons of finished lead, respectively. This production is below the production limit of 50,000 tons per quarter of finished lead, which was required by the second contingency measure.

What is the basis for the proposed finding?

After the August 2002 attainment date, the Herculaneum area monitored attainment of the lead standard for 10 consecutive calendar quarters. However, air quality monitors in the area reported exceedances of the standard in the first three calendar quarters in 2005 even though Doe Run has implemented all

control measures contained in the 2001 SIP revision. Doe Run has also implemented all of the contingency measures required by the current SIP.

Doe Run and the Missouri Department of Natural Resources (MDNR) operate co-located monitors at the Broad Street monitoring location (in addition to other lead monitoring locations in the nonattainment area) and both sample on a daily basis. In the first calendar quarter of 2005, Doe Run's monitor recorded a quarterly value of 1.928 $\mu\text{g}/\text{m}^3$, and MDNR's monitor recorded a quarterly value of 1.877 $\mu\text{g}/\text{m}^3$. In the second calendar quarter of 2005, Doe Run's monitor recorded a quarterly value of 1.615 $\mu\text{g}/\text{m}^3$. In the third calendar quarter of 2005, MDNR's monitor recorded a violation of 1.60 $\mu\text{g}/\text{m}^3$. These monitored values have been quality assured by MDNR and properly entered into the Air Quality System, EPA's repository for ambient air monitoring data. The values for each of the three quarters exceed the 1.5 $\mu\text{g}/\text{m}^3$ lead standard, and therefore constitute violations of the standard for each quarter. Although the violation recorded in the first calendar quarter of 2005 is the first violation of the lead standard in Herculaneum after ten consecutive calendar quarters of "clean" monitoring data, the Broad Street monitors, in 2003, experienced quarterly monitoring values that were close to the standard. In fact, in the first calendar quarter of 2003, both the Doe Run and the MDNR monitors at Broad Street, recorded values of 1.464 $\mu\text{g}/\text{m}^3$ and 1.491 $\mu\text{g}/\text{m}^3$, respectively.

As such, because the violations recorded in 2005 have occurred despite implementation of all the control measures contained in the SIP, including all contingency measures that were to address the violations, EPA believes the SIP is substantially inadequate to attain and maintain the NAAQS for lead.

How can Missouri correct the inadequacy and when must the correction be submitted?

Section 172(d) of the CAA provides that a plan revision required by a SIP call under section 110(k)(5) must correct the deficiencies specified by EPA, and must meet all other applicable plan requirements under section 110 and Part D of Title I of the CAA. EPA believes that MDNR must submit several specific plan elements to EPA in order to correct the inadequacy of the SIP. These specific elements are: (1) A revised emissions inventory; (2) a modeling demonstration showing what reductions will be needed to bring the area back into attainment of the lead NAAQS; (3)

adopted measures to achieve reductions determined necessary by the attainment demonstration, with enforceable schedules for implementing the measures as expeditiously as practicable; and (4) contingency measures meeting the requirements of Section 172(c)(9) of the CAA.

Section 110(k)(5) of the CAA provides that after EPA makes a finding that a plan is substantially inadequate, it may establish a reasonable deadline for correcting the deficiencies, but the date cannot be later than 18 months after the state is notified of the finding.

Consistent with this provision, we propose to require the submittal within twelve months following any final finding of substantial inadequacy. We propose that the twelve-month period would begin on the date of signature of the final rulemaking. The state and company officials have been aware of the need for a plan revision for several months. The state issued notices to the Doe Run Company on April 22, 2005, September 8, 2005, and November 9, 2005. As a result of these notices, the state and company officials have held informal discussions to develop new control measures. Thus, based on the fact that discussions have already begun on how to correct the violations and because of the availability of the technical information from past SIP actions regarding emissions controls and because lead is a significant public health concern, we believe that twelve months is a reasonable time period for submission of the revisions. EPA seeks comments on the proposed deadline and on whether an alternate deadline should be established.

Sections 110(k)(5) and 172(d) also provide that EPA may adjust any deadlines with respect to SIPs that are applicable under the Act, except that the attainment date may not be adjusted unless it has elapsed. For lead, the attainment date is as expeditious as practicable, but no later than five years after the area is designated nonattainment, or, if applicable, no later than five years after the date EPA notifies the state that the area has failed to attain the standard under section 179(c). See section 192(a) and sections 179(d)(3) and 172(a)(2). Neither of these deadlines is applicable to a finding under section 110(k)(5). For Herculaneum, the attainment date was August 2002 (five years after the state was notified that the area failed to attain). Because the attainment date has elapsed, and the area is currently not attaining the standard, the attainment date must be adjusted, pursuant to section 110(k)(5) and section 172(d), and the state must provide for

attainment as expeditiously as practicable. In addition, because there is considerable technical information available from past SIP measures, and discussions between the Doe Run Company and MDNR have already begun on control measures which can be implemented in the near term, and the significance of lead as a public health concern, we propose to establish an attainment date which is two years from the date of signature of a final rulemaking. We also believe that the attainment date should not be adjusted to provide more than two years because the area is well beyond the 2002 attainment date. We request comment on whether an alternative attainment date should be established.

What action is EPA proposing?

EPA proposes the following actions relating to the Missouri SIP for lead for the Herculaneum nonattainment area:

1. Find that the SIP is substantially inadequate to attain and maintain the NAAQS for lead in the area;
2. Require that Missouri revise the SIP to meet all of the applicable requirements of section 110 and part D of Title I of the Act with respect to lead in the nonattainment area;
3. Require the state to submit revisions to the SIP within twelve months of the final rulemaking;
4. Require that the SIP provide for attainment of the lead NAAQS in the Herculaneum nonattainment area as expeditiously as practicable, but no later than two years after issuance of the final rule.

We are soliciting comments on these proposed actions. Final rulemaking will occur after consideration of any comments.

Statutory and Executive Order Reviews

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). The Administrator certifies that this proposed action 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.*).

EPA has determined that this proposed action 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 action will require the state of Missouri to revise laws and regulations to meet the NAAQS for lead. This requirement, even if considered a Federal mandate, would not result in aggregate costs over \$100 million to either the state or local districts. It is unclear whether a requirement to submit a SIP revision would constitute a Federal mandate. The obligation for a state to revise its SIP that arises out of sections 110(a) and 110(k)(5) of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 658 (a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658 (5)(a)(i)(I)).

This proposed action 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 specified 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 government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it is in keeping with the relationship and the distribution of power and responsibilities between EPA and the states as established by the CAA. This proposed SIP call is required by the CAA because the current SIP is inadequate to attain the lead NAAQS. Missouri's direct compliance costs will not be substantial because the proposed SIP call requires Missouri to submit only those revisions necessary to address the SIP deficiency and applicable CAA requirements.

This proposed action 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.

Section 12 of the National Technology Transfer and Advancement Act of 1995

requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with the National Technology Transfer and Advancement Act, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. In making a finding of a SIP deficiency, EPA’s role is to review existing information against previously established standards (in this case, what constitutes a violation of the lead standard). In this context, there is no opportunity to use VCS. 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 action 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, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 9, 2005.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 05–24201 Filed 12–16–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–8009–4]

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to the national emissions standards for hazardous air pollutants (NESHAP) for hazardous waste combustors which were issued October 12, 2005, under section 112 of the Clean Air Act. In that rule, we inadvertently included three new or revised bag leak detection system requirements for Phase I sources—incinerators, cement kilns, and lightweight aggregate kilns—among implementation requirements taking effect on December 12, 2005, rather than, as intended, after three years when

the sources begin complying with the revised emission standards under the NESHAP for hazardous waste combustors. We intended to establish the compliance date for these provisions three years after promulgation—October 14, 2008—because the provisions establish more stringent requirements for Phase I sources, which cannot readily be complied with on short notice, and because these provisions are inextricably tied to the revised emissions standards.

DATES: *Comments.* Written comments must be received by January 18, 2006, unless a public hearing is requested by December 29, 2005. If a hearing is requested, written comments must be received by February 2, 2006. *Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by December 29, 2005, we will hold a public hearing on January 3, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0022, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Email: a-and-r-docket@epa.gov and behan.frank@epa.gov.

- Fax: 202–566–1741.

- Mail: U.S. Postal Service, send comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2004–0022, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

- Hand Delivery: In person or by courier, deliver comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2004–0022, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0022. The EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes

information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404–02), Attention Docket ID No. EPA–HQ–OAR–2004–0022, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the HQ EPA Docket Center, Docket ID No. EPA–HQ–OAR–2004–0022, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The HQ EPA Docket Center telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public