

Number (757) 668-5555 or (757) 484-8192.

(2) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF-FM 13 and 16.

(d) Effective date: This regulation is effective from 9 p.m. to 10 p.m. on June 30, 2006.

Dated: April 4, 2006.

**Robert R. O'Brien, Jr.,**

*Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.*

[FR Doc. E6-5584 Filed 4-13-06; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R07-OAR-2006-0287; FRL-8158-6]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) submission by the state of Missouri which revises the Construction Permits Required rule, and we are taking no action on the revisions made to the Emissions Banking and Trading rule. We propose to approve most of the revisions to the Construction Permits Required rule because the revisions incorporate, by reference, the Federal New Source Review reforms, published in the **Federal Register** on December 31, 2002. In a February 28, 2006, letter from the Missouri Department of Natural Resources, Missouri requested EPA not act on certain rule references. Specifically, Missouri requested EPA not act on references to Clean Unit Exemptions, Pollution Control Projects, and the record keeping provisions for the actual-to-projected-actual emissions projections. Missouri requests no action on these provisions because of the June 24, 2005, United States Court of Appeals for the District of Columbia Circuit's decision, which vacated the Clean Unit Exemption and Pollution Control Project provisions and remanded back to EPA the recordkeeping provisions for the actual-to-projected-actual emissions projections standard for when a source must keep certain project related records.

**DATES:** Comments must be received on or before May 15, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-

OAR-2006-0287, by one of the following methods:

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

2. E-mail: [algoe-eakin.amy@epa.gov](mailto: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-2006-0287. 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 <http://www.regulations.gov> or e-mail. The <http://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 <http://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 <http://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 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](mailto: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 Federal Approval Process for a SIP?

What Is Being Addressed in This Document?

What Is the Background for EPA's New Source Review (NSR) Reform Rule?

What Is Missouri's NSR Reform Rule and What Action Has Missouri Requested on the Rule?

What Is EPA's Proposed Action on Missouri's Definition of "Baseline Area"?

Have the Requirements for Approval of a SIP Revision Been Met?

What Action Is EPA Proposing?

#### 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 Clean Air Act (CAA or Act) 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 Is Being Addressed in This Document?

We are proposing to approve the Missouri Department of Natural Resources’ (MDNR) request to include, as a revision to Missouri’s SIP, amendments to rule 10 CSR 10–6.060, Construction Permits Required, and we are not acting on the revisions to 10 CSR 10–6.410, Emissions Banking and Trading rule. These rules were adopted by the Missouri Air Conservation Commission on August 26, 2004, and became effective under state law on December 30, 2004. The rules were submitted to EPA on February 25, 2005, and the submission included comments on the rules made during the state’s adoption process, the state’s response to comments and other information necessary to meet EPA’s completeness criteria. For additional information on completeness criteria, the reader should refer to 40 CFR part 51, appendix V.

#### What Is the Background for EPA’s New Source Review (NSR) Reform Rule?

The 2002 NSR Reform rules are part of EPA’s implementation of Parts C and D of title I of the CAA, 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, is the Prevention of Significant Deterioration (PSD) program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS), also known as, “attainment areas” and in areas for which there is insufficient information to determine whether the area meets the NAAQS, also known as, “unclassifiable” areas. Part D of Title I of the CAA, 42 U.S.C. 7501–7515, is the nonattainment New Source Review (NNSR) program, which applies in areas that are not in attainment of the NAAQS, also known as, “nonattainment areas.” Collectively, the PSD and NNSR programs are referred to as the “New Source Review” or NSR programs. EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21 52.24 and part 51, appendix S. The Missouri rules which are the subject of this proposal address the Part C requirements for attainment and unclassifiable areas.

The CAA NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning

and air pollution control technology program requirements. Briefly, section 109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval, an SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied, to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decisions.

The 2002 NSR Reform rules made changes to five areas of the NSR programs. In summary, the 2002 rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plantwide applicability limits (PALs) to avoid having a significant emission increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of physical change or change in the method of operation.

After the 2002 NSR Reform rules were finalized and effective, various petitioners challenged numerous aspects of the 2002 NSR Reform rules, along with portions of EPA’s 1980 NSR rules (45 FR 5276 August 7, 1980). On June 24, 2005, the District of Columbia Court of Appeals issued a decision on the challenges to the 2002 NSR Reform Rules. *New York v. United States*, 413 F.3d (DC Cir. 2005). In summary, the Court of Appeals for the District of Columbia vacated portions of the rules pertaining to clean units and pollution control projects, remanded a portion of the rules regarding exemption from recordkeeping, e.g., 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and let stand the other provisions included as part of the 2002 NSR Reform rules. EPA has not

yet responded to the Court’s remand regarding recordkeeping provisions.

#### What Is Missouri’s NSR Reform Rule and What Action Has Missouri Requested on the Rule?

In this action, we propose approval of revisions to Missouri rule, 10 CSR 10–6.060, Construction Permits Required, into the SIP. This rule incorporates by reference the Federal PSD program in 40 CFR 52.21, including the 2002 NSR Reform rules described above.

In relevant parts, the Missouri rule excludes the public participation requirements in § 52.21(q), in favor of the Missouri public participation process, previously approved in the SIP, in 10 CSR 10–6.060 section (12)(B). The Missouri rule retains a number of tables and appendices which apply to the State’s minor NSR program as well as the PSD program. These include provisions on innovative control technologies (Appendix E), exclusion from increment consumption (Appendix G), and air quality models (Appendix F). To the extent that these provisions or similar provisions are addressed by § 52.21, the provisions of § 52.21 supersede the state provisions for purposes of the PSD program. Other provisions, such as the permit fee provisions in Appendix (A) of 10 CSR 10–6.060, which are not addressed by § 52.21, remain in effect.

Missouri’s rule was adopted prior to the *New York* decision described above so it included the vacated and remanded provisions of EPA’s rule. However, Missouri requested in a February 28, 2006, letter that EPA not act on the PCP, Clean Unit Exemption provisions, and the reasonable possibility provision in the recordkeeping provisions for the actual-to-projected-actual emissions projections applicability test. Missouri has also clarified that they commit to following EPA’s definition of ‘replacement unit’ and will follow EPA’s clarification of how baseline emissions for PALs will be calculated (these clarifications to the EPA’s rules were promulgated after the incorporation by reference date in the Missouri rule). When Missouri updates the Construction Permits Required rule, 10 CSR 10–6.060, Missouri commits to incorporating EPA’s definition of replacement unit by reference and will include EPA’s clarification of how baseline emissions for PALs are to be calculated.

We are taking no action on these provisions and on revisions to rule 10 CSR 6.410, Emissions Banking and Trading, because the only revision to this rule was a change to prevent

sources from generating Early Reduction Credits from Pollution Control Projects (PCPs) that take advantage of the PCP exclusion provisions in EPA's NSR Reform rules. Since the PCP exclusion was vacated and we are not acting on it, as it relates to Missouri rule 10 CSR 10-6.060, we are not acting upon the revision to Missouri rule 10 CSR 10-6.410.

The remaining rule revisions being proposed are approvable because Missouri incorporated the December 31, 2002, New Source Review reform regulation found in 40 CFR 52.21 by reference. We also note that Missouri clarified section (9)(C)1 of the Construction Permits Required rule. Section 9 outlines Hazardous Air Pollutant permit requirements which are exempt from hazardous air pollutant permit requirements unless they are listed on the source category list established in accordance with section 112(c) of the CAA. We are taking no action on including revisions to Section 9, because Section 9 addresses hazardous air pollutants under Section 112 and is not presently in the SIP.

#### **What Is EPA's Proposed Action on Missouri's Definition of "Baseline Area"?**

Missouri's initial NSR reform submission, which largely incorporates 40 CFR 52.21 by reference, retained the state's own definition of "baseline area" for purposes of section (1)(A)1. Additionally, Missouri requested in the February 28, 2006, letter that we approve the Construction Permits Required rule and retain Missouri's definition of baseline area in section (1)(A)1. Missouri acknowledges that the current Construction Permits Required rule does not contain the statement, "designated as attainment or classifiable under section 107(d)(1)(D) or (E) of the Act consistent with the Federal definition of "baseline area." We had previously approved this definition of baseline area with the specification that Missouri redesignate the areas of significant impact as the baseline area (proposed rule, 47 FR 7696, and final rule, 47 FR 26833). Missouri must make area-specific designation requests and EPA must approve the redesignation of the area before Missouri could establish new baseline areas under its rule. Missouri commits to revising the "baseline area" definition to clarify it will redesignate the areas of significant impact as baseline areas according to section 107(d)(1)(D) or (E) of the CAA. Missouri will submit these redesignations to EPA for formal approval before the new baseline area can be used for PSD permitting

purposes. While Missouri works to revise the rule, Missouri commits to implementing the baseline area definition consistent with all Federal regulations and will ensure that the air quality increment analysis for permit applications complies with all Federal and state requirements.

#### **Have the Requirements for Approval of an SIP Revision Been Met?**

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 below and in more detail in the technical support document that is part of this document, EPA believes that the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

#### **What Action Is EPA Proposing?**

We propose to approve revisions to Missouri rule, 10 CSR 10-6.060, Construction Permits Required. Per Missouri's request, we are taking no action on Clean Unit Exemptions, Pollution Control Projects, and the record keeping provisions for the actual-to-projected-actual emissions projections. We are not acting on revisions to Missouri rule 10 CSR 10-6.410, Emissions Banking and Trading, because the only revision made to the rule involves Pollution Control Projects.

#### **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). 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 the proposed approvals in 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.*). The proposed partial disapproval will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's partial disapproval of the submittal does not

impose a new Federal requirement. Therefore, the Administrator certifies that this proposed disapproval action does not have a significant 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 (Pub. L. 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 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). 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 an SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an SIP submission, to use VCS in place of an 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 7, 2006.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

[FR Doc. 06-3593 Filed 4-13-06; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 271**

[FRL-8158-3]

**Washington: Final Authorization of State Hazardous Waste Management Program Revisions**

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

**ACTION:** Proposed rule.

**SUMMARY:** During a review of Washington's regulations, EPA identified a variety of State-initiated changes to Washington's hazardous waste program under the Resource Conservation and Recovery Act, as amended, (RCRA) for which the State had not previously sought authorization. EPA proposes to authorize the State for the program changes. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the revisions by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we receive written comments that oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this authorization, EPA will publish a document in the **Federal Register** withdrawing the immediate final rule before it takes effect. EPA will then address public comments in a later final rule based on this proposal. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of the

immediate final rule. However, the authorization of program changes that are not opposed by any comments will become effective on the date established in the immediate final rule. A **Federal Register** withdrawal document will specify which part of the authorization will become effective and which part is being withdrawn. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time. EPA is also proposing to make corrections to the table included in the authorization **Federal Register** document for Washington published on October 12, 1999.

**DATES:** Send your written comments by May 15, 2006.

**ADDRESSES:** Submit your comments, identified by EPA-R10-RCRA-2006-0087 by one of the following methods:

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

2. E-mail: [kocourek.nina@epamail.epa.gov](mailto:kocourek.nina@epamail.epa.gov).

3. Fax: (206) 553-8509.  
4. Mail: Nina Kocourek, U.S. EPA, Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Mail Stop AWTB122, Seattle, Washington 98101.

**Instructions:** Direct your comments to EPA-10-RCRA-2006-0087. EPA's policy is that all comments received will be included in the public file 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 <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system which means that 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 <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file 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 and 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 <http://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 during normal business hours at the U.S. Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington, 98101. This Docket Facility is open to the public from 9 to 11:30 a.m. and from 1 to 4 p.m. Monday through Friday, excluding legal holidays. The library telephone number is (206) 553-1289. Additionally, hard copies are available from the Washington Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, contact, Patricia Hervieux at (360) 407-6756.

**FOR FURTHER INFORMATION CONTACT:**

Nina Kocourek, U.S. EPA, Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Mail Stop AWT-122, Seattle, Washington 9810, phone number: (206) 553-6502, e-mail: [kocourek.nina@epa.gov](mailto:kocourek.nina@epa.gov); or Patricia Hervieux, Washington Department of Ecology, 300 Desmond Drive, Lacey, WA 98503; phone number: (360) 407-6756, e-mail: [pher461@ecy.wa.gov](mailto:pher461@ecy.wa.gov).

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).