

Explanation of Provisions*Removal of De Minimis Partner Rule in § 1.704-1(b)(2)(iii)(e)*

The de minimis partner rule in § 1.704-1(b)(2)(iii)(e) (TD 9398, 73 FR 28699-01) was promulgated on May 19, 2008, as part of final regulations with respect to partners that are look-through entities. The de minimis partner rule provides that for purposes of applying the substantiality rules, the tax attributes of de minimis partners need not be taken into account and defines a de minimis partner as any partner, including a look-through entity that owns, directly or indirectly, less than 10 percent of the capital and profits of a partnership, and who is allocated less than 10 percent of each partnership item of income, gain, loss, deduction, and credit. The intent of the de minimis partner rule was to allow partnerships to avoid the complexity of testing the substantiality of insignificant allocations to partners owning very small interests in the partnership. It was not intended to allow partnerships to entirely avoid the application of the substantiality regulations if the partnership is owned by partners each of whom owns less than 10 percent of the capital or profits, and who are allocated less than 10 percent of each partnership item of income, gain, loss, deduction, and credit. The IRS and the Treasury Department have determined that the de minimis partner rule should be removed in order to prevent unintended tax consequences. The IRS and the Treasury Department request comments on how to reduce the burden of complying with the substantial economic effect rules, with respect to look-through partners, without diminishing the safeguards the rules provide.

Proposed Effective Date

These regulations are proposed to be effective the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that § 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to § 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has

been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Michala Irons, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.704-1 paragraph (b)(2)(iii)(e) is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

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BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R07-OAR-2011-0859; FRL-9482-8]

Approval and Promulgation of Air Quality Implementation Plans; Missouri; Reasonably Available Control Technology (RACT) for the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of Missouri to EPA on January 17, 2007, with a supplemental revision submitted to EPA on June 1, 2011. The purpose of these SIP revisions is to satisfy the RACT requirements for volatile organic compounds (VOCs) set forth by the Clean Air Act (CAA or Act) with respect to the 8-hour ozone NAAQS. In addition to proposing approval on the 2007 submission, EPA is also proposing to approve several VOC rules adopted by Missouri and submitted to EPA in a letter dated August 16, 2011 for approval into its SIP. We are approving these revisions because they enhance the Missouri SIP by improving VOC emission controls in Missouri. EPA's proposal to conditionally approve the SIP submittal is consistent with section 110(k)(4) of the CAA. As part of the conditional approval, Missouri would have up to twelve months from the date of EPA's final conditional approval of the SIP revisions in which to revise its rules to be consistent with the CAA.

DATES: Comments must be received on or before November 25, 2011.

ADDRESSES: Submit your comments identified by Docket ID No. EPA-R07-OAR-2011-0589, by one of the following methods:

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

2. *E-mail:* kemp.lachala@epa.gov.

3. *Mail or Hand Delivery or Courier:* Lachala Kemp, Air Planning and Development Branch, Environmental Protection Agency Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2011-0859. 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 U.S. Environmental Protection Agency Region 7, 901 North 5th Street, Kansas City, Kansas 66101, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. 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: Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency Region 7, 901 N. 5th Street, Kansas City, Kansas 66101; telephone number (913) 551-7214; e-mail address: kemp.lachala@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” or “our” refer to EPA. This section provides additional information by addressing the following questions:

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I. What action is EPA proposing?

EPA is proposing to conditionally approve a SIP revision submitted by the State of Missouri to EPA on January 17, 2007, and June 1, 2011. The purpose of these revisions is to control the emissions of VOCs, consistent with Control Techniques Guidelines (CTGs) issued by EPA. EPA is also proposing to approve several VOC rules approved by Missouri and submitted to EPA in a letter dated August 16, 2011 for approval into its SIP. The purpose of these rules is to satisfy the RACT requirements of the CAA for the Missouri portion of the St. Louis metropolitan 8-hour ozone nonattainment area. As explained further below, at this time, EPA is unable to fully approve the State’s RACT SIP revision because the current submittal does not yet meet all RACT requirements. Specifically, at this time, Missouri has not submitted a RACT rule for inclusion into the Missouri SIP to address one CTG: Solvent Cleanup Operations. However, based on Missouri’s commitment to do so by December 31, 2012,¹ pursuant to section 110(k)(4) of the CAA, EPA is proposing to conditionally approve Missouri’s proposed SIP revision at this time. Under that section, EPA may approve a SIP revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the SIP. This conditional approval would be treated as a disapproval if Missouri fails to comply with this commitment.

We are proposing to conditionally approve these revisions because they represent RACT under the 8-hour ozone NAAQS. These requirements are based on (1) Missouri’s RACT analysis and certification that previously adopted RACT controls in Missouri’s SIP that were previously approved by EPA under the 1-hour ozone NAAQS continue to represent RACT; (2) the adoption by Missouri of new or more stringent regulations that represent RACT control

levels for CTGs issued by EPA after 2006; and (3) a negative declaration that certain categories of sources that do not exist in Missouri.

II. Statutory and Regulatory Background

CAA section 172(c)(1) requires that SIPs for nonattainment areas “provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.” The St. Louis metropolitan area—which includes the counties of Franklin, Jefferson, St. Charles and St. Louis and the city of St. Louis in Missouri—is currently designated as a moderate nonattainment area under the 8-hour ozone standard. For areas in moderate nonattainment with the ozone NAAQS, section 182(b)(2) requires states to submit SIP revisions to EPA that require sources of VOCs that are subject to a CTG issued by EPA, and all other major stationary sources,² in the nonattainment area to implement RACT.

EPA has defined RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. 44 FR 53761 (Sept. 17, 1979). EPA provides states with guidance concerning what types of controls could constitute RACT for a given source category through the issuance of a CTG. See 71 FR 58745, 58747 (Oct. 5, 2006).

Section 182(f) of the CAA requires that all SIP provisions required for major stationary sources of VOCs shall also apply to major stationary sources of Nitrogen Oxides (NO_x). With respect to NO_x, section 182(f) authorizes EPA to exempt the sources in an area from the NO_x RACT requirements through a “waiver,” if EPA finds that additional reductions of NO_x would not contribute to attainment of the NAAQS for ozone in that area. On June 9, 2011, EPA published a final determination that the St. Louis Metropolitan area has attained the 8-hour ozone standard based on three years of complete, quality assured ambient air quality monitoring data. See 76 FR 33647. On July 21, 2011, EPA approved Missouri’s request for such a

² For a moderate nonattainment area, a major stationary source is one which emits, or has the potential to emit, one hundred tons per year or more of VOCs. See CAA section 302(j).

¹ See letter from MDNR to EPA, dated September 30, 2011.

“NO_x waiver,” effective September 19, 2011. 76 FR 43598. Based on this rule, on September 9, 2011, Missouri withdrew the portion of its 2007 submission relating to NO_x RACT. Therefore, today’s action only addresses Missouri’s RACT obligations for VOCs.

III. Summary of Missouri’s SIP Revision

On January 17, 2007, Missouri Department of Natural Resources (MDNR) submitted to EPA proposed SIP revisions demonstrating compliance with the RACT requirements set forth by the CAA under the 8-hour ozone NAAQS. This submittal addressed all source categories for which a CTG had been issued by EPA at the time, and addressed the controls in place for all other major stationary sources in the nonattainment area. Since the initial

submittal, EPA has issued a number of new CTGs in 2006, 2007, and 2008.³

On October 5, 2006, EPA issued four CTGs which states were required to address by October 5, 2007 (71 FR 58745): Lithographic Printing and Letterpress Printing Materials; Flexible Packaging Printing Materials; Flat Wood Paneling Coatings; and Industrial Cleaning Solvents. Also, on October 9, 2007, EPA issued three CTGs which states were required to address by October 9, 2008 (72 FR 57215): Paper, Film, and Foil Coatings; Metal Furniture Coatings; and Large Appliance Coatings. Furthermore, on October 7, 2008, EPA issued four CTGs which states were required to address by October 7, 2009 (73 FR 58481): Miscellaneous Metal and Plastic Parts Coatings; Auto and Light-Duty Truck Assembly Coatings; Fiberglass Boat Manufacturing Materials; and Miscellaneous Industrial

Adhesives. As a result of these new CTGs, Missouri submitted an amendment to its prior RACT demonstration on June 1, 2011. In addition, on August 16, 2011, Missouri submitted proposed revisions to its SIP to EPA. These revisions will ensure that the requirements of the new CTGs will be incorporated into the VOC RACT rules for the St. Louis moderate ozone nonattainment area.

IV. Missouri’s VOC RACT Rules

Missouri’s SIP submittals dated January 17, 2007, and June 1, 2011, include an analysis of its VOC rules for the Missouri portion of the St. Louis metropolitan 8-hour ozone NAAQS nonattainment area. Table 1 summarizes the CTGs issued by EPA both prior to 2006 and after 2006, and the corresponding Missouri VOC rules which address these CTGs.

TABLE 1—CTG SOURCE CATEGORIES AND APPLICABLE MISSOURI VOC RACT RULES

Missouri State rule	CTG Source category
10 CSR 10–5.295 Control of Emissions From Aerospace Manufacture and Rework Facilities.	Aerospace Manufacturing and Rework Operations & Coating Operations.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Automobile and Light-Duty Truck Assembly Coatings.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Bulk Gasoline Plants.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Can Coatings.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Coil Coatings.
10 CSR 10–5.310 Liquefied Cutback Asphalt Paving Restricted	Cutback Asphalt.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Fabric Coatings.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Flat Wood Paneling Coatings.
10 CSR 10–5.340 Control of Emissions From Rotogravure and Flexographic Printing Facilities.	Flexible Package Printing.
10 CSR 10–5.340 Control of Emissions From Rotogravure and Flexographic Printing Facilities.	Flexographic and Rotogravure Printing.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Gasoline Dispensing Stage II Vapor Recovery.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Gasoline Service Stations.
10 CSR 10–5.390 Control of Emissions From Manufacture of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Operations.	Ink and Paint Manufacturing.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Large Appliance Coatings.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Magnet Wire, Surface Coating.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Metal Furniture Coatings.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Miscellaneous Industrial Adhesives.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Miscellaneous Metal and Plastic Parts Coatings.
10 CSR 10–5.442 Control of Emissions From Lithographic and Letterpress Printing Operations.	Offset Lithographic Printing and Letterpress Printing.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Paper, Film, and Foil Coatings.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Petroleum Liquid Storage in External Floating Roof Tanks.

³ Under section 183(b), EPA is required to periodically review and, as necessary, update CTGs.

TABLE 1—CTG SOURCE CATEGORIES AND APPLICABLE MISSOURI VOC RACT RULES—Continued

Missouri State rule	CTG Source category
10 CSR 10–5.350 Control of Emissions From Manufacture of Synthesized Pharmaceutical Products.	Pharmaceutical Products.
10 CSR 10–5.410 Control of Emissions From Manufacture of Polystyrene Resin.	Polyester Resin.
10 CSR 10–5.455 Control of Emissions From Industrial Solvent Cleaning Operations.	Solvent Cleanup Operations. ⁴
10 CSR 10–5.300 Control of Emissions From Solvent Metal Cleaning	Solvent Metal Cleaning.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Storage of Petroleum Liquids in Fixed Roof Tanks.
10 CSR 10–5.420 Control of Equipment Leaks From Synthetic Organic Chemical and Polymer Manufacturing Plants.	Synthetic Organic Chemical Manufacturing.
10 CSR 10–5.550 Control of Volatile Organic Compound Emissions From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry.	Synthetic Organic Chemical and Polymer Manufacturing Equipment, Equipments Leaks from.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Tank Truck Gasoline Loading Terminals.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Tank Trucks, Gasoline, and Vapor Collection Systems.
10 CSR 10–5.500 Control of Emissions From Volatile Organic Liquid Storage.	Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks.
10 CSR 10–5.530 Control of Emissions From Wood Furniture Manufacturing Operations.	Wood Furniture Manufacturing.

A. CTGs Issued Prior to 2006

With respect⁴ to Missouri's VOC RACT rules that address CTGs issued by EPA prior to 2006, EPA has previously approved these rules into the Missouri SIP as RACT for the 1-hour ozone standard. In its June 1, 2011, submittal to EPA, MDNR reviewed all of the St. Louis area VOC rules and certified that they still satisfy RACT requirements for the 8-hour ozone standard by the application of control technology that is reasonably available considering technological and economic feasibility. EPA is proposing to approve this certification in today's rulemaking.

B. CTGs Issued After 2006

With respect to addressing CTGs issued by EPA after 2006, Missouri submitted three revised rules to EPA for inclusion into the Missouri SIP. EPA has reviewed these new VOC rule revisions with respect to the RACT requirements and the recommendations in the new CTGs and proposes to find that these revisions meet RACT. A brief description of the VOC rules that are proposed for approval in this action is provided below.

1. 10 CSR 10–5.330 Industrial Surface Coating Operations

This rule amendment exempts facilities that are regulated under other rules that limit emissions of VOCs and incorporates changes in RACT for surface coating operations in the St.

⁴ At this time, Missouri has not submitted this rule revision to EPA for inclusion into the SIP. However, as discussed previously, Missouri has committed to doing so by December 31, 2012.

Louis ozone nonattainment area to be consistent with the current federal RACT CTGs. Compliance with these rules is required by March 1, 2012.

These revised requirements are based on and consistent with the following CTG documents issued by EPA since 2006:

- Flat Wood Paneling Coatings
- Paper, Film, and Foil Coatings
- Miscellaneous Industrial Adhesives
- Large Appliance Coatings
- Metal Furniture Coatings
- Miscellaneous Metal and Plastic Parts Coatings
- Automobile and Light-Duty Truck Assembly Coatings

The revisions to this rule either create new source categories that are subject to VOC limits (the first three CTG source categories on this list) or strengthen limits that are already existing for other source categories (the last four CTG source categories on this list). The rule revisions also specify work practices for sources that are subject to this rule.

2. 10 CSR 10–5.340 Rotogravure and Flexographic Printing

This rule amendment adds specific limits of VOCs for flexible package printing operations in the St. Louis ozone nonattainment area. The rule amendment will add stricter emission limits and lower applicability limits, as well as add flexible package printing presses as a source subcategory. These changes are intended to make the limits consistent with the current federal RACT CTGs. Compliance with these rules is required by March 1, 2012.

These revised requirements are based on and consistent with the following CTG document issued by EPA since 2006:

- Flexible Packaging Printing Materials
3. 10 CSR 10–5.442 Lithographic Printing Operations

This rule amendment adds specific emission limits of VOCs for both offset lithographic and letterpress printing operations in the St. Louis ozone nonattainment area. The rule also lowers the applicability limit and adds letterpress printing as a new category. These changes are intended to make the limits consistent with the current Federal RACT CTGs. Compliance with these rules is required by March 1, 2012.

These revised requirements are based on and consistent with the following CTG document issued by EPA since 2006:

- Lithographic Printing and Letterpress Printing Materials

4. 10 CSR 10–5.455 Solvent Cleanup Operations

At this time, Missouri has not submitted this proposed rule revision to EPA for approval into the Missouri SIP. However, in a letter dated September 30, 2011, Missouri has committed to submit this rule to EPA by December 31, 2012 for inclusion into the SIP. The intent of this rule is to reduce the VOC emissions from industrial cleaning operations that use organic solvents. The rule amendment will lower the allowable emissions threshold for VOCs released per day from the use, storage and disposal of industrial cleaning

solvents. It will also add requirements for facilities that have VOC emission levels that exceed the threshold, including placing limitations on the VOC content of the cleaning materials.

C. Non-CTG Major Stationary Sources

Major sources not subject to a specific CTG, but for which RACT is required, are referred to as non-CTG sources. Table 2 summarizes the Missouri's VOC rules that address non-CTG sources. All of these rules have previously been approved by EPA into the Missouri SIP.

TABLE 2—SUMMARY OF ST. LOUIS AREA NON-CTG VOC RACT RULES

	Missouri State rule
10 CSR 10–5.360	Control of Emissions From Polyethylene Bag Sealing Operations.
10 CSR 10–5.370	Control of Emissions From the Application of Deadeners and Adhesives.
10 CSR 10–5.450	Control of VOC Emissions From Traffic Coatings.
10 CSR 10–5.451	Control of Emissions From Aluminum Foil Rolling.
10 CSR 10–5.490	Municipal Solid Waste Landfills.
10 CSR 10–5.520	Control of Volatile Organic Compound Emissions From Existing Major Sources.
10 CSR 10–5.540	Control of Emissions From Batch Process Operations.

In particular, Missouri promulgated 10 CSR 10–5.520 (Control of Volatile Organic Compound Emissions from Existing Major Sources). This generic rule applies to all major sources of VOC located in the St. Louis ozone nonattainment area that are not subject to individual RACT rules and have the potential to emit greater than 100 tons per year of VOCs. Sources subject to this rule must submit a detailed engineering RACT proposal to MDNR for each VOC emission unit at the facility. In its submittal to EPA, MDNR noted that in the St. Louis ozone nonattainment area, no sources have been identified that are subject to this generic RACT rule. Therefore, the State believes that the requirements of section 182(b)(2)(C) have been met.⁵

D. Negative Declarations

In addition, the June 1, 2011, submittal from MDNR also states that

⁵ We note that other regulatory mechanisms within the CAA affect sources in the St. Louis ozone nonattainment area, such as Maximum Achievable Control Technology (MACT), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPS). Because these standards are generally more stringent than RACT, emission sources subject to these standards were determined to also fulfill RACT requirements.

Missouri has made a negative declaration that there are no applicable sources of VOC located in the St. Louis portion of the ozone nonattainment area for the following CTG categories identified by EPA in CTG documents:

1. Fiberglass Boat Manufacturing Materials (EPA–453/R–08–004).
2. Shipbuilding and Ship Repair Operations (*See* 61 FR 44050).
3. Petroleum Refinery Equipment (EPA–450/2–78–036).
4. Application of Agriculture Pesticides (EPA–453/R–92–011).
5. Pneumatic Rubber Tires (EPA–450/2–78–030).
6. Natural Gas/Gasoline Processing Plants (EPA–450/3–83–007).
7. Plywood Veneer Dryers (EPA–450/3–83–012).

E. Summary

The purpose of Missouri's RACT rules in the St. Louis area is to establish reasonable controls on the emissions of ozone precursors. As new RACT rules have been added and other RACT rules have been expanded with new source categories or stricter limits, Missouri has continuously reviewed and updated its VOC rules in order satisfy all RACT requirements. Based on EPA's review of Missouri's submittal, EPA is proposing to find that for the CTG and non-CTG source categories included in this rulemaking, Missouri has RACT-level controls.

V. Proposed Action

In today's rulemaking, EPA is proposing several actions. First, with respect to Missouri's VOC RACT rules that EPA previously approved into Missouri's SIP under the 1-hour ozone standard, EPA is proposing to approve Missouri's certification that these RACT controls continue to represent RACT under the 8-hour ozone standard. Second, EPA is proposing to approve revisions to three of Missouri's VOC rules (10 CSR 10–5.330; 10 CSR 10–5.340; 10 CSR 10–5.442) into Missouri's SIP, as these rules satisfy RACT for the Missouri portion of the St. Louis nonattainment area. Third, pursuant to CAA section 110(k)(4), EPA is proposing to conditionally approve the Missouri SIP revisions that addresses the requirements of RACT under the 8-hour ozone NAAQS. Missouri would have up to twelve months from the date of EPA's final conditional approval of the SIP revisions in which to revise its rules to be consistent with the CAA. This conditional approval shall be treated as a disapproval if Missouri fails to comply with this commitment.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 17, 2011.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011-27601 Filed 10-24-11; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R2-ES-2011-0084; 92220-1113-0000; ABC Code: C6]

RIN 1018-AH53

Endangered and Threatened Wildlife and Plants; Delisting of the Plant *Frankenia johnstonii* (Johnston's frankenia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), notify the public that we are reopening the comment period on the May 22, 2003, proposed rule to remove the plant *Frankenia johnstonii* (Johnston's frankenia) from the List of Endangered and Threatened Plants (List) under the Endangered Species Act of 1973, as amended (Act). Comments submitted during the 2003 comment period will be considered and do not need to be resubmitted now. However, we invite comments on the new information presented in this announcement relevant to our consideration of the status of *F. johnstonii*. We encourage those who may have commented previously to submit additional comments, if appropriate, in light of this new information. We are also making available for public review the Draft Post-Delisting Monitoring Plan for *F. johnstonii*.

DATES: To ensure that we are able to consider your comments and information, we request that we receive them no later than December 27, 2011. Please note that, if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is Eastern Standard Time on this date. We may not be able to address or

incorporate information that we receive after the above requested date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by December 9, 2011.

ADDRESSES: Electronic copies of the 2003 proposed delisting of the plant *Frankenia johnstonii* (Johnston's frankenia), comments received on that proposal, and the Draft Post-Delisting Monitoring Plan for *Frankenia johnstonii* can be obtained from the Web sites <http://www.regulations.gov> or <http://www.fws.gov/southwest/es/Library/>. Also, you may submit comments and information by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is FWS-R2-ES-2011-0084. Choose the Action that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.

- **U.S. mail or hand-delivery:** Public Comments Processing, Attn: FWS-R2-ES-2011-0084; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We will post all comments and information we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more details).

FOR FURTHER INFORMATION CONTACT: Michelle Shaughnessy, Assistant Regional Director, Ecological Services, Southwest Regional Office, P.O. Box 1306, Albuquerque, NM 87103, by telephone (505-248-6671), or by facsimile (505-248-6788). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:**Previous Federal Actions**

Frankenia johnstonii was listed August 7, 1984 (49 FR 31418), as an endangered species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). At the time *F. johnstonii* was listed, we determined that designation of critical habitat was not prudent because if localities were published in the **Federal Register**, the species might be additionally threatened by taking and vandalism. A recovery plan was completed for *F. johnstonii* in 1988 (<http://ecos.fws.gov/docs/>

[recovery_plan/880524.pdf](http://ecos.fws.gov/docs/recovery_plan/880524.pdf)), but it did not quantify criteria for downlisting or delisting due to a lack of knowledge about the species (Service 1988, p. 14). Threats identified in the recovery plan were the small number of individuals, the restricted distribution, the low reproductive potential, and the impacts of heavy grazing and land management practices, such as road construction or maintenance and bulldozing of woody vegetation (Service 1988, p. 11).

Since the recovery plan was completed, our knowledge of *F. johnstonii* has greatly increased. Based on what we learned about the species' known range, the number of newly discovered populations, the life history requirements of this species, clarification of the degrees of threats, and the protection offered by several landowners who control those populations, we proposed delisting the *F. johnstonii* on May 22, 2003 (68 FR 27961), due to recovery. Please see the May 22, 2003 (68 FR 27961), proposed delisting rule (also posted on our Web sites) for a detailed analysis of factors affecting the species. Because of the amount of time that has lapsed since the 2003 delisting proposal, we are reopening the public comment period for that proposal, and inviting comment on new information presented in this announcement as well as on the draft post-delisting monitoring plan for Johnston's frankenia (*Frankenia johnstonii*).

Background

In this document, we will only discuss new information pertinent to the proposed delisting of *Frankenia johnstonii*. For a more detailed description of *F. johnstonii*, its current status and its threats, please refer to the May 23, 2003, proposed rule to delist the species (68 FR 27961 and posted on our Web sites with this docket; see **ADDRESSES** above) and the recovery plan (http://ecos.fws.gov/docs/recovery_plan/880524.pdf).

At the time of listing *F. johnstonii*, 5 populations were known, 4 in Texas and 1 in Mexico, and the total number of individual plants was estimated to be approximately 1,500. Threats to the species at the time of listing were considered to be small number of plants, their restricted distribution, the impacts of grazing on them, and low reproductive potential (49 FR 31418).

The May 22, 2003 (68 FR 27961), proposal to remove *Frankenia johnstonii* from the List of Endangered and Threatened Plants was based on results of field work conducted between 1993 and 1999 that included extensive population surveys, landowner