concession agreements as defined in § 710.703.

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10. Add new Subpart G to Part 710 to read as follows:

Subpart G—Concession Agreements

Sec.
710.701 Purpose.
710.703 Definitions.
710.705 Applicability.
710.707 Fair market value.
710.709 Determination of fair market value.

Authority: 23 U.S.C. 129,156, 166, 315; Pub. L. 102–240, section 1012(b); Pub. L. 105–178, section 1216(b); Pub. L. 109–59, section 1604.

§ 710.701 Purpose.

The purpose of this subpart is to prescribe the standards that ensure fair market value is received by a highway agency under concession agreements involving Federally funded highways.

§ 710.703 Definitions.

As used in this subpart:

(a) *Best value* means the proposal offering the most overall public benefits as determined through an evaluation of the amount of the concession payment and other appropriate considerations. Such other appropriate considerations may include, but are not limited to, qualifications and experience of the concessionaire, expected quality of services to be provided, the history or track record of the concessionaire in providing the services, timelines for the delivery of services, performance standards, complexity of the services to be rendered, and revenue sharing.

(b) *Concession agreement* means an agreement between a highway agency and a concessionaire under which the concessionaire is given the right to operate and collect revenues or fees for the use of a Federally funded highway in return for compensation to be paid to the highway agency. A concession agreement may include, but not be limited to, obligations concerning the development, design, construction, maintenance, operation, level of service, and/or capital improvements to a facility over the term of the agreement.

(c) *Concessionaire* means any private or public entity that enters into a concession agreement with a highway agency.

(d) *Fair market value, for purposes of this Subpart*, means the price at which a highway agency is ready and willing to enter into a concession agreement for a Federally funded highway on the open market for a reasonable period of time and in an arm's length transaction to any willing, knowledgeable, and able buyer.

(e) *Federally funded highway* means any highway (including highways, bridges, and tunnels) acquired with Federal assistance made available under title 23, United States Code. A highway shall be deemed to be acquired with Federal assistance if Federal assistance participated in either the purchase of any real property, or in any capital expenditures in any fixtures located on real property, within the right-of-way, including the highway and any structures located upon the property.

(f) *Highway agency* means any State transportation department or other public authority with jurisdiction over a Federally funded highway.

§ 710.705 Applicability.

This subpart applies to all concession agreements involving Federally funded highways.

§ 710.707 Fair market value.

A highway agency shall receive fair market value for any concession agreement involving a Federally funded highway.

§ 710.709 Determination of fair market value.

(a) Fair market value may be determined either on a best value basis or upon the basis of highest bid received, as may be specified by the highway agency in the request for proposals or other relevant solicitation.

(b) In order to be considered fair market value, the terms of the concession agreement must be both legally binding and enforceable.

(c) Any concession agreement awarded pursuant to a competitive process shall be presumed to be fair market value. Any such competitive process shall afford all interested proposers an equal opportunity to submit a proposal for the concession agreement and shall comply with applicable State and local law.

(d) If a concession agreement is not awarded pursuant to a competitive process, the highway agency must demonstrate to the FHWA that the process used resulted in fair market value being received.

(e) Nothing in this subpart is intended to waive the requirements of Part 172, Part 635, and Part 636 of this chapter whenever any Federal-aid (including TIFIA assistance) is to be used for a project under the concession agreement.

[FR Doc. E8–23729 Filed 10–7–08; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2008–0538; FRL–8726–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant conditional approval of Missouri's attainment demonstration State Implementation Plan (SIP) for the lead National Ambient Air Quality Standard (NAAQS) nonattainment area of Herculaneum, Missouri. The state asserts that it will adopt and submit specific enforceable measures to EPA by date certain, which will be no later than one year following any EPA approval of the plan, in order to meet the conditions described in this proposal. EPA proposes conditional approval because Missouri's SIP submission provides substantial progress toward improving air quality, and Missouri has committed to submitting a SIP revision to meet all applicable requirements of the Clean Air Act.

DATES: Comments must be received on or before November 7, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0538, by one of the following methods:

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

2. *E-mail: yoshimura.gwen@epa.gov.*

3. *Mail, Hand Delivery or Courier:* Gwen Yoshimura, 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–2008–0538. 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: Gwen Yoshimura at (913) 551–7073, or e-mail her at *yoshimura.gwen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA.

Table of Contents

I. Background

A. The SIP Process

1. What is a SIP?

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

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

2. 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 EPA for inclusion into the Federally-approved 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 EPA.

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

3. What does Federal approval of a state regulation mean to me?

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

B. Background for the Proposal

The Environmental Protection Agency (EPA) established the National Ambient Air Quality Standard (NAAQS) for lead on October 5, 1978 (43 FR 46246). The NAAQS for lead is set at a level of 1.5 micrograms (mug) of lead per cubic meter (m^3) of air, averaged over a calendar quarter.

During the 1980s and 1990s, Missouri submitted and EPA approved a number of State Implementation Plan (SIP) revisions for lead to address ambient lead concentrations in various areas of the state. One such area was Herculaneum, Missouri, where a primary lead smelter has been in operation since 1892. The primary lead smelter is currently owned and operated by the Doe Run Resources Company (hereafter referred to as ''Doe Run''). Doe Run-Herculaneum is the only currently operating primary lead smelter in the United States.

The city of Herculaneum was designated nonattainment for lead in 1991 (56 FR 56694, November 6, 1991, codified at 40 CFR 81.326), pursuant to new authorities provided by the Clean Air Act Amendments of 1990. The state also became subject to new SIP requirements under part D, Title I of the Act, added by the 1990 amendments. A revised SIP meeting the part D requirements was subsequently submitted in 1994. The plan established June 30, 1995, as the date by which the Herculaneum area was to attain compliance with the lead standard. However, the plan did not result in attainment of the standard and monitored ambient air lead concentrations in the Herculaneum area continued to show exceedances of the standard. Therefore, on August 15, 1997, after taking and responding to public comments, EPA published a notice in the **Federal Register** (62 FR

43647) finding that the Herculaneum nonattainment area had failed to attain the lead standard by the June 30, 1995, deadline.

On January 10, 2001, Missouri submitted a revised SIP to EPA for the Herculaneum area. The SIP contained control measures to reduce lead emissions to attain the standard, including building enclosure and ventilation projects, implementation of work practice standards, process throughput restrictions and hours of operation limitations. As required by section 172(c)(9) of the Act, the plan also included contingency measures to be implemented in the event that there were future exceedances of the lead standard in Herculaneum. These consisted of additional building enclosures and process controls, and a production curtailment measure. A 2000 Work Practices Manual, 2001 Consent Judgment, and Missouri rule 10 CSR 10–6.120 ''Restriction of Emissions of Lead from Specific Lead Smelter-Refinery Installations'' were also included as part of the SIP submittal. The SIP established August 14, 2002, as the attainment date for the area. The plan included permitting, monitoring, and reporting requirements, an emissions inventory, implementation of all reasonably available control measures as expeditiously as practicable, provided for attainment of the NAAQS as demonstrated using modeling, provisions for reasonable further progress and implementation of contingency measures, and assurances that the state would be able to implement the plan, thereby satisfying the CAA section 172(c) nonattainment plan provision requirements. EPA approved the SIP on April 16, 2002 (67 FR 18497).

Doe Run and the Missouri Department of Natural Resources (MDNR) operate co-located monitors at the Broad Street and Main Street/City Hall monitoring locations (in addition to other lead monitoring locations in the nonattainment area). These monitors are used to show whether or not the area is in attainment of the standard. Following the August 2002 attainment date, the Herculaneum area monitored attainment of the lead standard for 10 consecutive calendar quarters. In 2005, air quality monitors in the area again reported exceedances of the 1.5 μg/m^3 lead NAAQS in the first two calendar quarters in 2005. Monitored values are quality assured by MDNR and properly entered into the Air Quality System, EPA's repository for ambient air monitoring data. The values for the first two quarters of 2005 exceed the 1.5 μg/m^3 lead standard and, therefore, constitute exceedances of the standard for each quarter.

Typically, an exceedance would trigger implementation of a contingency measure. The first set of contingency measures, consisting of additional building enclosures and process controls, was fully implemented by Doe Run prior to any monitored exceedances of the lead NAAQS. The second contingency measure, a production curtailment, was implemented following exceedance of the lead standard in the first and second calendar quarters of 2005. Despite implementation of all contingency measures, air monitors in Herculaneum recorded values above the 1.5 μg/m^3 lead standard in the third quarter of 2005.

Because the exceedance recorded in the third quarter of 2005 occurred despite implementation of all the control measures contained in the SIP, including all contingency measures developed and implemented to address exceedances, EPA proposed a SIP call on December 19, 2005 (70 FR 75093). The SIP call proposed to find the SIP substantially inadequate to attain and maintain the NAAQS for lead and proposed to require the state to revise the lead SIP for Herculaneum.

EPA finalized the SIP call on April 14, 2006 (71 FR 19432). The SIP call notified the state of EPA's finding that the SIP was substantially inadequate to provide for attainment and maintenance of the lead NAAQS in Herculaneum, and required the state to submit a revised SIP. 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 can be no later than 18 months after the state is notified of the finding. Based on a number of considerations detailed in the final rule, the SIP call required submission of the revisions within 12 months following date of signature of the final rulemaking.

Along with a deadline for SIP submittal by the state to EPA, the final SIP call established the date by which the state must demonstrate attainment of the standard in Herculaneum. Sections 110(k)(5) and 172(d) of the Act provide that EPA may adjust any SIP deadlines that are applicable under the Act, except that the attainment date may not be adjusted unless it has elapsed. For Herculaneum, the attainment date had been August 2002 (five years after the state was notified that the area failed to attain). The attainment date had elapsed, and the area was not attaining the standard. The attainment date could therefore be adjusted pursuant to section 110(k)(5) and section 172(d) of the Act, and the state was required to provide for attainment as expeditiously as practicable. Based on information described in the final SIP call rule, EPA established an attainment date of April 7, 2008, two years from the date of signature of the final rulemaking. MDNR formally commented in support of the timelines contained in the SIP call, including the SIP submittal deadline and attainment date.

EPA required MDNR to submit several specific plan elements to EPA in order to correct the inadequacy of the SIP. These specific elements were: (1) A revised emissions inventory, (2) a modeling demonstration showing what reductions would be needed to bring the area back into attainment of the lead NAAQS, (3) adoption of measures to achieve the reductions determined necessary by the modeled 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.

MDNR completed its revision to the SIP, and on April 26, 2007, the Missouri Air Conservation Commission approved the SIP revision after completing the required public notification, public hearing and comment period. On May 31, 2007, EPA received Missouri's revised SIP for the Herculaneum area. MDNR submitted supplemental information to EPA on March 19, 2008.

Since the SIP call was issued in April 2006, Herculaneum air monitors have recorded additional exceedances of the quarterly lead NAAQS. In total, since the third quarter of 2002, exceedances have occurred in the: First, second, third quarters of 2005; first, third, fourth quarters of 2006; second and third quarters of 2007; and the first quarter (January–March) of 2008. The SIP submittal establishes April 7, 2008, as the attainment date and requires implementation of all measures required for attainment by that date.

II. Technical Review of the Submittal

A. Summary of the State Submittal

This SIP builds upon technical information and tools developed under the previous SIP, improving upon and adding to this information to more accurately model current conditions. EPA proposed, and MDNR agreed, that a shortened timeframe for developing the control strategy was appropriate given the substantial amount of technical information already available, early initiation of discussions between the source (Doe Run) and the state, and

the significance of lead as a public health concern. The resulting SIP thus builds and improves upon previous demonstrations to show attainment under current conditions.

Several elements are typically included to produce an attainment demonstration. A computer model is selected to predict concentrations of the pollutant (in this case, lead) in the air under different scenarios. The model requires input data, including an emissions inventory for the identified sources and meteorological data for use in simulating different weather conditions. Information such as actual monitored concentrations and filter data may be used to assess the model's accuracy. Finally, control measures are developed and inserted into the model. A successful attainment demonstration shows that the area will attain the standard if all enforceable conditions, including the proposed control measures, are met.

The SIP must contain legally enforceable emissions limitations and other measures necessary to attain the NAAQS as expeditiously as practicable, as required by Section 110(a)(2) of the Act. The SIP submitted by MDNR contains two regulatory documents: (1) The May 2007 Consent Judgment between the state of Missouri, Missouri Department of Natural Resources (MDNR), Missouri Air Conservation Commission (MACC), and the Doe Run Resources Company, containing control requirements, associated implementation schedules, and contingency measures, and (2) the January 2007 Doe Run Herculaneum Smelter Work Practices Manual (WPM), specifying operational procedures, recordkeeping, and required practices. Missouri rule 10 CSR 10–6.120 complements this SIP revision and has been previously approved by EPA (see generally, 71 FR 33622, June 12, 2006, for EPA's approval of the most recent revision). In addition, the provisions of paragraphs (B) and (C) of the January 2001 Consent Judgment, approved as part of the 2002 SIP, remain in full force and effect, except when inconsistent with the 2007 Consent Judgment. MDNR has provided an explanation of the differences between the two documents, and a justification for the changes from the 2001 Consent Judgment to the 2007 Consent Judgment. The 2001 and 2007 Consent Judgment, 2007 Work Practices Manual, and additional SIP package documents may be found in the docket for this rulemaking. The reader is also referred to EPA's technical support document contained in the docket for a more complete discussion of the SIP development and requirements.

1. Facility Description

The Doe Run-Herculaneum facility was opened in 1892 and is the only primary lead smelter currently operating in the United States. The annual total production capacity of the facility is approximately 250,000 tons of refined lead.

The primary lead smelting process begins with lead concentrate. Doe Run-owned mining and milling operations located in southeastern Missouri are the primary source of Doe Run-Herculaneum's lead ore and lead concentrate. Lead ore, typically 45 percent to 50 percent lead by weight, is mined from underground ore deposits. The ore is crushed and then processed into lead concentrate at the mills. Lead concentrate contains approximately 75 percent lead by weight. Lead concentrate was previously transported from the mines/mills to the Herculaneum smelter by rail, but since 2002 has been transported exclusively by truck to Herculaneum. Once delivered to the Herculaneum primary lead smelter, the process of smelting the lead concentrate into high purity lead can be divided into three main steps: Sintering, reducing (smelting), and refining.

Once delivered to Herculaneum, the concentrate is first processed through the sinter plant. The concentrate is mixed and crushed with other feedstock materials such as silica, iron ore, and limestone fluxes. Recycled process material such as returned sinter, blast furnace slag, and baghouse fume may also be added to this mixture to produce the sinter feed. A thin layer of sinter feed enters the sinter machine and is ignited by a series of natural gas burners. A main sinter feed layer is then laid on top of this ignition layer. This layered sinter bed enters the updraft portion of the sinter machine, where air is drawn across the sinter bed from the bottom to the top, driving the thermal reaction. The lead sulfide contained in the feed is oxidized, producing lead oxide and releasing sulfur dioxide. Off-gasses from the sintering process are sent to a baghouse which removes particulate matter. The off-gasses continue on to the acid plant where sulfur dioxide is recovered as sulfuric acid. The sinter machine produces a continuous feed of sinter cake (also called sinter roast) which is crushed and sorted by size. The larger pieces are transported to the blast furnace or to temporary storage, while the undersized pieces return to the mix room to await reprocessing through the sinter machine.

Smelting takes place in Doe Run-Herculaneum's blast furnaces. Sinter cake is mixed with coke and other feed materials and transferred to the top of a furnace. Air feeds through the bottom of the furnace, resulting in coke combustion. The coke combustion heats the sinter cake to approximately 3,000 degrees Fahrenheit and produces carbon monoxide. The carbon monoxide reacts with lead and other metal oxides to produce molten lead, waste slag, and carbon dioxide. The lead bullion settles to the bottom of the furnace, where it is tapped into holding pots and transferred to the drossing area for further refining. The slag (a sand-like byproduct with small amounts of lead, copper, zinc, and other materials) floats to the top of the furnace, is tapped off and either recycled back into the sinter feed or transported to the slag storage area at the south end of the facility. Impurities are further separated and removed from the lead in the dross/refinery departments. The lead bullion from the blast furnace is first transferred to one of the large drossing kettles where it is allowed to cool. As the bullion cools, copper, nickel, and other impurities are skimmed from the surface layer, known as the ''dross.'' Next, the decopperized lead is transferred to a series of natural gas-heated refining kettles where additional impurities are removed. Zinc is added to the lead to facilitate the removal of silver. The zinc-silver dross that forms at the surface of the kettle is removed and then further processed in order to recover the silver. Excess zinc is removed by vacuum distillation and chemical conversion. The resulting lead is more than 99.999 percent pure and is cast into 60-pound and 100-pound pigs, as well as 1-ton ingots. Precise amounts of other metals may be added to the molten lead in order to produce lead alloys for specific industrial uses.

2. Model Selection, Meteorological and Emissions Inventory Input Data

When determining what model would be most appropriate to use for the Herculaneum SIP control strategy modeling, EPA and MDNR considered use of Industrial Source Complex Short-Term (ISC3P), CALPUFF, and AERMOD models. The selected model needed to be able to represent terrain, emission sources, meteorological conditions, and other parameters. All three models were deemed adequate to characterize conditions at Herculaneum. MDNR and EPA also wanted to be able to perform a model performance evaluation on the selected model using recent data. A model performance evaluation allows verification that the model is accurately characterizing emissions from specific

sources and accurately predicting air concentrations. For Herculaneum, the model performance evaluation would take advantage of recent monitored concentration data and filter data. The model would be run using meteorological data and emissions information from the same time period as the monitored air concentration and filter data, allowing for a direct comparison between the modeled results and the monitored information. Unfortunately, the on-site meteorological station did not consistently collect a full suite of data over the time period in question. The data it did collect, supplemented with data from a nearby met station, was adequate for use in the ISC model. Calculations used in the AERMOD and CALPUFF models rely on a larger suite of meteorological parameters and do not work well with supplemental, off-site information. Therefore, MDNR and EPA concluded that recent available meteorological data were not of sufficient quantity or quality to perform a model performance evaluation in the newer CALPUFF or AERMOD models. ISC3P requires a smaller suite of meteorological data inputs, can be used to assess concentrations from several types of sources associated with industrial source complexes, can account for building downwash, urban or rural dispersion coefficients, flat or elevated terrain, and averaging periods from one hour to one year. It was therefore selected as an appropriate model for this SIP demonstration.

The model performance evaluation which, as described above, compared modeled results against monitored and filter data, was conducted using 2005 emission inventory and meteorological information as inputs into the model, and 2005 monitored concentration and filter data. Once the model evaluation and refinement was complete, the attainment demonstration modeling was conducted using quality assured meteorological data from April 1997–March 1999 and January–March 2005. These nine quarters include a large block of time over which a range of meteorological conditions occurred, as well as a more recent quarter of data. Concentrations modeled over these nine quarters of meteorological data are therefore representative of an assortment of meteorological conditions, and using these nine quarters of quality assured data provides confidence that the SIP control strategy was evaluated over a variety of meteorological conditions.

As required by Section 172(c)(3) of the CAA, a revised emission inventory was developed for this SIP revision. In general, 2005 hourly lead emissions were based upon facility daily production records. Many of the processes and sources of emissions had not been altered since the previous SIP and associated emission rates were assumed to be unchanged. Rates were estimated using equations developed from source testing at the facility or from published emission factors. In some instances, the emission equations include meteorological parameters to account for wind-driven emissions. For more information on these SIP elements, the reader is referred to the technical support document developed by EPA, included in the docket for this rulemaking.

3. Modeling Results

Actual value dispersion modeling was conducted to determine whether the model was performing adequately to pursue attainment demonstration modeling. This was determined through three comparisons: (1) Determining the model's ability to replicate monitored daily lead concentrations, (2) comparing the actual value modeling results with filter analysis results, and (3) determining the model's ability to replicate averaged actual monitored lead concentrations. The meteorological data set used in the actual value/model performance modeling was developed from data collected in 2005.

The first comparison, evaluating the model output versus the monitored values on a day-to-day basis, was completed for Broad Street, Main Street/City Hall, Bluff, and Dunklin High School monitor sites. Overall, the model performed well and matched general increases and decreases in daily values. The precise predicted daily concentrations varied from the measured concentrations. This was attributed to uncertainties in the meteorological measurements, model algorithms, and the emission inventory.

The second comparison looked at the filter analysis versus the model. By combining fingerprint data from the previous SIP with updated source profiles, the filters were analyzed for the percent contribution from several facility source categories. This filter analysis source category percentage contribution profile was compared against the percentage contribution profile indicated by the modeling. As a result of these comparisons, the state modelers identified a modeled under-prediction of sinter building fugitives. This was subsequently corrected in the modeling. Model results were compiled after the identified problems were corrected and compared against the filter analysis. The filter analysis and model results showed reasonable agreement.

The third comparison, looking at the model's ability to replicate actual quarterly monitored lead concentrations, also gave favorable results. The Sherman monitoring location was added to the four monitoring locations used in the first comparison. The Broad Street monitor is the monitor located closest to the smelter and is the monitor that has registered the majority of the exceedances since 2002. At the Broad Street monitor site the model performed well, over-predicting at one monitor and under-predicting at the other co-located monitor, and closely matching the averaged Broad Street site value. The model over-predicted concentrations at the other monitors. The state concluded that the model adequately predicted values at Broad Street, and gave conservative, possibly high, predicted concentrations at the other monitors. These comparisons showed the model performed adequately to determine whether the proposed controls would be sufficient to provide for attainment of the lead NAAQS.

Design value modeling was conducted to identify which sources may be significant contributors in a hypothetical scenario where all processes operated for as many hours as possible, and throughput was as high as possible. The design value modeling was completed for a worst-case scenario without consideration of the 2007 proposed controls and without assuming the controls resulting from the previous 2002 SIP. Results from this worst-case scenario modeling indicated sources or groups of sources that may significantly contribute to lead concentrations. Identified source areas included: south-end storage, all process building fugitives, Baghouse 7/9 stack, Baghouse 8 stack, unloader area, and in-plant roads. The state then examined the effectiveness of existing controls and the technological and economic feasibility for additional controls at these sources.

Finally, the control strategy model was developed. The control strategy model incorporates all changes made as a result of the actual value modeling/model refinement runs, and included all control measures contained in the 2007 SIP. This required application of capture and/or control efficiencies to a number of emission points, changing stack parameters to reflect modified stacks, and limitations on process throughputs and/or hours of operation.

One specific set of control efficiencies included in the control strategy modeling was attributed to process

buildings as a result of operating conditions required by a ventilation study. The Consent Judgment requires Doe Run to conduct a building ventilation study for the Sinter Building, Blast Furnace Building, and Refinery Building. Building openings, ventilation sources with either continuous or varying rates of operation, and a procedure for measuring inflow into the buildings must be identified within the study. The study must also include enforceable conditions developed to ensure that particles emitted within the process buildings are being appropriately captured by the ventilation systems.

The ventilation study works together with door closure and building siding inspection requirements to achieve an overall objective, or control measure, of effective building enclosure. By minimizing building openings and ensuring adequate ventilation, the buildings will be operated and maintained in such a fashion as to minimize the escape of fugitive emissions from the buildings. The SIP requires this overall building enclosure control measure, and also requires adequate ventilation in each of the process buildings under the ventilation study element. The control strategy modeling attributes a control efficiency to the overall building enclosure control measure, and this control efficiency is included in all attainment demonstration calculations. Although the adequate ventilation and overall building enclosure control measures are required under the SIP, the SIP does not include all necessary enforceable conditions (such as fan amperages or flow rates) associated with the ventilation study to ensure that these ventilation-related control measures are met. Upon MDNR's approval of the ventilation study and its findings, the enforceable conditions identified in the study will become part of the Consent Judgment and/or Work Practices Manual. MDNR asserts that it will adopt and submit these enforceable conditions to EPA by date certain, which will be no later than one year following any EPA approval of the plan. See the ''Proposed Actions'' section of this rulemaking for EPA's proposed approach to address this element of the SIP.

Unless specific hourly or daily operating limitations were applied to a process or activity, sources at the plant were modeled based on a quarterly average. Many emission sources at Doe Run do not run continuously, twenty-four hours a day, seven days a week. However, in order to account for the variety of meteorological conditions simulated in the analyses, the model was run using an average emission rate, calculated assuming 24-hour operation of these sources.

One source where emissions are not expected to be uniform across all days is roadways. The control strategy modeling attributes a 95 percent control efficiency to paved in-plant roads and paved truck haul routes external to the plant. This control percentage was modeled uniformly across all days modeled. Given typical operating conditions, the Herculaneum smelter generally experiences somewhat less activity on weekends than on weekdays. The wet sweeper is required to operate a minimum of Monday through Friday, and the regenerative air sweeper must operate Monday through Friday as well as any days concentrate is scheduled for delivery. The state attributed a control efficiency of 95 percent to the sweepers alone. Requirements for a continuously-operating sprinkler system, truck tarping and truck washing add an additional layer of emission controls. An average 95 percent control efficiency was attributed to the paved roads for all days modeled. Further discussion on road controls may be found in the technical support document developed by EPA and included in the docket for this rulemaking.

The resulting maximum predicted quarterly lead concentration from the state's control strategy modeling was 1.492 $\mu g/m^3$. The 1.492 $\mu g/m^3$ concentration includes a calculated background concentration. A background concentration is significant due to its contribution to the total concentration of lead in ambient air. The lead NAAQS requires the concentration of lead, from all sources of lead in ambient air, not to exceed 1.5 $\mu g/m^3$. The state emissions inventory identified the Doe Run smelter and associated activities as the only lead sources near Herculaneum. The state then developed a background concentration to account for the contribution to monitored concentrations from distant sources of lead, any naturally occurring lead in the atmosphere, and sources of lead not captured by the Herculaneum lead emissions inventory. It is also possible that the calculated background includes secondary (e.g., re-entrained historical lead deposition from the plant) or primary impacts from the smelter and associated activities, some of which may also be captured by the Herculaneum lead emissions inventory. The state believes that in this situation, the background concentration would be over-estimated and would provide a conservative estimate for the attainment demonstration analysis.

The background concentration was calculated by examining concentrations at three geographically dispersed Herculaneum air monitors (Ursaline—distant south, Bluff—proximate north, and High School—middle scale northwest). MDNR identified days when meteorological data indicated the wind was not blowing from the smelter toward the individual monitors. The monitored concentrations associated with these days were then averaged, resulting in a background concentration of 0.063 $\mu g/m^3$. Further detail on how the background concentration was calculated may be found in the technical support document developed by EPA and included in the docket for this rulemaking.

4. Control Strategy

In order to bring Herculaneum back into attainment of the lead NAAQS, MDNR developed a control strategy for Doe Run-Herculaneum. The control strategy requires Doe Run-Herculaneum to implement measures to control emissions from five general areas: building fugitives, baghouse and stack emissions, storage piles, transportation, and emissions reductions through production volume and hours of operation restrictions. A brief description of controls associated with each follows below.

Several control measures must be implemented to reduce escape of process building fugitive emissions to the outside air: (1) Automatic door closure mechanization and lock-out procedures, (2) a requirement for installation of a south door and specific door closure procedures for the Railcar Tipper Building, and (3) building siding inspections and maintenance work practices. As discussed in the ''Modeling Results'' portion of this proposed rulemaking, a study will establish ventilation parameters, such as minimum fan amperages, necessary to ensure particle capture by the ventilation systems or particle capture within the buildings, and compliance with ventilation specifications resulting from the aforementioned study and specifications will be required under the Consent Judgment and/or Work Practices Manual. In addition, fugitive emissions from specific processes within buildings will also be reduced through a number of new controls: (1) Sinter wheel ventilation enclosure, (2) blast furnace doghouse ventilation improvement and redesign of hoods servicing the front of the furnace, (3) automated blast furnace tuyure controls and interlock control system, and (4) relocation of blast furnace 1 to reduce ductwork, reduce length of the charge

belt, and potentially increase ventilation flow rates.

Controls specific to baghouses and stack emissions include: (1) Enclosure of the dust handling sections of the Carrier Cooler Baghouse, (2) installation of an alarm system for Number 5 Baghouse fans, (3) pleated filter installation and use in Number 7 & 9 Baghouse, (4) new bags and installation and use of reverse flow technology for bag cleaning in Number 3 Baghouse, and (5) visual monitoring of kettle heat stacks and work practices to address kettle failures. An additional feature of the baghouses is an increased stack height for Number 7 & 9 Baghouse, and Number 8 Baghouse stacks. (These stack height increases remain below good engineering practice heights.)

Emissions from storage piles and associated materials handling will be reduced through: (1) Partial enclosure of the concentrate delivery area and full enclosure of the sinter loading area, (2) utilization of drop sleeves, (3) minimum moisture content requirements for concentrate and fume, and (4) wetting and chemical stabilization of storage piles.

Transportation-related emissions will be reduced through: (1) Use of street sweeping technologies on paved roads both inside and outside of the plant, (2) in-plant sprinklers, (3) wetting and chemical stabilization of the slag haul road, and (4) haul truck tarp use, tarp maintenance, and concentrate truck washing before leaving the facility.

Finally, the May 2007 Consent Judgment and January 2007 Work Practices Manual also include process throughput limitations and hours of operation limitations. Process limits are specified for certain materials handing operations. Twenty-four hour maximum allowable and/or quarterly maximum allowable throughputs are also specified for sinter, blast furnace, dross, and refinery production processes. Additional requirements are contained in the Consent Judgment and Work Practices Manual submitted as part of this SIP and contained in this rule docket.

EPA requires in 40 CFR part 51, subpart N, that a compliance schedule generally provide for compliance as soon as practicable, but no later than the attainment date included in the plan. The final SIP call required the state to submit a revised SIP no later than April 7, 2007 (no later than a year after the final SIP call was signed), and for Herculaneum to attain the lead NAAQS no later than April 7, 2008. EPA afforded only a year for development of the plan, and one year after that for implementation of controls. This was done because lead is a significant public health concern, technical information from past SIP actions was available, and early discussions between the state and Doe Run about new controls had taken place. EPA did not believe that less than a year was appropriate for development of the plan due to the substantial amount of work required to develop a SIP revision. In order to develop a revised lead SIP, the state would need to develop a revised emissions inventory to characterize the plant's current conditions and operations, create a model to reflect conditions at Herculaneum, evaluate and refine the model, determine where new controls might reduce emissions, evaluate the feasibility of any such controls, and develop a control strategy that modeled attainment of the standard. In recognition of the time involved with each of these efforts, and the amount of time it takes to complete large construction projects, EPA believed that the deadlines contained in the SIP call would require attainment as expeditiously as practicable.

A compliance schedule for implementation of controls is detailed in the Consent Judgment. All controls described above were included in the attainment demonstration modeling (also called the control strategy modeling), with the exception of control measures the state felt provided reassurances that emissions would be reduced but did not feel warranted its own control efficiency. The state's attainment demonstration modeling predicted a maximum quarterly concentration of 1.492 ug/m^3. Further discussion of the individual controls may be found in EPA's technical support document included in this docket. The Consent Judgment schedule provides for compliance as expeditiously as practicable, but no later than April 7, 2008. EPA believes that the control strategy and the compliance schedule contained in the control strategy, with the exception of the ventilation controls discussed in the ''Proposed Actions'' portion of this document, provide for attainment as expeditiously as practicable, and otherwise meet the applicable requirements of the Clean Air Act.

5. Reasonably Available Control Measures (RACM) Including Reasonably Available Control Technology (RACT)

Section 172(c)(1) of the CAA requires nonattainment areas to implement all RACM, including emissions reduction through the adoption of RACT, as expeditiously as practicable. EPA interprets this as requiring all nonattainment areas to consider all available controls and to implement all measures that are determined to be reasonably available, except that measures which will not assist the area to more expeditiously attain the standard are not required to be implemented. See 58 FR 67751, December 22, 1993, for a discussion of this interpretation as it relates to lead.

In the April 14, 2006, SIP call, EPA did not list a new RACT analysis as a required element of the SIP submittal. Even though not required by the 2006 SIP call, a RACT/RACM analysis is still included with the 2007 SIP submittal. No additional RACT measures were identified that would expedite attainment or reasonable further progress, and the plant has not changed significantly from when the previous RACT/RACM evaluation was completed. Some previously implemented RACT/RACM measures, i.e., types of controls, were strengthened through incorporation of more detailed, enforceable work practices in the Work Practices Manual. Although not directly relevant to RACT/RACM, we note that the Herculaneum primary lead smelter is also subject to 40 CFR Part 63 subpart TTT, the Federal MACT standard for Primary Lead Smelters. Subpart TTT requires the development and use of standard operating procedures manuals for all baghouses controlling process, process fugitive, or fugitive lead dust emissions.

Dispersion modeling analysis was conducted to determine if the controls required by the 2007 Consent Judgment control strategy would be sufficient to bring the area into attainment of the standard. The dispersion modeling submitted by the state showed attainment of the 1.5 ug/m^3 standard, demonstrating that the control strategy is adequate to bring the area into attainment of the standard. In terms of expeditious attainment we again note that the time between the SIP submission deadline and the attainment date is only one year, so that additional measures which could be implemented within that year and achieve reductions before the end of that year would be even less likely. For the reasons stated above, EPA proposes to find that no additional measures will expedite attainment and that the RACT/RACM requirement is met.

6. Reasonable Further Progress (RFP)

Section 172(c)(2) of the CAA requires SIPs to provide for Reasonable Further Progress (RFP) as defined in section 171(1) of the CAA. Section 171(1) defines RFP as annual incremental reductions in emissions of the relevant air pollutants as required by Part D, or

emission reductions that may reasonably be required by EPA to ensure attainment of the applicable NAAQS by the applicable date. Part D does not include specific RFP requirements for lead.

MDNR has demonstrated RFP as required under section 172(c)(2) of the CAA. Doe Run is subject to a compliance schedule for implementing: (1) Installation of emission control equipment, (2) enclosure and ventilation projects to reduce lead emissions, (3) process throughput restrictions and hours of operation limitations, and (4) work practice standards. These are but a few of the SIP controls that are enforceable through the Consent Judgment and/or the Work Practices Manual. Given that all controls contained in the control strategy were required to be implemented by April 7, 2008, to provide for attainment by April 7, 2008, EPA does not believe additional incremental reductions are necessary to meet the RFP requirement. EPA also notes that, since all of the new controls in the SIP were required to be implemented within one year of development of the control strategy (April 2007 to April 2008), and that these controls have been demonstrated to be adequate for attainment, we believe that these controls represent the annual reductions necessary for RFP and attainment.

7. New Source Review (NSR)

Within the CAA, Part D of Title I requires SIP submittals to include a permit program for the construction and operation of new and modified major stationary sources. The current definition of nonattainment areas in Missouri, which for lead includes the city of Herculaneum, Missouri, is provided in Missouri rule 10 CSR 10–6.020. For installations in a nonattainment area, Missouri rule 10 CSR 10–6.060 requires a permit for construction of, or major modification to, an installation with potential to annually emit one hundred (100) tons or more of a nonattainment pollutant, or a permit for a modification at a major source with potential to annually emit one thousand two hundred (1,200) pounds of lead. The SIP call did not require revision to these rules. Both rules have been previously approved by EPA as part of the SIP, as meeting the requirements of section 173 of the Clean Air Act, and EPA implementing rules in 40 CFR 51.165.

8. Contingency Measures

As required by CAA section 172(c)(9), the SIP submittal includes contingency measures to be implemented if EPA determines that Herculaneum has failed to make reasonable further progress, or if the area fails to attain the NAAQS by April 7, 2008, as set forth in the SIP call (71 FR 19432). If the area has an exceedance of the NAAQS during any quarter following the April 7, 2008, attainment date, the contingency measures will be implemented according to the schedule outlined in the May 2007 Consent Judgment, upon written notification of violation from MDNR. MDNR may also require implementation of contingency measures if the control strategy projects are not completed as required in the Consent Judgment.

Within six months of receipt of such a notice, Doe Run is required to complete contingency measure (a) enclosure of the sinter plant ''pugger,'' and contingency measure (b) paving of the slag haul road from the north end of the blast furnace to the refinery dock. Following implementation of these two projects, if any quarter exceeds the standard or Doe Run fails to make reasonable further progress (in this instance, timely implementation of control measures), MDNR will notify Doe Run and contingency measure (c) rerouting of the kettle heat stacks to the main stack, is required to be completed within 18 months of receipt of the notice.

In addition, if an exceedance of the quarterly lead NAAQS occurs, the quarterly production limit for refined lead is required to be reduced to 95% of the actual production during the exceedance quarter. The refined lead production limit will be reduced by an additional 5% below actual production for each subsequent quarter in which there is an exceedance, to a minimum production of 35,000 tons of refined lead per calendar quarter. In the event that all monitors show attainment in a quarter following a production decrease, the production level for refined lead may be increased by 5% of the attainment quarter's actual production provided that Doe Run implements additional control measures prior to increasing the production level. Doe Run must demonstrate to MDNR that these control measures reduce impacts on air quality to an equal or greater extent than the increased production limit will increase impacts on air quality. In addition, any substitution of control measures is subject to EPA approval through the SIP revision process described below. Production may increase to a maximum of 62,500 tons per calendar quarter (the level assumed in the attainment demonstration modeling), if the area continues to monitor attainment of the NAAQS.

The Consent Judgment further outlines two additional contingency measures to be implemented in the event that exceedances occur after implementation of the contingency measures described above. Contingency measure (d) requires implementation of contingency measures identified as a result of a technological study for fugitive dust control. These not-yet identified measures would be implemented within a time frame to be determined by Doe Run and MDNR. Contingency measure (e) would require installation of dedicated ventilation to the sinter plant or implementation of Flubor© technology at the Herculaneum facility. This contingency would be required if an exceedance is monitored or Doe Run fails to make reasonable further progress after implementation of contingency measure (c) routing of kettle heat stacks to the main stack, and contingency measure (d) contingencies identified by the fugitive dust control study to be implemented according to a currently undefined schedule.

Section 172(c)(9) of the Act provides that contingency measures must be capable of implementation without any further action by the state or EPA. While EPA supports implementation of the activities described in contingency measures (d) and (e), because these two projects do not contain specific requirements and/or associated deadlines, EPA does not consider them contingency measures under section 172(c)(9) of the Act. EPA therefore proposes to only include contingency measures (a) enclosure of the pugger, (b) paving of haul road, (c) rerouting of kettle heat stacks, and the percent production cuts as contingency measures under the Federally-enforceable SIP.

Doe Run must notify MDNR within 10 days of completion of any contingency measure. Sixty days after completion, Doe Run will propose an additional quantified contingency measure to be added to the Consent Judgment, which will become part of the Consent Judgment and fully enforceable upon approval by MDNR. These additional contingency measures will also be subject to EPA approval as part of the SIP. Doe Run may also substitute new control(s) for the above contingency measure(s) if Doe Run identifies and demonstrates to MDNR and EPA's satisfaction the alternate control measure(s) would achieve equal or greater air quality improvements as compared to the contingency measures currently outlined in the Consent Judgment.

Changes to contingency measures would require a public hearing at the state level and EPA approval as a formal SIP revision. Until such time as EPA approves any substitute measure, the measure included in the approved SIP will be the enforceable measure. EPA does not intend to approve any substitutions which cannot be implemented in the same timeframe as the original. These measures will help ensure compliance with the lead NAAQS as well as meet the requirements of Section 172(c)(9) of the CAA.

9. Enforceability

As specified in section 172(c)(6) and section 110(a)(2)(A) of the CAA, and 57 FR 13556, all measures and other elements in the SIP must be enforceable by the state and EPA. Enforceable documents included in Missouri's SIP submittal are the May 2007 Consent Judgment and January 2007 Work Practices Manual. The Consent Judgment contains all control and contingency measures with enforceable dates for implementation. The only exception relates to the enforceable requirements for the ventilation controls, discussed above and in section III below. The Consent Judgment also includes monitoring, recordkeeping, and reporting requirements to ensure that the control and contingency measures are met. The Work Practices Manual includes these, as well as specific operating procedures and additional reporting requirements. The state adopted both documents into Missouri's state regulations on April 26, 2007, making them state-enforceable. Upon EPA approval of the SIP submission, both documents will become state and Federally enforceable, and enforceable by citizens under section 304 of the Act.

We note that the Consent Judgment also contains provisions for stipulated penalties and sanctions should Doe Run fail to comply with provisions of the Consent Judgment or Work Practices Manual. EPA is not bound by the state's Consent Judgment penalties, and would enforce against violations of these documents under section 113 of the Clean Air Act or other Federal authorities, rather than the Consent Judgment, if it approves the Consent Judgment and Work Practices Manual into the SIP.

III. Proposed Action

In a July 9, 1992, memorandum from John Calcagni, EPA discussed the options for actions on SIP submissions. One such option, conditional approval, is authorized under section 110(k)(4) of the CAA and is available where a rule strengthens the SIP even though the entire submittal does not meet all applicable requirements. A conditional approval requires a commitment from the state to adopt specific enforceable measures within a specific timeframe. The measures must be adopted no later than one year from the date of EPA's final conditional approval. EPA is proposing to grant conditional approval for Missouri's attainment demonstration SIP for the lead National Ambient Air Quality Standard nonattainment area of Herculaneum, Missouri. By date certain, which will be no later than one year following any EPA approval of the plan, the state asserts that it will adopt and submit to EPA enforceable measures related to ventilation of the process buildings described previously.

As described in this proposed rulemaking's ''Modeling Results'' section, one set of control measures contained in this SIP submittal requires creation of enforceable conditions to ensure appropriate building ventilation for particle capture. MDNR has not approved enforceable conditions such as fan amperages or flow rates related to this control. Therefore, although the SIP includes enforceable measures (building enclosure and adequate ventilation measures) related to this control, the ventilation requirements do not currently contain all necessary enforceable conditions to ensure that the provisions are met. The ventilation study and resulting reduction in building fugitive emissions is a significant element of the proposed control strategy, and these projected emissions reductions contribute significantly to the control strategy modeling showing attainment. EPA does not believe it is appropriate to give full approval to the SIP until the ventilation study and associated enforceable conditions are submitted by the state, reviewed by EPA, and made available for public comment.

EPA proposes conditional approval of the SIP as it provides substantial progress toward improving air quality, and the state asserts that it will adopt and submit the missing elements to EPA by date certain, which will be no later than one year following any EPA approval of the plan. If EPA reviews and finds the ventilation control conditions adequate, EPA will publish and take comment on a supplemental proposal relating to the ventilation control conditions. This supplemental proposal may include a proposal to fully approve the SIP.

If the state does not submit the control strategy element described above by date certain, which will be no later than one year following any EPA approval of the plan, and EPA takes final action to conditionally approve the revised lead SIP, the conditional approval will convert to a disapproval, as provided by section 110(k)(4) of the Act. In that instance, all portions of the revision not related to the ventilation study portion of the control strategy will remain in effect. However, disapproval of the ventilation study portion will start a clock for implementation of Clean Air Act sanctions under section 179(b), and a clock for promulgation of a Federal implementation plan under section 110(c)(1) of the Act.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 (Public Law 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 30, 2008.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E8–23877 Filed 10–7–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2008–0082; 9221050083–B2]

RIN 1018–AU85

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Reticulated Flatwoods Salamander; Proposed Designation of Critical Habitat for Frosted Flatwoods Salamander and Reticulated Flatwoods Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service, are announcing the location and time of a public hearing to receive public comments on the proposal to split the current listing under the Endangered Species Act of 1973, as amended, of the threatened flatwoods salamander (*Ambystoma cingulatum*) into two distinct species: frosted flatwoods salamander (*Ambystoma cingulatum*) and reticulated flatwoods salamander (*Ambystoma bishopi*), due to a change in taxonomy. We also propose to list reticulated flatwoods salamander as endangered and propose critical habitat for both species. We are extending the public comment period until November 3, 2008. If you submitted comments previously, then you do not need to resubmit them because we have already incorporated them into the public record and we will fully consider them in preparation of our final determination.

DATES: *Public hearing:* We will hold a public hearing on this proposed rule on October 22, 2008, from 7:30 p.m. to 9:30 p.m. An open house, where the public may view maps of critical habitat units and obtain other information on the proposed rule and draft economic analysis, will be held 1 hour prior to the hearing from 6:30 p.m. to 7:30 p.m.

Comments: We are extending the public comment period until November 3, 2008. For more information, see ''Public Comments Solicited'' below.

ADDRESSES: *Public hearing:* We will hold a public hearing at Pensacola Junior College, 1000 College Blvd., Hagler Auditorium (Bldg. 2), Room 252, Pensacola, FL 32504.

Comments: You may submit comments by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

U.S. mail or hand-delivery: Public Comments Processing, Attn: RIN 1018–AU85; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments 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 information).

FOR FURTHER INFORMATION CONTACT: Ray Aycock, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; telephone: 601–321–1122; facsimile: 601–965–4340. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

We, the U.S. Fish and Wildlife Service, published a proposed rule on February 7, 2007, (72 FR 5855) to designate critical habitat for the flatwoods salamander (*Ambystoma cingulatum*), a species that was listed as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) in 1999 (64 FR 15691, April 1, 1999). As the result of a change in taxonomy, we subsequently proposed to split the listing of the flatwoods salamander into two distinct species: Frosted flatwoods salamander (*Ambystoma cingulatum*) and reticulated flatwoods salamander (*Ambystoma bishopi*) (73 FR 47257, August 13, 2008). Under our proposal, the frosted flatwoods salamander would maintain the status of threatened; however, we proposed to list the reticulated flatwoods salamander as endangered.

We also proposed to designate critical habitat for both the frosted flatwoods salamander and the reticulated flatwoods salamander. In total, approximately 30,628 acres (ac) (12,395 hectares (ha)) (23,132 ac (9,363 ha) for the frosted flatwoods salamander and 7,496 ac (3,035 ha) for the reticulated flatwoods salamander) fall within the boundaries of the proposed critical habitat designation, which is located in the panhandle of Florida, southwestern Georgia, and southeastern South Carolina. On September 18, 2008, we published supplemental information to our proposed rule (73 FR 54125).

In response to a request, we will hold a public hearing on this proposed rule as described in **DATES** and **ADDRESSES**. In addition, we are extending the close of the public comment period from October 14, 2008, until November 3, 2008.

Public Comments Solicited

We will accept written comments and information we receive on or before the date listed in **DATES** on our proposed critical habitat designation, proposed endangered status for reticulated flatwoods salamander, the draft economic analysis published in the **Federal Register** on August 13, 2008 (73 FR 47258), and proposed threatened status for frosted flatwoods salamander published in the **Federal Register** on September 18, 2008 (73 FR 54125). We will consider information and recommendations from all interested parties.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We will not accept comments you send by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://*