



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2020-0256; FRL-10014-22-Region 7]

**Air Plan Approval; Missouri; Restriction of Emission of Lead
From Specific Lead Smelter-Refinery Installations**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by Missouri on February 5, 2019. Missouri requested that EPA revise its approved plan which restricts emission of lead from specific lead smelter-refinery installations. The revisions remove emission restrictions for a facility that is no longer operating, update a reference to the Federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) for secondary lead smelters, and update incorporation by reference to testing methods. Minor editorial revisions have also been made for clarity. The EPA's approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2020-0256. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Robert F. Webber, Environmental Protection Agency, Region 7 Office, Air Permitting and Standards Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7251; email address: webber.robert@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to the EPA.

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I. What is Being Addressed in this Document?

The EPA is approving revisions to 10 Code of State Regulation (CSR) 10-6.120, *Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations*, in the Missouri SIP. The EPA received the Missouri Department of Natural Resources' (MoDNR) SIP revision submission on February 15, 2019. The revisions are described in detail in the technical support document (TSD) included in the docket for this action.

The revisions to 10 CSR 10-6.120 eliminate restrictions for a facility that is no longer operational as a primary lead smelter, update the reference to the National Emissions Standards for Hazardous Air Pollutants (NESHAP), subpart X, update the incorporation by reference information, and make editorial changes to the rule for clarity.

Based on a detailed analysis in its TSD of the revisions to the state rule listed above EPA is approving the revisions to this rule because it promotes clarity by removing emission limits no longer needed for the former Herculaneum primary lead smelter, updates references to the NESHAP, subpart X, and test methods. These revisions will not have a negative impact on air quality.

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

The State submission has met the public notice requirements

for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State placed this rule revision on public notice from June 29 through October 4, 2008. The state received three comments from two sources during the comment period: EPA provided two comments and Doe Run Resource Recycling Facility provided one comment on the rule revisions. MoDNR responded to all three comments received. The revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule opened June 1, 2020, the date of its publication in the *Federal Register* and closed on July 1, 2020. During this period, the EPA received one adverse comment.

Comment: The Commenter expresses opposition to EPA approving Missouri's requested revisions. The commenter expresses concern that the revisions could potentially eliminate or delay regulatory protections if a new facility comes in or the former Herculaneum primary lead smelter refinery reopens. In addition, the commenter states that "the removal of a numeric emission limit for Doe Run now makes the rule unenforceable" and refers to Doe Run's comment concerning the numerical limit during Missouri's public comment process.

Response: The EPA finds that removal of the emission limits in Table 1 of 10 CSR 10-6.120, which were solely applicable to Doe Run's Herculaneum facility, is appropriate because the limits in the table are less stringent than the limits in the state's attainment plan and supporting Consent Judgment for the 2008 Lead National Ambient Air Quality Standards (NAAQS). The EPA's approval of the state's attainment plan for the 2008 Lead NAAQS was effective on November 19, 2014. See 79 FR 62572. Missouri's removal of the emissions limitations from Table 1 of 10 CSR 10-6.120 does not affect the enforceability of the state's more stringent attainment plan and the emission limits necessary to meet the 2008 Lead NAAQS.

As stated in the TSD for this action, the Herculaneum primary lead smelter ceased lead smelting operations on December 13, 2013 as required by a Consent Decree.¹ Doe Run's current and future operation of the facility is governed by the Consent Decree, which is federally enforceable, and the Consent Judgment, which has been approved into the Missouri SIP and is also federally enforceable. If a new company were to reopen the former primary lead smelter, it would be subject to the requirements of the Consent Decree, federal regulations such as the New Source Performance Standards for Primary Lead Smelters

¹ U.S. and State of Missouri v. Doe Run Resources Corp., et al, No. 4:10-cv-01895-JCH, (E.D.Mo. Dec. 21, 2011).

at 40 CFR part 60, subpart R, and the National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting at 40 CFR part 63, subpart TTT, in addition to the permitting requirements of the Missouri SIP.

Regarding the commenter's concern about removal of the numeric emission limit from 10 CSR 10-6.120 and Doe Run's comment to Missouri concerning a difference of opinion about what the limit should be, the EPA interprets this comment to apply to the Doe Run Resource Recycling Facility in Boss, Missouri, which is a separate facility from the former primary lead smelter in Herculaneum, Missouri. In reviewing the state's submittal to EPA (EPA-R07-2020-0256-002), the EPA notes that the numeric limit that was the subject of the Doe Run Resource Recycling Facility's comment to Missouri is outside of the scope of this action, as the limit is not contained in the version of 10 CSR 6.120 that was previously approved into the SIP, and the limit was not submitted for approval into the SIP in this action. See 80 FR 52194.

IV. What Action is the EPA Taking?

The EPA is taking final action to amend Missouri's SIP to include the revisions to 10 CSR 10-6.120 as requested in its February 15, 2019, submission.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.²

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, the EPA's role is

² 62 FR 27968, May 22, 1997.

to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report,

which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead, Reporting and recordkeeping requirements, Test methods.

Dated: August 27, 2020.

James Gulliford,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA is amending 40 CFR part 52 as set forth below:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart-AA Missouri

2. In §52.1320, the table in paragraph (c) is amended by revising the entry "10-6.120" to read as follows:

§52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6--Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * *				
10-6.120	Restriction of Emissions of Lead from Specific Lead Smelter-Refinery Installations	10/25/18	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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