

Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the Addresses section of the direct final rule which is located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Shelly Rios-LaLuz at (913) 551-7296, or by e-mail at [rios.shelly@epa.gov](mailto:rios.shelly@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: March 21, 2005.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R07-OAR-2005-MO-0003; FRL-7894-2]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve an amendment to the statewide NO<sub>x</sub> rule for the state of Missouri. This document summarizes the changes to

the rule. This rule is a critical element in the state's plan to maintain the 1-hour ozone standard in the St. Louis maintenance area and will help reduce ozone concentrations in the area in the future. This action is necessary to begin the process of incorporating the amended rule into Missouri's ozone SIP.

**DATES:** Comments must be received on or before May 2, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07-OAR-2005-MO-0003, by one of the following methods:

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

2. Agency Web site: <http://docket.epa.gov/rmepub/>. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [jay.michael@epa.gov](mailto:jay.michael@epa.gov).

4. Mail: Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. Hand Delivery or Courier. Deliver your comments to Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**Instructions:** Direct your comments to RME ID Number R07-OAR-2005-MO-0003. 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://docket.epa.gov/rmepub/>, 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 RME, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA RME Web site and the Federal [regulations.gov](http://www.regulations.gov) Web site are "anonymous access" systems, 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 RME or [regulations.gov](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 RME index at <http://docket.epa.gov/rmepub/>. 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 either electronically in RME 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:** Michael Jay at (913) 551-7460 or by e-mail at [jay.michael@epa.gov](mailto:jay.michael@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?

What Is the Federal Approval Process for a SIP?

What Does Federal Approval of a State Regulation Mean to Me?

What Is Being Addressed in This Document?

How Does the Statewide NO<sub>x</sub> Rule Relate to the NO<sub>x</sub> SIP Call?

What Changes Has Missouri Made to the Statewide Rule and What Are EPA's Analyses of Them?

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

What Action Is EPA Taking?

#### What Is a SIP?

Section 110 of the Clean Air Act (CAA) 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.

#### **What Is the Federal Approval Process for a SIP?**

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the 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 we have approved a given state regulation with a specific effective date.

#### **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, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

#### **What Is Being Addressed in This Document?**

We are proposing to approve the Missouri Department of Natural Resources' (MDNR) request to include, as a revision to Missouri's ozone SIP, an amendment to rule 10 CSR 10-6.350, "Emissions Limitations and Emissions Trading of Oxides of Nitrogen" (known hereafter as "statewide NO<sub>x</sub> rule") which was incorporated into the SIP on December 28, 2000 (65 FR 82285). The amended rule was adopted by the Missouri Air Conservation Commission on April 24, 2003. The rule became effective under state law on June 23, 2003. The rule was submitted to EPA on September 18, 2003, and included the comments on the rule during the state's adoption process, and the state's response to comments, and other information necessary to meet EPA's completeness criteria. For additional information on the completeness criteria, the reader should refer to 40 CFR part 51, appendix V.

#### **How Does the Statewide NO<sub>x</sub> Rule Relate to the NO<sub>x</sub> SIP Call?**

As stated previously, the statewide NO<sub>x</sub> rule is designed to achieve emissions reductions to improve air quality in the St. Louis area. Missouri is also subject to a requirement to achieve certain NO<sub>x</sub> reductions to eliminate its significant contribution to ozone nonattainment problems in other areas relating to NO<sub>x</sub> emissions transported from Missouri to other states. (See, 69 FR 21604, April 21, 2004.) Missouri is in the process of developing separate rules to meet this additional requirement.

#### **What Changes Has Missouri Made to the Statewide Rule and What Are EPA's Analyses of Them?**

The amended rule modifies the existing compliance date in the original rule. The original statewide NO<sub>x</sub> rule (65 FR 82285) had a compliance date of May 1, 2003, whereas the revised rule has a compliance date of May 1, 2004. Due to the uncertainty related to the inclusion of Missouri in Phase II of the NO<sub>x</sub> SIP Call, which was not resolved until April 2004, EPA believes that the delayed compliance date is appropriate to assist affected utilities in planning to meet their NO<sub>x</sub> reduction obligations. The deferral also did not impact Missouri's ability to maintain the 1-hour ozone standard in St. Louis.

The amended rule also modifies the emissions limitations established in the original rule. The original state rule limited electrical generation units (EGUs) in the eastern one-third of

Missouri to an emission rate of 0.25 pounds of NO<sub>x</sub> per million British thermal units per hour (lbs. NO<sub>x</sub>/mmBtu) of heat input during the control period and EGUs in the western two-thirds to a rate of 0.35 lbs. NO<sub>x</sub>/mmBtu. The amended rule established a more restrictive emission limitation of 0.18 lbs. NO<sub>x</sub>/mmBtu for affected sources in the city of St. Louis and additional counties of Franklin, Jefferson and St. Louis, which are areas that are part of the St. Louis current 1-hour maintenance and 8-hour nonattainment area. The remainder of the eastern one-third of Missouri is still subject to the 0.25 lbs. NO<sub>x</sub>/mmBtu. The limit for the western two-thirds of Missouri remains the same as in the original rule at 0.35 lbs. NO<sub>x</sub>/mmBtu, with the exception that in the amended rule affected facilities with cyclone boilers that burn tire-derived fuel are allowed an emissions rate of 0.68 lbs. NO<sub>x</sub>/mmBtu. The MDNR has submitted documentation that supports the conclusion that the revised emissions limitations will achieve a greater overall emissions reduction when compared to the original rule (see Technical Support Document (TSD) prepared for this rule). Moreover, the additional emissions reductions in the eastern one-third of Missouri will likely provide for lower 1-hour and 8-hour ozone concentrations in the St. Louis area as these emissions are more proximate to the metropolitan area when compared to the more distant western two-thirds of Missouri.

The amended rule also modifies the dates for generation and use of early reduction credits (ERCs). In the original rule, affected units that had reduced emissions rates in the years 2000, 2001, and 2002 would be able to generate ERCs. The amended rule added the year 2003 for generating ERCs. Accordingly, the retirement date for all ERCs has been extended from January 31, 2005, to January 31, 2006, in the amended rule. Therefore, all ERCs are restricted for use in the control periods of 2004 and 2005 in the amended rule. The modifications to the generation and use of ERCs were made to be consistent with the compliance date extension from May 1, 2003, to May 1, 2004. Due to the revised emissions rates for the aforementioned counties in the eastern one-third of Missouri, the MDNR submitted documentation that 2003 ERCs earned between 0.25 lbs. NO<sub>x</sub>/mmBtu and the required limit of 0.18 lbs. NO<sub>x</sub>/mmBtu were permanently retired (see TSD). This action eliminated ERCs that were not surplus.

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

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the TSD which is part of this rule, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

### What Action Is EPA Taking?

We are proposing to approve as an amendment to the Missouri SIP amended rule 10 CSR 10–6.350, “Emissions Limitations and Emissions Trading of Oxides of Nitrogen,” submitted to us on September 18, 2003. We are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

### Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism

implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 21, 2005.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018–AT88

### Endangered and Threatened Wildlife and Plants; Extension of the Comment Period on Proposed Designation of Critical Habitat for the Southwestern Willow Flycatcher

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; extension of public comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the extension of the public comment period for the proposal to designate critical habitat for the southwestern willow flycatcher (*Empidonax extimus traillii*) to allow all interested parties to comment on the proposed critical habitat designation under the Endangered Species Act of 1973, as amended. The proposed rule was published and the public comment period initially opened on October 12, 2004 (69 FR 60706). The comment period was extended to March 31, 2005 (December 13, 2004; 69 FR 72161) and is being extended again with this notice.

**DATES:** The deadline for submitting comments on this proposal is extended from March 31, 2005, to May 31, 2005. Comments must be submitted directly to the Service (see **ADDRESSES** section) on or before May 31, 2005. Any comments received after the closing date may not be considered in the final determination on the proposal.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information by mail or hand-delivery to Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021.

2. Written comments may be sent by facsimile to (602) 242–2513.

3. You may send your comments by electronic mail (e-mail) to [WIFLcomments@fws.gov](mailto:WIFLcomments@fws.gov).

The critical habitat proposal and supporting maps are available for viewing by appointment during regular business hours at the above address or on the Internet at [http://arizonaes.fws.gov/SWWF\\_PCH\\_Oct.htm](http://arizonaes.fws.gov/SWWF_PCH_Oct.htm). All comments and materials received, as well as supporting documentation used in preparation of the proposed rule, will be available for public inspection, by