

is received by the DDO unless a longer period is necessary based on the complexity of the legal, technical and factual issues presented. The DDO will notify the Affected Entity if the expected decision will not be issued within the 180 day period and if feasible will indicate when the decision is expected to be issued. The Appeal decision will also identify the Review Official. The DDO will issue the Appeal decision electronically. The DDO's decision will constitute the final agency action unless the Affected Entity files a timely request for review in accordance with the Request for Review procedures in § 31.75.

§ 31.75 Request for review.

An Affected Entity may file an electronic written request for review of the DDO's Appeal decision to the appropriate Review Official within 15 calendar days from the date the Appeal decision is electronically sent to the Affected Entity. The request for review must comply with the following requirements:

(a) *Submission of request for review.* The request must be submitted to the Review Official identified in the Appeal decision as follows:

(1) If a Headquarters DDO issued the Appeal decision, the request must be electronically submitted to the Director of the Office of Grants and Debarment, or designee, at the email address identified in the Appeal decision, with a copy to the DDO.

(2) If the Appeal decision was issued by a DDO located in an agency Regional Office, the request for review must be electronically submitted to the Regional Administrator, or designee, at the email address identified in the Appeal decision, with a copy to the DDO.

(b) *Contents and grounds of request for review.* The request for review must include a copy of the DDO's Appeal decision and provide a detailed statement of the factual and legal grounds warranting reversal or modification of the Appeal decision. The only ground for review of a DDO's Appeal decision is that there was a clear and prejudicial error of law, fact or application of agency policy in deciding the Appeal.

(c) *Conducting the review.* In reviewing the Appeal decision, the Review Official will only consider the information that was part of the Appeal decision unless:

(i) The Affected Entity provides new information in the request for review that was not available to the DDO for the Appeal decision; and

(ii) The Review Official determines that the new information is relevant and

should be considered in the interests of fairness and equity.

§ 31.76 Notice of receipt of request for review.

Timeliness. The Review Official will provide the Affected Entity electronic written notice acknowledging receipt of the review request within 15 calendar days of receiving the request. The Review Official will further provide a copy of the notice to the DDO.

(a) If the request was submitted in accordance with section § 31.75, the notice of acknowledgment will also advise the Affected Entity that the Review Official expects to issue a decision within 45 calendar days from the date they received the request.

(b) If the request for review was not submitted within the required 15 calendar day period, or does not allege reviewable grounds consistent with § 31.75, the Review Official will notify the Affected Entity that the request is denied as untimely and/or for failing to state a valid basis for review. In limited circumstances, the Review Official may, as a matter of discretion, consider an untimely review if doing so would be in the interest of fairness and equity.

§ 31.77 Determination of request for review.

(a) Within 15 calendar days of receiving a copy of the notice acknowledging the receipt of a timely and reviewable Request for Review, the DDO will submit the Appeal record to the Review Official.

(b) The Review Official will issue a final written decision within 45 calendar days of the submission of the request for review unless a longer period is necessary based on the complexity of the legal, technical and factual issues presented.

(1) The Review Official will notify the Affected Entity if the expected decision will not be issued within the 45-day period and if feasible will indicate when the decision is expected to be issued.

(2) The Review Official's decision constitutes the final agency action and is not subject to further review within the agency.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0173; FRL-9904-91-Region 4]

Air Quality Implementation Plan; Alabama; Attainment Plan for the Troy Area 2008 Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a state implementation plan (SIP) revision, submitted by the State of Alabama through the Alabama Department of Environmental Management (ADEM), to EPA on November 9, 2012, for the purpose of providing for attainment of the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) in the Troy 2008 Lead nonattainment area (hereafter referred to as the "Troy Area" or "Area"). The Troy Area is comprised of a portion of Pike County in Alabama surrounding the Sanders Lead Company (hereafter referred to as "Sanders Lead"). EPA is taking final action to approve Alabama's November 9, 2012 SIP submittal regarding the attainment plan based on Alabama's attainment demonstration for the Troy Area. The attainment plan includes the base year emissions inventory requirements, an analysis of the reasonably available control technology (RACT) and reasonably available control measures (RACM) requirements, reasonable further progress (RFP) plan, modeling demonstration of lead attainment and contingency measures for the Troy Area. This action is being taken in accordance with Clean Air Act (CAA or Act).

DATES: This rule is effective February 27, 2014.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2013-0173. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and

Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Zuri Farnigalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Zuri Farnigalo may be reached by phone at (404) 562–9152 or via electronic mail at farnigalo.zuri@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. What is the background for this action?

On November 12, 2008 (73 FR 66964), EPA revised the Lead NAAQS, lowering the level from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 0.15 $\mu\text{g}/\text{m}^3$ calculated over a 3-month rolling average. EPA established the NAAQS based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to lead emissions.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. On November 22, 2010 (75 FR 71033), EPA promulgated initial air quality designations for the 2008 Lead NAAQS, which became effective on December 31, 2010, based on air quality monitoring data for calendar years 2007–2009, where there was sufficient data to support a nonattainment designation. Designations for all remaining areas were completed on November 22, 2011 (76 FR 72097), which became effective on December 31, 2011, based on air quality monitoring data for calendar years 2008–2010. Effective December 31, 2010, the Troy Area was designated as nonattainment for the 2008 Lead NAAQS. This designation triggered a

requirement for Alabama to submit a SIP revision with a plan for how the Area would attain the 2008 Lead NAAQS, as expeditiously as practicable but no later than December 31, 2015.

EPA provided some guidance on attainment planning requirements for the Lead NAAQS in the November 2008 final rule promulgating the NAAQS.¹ In addition, in July 2011, EPA provided additional guidance and clarification in the form of a memorandum with questions and answers on Lead NAAQS implementation.² In April 2012, EPA also released the “SIP Toolkit—Attainment Demonstrations and Air Quality Modeling” (located at <http://www.epa.gov/air/lead/kitmodel.html>)³ with further guidance on air quality modeling for attainment demonstrations.

ADEM submitted its 2008 Lead NAAQS attainment SIP for the Troy Area on November 9, 2012, which included the base year emissions inventory and the attainment demonstration. EPA proposed to approve the Troy Area attainment SIP for the 2008 Lead NAAQS on September 6, 2013. EPA's analysis of the submitted attainment demonstration included a review of the pollutant addressed, emissions inventory requirements, modeling, RACT and RACM requirements, RFP plan, and contingency measures for the Troy Area. Refer to EPA's September 6, 2013, proposed rulemaking for detailed rationale on EPA's analysis of the Troy area attainment demonstration.

II. What is the action EPA is taking?

EPA is taking final action to approve Alabama's SIP submittal for the Troy Area, as submitted through ADEM to EPA on November 9, 2012, for the purpose of demonstrating attainment of the 2008 Lead NAAQS. Alabama's lead attainment plan for the Troy Area includes a base year emissions inventory, a modeling demonstration of lead attainment, an analysis of RACM/RACT, a RFP plan, and contingency measures.

EPA has determined that Alabama's attainment plan for the 2008 Lead NAAQS for the Troy Area meets the applicable requirements of the CAA. Thus, EPA is taking final action to approve Alabama's attainment plan for the Troy Area. EPA's analysis for this

final action is discussed in Section IV of EPA's September 6, 2013, proposed rulemaking.

III. Why is EPA taking this action?

EPA has determined that all the criteria for Alabama's lead attainment plan for the Troy Area have been met. EPA has determined that Alabama's November 9, 2012 SIP submission meets the applicable requirements of the CAA. Specifically, EPA is taking final action to approve Alabama's November 9, 2012 SIP submission, which includes the attainment demonstration, base year emissions inventory, RACM/RACT analysis, contingency measures and RFP plan.

IV. What are EPA's responses to comments for Alabama's November 9, 2012 SIP submission?

As mentioned above, the proposed rule to approve the attainment demonstration for the Troy Area was published on September 6, 2013. *See* 78 FR 58435. EPA received one comment in response to the proposed approval of Alabama's attainment demonstration. The Commenter, Sanders Lead, generally supported EPA's action but also requested that EPA provide a clarification regarding contingency measures.

Comment: The Commenter requests that EPA clarify that “attainment of the Pb NAAQS is not required until December 31, 2015, and the plan's requirement that Sanders employ certain contingency measures if any Pb NAAQS exceedance occurs after 2013, is not mandated by the Act.” The Commenter further states that “while Sanders acknowledges the regulatory preference to adopt contingency measures in the event of an exceedance, employment of contingency measures may not be legally required by the Clean Air Act until December 31, 2015.”

Response: The Commenter is pointing to a provision of the SIP submitted by Alabama that requires Sanders Lead to undertake certain measures in the event that an exceedance of the 2008 Pb NAAQS occurs after July 2013. In the Commenter's view, since the proposed (and final) rule establish that the attainment date for the Area is December 31, 2015, the SIP cannot require Sanders Lead to undertake such contingency measures before that date. It is true that CAA section 172(c)(9) provides that an attainment plan shall include contingency measures if the area fails to attain the NAAQS by the applicable attainment date. However, section 172(c)(9) also provides that an attainment plan shall include contingency measures if an area fails to

¹ See 73 FR 66964. <http://www.epa.gov/air/lead/kitrules.html>

² Memorandum titled “2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) Implementation Questions and Answers” dated July 8, 2011, from Scott L. Mathias, Interim Director, Air Quality Policy Division.

³ <http://www.epa.gov/air/lead/kitrules.html>.

make reasonable further progress towards attainment by the attainment date. Moreover, CAA section 116 provides that nothing in the Act precludes the right of a State to adopt or enforce any requirement respecting the control or abatement of air pollution from stationary sources, provided that the requirement is no less stringent than required by the Act. Likewise, section 110(k)(3) provides that EPA shall approve a submittal if it meets all of the applicable requirements of the Act. Finally, CAA section 192(a) of the Act provides that the primary Pb NAAQS shall be attained as expeditiously as practicable.

The aforementioned multiple CAA statutory provisions evidence Congressional intent to achieve the health benefits of NAAQS attainment as expeditiously as practicable, and to approve and enforce State strategies that will achieve that goal. Therefore, EPA believes it is entirely appropriate and consistent with the Act to approve the portion of Alabama's SIP submittal which requires certain measures to be undertaken by Sanders Lead in the event an exceedance of the Lead NAAQS occurs after July 2013. Even assuming it is true that Alabama was not required to submit this provision as part of its attainment SIP, Alabama certainly was authorized to elect to submit the requirement, and EPA has no basis under the CAA to disapprove it.

V. Final Action

EPA is taking final action to approve Alabama's lead attainment plan for the Troy Area. EPA has determined that the SIP meets the applicable requirements of the CAA. Specifically, EPA is taking final action to approve Alabama's November 9, 2012, SIP submission, which includes the attainment demonstration, base year emissions inventory, RACM/RACT analysis, contingency measures and RFP plan.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submittal 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 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 Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, October 7, 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 CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

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

Dated: December 18, 2013.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

40 CFR Part 52 is amended as follows:

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 B—Alabama

- 2. Section 52.50(e) is amended by adding a new entry for "2008 Lead Attainment Demonstration for Troy Area" at the end of the table to read as follows:

§ 52.50 Identification of plan.

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(e) * * *

EPA-APPROVED ALABAMA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
2008 Lead Attainment Demonstration for Troy Area.	Troy Area	11/9/12	1/28/14 [Insert citation of publication] ..	