

confidentiality agreement which has been duly executed between a statutory licensee and any other interested party, or between one or more interested parties; *provided* that all such information shall be made available for the audit procedure provided for in this section.

(2) Access to confidential information under this section shall be limited to:

(i) The auditor; and

(ii) Subject to an appropriate confidentiality agreement, those employees, agents, consultants and independent contractors of the auditor who are not employees, officers, or agents of a copyright owner for any purpose other than the audit, who are engaged in the audit of a Statement of Account or activities directly related hereto, and who require access to the confidential information for the purpose of performing such duties during the ordinary course of their employment.

(3) The auditor and any person identified in paragraph (m)(2)(ii) of this section shall implement procedures to safeguard all confidential information received from any third party in connection with an audit, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the auditor or such person.

Dated: June 8, 2012.

David O. Carson,
General Counsel.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0323; FRL-9686-7]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Tennessee: Bristol; Determination of Attainment for the 2008 Lead Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 4, 2012, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted a request to EPA to make a determination that the Bristol nonattainment area for the 2008 lead national ambient air quality standards (NAAQS or standard)

has attained the 2008 lead NAAQS. In this action, EPA is proposing to determine that the Bristol nonattainment area (hereafter also referred to as the "Bristol Area" or "Area") has attained the 2008 lead NAAQS. This proposed determination of attainment is based upon complete, quality-assured and certified ambient air monitoring data for the 2009–2011 period showing that the Area has monitored attainment of the 2008 lead NAAQS. EPA is further proposing that, if EPA finalizes this proposed determination of attainment, the requirements for the Area to submit an attainment demonstration, together with reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines shall be suspended for so long as the Area continues to attain the 2008 lead NAAQS.

DATES: Comments must be received on or before July 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2012-0323, by one of the following methods:

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

2. *Email*: R4-RDS@epa.gov.

3. *Fax*: (404) 562-9040.

4. *Mail*: EPA-R04-OAR-2012-023, 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.

5. *Hand Delivery*: Lynorae Benjamin, Chief, 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. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2012-0323. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *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 email comment directly to EPA without going through *www.regulations.gov*, your email 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. 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 *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: Steve Scofield or Richard Wong, 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.

Mr. Scofield may be reached by phone at (404) 562–9034 or via electronic mail at scofield.steve@epa.gov. Mr. Wong may be reached by phone at (404) 562–8726 or via electronic mail at wong.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. What actions is EPA taking?
- II. What is the background for these actions?
- III. Application of EPA's Clean Data Policy to the 2008 Lead NAAQS
- IV. Does the Bristol area meet the 2008 lead NAAQS?
 - A. Criteria
 - B. Bristol Area Air Quality
- V. What is the effect of these actions?
- VI. Statutory and Executive Order Reviews

I. What actions is EPA taking?

EPA is proposing to determine that the Bristol Area (comprising the portion of Sullivan County bounded by a 1.25 kilometer radius surrounding the Universal Transverse Mercator (UTM) coordinates 4042923 meters E, 386267 meters N, Zone 17, which surrounds the Exide Technologies Facility) has attained the 2008 lead NAAQS. This proposal is based upon complete, quality-assured and certified ambient air monitoring data for the 2009–2011 monitoring period that show that the Area has monitored attainment of the 2008 lead NAAQS.

Further, EPA is proposing that, if this proposed determination of attainment is made final, the requirements for the Bristol Area to submit an attainment demonstration together with RACM, a RFP plan, and contingency measures for failure to meet RFP and attainment deadlines would be suspended for so long as the Area continues to attain the 2008 lead NAAQS. As discussed below, EPA's proposal is consistent with EPA's regulations and with its longstanding interpretation of subpart 1 of part D of the Clean Air Act (CAA or Act).

If this proposed rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Area has violated the 2008 lead NAAQS, the basis for the suspension of these attainment planning requirements would no longer exist for the Bristol Area, and the Area would thereafter have to address such requirements.

II. What is the background for these actions?

On November 12, 2008 (73 FR 66964), EPA established a 2008 primary and secondary lead NAAQS at 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) based on a maximum arithmetic 3-month mean concentration for a 3-year period. See 40 CFR 50.16. On November 22, 2010 (75 FR 71033), EPA published

its initial air quality designations and classifications for the 2008 lead NAAQS based upon air quality monitoring data from those monitors for calendar years 2007–2009. These designations became effective on December 31, 2010.¹ The Bristol Area was designated nonattainment for the 2008 lead NAAQS. See 40 CFR 81.343.

On April 4, 2012, the State of Tennessee, through TDEC, submitted a request to EPA to make a determination that the Bristol Area for the 2008 lead NAAQS has attained that standard based on complete, quality-assured, quality-controlled monitoring data from 2009 through 2011.²

III. Application of EPA's Clean Data Policy to the 2008 Lead NAAQS

Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the general preamble for the Implementation of Title I of the CAA Amendments of 1990 (General Preamble) 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171 and 172, and section 182 in the General Preamble, EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS. See Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, "RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" (May 10, 1995). In 2004, EPA indicated its intention to extend the Clean Data Policy to the $\text{PM}_{2.5}$ NAAQS. See Memorandum from Steve Page, Director, EPA Office of Air Quality Planning and Standards, "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards" (December 14, 2004).

Since 1995, EPA has applied its interpretation under the Clean Data Policy in many rulemakings, suspending certain attainment-related planning requirements for individual areas, based on a determination of attainment. See 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties,

Utah, 1-hour ozone); 61 FR 20458 (May 7, 1996) (Cleveland Akron-Lorain, Ohio, 1-hour ozone); 61 FR 31832 (June 21, 1996) (Grand Rapids, Michigan, 1-hour ozone); 65 FR 37879 (June 19, 2000) (Cincinnati-Hamilton, Ohio-Kentucky, 1-hour ozone); 66 FR 53094 (October 19, 2001) (Pittsburgh-Beaver Valley, Pennsylvania, 1-hour ozone); 68 FR 25418 (May 12, 2003) (St Louis, Missouri, 1-hour ozone); 69 FR 21717 (April 22, 2004) (San Francisco Bay Area, 1-hour ozone), 75 FR 6570 (February 10, 2010) (Baton Rouge, Louisiana, 1-hour ozone), 75 FR 27944 (May 19, 2010) (Coso Junction, California, PM_{10}).

EPA also incorporated its interpretation under the Clean Data Policy in implementation rules. See Clean Air Fine Particle Implementation Rule, 72 FR 20586 (April 25, 2007); Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2, 70 FR 71612 (November 29, 2005). The Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld EPA's rule embodying the Clean Data Policy for the 1997 8-hour ozone standard. *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009). Other courts have reviewed and considered rulemakings applying EPA's Clean Data Policy, and have consistently upheld them. *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, No. 04–73032 (9th Cir. June 28, 2005 (Memorandum Opinion)), *Latino Issues Forum v. EPA*, Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009 (Memorandum Opinion)). EPA sets forth below a brief explanation of the Clean Data Policy. EPA also incorporates the discussions of its interpretation set forth in prior rulemakings, including the $\text{PM}_{2.5}$ implementation rulemaking. See also 75 FR 31288 (June 3, 2010) (Rhode Island, 1997 8-hour ozone), 75 FR 62470 (October 12, 2010) (Knoxville, Tennessee, 1997 8-hour ozone), 75 FR 53219 (August 31, 2010) (Greater Connecticut Area, 1997 8-hour ozone), 75 FR 54778 (September 9, 2010) (Baton Rouge, Louisiana, 1997 8-hour ozone), 75 FR 64949 (October 21, 2010) (Providence, Rhode Island, 1997 8-hour ozone), 76 FR 11080 (March 1, 2011) (Milwaukee-Racine and Sheboygan Areas, 1997 8-hour ozone), 76 FR 31273 (May 31, 2011) (Pittsburgh-Beaver Valley, 1997 8-hour ozone), 76 FR 33647 (June 9, 2011) (St. Louis, Missouri-Illinois, 1997 8-hour ozone), 76 FR 7145 (November 15, 2011) (Charlotte, North Carolina-South Carolina, 1997 8-hour ozone), 77 FR 31496 (May 29, 2012)

¹ EPA completed a second and final round of designations for the 2008 Lead NAAQS on November 22, 2011. See 76 FR 72097. No additional areas in Sullivan County, Tennessee were designated as nonattainment for the 2008 Lead NAAQS.

² This Area has ambient air monitoring data for forty-seven (47) months for the period of February 2008 through December 31, 2011, which show attainment of the 2008 lead NAAQS. Preliminary 2012 data indicates that this Area is continuing to attain the 2008 lead NAAQS.

(Boston-Lawrence-Worcester, Massachusetts, 1997 8-hour ozone). *See also*, 75 FR 56 (January 4, 2010) (Greensboro-Winston-Salem-High Point, 1997 PM_{2.5}), 75 FR 230 (January 5, 2010) (Hickory-Morganton, Lenoir, 1997 PM_{2.5}), 75 FR 57186 (September 20, 2010) (Birmingham, Alabama, 2006 PM_{2.5}), 76 FR 12860 (March 9, 2011) (Louisville, Kentucky-Indiana, 1997 PM_{2.5}), 76 FR 1850 (April 5, 2011) (Rome, Georgia, 1997 PM_{2.5}), 76 FR 31239 (May 31, 2011) (Chattanooga, Tennessee-Georgia-Alabama, 1997 PM_{2.5}), 76 FR 31858 (June 2, 2011) (Macon, Georgia, 1997 PM_{2.5}), 76 FR 36873 (June 23, 2011) (Atlanta, Georgia 1997 PM_{2.5}), 76 FR 38023 (June 29, 2011) (Birmingham, Alabama 1997 PM_{2.5}), 76 FR 5542 (September 7, 2011) (Huntington-Ashland, West Virginia-Kentucky-Ohio, 1997 PM_{2.5}), 76 FR 60373 (September 29, 2011) (Cincinnati, Ohio-Kentucky-Indiana, 1997 PM_{2.5}), (November 18, 2011) (Charleston, West Virginia, 2006 PM_{2.5}), 77 FR 18922 (March 29, 2012) (Harrisburg-Lebanon-Carlisle-York Allentown, Johnstown and Lancaster, 1997 PM_{2.5})

The Clean Data Policy represents EPA's interpretation that certain requirements of subpart 1 of part D of the Act are by their terms not applicable to areas that are attaining the NAAQS.³ As explained below, the specific requirements that are inapplicable to an area attaining the standard are the requirements to submit a SIP that provides for: Attainment of the NAAQS; implementation of all reasonably available control measures; reasonable further progress; and implementation of contingency measures for failure to meet deadlines for RFP and attainment.

CAA section 172(c)(1), the requirement for an attainment demonstration, provides in relevant part that SIPs "shall provide for attainment of the [NAAQS]." EPA has interpreted this requirement as not applying to areas that have attained the standard. If an area has attained the standard, there is no need to submit a plan demonstrating how the area will reach attainment. In the General Preamble (57 FR 13564), EPA stated that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." *See also* Memorandum from John Calcagni, "Procedures for Processing Requests to Redesignate Areas to Attainment," (September 4, 1992), at page 6.

³ This discussion refers to subpart 1 because subparts 1 and 5 contain the requirements relating to attainment of the lead NAAQS.

A component of the attainment plan specified under section 172(c)(1) is the requirement to provide for "the implementation of all reasonably available control measures as expeditiously as practicable" (RACM). Since RACM is an element of the attainment demonstration, *see* General Preamble (57 FR 13560), for the same reason the attainment demonstration no longer applies by its own terms, RACM also no longer applies. Furthermore, EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could advance attainment.⁴ Thus, where an area is already attaining the standard, no additional RACM measures are required. EPA's interpretation that the statute requires only implementation of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit (*Sierra Club v. EPA*, 314 F. 3d 735, 743–745, 5th Cir. 2002) and by the United States Court of Appeals for the D.C. Circuit (*Sierra Club v. EPA*, 294 F. 3d 155, 162–163, D.C. Cir. 2002). *See also* the final rulemakings for Pittsburgh-Beaver Valley, Pennsylvania, 66 FR 53096 (October 19, 2001) and St. Louis, 68 FR 25418 (May 12, 2003).

CAA section 172(c)(2) provides that state implementation plan (SIP) provisions in nonattainment areas must require "reasonable further progress." The term "reasonable further progress" is defined in section 171(1) as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date." Thus, by definition, the "reasonable further progress" provision requires only such reductions in emissions as are necessary to attain the NAAQS. If an area has attained the NAAQS, the purpose of the RFP requirement has been fulfilled, and since the area has already attained, showing that the State will make RFP towards attainment "[has] no meaning at that point." General Preamble, 57 FR 13498, 13564 (April 16, 1992).

CAA section 172(c)(9) provides that SIPs in nonattainment areas "shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by

⁴ This interpretation was adopted in the General Preamble, *see* 57 FR 13498, and has been upheld as applied to the Clean Data Policy, as well as to nonattainment SIP submissions. *See NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009); *Sierra Club v. EPA*, 294 F.3d 155 (D.C. Cir. 2002).

the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or [EPA]." This contingency measure requirement is inextricably tied to the reasonable further progress and attainment demonstration requirements. Contingency measures are implemented if reasonable further progress targets are not achieved, or if attainment is not realized by the attainment date. Where an area has already achieved attainment by the attainment date, it has no need to rely on contingency measures to come into attainment or to make further progress to attainment. As EPA stated in the General Preamble: "The section 172(c)(9) requirements for contingency measures are directed at ensuring RFP and attainment by the applicable date." *See* 57 FR 13564. Thus these requirements no longer apply when an area has attained the standard.

It is important to note that should an area attain the lead standards based on 3 years of data, its obligation to submit an attainment demonstration and related planning submissions is suspended only for so long as the area continues to attain the standard. If EPA subsequently determines, after notice-and-comment rulemaking, that the Area has violated the 2008 lead NAAQS, the requirements for the State to submit a SIP to meet the previously suspended requirements would be reinstated. It is likewise important to note that the area remains designated nonattainment pending a further redesignation action.

IV. Does the Bristol area meet the 2008 lead NAAQS?

A. Criteria

Today's proposed rulemaking assesses whether Bristol Area has attained the 2008 Lead NAAQS, based on the most recent 3 years of quality-assured data. The Bristol Area comprises the portion of Sullivan County bounded by a 1.25 kilometer radius surrounding the UTM coordinates 4042923 meters E, 386267 meters N, Zone 17, which surrounds the Exide Technologies Facility.

Under EPA regulations at 40 CFR 50.16, the 2008 primary and secondary lead standards are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with 40 CFR part 50, Appendix R, is less than or equal to 0.15 µg/m³ at all relevant monitoring sites in the subject area.

B. Bristol Area Air Quality

EPA has reviewed the ambient air monitoring data for the Bristol Area in

accordance with the provisions of 40 CFR part 50, Appendix R. All data considered are complete, quality-assured, certified, and recorded in EPA's Air Quality System (AQS) database. This review addresses air quality data collected in 3-year period of 2009–2011 which are the most recent quality-assured data available.

40 CFR part 58, Appendix D, Section 4.5, states that “At a minimum, there must be one source-oriented State and Local Air Monitoring Station site located to measure the maximum Pb [lead] concentration in ambient air resulting from each non-airport Pb source which emits 0.50 or more tons

per year * * *.” The Exide Technologies facility in Bristol is responsible for operating the monitors that meet this requirement. EPA's review shows that Exide has been exceeding the minimum monitoring requirement of one monitor, and is currently operating three Federal reference method (FRM) source-oriented monitors at the facility, which meet the quality assurance requirements of 40 CFR part 58, Appendix A. In addition, the State of Tennessee is also operating one additional source-oriented FRM monitor (AQS ID 47–163–3004, identified in Table 1) at the Exide facility. The State's monitor originally

operated from January 1, 2009 through December 31, 2009 (AQS ID 47–163–4002). Beginning January 1, 2010, Tennessee's monitor was relocated 0.3 miles to its current location, approximately 10 feet from Exide's design value monitor (47–163–3001), which is an area of expected maximum concentration at the site.

Table 1 shows the 2009–2011 design values at the Bristol Area monitors (the metrics calculated in accordance with 40 CFR part 50, Appendix R, for determining compliance with the NAAQS) for the 2008 lead NAAQS. It also shows the maximum 3-month rolling average for each individual year.

TABLE 1—DESIGN VALUE FOR MONITORS IN THE BRISTOL NONATTAINMENT AREA FOR THE 2008 LEAD NAAQS

Location	AQS site ID	2009 Max 3-month rolling avg (µg/m ³)	2010 Max 3-month rolling avg (µg/m ³)	2011 Max 3-month rolling avg (µg/m ³)	2009–2011 design value (µg/m ³)
364 Exide Drive	⁵ 47–163–3001	0.09	0.08	0.06	0.09
	47–163–3002	0.06	0.04	0.04	0.06
	47–163–3003	0.06	0.04	0.05	0.06
	47–163–3004		0.05	0.08	
	47–163–4002	0.04			

EPA's review of these data indicates that the Bristol Area has attained and continues to attain the 2008 Lead NAAQS, with a design value of 0.09 µg/m³ for the period of 2009–2011. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. What is the effect of these actions?

EPA is proposing to determine that the Bristol Area has attained the 2008 lead NAAQS, based on complete, quality-assured and certified data for 2009–2011. Preliminary data available for 2012 indicates that the area continues to be in attainment. EPA further proposes that, if its proposed determination of attainment is made

final, the requirements for the Bristol Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 2008 lead NAAQS would be suspended for so long as the Area continues to attain the 2008 lead NAAQS. EPA's proposal is consistent and in keeping with its long-held interpretation of CAA requirements, as well as with EPA's regulations for similar determinations for ozone (see 40 CFR 51.918) and fine particulate matter (see 40 CFR 51.1004(c)). As described below, any such determination would not be equivalent to the redesignation of the Area to attainment for the 2008 Lead NAAQS.

Finalizing this proposed action would not constitute a redesignation of the Area to attainment of the 2008 Lead NAAQS under section 107(d)(3) of the CAA. Further, finalizing this proposed action does not involve approving a maintenance plan for the Area as required under section 175A of the CAA, nor would it find that the Area has met all other requirements for redesignation. Even if EPA finalizes the proposed action, the Bristol Area would remain designated nonattainment for the 2008 Lead NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

If the Bristol Area continues to monitor attainment of the 2008 lead NAAQS, EPA proposes that the requirements for the Bristol Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the annual PM_{2.5} NAAQS will remain suspended. If this proposed rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Area has violated the 2008 Lead NAAQS, the basis for the suspension of these attainment planning requirements would no longer exist for the Bristol Area, and the Area would thereafter have to address such requirements.

VI. 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 action proposes to make a determination based on air quality data and to suspend certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic

⁵ According to 40 CFR 58.12(b) (“For Pb manual methods, at least one 24-hour sample must be collected every 6 days except during periods or seasons exempted by the Regional Administrator.”) All three Exide monitors met and exceeded this requirement, and collected a sample every three days. EPA also publishes an annual recommended national sampling calendar, which contains suggested days of the week for sampling. While this schedule is recommended, it is not a CFR requirement. From March 30, 2011–November 23, 2011, the Exide facility's monitors inadvertently operated on a schedule that deviated from the recommended national schedule by one day of the week. However, since the monitors still collected a sample every six days, the data collection requirements were met by all three Exide monitors for the Area. EPA has thus counted the samples collected using the alternate sampling schedule as creditable samples and calculated valid design values supporting a clean data determination for the Area.

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 make a determination based on air quality data and to suspend certain Federal requirements, 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 proposed 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), because it only proposes to make a determination based on air quality data and suspend certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 proposes to determine that air quality in the affected area is meeting Federal standards. 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 because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the

provisions of the CAA. 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.). Under Executive Order 12898, EPA finds that this rule involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Lead, Reporting and Recordkeeping requirements.

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

Dated: June 5, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–14566 Filed 6–13–12; 8:45 am]

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