Dated: September 13, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–24120 Filed 9–19–00; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–233–1–20021a; FRL–6872–2]

Approval and Promulgation of the Implementation Plan for the Shelby County, Tennessee Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the lead state implementation plan (SIP) for the Shelby County, Tennessee, lead nonattainment area. The State of Tennessee submitted the lead SIP on March 17, 2000, pursuant to sections 110(a)(2) and 172(c) of the Clean Air Act (CAA). This SIP submittal meets all EPA and CAA requirements for lead SIPs.

DATES: This direct final rule is effective November 20, 2000 without further notice, unless EPA receives adverse comment by October 20, 2000. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments on this action should be addressed to Kimberly Bingham, EPA Region 4, Air Planning Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency at (404) 562–9038 or bingham.kimberly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background—Lead SIP

Section 107(d)(5) of the CAA provides for areas to be designated as attainment, nonattainment, or unclassifiable with respect to the lead national ambient air quality standard (NAAQS). Governors are required to submit recommended designations for areas within their states. When an area is designated nonattainment, the state must prepare and submit a SIP that meets the requirements of sections 110(a)(2) and 172(c) of the CAA demonstrating how the area will be brought into attainment. The EPA designated the portion of Memphis in Shelby County, Tennessee, around the Refined Metals Corporation secondary lead smelter as a lead nonattainment area on January 6, 1992. This nonattainment designation was based on lead NAAQS violations recorded by monitors near the Refined Metals Corporation facility in 1990 and 1991.

On December 1, 1994, the Memphis and Shelby County Health Department (MSCHD) through the Tennessee Department of Environment and Conservation submitted a SIP to bring the Shelby County lead nonattainment area into attainment with the lead NAAQS. EPA found the December 1, 1994, SIP to be inadequate because it did not meet all of the requirements of section 172(c) of the CAA. EPA requested that MSCHD make the necessary corrections and submit supplemental information to address the deficiencies. Due to several violations of the lead NAAQS in 1996, Region 4 requested that MSCHD also submit an analysis of the control measures in place at the facility to ensure that they were adequate to prevent future violations. The SIP also contained language in the lead chapter that granted Director's discretion to change emission limits at any given time. Because a requirement of the CAA is that the submittal includes specific enforceable emission limits, the Region could not approve the submittal with the Director's discretion clause. The EPA conducted an inspection of the Refined Metals facility and found that the violations were not a result of an inadequate SIP. Instead, they were due to compliance issues (*i.e.,* poor housekeeping methods). The MSCHD submitted additional information to demonstrate that the controls in place would prevent future violations and met CAA requirements. The Region decided to conditionally approve this submittal contingent on the State removing the Director's discretion language from their lead rule.

During the second quarter of 1998, a violation of the lead NAAQS occurred in the Shelby County nonattainment area. Subsequently, the MSCHD issued a Notice of Violation giving Refined Metals, Inc. options to surrender all of its permits or pay a fine and conduct extensive remodeling of the facility. Refined Metals, Inc. chose to surrender all of its permits and shutdown permanently on December 22, 1998. As a result, the 1994 submittal was no longer applicable and MSCHD withdrew and replaced it with a new submittal dated March 17, 2000.

II. Analysis of the State Submittal

The lead SIP for Shelby County, Tennessee was reviewed using the criteria established by the CAA in sections 110(a)(2) and 172(c). Section 110(a)(2) contains general requirements for all SIPs, and section 172(c) of the CAA contains specific provisions applicable to areas designated as nonattainment for any of the NAAQS. EPA also issued a General Preamble describing how we will review SIPs and SIP revisions submitted under Title I of the CAA, including those state submittals containing lead nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because the EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's approval and the supporting rationale (57 FR 13549, April 16, 1992).

A. Attainment Demonstration

Section 192(a) of the CAA requires that SIPs must provide for attainment of the lead NAAQS as expeditiously as practicable but not later than five years from the date of an area's nonattainment designation. The lead nonattainment designation for the Shelby County area was effective on January 6, 1992; therefore, the latest attainment date permissible by the statute was January 6, 1997. The Shelby County area did not meet this date because of violations in 1996 and 1998. Enforcement actions were taken against Refined Metals Corporation that led to the owners of the facility surrendering the operating permits and permanently closing the facility. Since this action, the air quality monitor in the Shelby County area has recorded seven consecutive quarters of air quality data that meet the lead NAAQS for the years 1998, 1999, and to date for 2000. MSCHD can request redesignation to attainment after the area has recorded eight consecutive quarters of air quality data that meet the lead NAAQS.

The Refined Metals Corporation is the sole source of the lead emissions in the Shelby County nonattainment area. Since the facility ceased operation, the improvement in air quality resulting in seven consecutive quarters of clean air quality data indicates that the area will likely continue to meet the lead NAAQS, and therefore, the SIP is adequate for attainment of the lead NAAQS.

B. Emissions Inventory

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because it is necessary to support an area's attainment demonstration, the emission inventory must be included with the SIP submission. Since the Refined Metals Corporation, the sole source of lead emissions in the Shelby County area, ceased operation, there are no permitted process emissions from the facility or in the nonattainment area. Therefore, this requirement is no longer applicable.

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

States with lead nonattainment areas must submit provisions to assure that RACM (including RACT) is implemented (see section 172(c)(1)). The owner of the Refined Metals facility is currently decontaminating and demolishing all of the buildings at that location. To ensure that there are no violations of the lead NAAQS during the decontamination and demolition of the facility, control measures were included in the Building Decontamination and Demolition Plan (BDDP) dated October 1, 1999. BDDPs are required by the Resource Conservation and Recovery Act (RCRA), and must ensure that human health and the environment are protected during the cleanup of any facility. This includes making sure that there are no violations of the lead NAAQS. EPA has determined that all of the control measures included in the BDDP satisfy RCRA and CAA requirements.

D. Other Measures Including Emission Limitations and Timetables

Pursuant to 172(c)(6) of the CAA, all nonattainment SIPs must contain enforceable emission limitations, other control measures, and schedules and timetables for compliance. Since the Refined Metals Corporation, the sole source of lead emissions in the Shelby County area, ceased operation, there are no permitted process emissions from the facility or any other source. Also, requiring other control measures or a schedule for compliance is not necessary because the Shelby County area has been meeting the lead NAAQS since the facility ceased operation. Therefore, these requirements are no longer applicable.

E. Enforceability

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions are stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)). The MSCHD has the enforcement authority to implement and enforce this control strategy for lead under the federally approved provisions of the Memphis and Shelby County code, section 1200–3–22–.03(1).

F. Computer Modeling

Section 110(a)(2)(K) of the CAA requires the use of air quality modeling to predict the effect of the control strategy on ambient air quality from any emissions of an air pollutant for which a NAAQS has been established. Since the Refined Metals Corporation, the sole source of lead emissions in the Shelby County area, ceased operation, there are no permitted process emissions coming from the facility. Therefore, this requirement is no longer applicable.

G. Reasonable Further Progress (RFP)

The SIP must provide for RFP, defined in section 171(1) of the CAA as such additional reductions in emissions of the relevant air pollutant as are required by section 172(c)(2), or may reasonably be required by the Administrator to ensure attainment of the applicable NAAQS by the applicable date.

The improvement in air quality since the facility shutdown, resulting in seven consecutive quarters of clean air quality data, demonstrates that progress has been made in the Shelby County area. Moreover, additional incremental reductions in emissions cannot be obtained because there are not any process emissions coming from the Refined Metals facility.

H. New Source Review (NSR)

Section 172(c)(5)of the CAA requires that the submittal include a permit program for the construction and operation of new and modified major stationary sources. The federally approved Rule 16–77 of the Memphis and Shelby County Air Pollution Control Regulations identifies the current specific permitting requirements for nonattainment areas in the Memphis and Shelby County area. This rule meets the requirements of the CAA.

I. Contingency Measures

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs that demonstrate attainment must include contingency measures. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the state or EPA, upon a determination that the area has failed to meet RFP or attain the lead NAAQS by the applicable attainment date.

If a violation of the lead NAAQS occurs in the Shelby County area, MSCHD will proceed immediately to take an appropriate enforcement action for that violation. EPA has determined this requirement in the MSCHD SIP satisfies the contingency measure provisions of the CAA.

The EPA is approving the lead SIP for Shelby County, Tennessee because it meets the requirements set forth in section 110(a)(2) and 172(c) of the CAA.

III. Final Action

EPA is approving the lead SIP for the Shelby County, Tennessee lead nonattainment area because the submittal meets the requirements of the CAA as discussed in this document. The EPA is publishing this rule without a prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments are filed. This rule will be effective November 20, 2000 without further notice unless the Agency receives adverse comments by October 20, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not

institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 20, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will 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 merely approves 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 rule also is not subject to Executive Order 13045 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This 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.*).

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 rule 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 20, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and will 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, Intergovernmental relation, Lead, Reporting and recordkeeping requirements.

Dated: September 5, 2000.

Mike V. Peyton,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

2. Section 52.2220(d) is amended by adding at the end of the table a new entry for the Refined Metals, Inc. facility to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(d) EPA-approved State Source specific requirements.

EPA-APPROVED TENNESSEE SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
* *	*	*	*	*
Refined Metals, Inc.	n/a	.....	September 20, 2000.	

[FR Doc. 00–24042 Filed 9–19–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–051–200026(a); FRL–6872–4]

Approval and Promulgation of Implementation Plans: Revision to the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Alabama Department of Environmental Management's (ADEM) Administrative Code submitted on January 10, 2000, by the State of Alabama. The revisions comply with the regulations set forth in the Clean Air Act (CAA). Included in this document are revisions to Chapter 335–3–14—Air Permits. ADEM is revising this rule to delete outdated accommodative state implementation plan (SIP) rules.

DATES: This direct final rule is effective November 20, 2000 without further notice, unless EPA receives adverse comment by October 20, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Kimberly Bingham at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404) 562–9038. Ms. Bingham can also be reached via electronic mail at bingham.kimberly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On January 10, 2000, the State of Alabama through ADEM submitted revisions to Chapter 335–3–14—Air Permits. Rule 335–3–14.05(4) was amended to remove outdated nonattainment new source review rules also referred to as ''accommodative SIP'' language. An accommodative SIP provides for new source growth without emission offsets by requiring reasonably available control technologies on existing 100 ton per year Group I and Group II sources that emit volatile organic compounds in areas not normally required to have controls (*i.e.*, attainment and unclassified areas). ADEM removed most of the accommodative language in a previous SIP which was approved by EPA on December 19, 1986 (see 51 FR 45469, December 19, 1986 for a more detailed discussion).

ADEM deleted the following subparagraphs under rule 335–3–14–.05(4) which were a part of the accommodative SIP language:

- Subparagraphs (a), (b), and (e) were marked reserved.
- Subparagraph (c)(1) contained the following language, ''A person proposing to construct or make a major modification to a major facility subject to the provisions of this Rule, located in a nonurban nonattainment area (less than 200,000 population), shall be required to install LAER but shall not be required to obtain emission offsets as specified herein.''
- Subparagraph (c)(2) contained the following language, ''The provisions of subparagraph (c) of this paragraph are applicable to volatile organic compound sources only.''

These revisions comply with CAA requirements.

II. Final Action

EPA is approving the aforementioned change to the State of Alabama's SIP because it is consistent with the CAA and EPA policy. The EPA is publishing this rule without a prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective November 20, 2000 without further notice unless the Agency receives adverse comments by October 20, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 20, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will 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 merely approves 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 rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.