

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 Clean Air Act; 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.

#### B. Submission to Congress and the Comptroller General

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. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

#### C. Petitions for Judicial Review

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 14, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the

removal of the Norfolk Southern Railway Company—East End Shops' NO<sub>x</sub> RACT permit, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 29, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

#### Subpart VV—Virginia

##### § 52.2420 [Amended]

■ 2. In § 52.2420, the table in paragraph (d) is amended by removing the entry for Norfolk Southern Railway Company—East End Shops.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2008-0593-200818a; FRL-8714-7]

#### Approval and Promulgation of Implementation Plans Alabama: Volatile Organic Compounds and Open Burning

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM) on January 8, 2008. The revisions include modifications to Alabama's Volatile Organic Compounds (VOC) and Control of Open Burning and Incineration regulations, found at Alabama Administrative Code (AAC) Chapters 335-3-1, and 335-3-3, respectively. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

This SIP revision also contains a letter addressing the requirements of section

110(a)(2)(D)(i), which EPA will consider separately.

**DATES:** This direct final rule is effective November 14, 2008 without further notice, unless EPA receives adverse comment by October 15, 2008. If EPA receives such comments, it 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:** Submit your comments, identified by Docket ID No. "EPA-R04-OAR-2008-0593," by one of the following methods:

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

2. *E-mail*: [harder.stacy@epa.gov](mailto:harder.stacy@epa.gov).

3. *Fax*: 404-562-9019.

4. *Mail*: "EPA-R04-OAR-2008-0593," 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 or Courier*: Ms. Stacy Harder, 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's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. "EPA-R04-OAR-2008-0593," 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 e-mail, 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 e-mail comment directly to EPA without going through *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. 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](http://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](http://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 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stacy Harder, 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. The telephone number is (404) 562-9042. Ms. Harder can also be reached via electronic mail at [harder.stacy@epa.gov](mailto:harder.stacy@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. Today's Action
- II. What Is the Background for This Action?
- III. Final Action
- IV. Statutory and Executive Order Reviews

#### **I. Today's Action**

On January 8, 2008, ADEM submitted proposed SIP revisions to EPA for review and approval into the Alabama SIP. The revisions include changes made by the State of Alabama to AAC Chapters 335-3-1 and 335-3-3. The rules became state effective on January 22, 2008. EPA is now taking direct final

action to approve the revisions, which include revising the definition of VOC, and updating an open burning regulation. These revisions are part of the State's strategy to meet the national ambient air quality standards (NAAQS) by reducing emissions of VOCs.

The revision to Chapter 335-3-1-.02(gggg), submitted by ADEM, added one compound to the list of those excluded from the definition of VOC, on the basis that this compound makes a negligible contribution to ozone formation. This revision modified the definition to say that: 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (also known as HFE-7300 or L-14787 or  $C_2F_5CF(OCH_3)CF(CF_3)_2$ ), will be considered to be negligibly reactive.

Additionally, ADEM is revising the Open Burning regulation found at Chapter 335-3-3.01(2)(e), to delete an outdated provision which applied only in 2006. The revisions summarized above are approvable pursuant to section 110 of the CAA.

#### **II. What Is the Background for This Action?**

##### *Revisions to Chapter 335-3-1*

Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxides ( $NO_x$ ) react in the atmosphere. Because of the harmful health effects of ozone, EPA limits the amount of VOC and  $NO_x$  that can be released into the atmosphere. VOC are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) which form ozone through atmospheric photochemical reactions. Compounds of carbon (or organic compounds) have different levels of reactivity; they do not react at the same speed, or do not form ozone to the same extent.

It has been EPA's policy that compounds of carbon with a negligible level of reactivity need not be regulated to reduce ozone (see, 42 FR 35314, July 8, 1977). EPA determines whether a given carbon compound has "negligible" reactivity by comparing the compound's reactivity to the reactivity of ethane. EPA lists these compounds in its regulations at 40 CFR 51.100(s), and excludes them from the definition of VOC. The chemicals on this list are often called "negligibly reactive." EPA may periodically revise the list of negligibly reactive compounds to add compounds to or delete them from the list.

EPA finalized such a rule on January 18, 2007 (72 FR 2193), approving the addition of 1,1,1,2,2,3,4,5,5,5-

decafluoro-3-methoxy-4-trifluoromethyl-pentane to the list of those compounds excluded from the definition of VOC. ADEM is updating the State regulation to be consistent with federal regulations.

##### *Revisions to Chapter 335-3-3*

The "Open Burning" regulation in Chapter 3 is being revised to delete Rule 335-3-3-.01(2)(e). As currently written, subparagraph 2(e) allows open burning in the counties of DeKalb, Etowah, Russell, and Talladega during the months of May, June, July, August, September, and October, during 2006 only, provided that an air curtain incinerator is used during burning. Alabama is updating the SIP to remove this rule, as it applied to the 2006 calendar year only.

#### **III. Final Action**

EPA is approving revisions to the Alabama SIP submitted on January 8, 2008. The SIP revision includes changes to the VOC regulations which are part of the State's strategy to meet the NAAQS. The action amends Rules 335-3-1-.02(gggg) to update the definition of VOC to be consistent with EPA regulations, and deletes an outdated open burning provision in rule 335-3-3-.01(2)(e). These changes are consistent with the CAA.

The EPA is publishing this rule without 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 be filed. This rule will be effective November 14, 2008 without further notice unless the Agency receives adverse comments by October 15, 2008.

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. 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 14, 2008 and no further action will be taken on the proposed rule. Please note that if EPA receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions

of the rule that are not the subject of an adverse comment.

**IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See, section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: September 4, 2008.

**Russell L. Wright, Jr.,**

*Acting Regional Administrator, Region 4.*

■ 40 CFR part 52 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 B—Alabama**

■ 2. Section 52.50(c) is amended by revising entries for "Sections 335-3-1-.02 and 335-3-3-.01" to read as follows:

**§ 52.50 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED ALABAMA REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 335-3-1			General Provisions	
* * *	* * *	* * *	* * *	* * *
Section 335-3-1-.02	Definitions	01/22/08	09/15/08	[Insert citation of publication].
* * *	* * *	* * *	* * *	* * *
Chapter 335-3-3			Control of Open Burning and Incineration	
Section 335-3-3-.01	Open Burning		09/15/08	[Insert citation of publication].
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\* \* \* \* \*

[FR Doc. E8-21312 Filed 9-12-08; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 70**

[EPA-R07-OAR-2008-0614; FRL-8713-8]

**Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA is approving a revision to the Missouri rule entitled "Submission of Emission Data, Emission Fees, and Process Information." These revisions will establish emission fees for the Missouri facilities as required annually, align state rule reporting requirements with the Federal Consolidated Emission Reporting Rule (CERR), and decrease the required Emissions Inventory Questionnaire (EIQ) reporting frequency for affected installations.

**DATES:** This direct final rule will be effective November 14, 2008, without further notice, unless EPA receives adverse comment by October 15, 2008. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2008-0614, by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *E-mail:* [algoe-eakin.amy@epa.gov](mailto:algoe-eakin.amy@epa.gov).
3. *Mail or Hand Delivery:* Amy Algae-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**Instructions:** Direct your comments to Docket ID No. EPA-R07-OAR-2008-0614. 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://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 <http://www.regulations.gov> or e-mail information that you consider to be CBI or otherwise protected. The <http://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 e-mail comment directly to EPA without going through <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 docket are listed in the <http://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, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding Federal holidays. 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:** Amy Algae-Eakin at (913) 551-7942, or by e-mail at [algoe-eakin.amy@epa.gov](mailto:algoe-eakin.amy@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," or "our" refer to 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 the Part 70 Operating Permits Program?

What is the Federal approval process for an Operating Permits Program?  
 What is being addressed in this document?  
 Have the requirements for approval of a SIP revision and a Part 70 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