

Date	City	Location	Time
Tuesday, January 4 .....	Washington, DC .....	Sydney Yates Federal Building, 14th & Independence, SW, Second Floor, Roosevelt Room.	10 a.m.–12 noon
Thursday, January 6 .....	Manchester, NH .....	The Highlander Inn, Coldwell Room, 2 Highlander Way .....	1–3 p.m.
Thursday, January 6 .....	Seattle, WA .....	Hilton Seattle Airport, Columbia West Room 17620 Pacific Highway South.	1–3 p.m.
Monday, January 10 .....	Atlanta, GA .....	USFS Southern Regional Office, 1720 Peachtree Rd, NW ..	1–3 p.m.
Tuesday, January 11 .....	Sacramento, CA .....	Holiday Inn Capitol Plaza, Fresno Room 300 J Street .....	1–3 p.m.
Wednesday, January 12 .....	Salt Lake City, UT .....	Hilton Hotel, 150 West, 500 South .....	10 a.m.–12 noon
Thursday, January 13 .....	Denver, CO .....	Marriott Denver West, 1717 Denver West Blvd. Golden, CO	1–3 p.m.

Dated: December 10, 1999.

**Hilda Diaz-Soltero,**

*Associate Chief for Natural Resources.*

[FR Doc. 99–32664 Filed 12–15–99; 8:45 am]

BILLING CODE 3410–11–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[AL–9927; FRL–6503–9]

#### Approval and Promulgation of State Implementation Plans (SIP) for the State of Alabama—Call for 1-hour Attainment Demonstration for the Birmingham, Alabama Marginal Ozone Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a State Implementation Plan (SIP) call to require the State of Alabama to submit a 1-hour ozone attainment SIP for the Birmingham marginal nonattainment area within six months of final action on the SIP call. EPA is proposing to issue this SIP call, because violations of the 1-hour ozone national ambient air quality standards (NAAQS) have continued to be recorded in the Birmingham area after the required attainment date of November 15, 1993. Exceedances of the 1-hour ozone NAAQS occurred in the Birmingham area during the 1995, 1996, 1997, and 1998 ozone seasons. There are more than 3 exceedances of the 1-hour ozone NAAQS during the most recent 3 year period (96–98), indicating continuing violations of the NAAQS. EPA is authorized under section 110(k)(5) of the Clean Air Act (CAA) to issue this SIP call requiring the State of Alabama to develop a 1-hour ozone attainment SIP revision for the Birmingham area. If the State of Alabama fails to submit an attainment SIP in response to this SIP call, EPA will issue a finding that the State failed to submit a required SIP pursuant to section 179(a) of the CAA. The finding would start the clocks for

mandatory sanctions and development of a federal implementation plan (FIP).

**DATES:** Comments on this proposed action must be received in writing by January 18, 2000.

**ADDRESSES:** Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below.

Environmental Protection Agency,  
Region 4 Air Planning Branch, Atlanta  
Federal Center, 61 Forsyth Street, SW,  
Atlanta, Georgia 30303–3104

#### 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.

**SUPPLEMENTARY INFORMATION:** The supplemental information is organized in the following order:

- I. Background
- II. Why EPA is proposing a SIP call for the Birmingham marginal ozone nonattainment area.
- III. What happens if the State of Alabama does not submit a SIP responding to this SIP call?

#### I. Background

On November 15, 1990, Jefferson and Shelby Counties, Alabama, were designated as marginal ozone nonattainment areas. Section 182(f)(1)(A) of the Clean Air Act (CAA) provides for an exemption for New Source Review offsets for nitrogen oxides (NO<sub>x</sub>) in ozone nonattainment areas where a state shows and EPA agrees that additional NO<sub>x</sub> reductions would not contribute to attainment of the ozone standard in that area. In 1992, the Alabama Department of Environmental Management (ADEM) requested and received from EPA a NO<sub>x</sub> exemption under this statutory provision for the Birmingham marginal ozone nonattainment area. At the time of the request, the Birmingham area was required to attain the NAAQS for ozone by November 15, 1993. Given this deadline, offsets from new sources of NO<sub>x</sub> applying for a permit to locate in

the Birmingham area after November 15, 1992, would not in practice have been achieved prior to the expected ozone attainment date. Based on this information, EPA determined that the State of Alabama met the requirements of sections 182(a) and 182(f) of the CAA for marginal nonattainment areas. Furthermore, EPA determined that the application of NO<sub>x</sub> provisions would not have contributed to the timely attainment of the ozone standard and subsequently approved the NO<sub>x</sub> exemption for the Birmingham area. (58 FR 45439).

Section 107(d)(3)(E) of the CAA, set forth five specific requirements that states must include in a redesignation request in order for EPA to redesignate an area from nonattainment to attainment. The EPA provided guidance on redesignations in the General Preamble for the Implementation of the CAA, 57 FR 13498 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992). The primary memorandum providing further guidance with respect to section 107(d)(3)(E) of the amended Act is dated September 4, 1992, and issued by the Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Calcagni Memorandum).

The State of Alabama through the Alabama Department of Environmental Management (ADEM) submitted a request for redesignation of the Birmingham marginal ozone nonattainment area to attainment on March 16, 1995. The request included information showing that the Birmingham area had three years of air quality attainment data from 1990–1993, thus meeting the requirement for the area to attain the 1-hour ozone NAAQS by November 15, 1993. The area continued to maintain the ozone NAAQS through 1994. The submittal was rendered administratively complete on April 11, 1995. Supplemental information needed for the submittal to be approvable initially requested from ADEM in a February 15, 1995, letter addressing the prehearing submittal, was submitted on July 21, 1995. A direct

final rule approving the redesignation request was signed by the Regional Administrator and forwarded to the EPA Federal Register Office on August 15, 1995. The direct final rule as drafted contained a 30 day period for public comment on the redesignation request.

Prior to publication of the document and therefore prior to close of the administrative record, EPA determined that the area registered a violation of the ozone NAAQS on August 18, 1995. The EPA directed the Office of Federal Register to recall the document from being published. The ambient data was quality assured according to established procedures for validating such monitoring data. Subsequently, EPA withdrew the approval notice, and disapproved the maintenance plan and redesignation request. EPA also revoked the nitrogen oxides (NO<sub>x</sub>) waiver for the Birmingham area which was previously granted based on a determination that the area had clean air quality data (62 FR 49158, September 19, 1997). Additional exceedances of the 1-hour ozone NAAQS were recorded in the Birmingham area during the 1996 and 1997 ozone seasons, prompting EPA to request that the State of Alabama adopt a federally enforceable commitment to submit a SIP that would provide for the attainment of the 1-hour ozone NAAQS. ADEM submitted the final commitment without Board adoption, precluding approval into the federally enforceable SIP.

## **II. Why EPA Is Proposing a SIP Call for the Birmingham Marginal Ozone Nonattainment Area**

To assure that SIPs provide for the attainment and maintenance of the relevant NAAQS, section 110(k)(5) of the CAA authorizes EPA to find that a SIP is substantially inadequate to attain or maintain a NAAQS, and to require ("call for") the State to submit, within a specified period, a SIP revision to correct the inadequacy. This CAA requirement for a SIP revision is known as a "SIP call." The CAA authorizes EPA to allow a state up to 18 months to respond to a SIP call. EPA is proposing to issue this SIP call, because violations of the 1-hour ozone NAAQS have continued to be recorded in the Birmingham area after the required attainment date of November 15, 1993. EPA is authorized under section 110(k)(5) to issue this SIP call requiring the State of Alabama to develop a 1-hour ozone attainment SIP revision for the Birmingham area. In consideration of the length of time that has passed since the required attainment date of November 15, 1993, and the substantial air quality modeling already completed,

EPA believes it is reasonable to require the State of Alabama to make the submittal within six months of finalization of this SIP call.

## **III. What Happens If the State of Alabama Does Not Submit a SIP Responding to This SIP Call?**

Section 179(a) sets forth four findings that form the basis for application of sanctions. The first finding, that a State has failed to submit a plan or one or more elements of a plan required under the CAA, is the finding relevant to this rulemaking. If the State of Alabama fails to submit the required plan in response to this SIP call, EPA will issue a finding under section 179(a) of the CAA that the State failed to make a required SIP submittal. If within 18 months of the finding, the State of Alabama has not submitted an attainment SIP that EPA determines is complete, then the emission offset sanction will apply automatically pursuant to CAA section 179(a) and 40 CFR 52.31. Under this sanction, the ratio of emission reductions that must be obtained to offset increased emissions caused by new major sources or modifications to major sources in the Birmingham area must be at least two to one. If the State of Alabama does not make a complete submission within six months after the offset sanction applies, then the highway funding sanction will apply, in accordance with 40 CFR 52.31. In addition, sanctions would apply in the same manner if the State of Alabama submits a plan that EPA determines is incomplete or that EPA disapproves. Finally, the CAA section 110(c) provides that EPA promulgate a FIP no later than 24 months after a finding of failure to submit a SIP under section 179(a) unless the State of Alabama has submitted and EPA has approved the attainment plan.

## **Proposed Action**

EPA is proposing to issue a SIP call to the State of Alabama for a 1-hour ozone attainment SIP revision for the Birmingham nonattainment area and to require the State of Alabama to submit a plan within six months of a final SIP call. In addition, EPA is proposing that the sanctions contained in sections 179(a) and (b) of the CAA and in 40 CFR 50.31 will apply if EPA makes a finding relevant to this required attainment demonstration plan for Birmingham. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the person listed in the **ADDRESSES** section.

## **IV. Administrative Requirements**

### **A. Executive Order 12866**

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

### **B. Executive Order 12875**

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

### **C. Executive Order 13045**

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant as determined under Executive Order 12866 and it

does not involve decisions intended to mitigate environmental health or safety risks that may disproportionately affect children.

#### D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)(RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Public Law No. 104-121)(SBREFA), provides that whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available an initial regulatory flexibility analysis, unless it certifies that the proposed rule, if promulgated, will not have "a significant economic impact on a substantial number of small entities," 5 U.S.C. 605(b). Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. See, *Motor and Equip. MFRS. Ass'n v. Nichols*, 142 F.3d 449 (D.C. Cir. 1998); *United Distribution Cos. v. FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1985) (agency's certification need

only consider the rule's impact on entities subject to the rule).

The SIP Call would not establish requirements applicable to small entities. Instead, it would require Alabama to develop, adopt, and submit an attainment demonstration and would leave to Alabama the task of determining how to obtain those reductions, including which entities to regulate. Moreover, because Alabama would have discretion to choose which sources to regulate and how much emissions reductions each selected source would have to achieve EPA could not predict the effect of the rule on small entities.

For these reasons, EPA appropriately certified that the proposed rule would not have a significant impact on a substantial number of small entities. Accordingly, the Agency did not prepare an initial RFA for the proposed rule.

This rule would not have a significant impact on a substantial number of small entities because the rule does not establish requirements applicable to small entities. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities.

#### F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

#### G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new

regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

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

Dated: October 6, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MI23-01-6258; FRL-6510-2]

### Approval and Promulgation of State Implementation Plans; Michigan; Extension of Comment Period

**AGENCY:** Environmental Protection Agency.

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

**SUMMARY:** The United States Environmental Protection Agency (EPA) is extending the comment period for a proposed action published November 9, 1999 (64 FR 61046). On November 9, 1999, the EPA proposed disapproval of requested revisions to the Michigan State Implementation Plan (SIP). The SIP revisions relate to the review of new and modified stationary sources of air pollution. At the request of the Michigan Department of Environmental Quality, the EPA is extending the comment period for 45 days.

**DATES:** The comment period is extended until January 24, 2000.

**ADDRESSES:** Send written comments to: Robert Miller, Chief, Permits and Grants Section (MI/MN/WI), Air Programs Branch (AR-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.