

why it is information that would not customarily be publicly released by the submitter. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(c) The period for providing OPIC with objections to disclosure of information may be extended by OPIC upon receipt of a written request for an extension from the business submitter. Such written request shall set forth the date upon which any objections are expected to be completed and shall provide reasonable justification for the extension. In its discretion, OPIC may permit more than one extension.

(d) OPIC may accept or reject the submitter's objections, in whole or in part. If OPIC rejects the submitter's objections, in whole or in part, OPIC will promptly notify the business submitter of its determination at least five working days prior to release of the information. The notification will include:

(1) A statement of the reasons for OPIC's decision to reject the business submitter's objections;

(2) A description of the information to be disclosed, or a copy thereof; and

(3) A specific disclosure date.

(e) OPIC will not ordinarily notify the business submitter pursuant to paragraph (a) of this section if:

(1) OPIC determines that the FOIA request should be denied;

(2) The disclosure is required by law (other than pursuant to 5 U.S.C. 552); or

(3) The information has been published or otherwise made available to the public, including material described in § 706.21.

§ 706.43 Who will OPIC notify if a FOIA lawsuit is filed?

If a requester files a lawsuit seeking to compel the disclosure of business information, OPIC will promptly notify any business submitter(s) that submitted information at issue in the lawsuit.

§ 706.44 What happens to business information contained in OPIC records transferred to the National Archives of the United States?

Under the Records Disposal Act, 44 U.S.C. Chapter 33, OPIC is required to transfer legal custody and control of records with permanent historical value to the National Archives. OPIC's Finance Project and Insurance Contract Case files generally do not qualify as records with permanent historical value. OPIC will not transfer these files except when the National Archives determines that an individual project or case is especially significant or unique. If the National Archives receives a FOIA

request for records that have been transferred it will respond to the request in accordance with its own FOIA regulations.

Dated: October 24, 2000.

Laura A. Naide,

FOIA Director and Senior Administrative Counsel.

[FR Doc. 00-27704 Filed 10-26-00; 8:45 am]

BILLING CODE 3210-01-U

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 884

RIN 0701-AA60

Delivery of Personnel to United States Civilian Authorities for Trial

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising 32 CFR Part 884, Delivery of Personnel to United States Civilian Authorities for Trial of the Code of Federal Regulations to reflect current policies. Part 884 is the Air Force Instruction establishing procedures for making Air Force members, civilian personnel, and family members available to U.S. civilian authorities for the trial or specified court appearances. It updates the process for delivery of personnel to civilian authorities for trial.

EFFECTIVE DATE: November 1, 2000.

ADDRESSES: Lt. Col. Tom Jaster, AFLSA/JAJM, 112 Luke Avenue, Suite 343, Bolling Air Force Base, DC 20332-8000, 202-767-1539.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Tom Jaster, AFLSA/JAJM, 202-767-1539.

SUPPLEMENTARY INFORMATION: Part 884 implements Department of Defense (DoD) Directive 5525.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders, December 27, 1988 and AFPD 51-10, Making Military Personnel, Employees, and Dependents Available to Civilian Authorities.

List of Subjects in 32 CFR Part 884

Courts, Government employees, Law enforcement, Military personnel.

For the reasons set forth in the preamble, the Department of the Air Force is revising 32 CFR Part 884 as follows:

PART 884—DELIVERY OF PERSONNEL TO UNITED STATES CIVILIAN AUTHORITIES FOR TRIAL

Sec.

884.0 Purpose.

884.1 Authority.

884.2 Assigned responsibilities.

884.3 Placing member under restraint pending delivery.

884.4 Release on bail or recognizance.

884.5 Requests under the interstate agreement on Detainer's Act.

884.6 Requests by Federal authorities for military personnel stationed within the United States and its possessions.

884.7 Requests by state and local authorities when the requested member is located in that state.

884.8 Request for delivery by state authorities when the member is located in a different state.

884.9 Requests for custody of members stationed outside the United States.

884.10 Returning members, employees, and family members from overseas.

884.11 Procedures for return of an Air force member to the United States.

884.12 Delays in returning members to the United States.

884.13 Denials of a request for return of a member to the United States.

884.14 Compliance with court orders by civilian employees and family members.

884.15 Procedures involving a request by Federal or state authorities for custody of an overseas civilian employee or a command-sponsored family member.

884.16 Reporting requests for assistance and action.

884.17 Commander's instruction letter to member.

884.18 Civilian authority's acknowledgment of transfer of custody and agreement to notify member's commander.

Authority: 10 U.S.C. 814; 10 U.S.C. 8013; Sec. 721(a), Pub. L. 100-456, 102 Stat. 2001.

§ 884.0 Purpose.

This part establishes procedures for making Air Force members, civilian personnel, and family members available to U.S. civilian authorities for trial or specified court appearances. It implements 32 CFR part 146. This part does not confer any rights, benefits, privileges, or form of due process procedure upon any individuals.

§ 884.1 Authority.

A general court martial convening authority (GCMCA) may authorize delivery of a member of that command to Federal or state civil authorities. The GCMCA may delegate this authority to an installation or equivalent commander. See AFPD 51-10, Making Military Personnel, Employees, and Dependents Available to Civilian

authorities,¹ paragraphs 8 and 9 for sources of authority.

§ 884.2 Assigned responsibilities.

(a) The Under Secretary of Defense (USD), Personnel & Readiness (P&R), is the denial authority for all requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.9(e).

(b) The Air Force Judge Advocate General (TJAG) may approve requests that fall under § 884.9(e) or recommend denial of such requests. TJAG or a designee may approve or deny:

(1) Requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.9(f).

(2) Requests for delays of up to 90 days completing action on requests for return of members to the United States for delivery to civilian authorities.

(c) The Air Force Legal Services Agency's Military Justice Division (HQ AFLSA/JAJM), 172 Luke Avenue, Suite 343, Bolling AFB, DC 20332-5113, processes requests for return of members to the United States for delivery to civilian authorities and notifies requesting authorities of decisions on requests. HQ AFLSA/JAJM completes action on requests within 30 days after receipt of the request, unless a delay is granted; they send all reports and notifications to USD/P&R and to the DoD General Counsel (DoD/GC), as required by this part; and they handle all communications with requesters.

§ 884.3 Placing member under restraint pending delivery.

Continue restraint only as long as is reasonably necessary to deliver the member to civilian authorities. See AFPD 51-10, paragraph 5. To determine whether probable cause exists and whether a reasonable belief exists that restraint is necessary, the commander should refer to the Manual for Courts-Martial (MCM), 1984, specifically, Rules for Courts-Martial (RCM) 305(h)(2)(B), and the discussion following it. The requirement for the formal review of restraint found in MCM 1984, RCM 305, and AFI 51-201, Military Justice Guide,² does not apply.

§ 884.4 Release on bail or recognizance.

(a) Before delivering an Air Force member to a civilian authority, the commander or designee directs the member in writing to report to a designated Air Force unit, activity, or recruiting office for further instructions

in the event the civilian authority releases the member (see § 884.17). The commander designates the member's unit, if the civilian authority is in the immediate vicinity of the member's base. The commander advises the designated Air Force unit, activity, or recruiting office of the situation. Once the member has been released and has reported to the designated authority, it immediately sends the member's name, rank, Social Security number (SSN), organization, and other pertinent information to the member's commander, who then provides further instructions.

(b) The member's commander notifies the military personnel flight (MPF) of the situation. In turn, the MPF provides an information copy to the Air Force Personnel Center (AFPC) assignment office responsible for the member's Air Force specialty code (AFSC), as listed in AFMAN 36-2105, Officer Classification,³ or AFMAN 36-2108, Airman Classification.³ If contact cannot be made with the member's commander, the Air Force unit, activity, or recruiting office previously designated by the commander obtains instructions from HQ AFPC/DPMARS or DPMRPP2.

§ 884.5 Requests under the Interstate agreement on Detainer's Act.

When either the prisoner or state authorities make a request under the Detainer's Act, follow the procedures in Title 18 U.S.C. App. Section 1, *et seq.* The Act applies only to a person who has entered upon a term of imprisonment in a penal or correctional institution and is, therefore inapplicable to members in pretrial confinement.

§ 884.6 Request by Federal authorities for military personnel stationed within the United States and its possessions.

(a) When Federal authorities request the delivery of service members, the Air Force will normally deliver service members when the request is accompanied by a warrant issued pursuant to the Federal Rules of Criminal Procedure, rule 4, or when a properly identified Federal officer represents that such a warrant has been issued.

(b) A U.S. marshal, deputy marshal, or other officer authorized by law will call for and take into custody persons desired by Federal authorities for trial. The officer taking custody must execute a statement in substantially the form set out in § 884.18.

§ 884.7 Requests by state and local authorities when the requested member is located in that state.

(a) The Air Force normally will turn over to the civilian authorities of the state, upon their request. Air Force members charged with an offense against state or local law. Each request by such civilian authorities for the surrender of a member of the Air Force should normally be accompanied by a copy of an indictment, information, or other document used in the state to prefer charges, or a warrant that reflects the charges and is issued by a court of competent jurisdiction.

(b) Before making delivery to civilian authorities of a state, the commander having authority to deliver will obtain a written agreement, substantially in the form of § 884.18, from a duly authorized officer of the state.

(c) Where the state authority cannot agree to one or more of the conditions set out in the form, the commander may authorize modification. The requirements of the agreement are substantially met when the state authority informs the accused's commander of the accused's prospective release for return to military authorities and when the state furnishes the accused transportation back to his or her station, together with necessary funds to cover incidental expenses en route. The accused's commander provides copies of the statement or agreement of this section and in § 884.6(b) to the civilian authority to whom the member was delivered and to the Air Force unit, activity, or recruiting office nearest to the place of trial designated in the agreement as the point of contact in the event of release on bail or on recognizance (see § 884.4). The accused's commander immediately notifies the civilian authority if the member has been discharged from the Air Force.

§ 884.8 Request for delivery by state authorities when the member is located in a different state.

(a) This part applies to members who are located in the United States. With respect to the extradition process, Air Force personnel have the same status as persons not in the Armed Forces. Accordingly, if a state other than the state in which the member is located requests the delivery of a military member, in the absence of a waiver of extradition process by the member concerned, that state must use its normal extradition procedures to make arrangements to take the individual into custody in the state where he or she is located.

¹ Air Force publications may be obtained through NTIS, 5285 Port Royal Road, Springfield, VA 22161, if not available online at <http://afpubs.hq.af.mil>.

² See footnote in § 884.1.

³ See footnote in § 884.1.

(b) The Air Force will not transfer a military member from a base within one state to a base within another state for the purpose of making the member amenable to prosecution by civilian authorities.

§ 884.9 Request for custody of members stationed outside the United States.

(a) Authority. This section implements Pub. L. 100-456, section 721(a), and DoD Directive 5525.9, December 27, 1988.

(b) The Air Force expects members to comply with orders issued by Federal or state court of competent jurisdiction, unless noncompliance is legally justified. Air Force members who persist in noncompliance are subject to adverse administrative action, including separation for cause under AFI 36-3206, Administrative Discharge Procedures, and AFI 36-3208, Administrative Separation of Airmen.

(c) Air Force officials will ensure that members do not use assignments or officially sponsored residence outside the United States to avoid compliance with valid orders of Federal or state court of competent jurisdiction.

(d) Noncompliance with a court order may be legally justified when the individual can adequately demonstrate that the conduct, which is the subject of the complaint or request, was sanctioned by supplemental court orders, equally valid court orders of other jurisdictions, good faith legal efforts to resist the request, or other reasons. HQ USAF/JAG, HQ AFLSA/JACA, and Air Force legal offices in the jurisdiction concerned will provide legal support to servicing staff judge advocates who request assistance in reviewing these issues.

(e) When Federal, state, or local authorities request delivery of an Air Force member stationed outside the United States who is convicted of or charged with a felony or other serious offense or who is sought by such authorities in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or from the lawful custody of another person, the member's commander will normally expeditiously return the member to the United States for delivery to the requesting authorities.

(1) A serious offense is defined as one punishable by confinement for more than 1 year under the laws of the requesting jurisdiction.

(2) Delivery of the member is not required if the controversy can be resolved without returning the member to the United States or if the request for delivery of the member is denied in accordance with this instruction.

(f) Ordinarily, do not return an Air Force member stationed outside the United States to the United States for delivery to civilian authorities if the offense is not specified in paragraph (e) of this section. TJAG may direct return when deemed appropriate under the facts and circumstances of the particular case.

(g) Before taking action under this section, give the member the opportunity to provide evidence of legal efforts to resist the court order or process sought to be enforced or otherwise to show legitimate cause for noncompliance.⁴

§ 884.10 Returning members, employees, and family members from overseas.

The Air Force expects persons overseas wanted by Federal or state authorities to make themselves available to those authorities for disposition. If they do not, DoD Directive 5525.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders, 10 U.S.C. 814, and Pub. L. 100-456, section 721(a), authorize and require commanders to respond promptly to requests from civilian authorities for assistance in returning members, civilian employees, and family members from overseas.

§ 884.11 Procedures for return of an Air Force member to the United States.

(a) Include the following information in a request for return of an Air Force member to the United States for delivery to civilian authorities.

(1) Fully identify the member sought by providing the member's name, grade, SSN, and unit of assignment, to the extent the information is known.

(2) Specify the offense for which the member is sought. If the member is charged with a crime, specify the maximum punishment under the laws of the requesting jurisdiction. Specify whether the member is sought in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or the lawful custody of another.

(3) Include copies of all relevant requests for assistance, indictments, information, or other instruments used to bring charges, all relevant court orders or decrees, and all arrest warrants, writs of attachment or capias (writs authorizing arrests), or other process directing or authorizing the requesting authorities to take the member into custody. Also, include reports of investigation and other materials concerning the background of the case if reasonably available.

(4) Indicate whether the requesting authorities will secure the member's lawful delivery or extradition from the port of entry to the requesting jurisdiction, whether they will do so at their own expense, and whether they will notify HQ AFLSA/JAJM of the member's release from custody and of the ultimate disposition of the matter.

(5) Any U.S. attorney or assistant U.S. attorney, governor or other duly authorized officer of a requesting state or local jurisdiction, or the judge, magistrate, or clerk of a court of competent jurisdiction must sign the request.

(b) Civilian authorities making requests for return of members to the United States for delivery to them should direct their request to HQ AFLSA/JAJM. If another Air Force agency or official receives the request, immediately send it to HQ AFLSA/JAJM.

(c) Upon receipt of a request, HQ AFLSA/JAJM promptly notifies the member's commander, who consults with the servicing staff judge advocate. The commander provides a report of relevant facts and circumstances and recommended disposition of the request through command channels to HQ AFLSA/JAJM. If the commander recommends denial of the request or a delay in processing or approving it, the commander provides the information specified in § 884.12(a)(1) through (a)(4) or § 884.13(a)(1) through (a)(4).

(d) After proper authority has approved a request for return of a member to the United States for delivery to civilian authorities, HQ AFLSA/JAJM notifies AFPC of the decision to return the member to the United States. AFPC issues permanent change of station (PCS) orders, assigning the member to an installation as close to the requesting jurisdiction as possible, considering the needs of the Air Force for personnel in the member's rank and AFSC.

(e) HQ AFLSA/JAJM notifies requesting authorities of the member's new assignment, port of entry into the United States and estimated time of arrival. Except during unusual circumstances, HQ AFLSA/JAJM notifies requesting authorities at least 10 days before the member's return.

§ 884.12 Delays in returning members to the United States.

(a) On a request to return a member to the United States for delivery to civilian authorities, TJAG may grant a delay of not more than 90 days in completing action when one or more of the following are present:

(1) Efforts are in progress to resolve the controversy to the satisfaction of the

⁴ See footnote in § 884.1

requesting authorities without the member's return to the United States.

(2) Additional time is required to permit the member to provide satisfactory evidence of legal efforts to resist the request or to show legitimate cause for noncompliance.

(3) Additional time is required to permit the commander to determine the specific effect of the loss of the member on command mission and readiness or to determine pertinent facts and circumstances relating to any international agreement, foreign judicial proceeding, DoD, Air Force, or other military department investigation or court-martial affecting the member.

(4) Other unusual facts or circumstances warrant delay.

(b) AFLSA/JAJM promptly reports all delays in cases falling under AFD 51-10,⁵ paragraph 3, through SAF/GC and SAF/MI or USD/P&R and to DoD/GC.

(c) Delays in excess of 90 days are not authorized in cases falling under AFD 51-10, paragraph 3, unless approved by USD/P&R.

§ 884.13 Denials of a request for return of a member to the United States.

(a) A request for return of a member to the United States for delivery to civilian authorities may be denied when:

(1) The member's return would have an adverse impact on operational readiness or mission requirements.

(2) An international agreement precludes the member's return.

(3) The member is the subject of foreign judicial proceedings, court-martial, or a DoD, Air Force, or other military department investigation.

(4) The member showed satisfactory evidence of legal efforts to resist the request or other legitimate cause for noncompliance or when other unusual facts or circumstances warrant a denial.

(b) Commanders promptly send to HQ AFLSA/JAJM information supporting a determination that denial may be appropriate. In cases warranting denial, TJAG promptly sends a recommendation and supporting documentation, through SAF/GC and SAF/MI, to USD/P&R for decision.

(c) The fact that a recommendation for denial is pending does not by itself authorize noncompliance or a delay in compliance with any provision of this section, but TJAG may consider a pending request for denial in determining whether to grant a delay.

§ 884.14 Compliance with court orders by civilian employees and family members.

(a) The Air Force expects civilian employees and family members to

comply with orders issued by Federal or state court of competent jurisdiction, unless noncompliance is legally justified. Air Force civilian employees who persist in noncompliance are subject to adverse administrative action, including separation for cause as provided in AFI 36-704, Discipline and Adverse Actions (PA).⁶

(b) Air Force officials ensure that civilian personnel and family members do not use assignments or officially sponsored residence outside the United States to avoid compliance with valid orders of Federal or state court of competent jurisdiction.

§ 884.15 Procedures involving a request by Federal or state authorities for custody of an overseas civilian employee or a command-sponsored family member.

(a) The procedures of this section apply to civilian employees, including nonappropriated fund instrumentality (NAFI) employees, who are assigned outside the United States, and to command-sponsored family members residing outside the United States.

(b) This section applies only when Air Force authorities receive a request for assistance from Federal, state, or local authorities involving noncompliance with a court order and when noncompliance is the subject of any of the following: An arrest warrant; indictment, information, or other document used in the jurisdiction to prefer charges; or a contempt citation involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the lawful custody of a parent or third party.

(c) To the maximum extent possible, consistent with provisions of international agreements and foreign court orders, DoD and military department investigations, and judicial proceedings, commanders comply with requests for assistance. After exhausting all reasonable efforts to resolve the matter without the employee or family member returning to the United States, the commander shall strongly encourage the individual to comply. The commander shall consider imposing disciplinary action (including removal) against the employee or withdrawing command sponsorship of the family member, as appropriate, for failure to comply.

§ 884.16 Reporting requests for assistance and action.

The commander or designee promptly reports each request for assistance and intended action by message. Send reports to HQ AFLSA/JAJM, which submits required reports, through

channels, to USD/P&R, HQ AFLSA/JAJM conducts all communications with requesters.

§ 884.17 Commander's instruction letter to member.

Subject: Instructions in Case of Release on Bail or Personal Recognizance

1. You are being delivered to the custody of civilian authorities, pursuant to the provisions of AFI 51-1001. This action does not constitute a discharge from the Air Force. In the event that you are released from civilian custody on bail or on your own recognizance, report immediately in person or by telephone to the (Air Force unit, activity, or recruiting office) for further instructions. Advise the commander of your name, rank, SSN, organization, the circumstances of your release from custody, and the contents of this letter.

2. Certain restrictions may be placed upon you by civilian authorities in connection with your temporary release from custody. Be certain to include in your report what these limitations are.

3. AFI 51-1001, paragraph 4 provides that the authority to whom you report will notify your commander. If that is not possible, request the nearest Air Force base military personnel flight to contact HQ AFPC/DPMARS or DPMRPP2 by the fastest means available. Provide your name, rank, SSN, organization, and the circumstances of your release; further instruction will then be given to you.

[Signature Element]

§ 884.18 Civilian Authority's acknowledgment of Transfer of Custody and Agreement to Notify Member's Commander.

1. A warrant for the arrest of (name, rank, and SSN), hereinafter referred to as the "member," and who is charged with (offenses) has been issued by (civilian authority) and in execution, thereof, I accept his or her custody.

2. In consideration of the delivery of member at (location) to me for trial upon the above charge, pursuant to the authority vested in me as (position), I hereby agree to the following:

a. The commander (name, rank, unit, telephone), will be advised of the disposition of the charges.

b. The member will be immediately returned to the custody of the military upon completion of the trial, if acquitted; or upon satisfying the sentence imposed, if convicted; or upon other disposition of the case.

c. The member's return will be to (location) or to such other place as may be designated by the Department of the Air Force.

3. The member's return will not be required if the member's commander has indicated that return is not appropriate. Instead of actual delivery, transportation for the member may be arranged so long as it is without expense to the United States or to the member.

4. Pending disposition of the charges, the member will remain in the custody of [name of agency and location], unless released on bail or the member's own recognizance, in

⁵ See footnote in § 884.1.

⁶ See footnote in § 884.1.

which event [Air Force unit, activity, or recruiting office nearest place of trial] will be notified.

[Signature Element]

Janet A. Long,

Air Federal Register Liaison Officer.

[FR Doc. 00-27520 Filed 10-26-00; 8:45 am]

BILLING CODE 5001-05-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01-00-243]

Drawbridge Operation Regulations; Hutchinson River, Eastchester Creek, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the South Fulton Avenue Bridge, mile 2.9, across the Eastchester Creek in New York. This deviation from the regulations allows the bridge owner to keep the bridge in the closed position, from 8 a.m. Monday through 4:30 p.m. Thursday, for four weeks, October 23, 2000, through November 17, 2000. This action is necessary to facilitate sidewalk replacement at the bridge.

DATES: This deviation is effective October 23, 2000, through November 17, 2000.

FOR FURTHER INFORMATION CONTACT: Joe Schmied, Project Officer, First Coast Guard District, at (212) 668-7165.

SUPPLEMENTARY INFORMATION: The South Fulton Avenue Bridge, mile 2.9, across the Eastchester Creek has a vertical clearance of 6 feet at mean high water, and 13 feet at mean low water in the closed position. The bridge owner, Westchester County Department of Public Works (WCDPW), requested a temporary deviation from the operating regulations to facilitate sidewalk replacement at the bridge. The existing operating regulations at 33 CFR 117.793(c) require the bridge to open on signal from three-hours before to three-hours after high tide. At all other times the bridge shall open on signal if at least four-hours advance notice is given.

This deviation to the operating regulations allows the owner of the South Fulton Avenue Bridge to keep the bridge in the closed position from 8 a.m. Monday through 4:30 p.m. Thursday,

for four weeks, October 23, 2000 through November 17, 2000. Vessels that can pass under the bridge without an opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 6, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 00-27666 Filed 10-26-00; 8:45 am]

BILLING CODE 4910-15-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-200018; FRL-6892-2]

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: Final rule.

SUMMARY: EPA is issuing 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 the effective date of this final SIP call. EPA is issuing this SIP call because we find, in light of the Birmingham area's continued nonattainment for ozone, that the Alabama SIP is substantially inadequate to attain the 1-hour ozone national ambient air quality standard (NAAQS). In light of this finding, section 110(k)(5) of the Clean Air Act (CAA) authorizes EPA to require Alabama to submit a 1-hour ozone attainment plan for the Birmingham area to correct this inadequacy. 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).

EFFECTIVE DATE: November 27, 2000.

ADDRESSES: Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours

before the visiting day. Please reference file AL-200018. The Region 4 office may have additional background documents not available at the other locations. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations:

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. Ms. Bingham can also be reached via electronic mail at Bingham.Kimberly@epa.gov.

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

- I. Background
- II. Why is EPA issuing this 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?
- IV. Response to Comments received on the Proposed SIP call
- V. Administrative Requirements

I. Background

On November 15, 1990, Jefferson and Shelby Counties, Alabama, were designated as the Birmingham marginal ozone nonattainment area. Section 182(f)(1)(A) of the CAA provides for an exemption for New Source Review offsets for nitrogen oxides (NO_x) in ozone nonattainment areas where a state shows and EPA agrees that additional NO_x 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_x exemption under this statutory provision for the Birmingham marginal ozone nonattainment area (58 FR 45439).

Section 107(d)(3)(E) of the CAA sets forth five specific requirements that states must include in a redesignation request in order for EPA to redesignate an area from nonattainment to attainment. 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) is dated