Subpart B—Alabama

■ 2. Section 52.50(c) is amended by:

■ a. Adding in numerical order a new entry in Chapter No. 335–3–1 General Provisions for ''Section 335–3–1–.15''; and

■ b. Revising entries for ''Section 335–3–3–.01'', ''Section 335–3–8–.10'', and ''Section 335–3–17–.01''.

The revisions and addition read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	*	*	* *	*
Section 335–3–1–.15	Emissions Inventory Reporting Requirements.	04/03/03	04/24/03 [Insert citation of publication].	
* *	*	*	* *	*
Section 335–3–3–.01	Open Burning	04/03/03	04/24/03 [Insert citation of publication].	
* *	*	*	* *	*
Section 335–3–8–.10	NO_X Allowance Tracking System	04/03/03	04/24/03 [Insert citation of publication].	
* *	*	*	* *	*
Section 335–3–17–.01	Transportation Conformity	04/03/03	04/24/03 [Insert citation of publication].	
* *	*	*	* *	*

* * * * *

[FR Doc. 03–10061 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[LA–58–1–7522; FRL–7487–4]

Notice of Withdrawal of October 2, 2002, Attainment Date Extension, Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule finalizes EPA's finding that the Baton Rouge 1-hour ozone nonattainment area (hereinafter referred to as the Baton Rouge area) did not attain the 1-hour ozone national ambient air quality standard (NAAQS or standard) by November 15, 1999, the attainment date for serious nonattainment areas set forth in the Federal Clean Air Act (CAA or Act). As a result of this finding, the Baton Rouge area will be reclassified from a serious to a severe one-hour ozone nonattainment area by operation of law on the effective date of this rule. In addition, EPA is establishing a schedule for Louisiana to submit State Implementation Plan (SIP) revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas within 12 months of the effective date of this rule and establishing November 15, 2005, as the date by which the Baton Rouge area must attain the ozone NAAQS. Finally, EPA is adjusting the dates by which the area must achieve a 9% reduction in ozone precursor emissions to meet the 2002 rate-of-progress requirement and is adjusting the contingency measure requirements as they relate to the 2002 ROP milestone. On December 11, 2002, the U.S. Court of Appeals for the Fifth Circuit issued its decision on EPA's extension policy used to extend the 1-hour ozone attainment deadline for the Beaumont-Port Arthur, Texas, area, without reclassifying the area. The Court rejected EPA's extension of Beaumont-Port Arthur's attainment date because it determined that the CAA precludes such an extension as a matter of law. We are issuing this rule in response to the rejection by the Fifth Circuit Court of Appeals of EPA's use of the extension policy.

DATES: This final rule is effective on June 23, 2003.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733; and the Louisiana Department of Environmental Quality (LDEQ), 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884. Please contact the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Maria L. Martinez, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–2230.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we, us, or our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

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I. What Is the Background for This Rule?
II. What Are the National Ambient Air Quality Standards?
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VI. What Does This Action Do?
VII. What Is the New Attainment Date for the Baton Rouge Area?
VIII. When Must Louisiana Submit SIP Revisions Fulfilling the Requirements for Severe Ozone Nonattainment Areas?
IX. What Is the Impact of a Reclassification on the Title V Operating Permit Program?
X. Statutory and Executive Order Reviews

I. What Is the Background for This Rule?

On May 9, 2001, EPA proposed its finding that the Baton Rouge serious ozone nonattainment area did not attain the 1-hour ozone NAAQS by November 15, 1999, the applicable attainment date (66 FR 23646). The proposed finding was based upon ambient air quality data from the years 1997, 1998, 1999. These data showed that the 1-hour ozone NAAQS of 0.12 parts per million (ppm) had been exceeded on an average of more than one day per year over this three-year period and that the area did not qualify for an attainment date extension under section 181(a)(5). EPA

also proposed that the appropriate reclassification of the area was to severe.

In that proposed action, we also stated that Louisiana was seeking an extension of its attainment date pursuant to the extension policy, which was published in a March 25, 1999, **Federal Register** notice (64 FR 14441). This policy addressed areas affected by downwind transport of ozone and/or ozone precursors. EPA proposed to take final action on the determination of nonattainment and reclassification of the Baton Rouge area only after the area had received an opportunity to qualify for an attainment date extension under the extension policy. EPA received comments on the May 9, 2001, proposed rule (66 FR 23646). We also received comments from the public on the supplemental proposed rulemaking published on July 25, 2001 (66 FR 38608) for the ''Clean Air Reclassification and Notice of Potential Eligibility for Extension of Attainment Date, Louisiana; Baton Rouge Ozone Nonattainment Area.'' This notice supplemented the proposed actions of the May 9, 2001, notice, by proposing to extend the deadline for submission of an attainment plan from August 31, 2001, to December 31, 2001. Louisiana submitted an Attainment Plan/Transport SIP on December 31, 2001 for the Baton Rouge area.

On March 7, 2002, the United States District Court for the Middle District of Louisiana entered a judgment ordering EPA to issue a determination by June 5, 2002, as to whether the Baton Rouge area had attained the applicable ozone standard under the CAA. *LEAN* v. *Whitman,* No. 00–879–A.

EPA made the determination required by the Court, and as the Court further ordered, EPA then published a notice of this determination in the **Federal Register**. 67 FR 42687 (June 24, 2002). That notice stated EPA's finding that the Baton Rouge area did not attain the 1-hour ozone NAAQS by November 15, 1999, and that the area would be reclassified to ''severe'' by operation of law as of the effective date of the rule. In addition, the June 24, 2002, rulemaking established the dates by which Louisiana was to submit SIP revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas and to attain the 1-hour NAAQS for ozone. The June 24, 2002, rulemaking was to be effective August 23, 2002. EPA's responses to the comments related to the reclassification are incorporated by reference in this rule and appear in the June 24, 2002, rule.

On August 20, 2002, EPA published a rule extending the effective date of the June 24, 2002, rulemaking to October 4, 2002 (67 FR 53882).

On October 2, 2002, EPA issued a final rule in which EPA extended the attainment date for the Baton Rouge area, consistent with the extension policy, and withdrew the June 24, 2002, rulemaking before its effective date (67 FR 61786). The October 2, 2002, rulemaking also approved the attainment demonstration for the Baton Rouge area and took several other related actions.

Petitions for review of the October 2, 2002, rulemaking have been filed in the U.S. Court of Appeals for the Fifth Circuit (*Louisiana Environmental Action Network (LEAN)* v. *EPA,* No. 02–60991; *Pointe Coupee Parish Police Jury* v. *EPA,* No. 02–61021.

Additionally on December 11, 2002, the U.S. Court of Appeals for the Fifth Circuit issued its decision in *Sierra Club* v. *United States EPA*, 314 F.3d 735. Among the issues in that case was EPA's decision under the extension policy to extend the 1-hour ozone attainment deadline for the Beaumont-Port Arthur, Texas, area without reclassifying the area. The Court rejected this decision because it determined that the CAA precludes such an extension as a matter of law. Because the Court's decision was based on its legal interpretation of the CAA and not on the particular facts at issue in the Beaumont-Port Arthur case, and because the decision is precedential within the Circuit, we must withdraw our determination to extend the attainment deadline for Baton Rouge. Accordingly, we requested that the Fifth Circuit grant a partial voluntary remand of our October 2, 2002, final rule, to allow us to withdraw our decision to extend the attainment date for Baton Rouge. The Court granted that request on February 25, 2003. We are issuing this rule in response to the Fifth Circuit Court of Appeals rejection of EPA's use of the extension policy.

II. What Are the National Ambient Air Quality Standards?

EPA has set NAAQS for six common air pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The CAA requires that these standards be set at levels that protect public health and welfare with an adequate margin of safety. These standards, established under section 109 of the CAA, present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether or not the air quality in their communities is healthful.

III. What Is the NAAQS for Ozone?

The NAAQS for ozone is expressed in two forms which are referred to as the 1-hour and 8-hour [1] standards. Table 1 summarizes the 1-hour ozone standard.

TABLE 1.—SUMMARY OF OZONE STANDARD

Standard	Value	Type [a]	Method of compliance
1-hour	0.12 ppm	Primary and Secondary	Must not be exceeded, on average, more than one day per year over any three-year period at any monitor within an area.

[a] Primary standards are designed to protect public health and secondary standards are designed to protect public welfare and the environment.

The 1-hour ozone standard of 0.12 parts per million (ppm) was promulgated in 1979. The 1-hour ozone standard continues to apply to Baton Rouge and it is the classification of the Baton Rouge area with respect to the 1-hour ozone standard that is addressed in this document.

IV. What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA. After engaging in required public participation, each state must submit the required regulations and control strategies to us for approval and

[1] The 8-hour ozone standard value is 0.08 ppm and is the primary and secondary standard. The method of compliance is the average of the annual fourth highest daily maximum 8-hour average ozone concentration measured at each monitor over any three-year period is less than or equal to 0.08 ppm.

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. They may contain state regulations or other enforceable measures, as well as supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

V. What Is the Baton Rouge Ozone Nonattainment Area?

The Baton Rouge ozone nonattainment area, located in southern Louisiana, consists of East Baton Rouge, West Baton Rouge, Ascension, Iberville, and Livingston Parishes.

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the 1-hour ozone standard before enactment of the 1990 CAA Amendments, such as the Baton Rouge area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. In addition, under section 181(a) of the Act, each area designated nonattainment under section 107(d) was classified as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme,'' depending on the severity of the area's air quality problem. The design value for an area characterizes the severity of the air quality problem. The design value for an area is the highest site design value. The site design value in turn is the fourth highest 1-hour daily maximum in a given three-year period. Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.160 and 0.180 ppm, such as the Baton Rouge area (which had a design value of 0.164 ppm in 1989), were classified as serious. These nonattainment designations and classifications were initially codified in 40 CFR part 81 (*see* 56 FR 56694, November 6, 1991).

TABLE 2.—1-HOUR OZONE NONATTAINMENT CLASSIFICATIONS

Area class	Design value (ppm)	Attainment date
Marginal	0.121 up to 0.138	November 15, 1993.
Moderate	0.138 up to 0.160	November 15, 1996.
Serious	0.160 up to 0.180	November 15, 1999.
Severe	0.180 up to 0.280	November 15, 2005.
Extreme	0.280 and above	November 15, 2010.

VI. What Does This Action Do?

In this action, in accordance with the decisions of the Fifth Circuit Court of Appeals rejecting EPA's use of the extension policy and in fulfilling our nondiscretionary duty under the CAA, EPA is withdrawing the portion of the October 2, 2002, rulemaking that granted Baton Rouge an extension of its attainment date. Specifically we are withdrawing the approvals of the attainment date extension for the Baton Rouge area and the transport demonstration in Louisiana's December 31, 2001, SIP. Additionally, EPA is reinstating its previous final determination that the Baton Rouge area did not attain the 1-hour ozone NAAQS by November 15, 1999, as prescribed in section 181 of the CAA. As a result of this action, the Baton Rouge area is reclassified by operation of law to severe ozone nonattainment pursuant to section 181(b)(2) of the CAA on the effective date of this action.[2] In addition, this action sets the dates by which Louisiana must submit SIP revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas (the ''severe area SIP'') and to attain the 1-hour NAAQS for ozone. The post-1999 ROP nine percent reduction originally was required under the CAA to occur by November 15, 2002. Because that statutory deadline passed before the area became classified as severe and thus first became subject to the requirement to demonstrate post-1999 ROP, we conclude that the State must have some time to actually develop and implement the measures needed to achieve such progress. Accordingly, in this action we are allowing Louisiana to demonstrate that the first required post-1999 nine percent ROP is achieved as expeditiously as practicable after November 15, 2002, but in any case no later than November 15, 2005. EPA is allowing Louisiana to relate contingency measures for the 2002 ROP milestone to this new date.[3] Further discussion of a severe ozone nonattainment area's SIP requirements appears below in section VIII.

VII. What Is the New Attainment Date for the Baton Rouge Area?

In the June 24, 2002, rulemaking, EPA set forth its conclusion under section 181(a)(1) of the Act that the attainment deadline for the Baton Rouge area, as a serious ozone nonattainment area reclassified to severe under section 181(b)(2), is as expeditiously as practicable but no later than the date provided in the Act for the new classification: November 15, 2005. EPA incorporates this conclusion, supporting reasoning, and responses to comments by reference into this rulemaking.

VIII. When Must Louisiana Submit SIP Revisions Fulfilling the Requirements for Severe Ozone Nonattainment Areas?

Under section 182(i) of the Act, serious ozone nonattainment areas reclassified to severe are required to submit SIP revisions addressing the severe area requirements for the 1-hour ozone NAAQS. Under section 182(d), severe area plans are required to meet all the requirements for serious area plans plus the requirements for severe area plans, which include: (1) A 25 ton per year major stationary source threshold; (2) additional reasonably available control technology (RACT) rules for sources subject to the new lower major stationary source threshold; (3) a new source review (NSR) offset requirement of at least 1.3 to 1; (4) a rate of progress in emission reductions of ozone precursors of at least 3 percent of base line emissions per year from November 15, 1999, until the attainment year; (5) additional transportation control measures (TCMs) needed to offset growth in emissions due to growth in vehicle miles traveled (VMT); and (6) a fee requirement for major stationary sources of volatile organic

[2] This rulemaking is a final action because the Fifth Circuit's decision in *Sierra Club* v. *United States EPA*, 314 F.3d 735, leaves no remaining questions on which we might solicit public comment regarding the reclassification of the Baton Rouge area. In light of the Court's decision and considering that we have already taken public comments and issued a final rule on reclassification (67 FR 42687, June 24, 2002), we have concluded that no good cause exists to require additional public comment regarding the reclassification of the Baton Rouge area.

[3] The severe area ROP plan will also have to provide for the second increment of post-1999 ROP for the period 2002 to 2005 and thus must achieve a minimum of 18 percent emission reductions from base line emissions by November 15, 2005. Therefore, the average ROP emission reductions will not decrease.

compounds (VOC) and nitrogen oxides (NO_X)[4] should the area fail to attain by 2005.[5] In addition, under Section 211(k) of the Act the use of reformulated gasoline (RFG) will be required in the Baton Rouge area beginning one year from the effective date of this rule. The application of the RFG requirement occurs by operation of law in any area reclassified to severe ozone nonattainment status. We have issued a ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' that sets forth our preliminary views on these section 182 requirements and how we will act on SIPs submitted under Title I. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

Additionally, since the Baton Rouge area did not attain by the serious area attainment date, and in order to fulfill the contingency measures requirements of sections 172(c)(9) and 182(c)(9) of the CAA, the implementation of the failure-to-attain contingency measures in the current SIP is triggered automatically upon the effective date of this rule. Further, Louisiana is required to submit a revision to the SIP containing additional contingency measures for its severe area SIP to meet ROP requirements and backfill for failure to attain. *See* 57 FR 13498, 13511 (1992).

The Baton Rouge severe area plan must also contain enforceable regulations, control measures, means or techniques as necessary or appropriate to make the required rate of progress and to attain the 1-hour ozone NAAQS as expeditiously as practicable but no later than November 15, 2005. The severe area SIP and its budgets must use the MOBILE6 emissions model. Using MOBILE6 may require a revision to the 1990 base year inventory and ROP targets. Section 182(i) further provides that EPA may adjust the CAA deadlines for submitting these severe area SIP requirements. In addition to establishing a new attainment date, EPA must also address the schedule by which Louisiana is required to submit SIP revisions meeting the CAA's pollution control requirements for severe areas. In our June 24, 2002, redesignation rulemaking, after taking comments, we required that Louisiana submit SIP revisions fulfilling all of the severe area requirements, no later than one year after the effective date of the reclassification. We also concluded that if the submission showed that the area could attain the one-hour ozone NAAQS sooner than the attainment date established in the June 24, 2002, reclassification notice, we would adjust the attainment date to reflect the earlier date, consistent with the requirement in section 181(a)(1) that the NAAQS be attained as expeditiously as practicable. EPA did not receive any comments on the proposed schedule. We conclude that the severe SIP revision schedule is reasonable and appropriate. Therefore, EPA is requiring Louisiana to submit SIP revisions within 12 months of the effective date of this rule. These revisions must address the Act's pollution control requirements for severe ozone nonattainment areas and must demonstrate attainment by November 15, 2005.

IX. What Is the Impact of a Reclassification on the Title V Operating Permit Program?

In the June 24, 2002, final rule, EPA listed most of the SIP revisions that would be required to be submitted by Louisiana addressing the severe area requirements. One of these requirements is the lowering of the major stationary source threshold for VOC and NO_X emissions from 50 tons per year to 25 tons per year.

As a consequence of the reclassification of the Baton Rouge area to severe, additional sources become subject to the Title V major stationary source operating permit program. The affected sources are those with a potential to emit at least 25 tons per year of either VOC or NO_X, or both VOC and NO_X. Any new major stationary source must submit a timely Title V permit application. ''A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.'' See 40 CFR 70.5(a)(1) and see 40 CFR 71.5(a)(1). On the effective date of this action that can be found in the **DATES** section of this final rule, the 12 month (or earlier date set by Louisiana) time period to submit a timely application will commence in accordance with the State's Title V program regulations applicable to that source.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities.''

The Agency has determined that the finding of nonattainment would result in none of the effects identified in section 3(f) of the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, determinations of nonattainment and reclassification cannot be said to impose a materially adverse impact on state, local, or tribal governments or communities.

B. Paperwork Reduction Act

This final action to reclassify the Baton Rouge area as a severe ozone nonattainment area and to adjust applicable deadlines does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses,

[4] Ozone is not emitted directly into the air, but is formed through the photochemical reaction of NO_X and VOCs.

[5] Section 182(d)(3) sets a deadline of December 31, 2000, to submit the plan revision requiring fees for major sources should the area fail to attain. This date can be adjusted pursuant to CAA section 182(i). We adjusted this date to coincide with the submittal deadline for the rest of the severe area plan requirements.

small not-for-profit enterprises, and small governmental jurisdictions.

Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. See 62 FR 60001, 60007–8, and 60010 (November 6, 1997) for additional analysis of the RFA implications of attainment determinations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that this final action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), 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 the 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 believes, as discussed previously in this document, that a determination of nonattainment is a factual determination based upon air quality considerations and the resulting reclassification of the area occurs by operation of law. Thus, the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation. This determination of nonattainment and the resulting reclassification of a nonattainment area by operation of law 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 this action does not, in and of itself, impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to these actions.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This final rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000). Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

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 final action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), EPA must prepare for those matters identified as significant energy actions. A ''significant energy action'' is any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking, that is a significant regulatory action under Executive Order 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy. Under Executive Order 12866, this action is not a ''significant regulatory action.'' For this reason, the finding of nonattainment and reclassification is also not subject to Executive Order 13211.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final action to reclassify the Baton Rouge area as a severe ozone nonattainment area and to adjust applicable deadlines does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

K. 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 June 23, 2003. 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 shall not postpone the effectiveness of such rule or action. This action to reclassify the Baton Rouge area as a severe ozone nonattainment area and to adjust applicable deadlines may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Motor vehicle pollution, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: April 14, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

■ Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.319 the table for Louisiana—Ozone (1-hour Standard) is amended by revising the entry for the Baton Rouge area to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA-OZONE (1–HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Baton Rouge Area:				
Ascension Parish	11/15/90	Nonattainment	6/23/03	Severe
East Baton Rouge Parish	11/15/90	Nonattainment	6/23/03	Severe
Iberville Parish	11/15/90	Nonattainment	6/23/03	Severe
Livingston Parish	11/15/90	Nonattainment	6/23/03	Severe
West Baton Rouge Parish	11/15/90	Nonattainment	6/23/03	Severe
* * *	*	*	*	*

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

[FR Doc. 03–10172 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1097, MB Docket No. 02–155, RM–10452]

Digital Television Broadcast Service and Television Broadcast Service; Charleston, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Pappas Telecasting of America, substitutes DTV channel 52 for channel 23. *See* 67 FR 44791, July 5, 2002. DTV channel 52 can be allotted to Charleston, West Virginia, in compliance with the principal community coverage requirements of Section 73.625(a) at coordinates 38–30–21 N and 82–12–33 W. Since the community of Charleston is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian Government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–155, adopted April 4, 2003, and released April 17, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under West Virginia, is amended by removing TV channel 23 at Charleston.

■ 3. Section 73.622(b), the Table of Digital Television Allotments under West Virginia, is amended by adding DTV channel 52 at Charleston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

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