

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

September 4, 1992, and issued by the Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Calcagni Memorandum).

Based on three years of air quality data from 1991–1993, the Birmingham area attained the 1-hour ozone standard, 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 State of Alabama through ADEM submitted a request for redesignation of the Birmingham marginal ozone nonattainment area to attainment on March 16, 1995. In a letter dated February 15, 1995, addressing the prehearing submittal, EPA requested that ADEM submit supplemental information needed for the redesignation request to be approvable. ADEM submitted this supplemental information to EPA 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 contained a 30 day period for public comment on the redesignation request.

Prior to publication of the document, EPA determined that the area registered a violation of the 1-hour ozone NAAQS based on an exceedance that occurred August 18, 1995. As a result, EPA directed the Office of Federal Register to recall the direct final rule 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 NO_x 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 violations 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 revision that would provide for the attainment of the 1-hour ozone NAAQS. Because ADEM submitted the final commitment without Board adoption which prevented approval into the federally enforceable SIP, Region 4 informed the State that a SIP call would be initiated.

The proposed rulemaking notice announcing the SIP call was published in the **Federal Register** on December 16,

1999, (See 64 FR 70205). In that action, EPA proposed to require the State of Alabama to submit an attainment SIP within six months after final action is taken on the SIP call and to implement controls by May 2003.

II. Why is EPA Issuing This 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 issuing this SIP call, because violations of the 1-hour ozone NAAQS have been recorded in the Birmingham area for the last several 3-year periods, which were 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 plan as a SIP revision for the Birmingham area because EPA finds the current Alabama SIP inadequate to assure attainment and maintenance of the 1-hour ozone NAAQS. Also, in consideration of the length of time that has passed since the required attainment date of November 15, 1993, the substantial air quality modeling already completed, and the ongoing discussions with ADEM, 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 Revision Responding to This SIP Call?

If EPA finds the State of Alabama has failed to submit a complete 1-hour ozone attainment plan for the Birmingham nonattainment area as required by this SIP call, or disapproves the attainment plan, EPA will apply sanctions within 18 months of the finding as authorized by sections 110(m), 179(a)(1), and 179(a)(2) of the CAA. Sanctions available to EPA under section 179 of the CAA include highway sanctions and emission offsets. Pursuant to EPA implementing regulations at 40 CFR 52.31, the emission offset sanction is applied first. 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 CAA sections 179(a) and (b)(1) and 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, CAA section 110(c) provides that EPA promulgate a federal implementation plan (FIP) no later than 24 months after a finding of failure to submit a SIP unless the State of Alabama has submitted and EPA has approved the attainment plan.

IV. Response to Comments Received on the Proposed SIP Call

EPA received seventeen comments in response to the proposed SIP call. EPA compiled the comments into seven categories, and they are addressed below.

Comment 1. “Even though ADEM” s regulatory development is short in comparison to most states, a minimum of six months is necessary from proposal to effective date. If, for example, significant comments are received, this process can be even longer. Moreover, a sufficient time period should be given to enable the stakeholder group to provide adequate input. Six months is simply not enough time to fully address the area’s ozone problem.”

Response: 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. EPA can allow up to 18 months for a State to submit a plan, but has the discretion to determine what is a reasonable timeframe for submission of a plan in response to a SIP call. EPA believes that six months is reasonable. In a letter dated February 4, 1997, EPA requested that the State of Alabama provide a timeline identifying when a 1-hour attainment SIP would be submitted. In response, ADEM submitted a timeline in a letter dated March 13, 1997, that had a submission date for the 1-hour attainment SIP of March 1998. Because of several policy changes associated with the new 8-hour ozone standard, EPA requested 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. That

commitment included a final submittal date of September 1999. In consideration of the length of time that EPA has already spent working with ADEM in an effort to develop an attainment plan and the substantial air quality modeling already completed toward this end, EPA believes it is reasonable to require the State of Alabama to submit the attainment SIP in six months. ADEM prepared a draft attainment demonstration and submitted it to EPA on September 10, 1999. EPA submitted comments on the draft submittal, and ADEM submitted a revised attainment demonstration on April 21, 2000, in response to EPA's comments. The draft attainment demonstration would achieve the emission reductions through controls on power plants and a low sulfur fuel program. EPA Region 4 continues to work with ADEM to resolve all remaining issues with the draft plan to ensure that the regulations necessary for attainment are adopted in a timely fashion.

Comment 2. "The consultative requirements of our Conformity SIP require that the signatory parties be given an opportunity to comment on a draft SIP revision before undertaking the rulemaking process. This lengthens the time between EPA's preliminary approval of our draft SIP revision and the beginning of the formal rulemaking process."

Response: The transportation conformity interagency consultation process is continuous throughout the development of a SIP and transportation plans. Its purpose is to ensure that the transportation plan is developed in a manner that supports the state's efforts toward attainment/maintenance of the 1-hour ozone NAAQS. If consultation is conducted on a continual basis and issues are discussed up-front in the plan development stage, then it should not lengthen the rulemaking process. In fact, consultation should streamline it, by resolving issues early in the process. Formal concurrence by all interagency partners is not a prerequisite for the State to move forward in its SIP development and rulemaking.

Comment 3. "EPA has acknowledged the difficulties, both technical and procedural, in preparing approvable ozone attainment SIPs across the country by frequently extending submission and attainment times in other urban areas."

Response: EPA has provided flexibility for some areas with respect to SIP submission requirements and with attainment dates. In the early to mid-1990's, EPA was concerned that many areas in the eastern United States were

having difficulty demonstrating attainment by the statutory deadline because of the potential transport of ozone and its precursors (volatile organic compounds (VOCs) and NO_x) from other States. On March 2, 1995, EPA issued a policy document, entitled *Ozone Attainment Demonstrations*, providing that eastern states that participated in a process to assess regional transport could follow a two-phase submission process for attainment demonstrations for ozone nonattainment areas classified as serious or severe. The 37 easternmost states participated in this process, which was called the Ozone Transport Assessment Group (OTAG). OTAG also included representatives from industry, environmental groups, and academia. Over approximately two years, OTAG conducted studies and made recommendations to EPA. In response to OTAG recommendations, EPA called on twenty-two states and the District of Columbia to reduce emissions of NO_x that were transported to other states (NO_x SIP Call), 63 FR 57356 (October 27, 1998).

In addition, EPA has issued guidance providing that an area that is affected by transport may receive an attainment date extension that reflects the time for the implementation of regional NO_x reductions or the attainment date for any upwind nonattainment area that is the source of transport and that has a later attainment date.

The policy concerning SIP submission dates for serious and severe areas is inapplicable here. The regional analysis that formed the basis for the two-phased approach for serious and severe areas has been completed since 1998. EPA addressed more fully in the response to comment 1, the factors EPA considered in determining the appropriate SIP submittal date for the Birmingham attainment demonstration.

With respect to the attainment date for the Birmingham area, EPA is not setting an attainment date through this action. Alabama will need to establish an appropriate attainment date in its SIP submittal. At this time, EPA believes that the attainment demonstration for Birmingham should provide for attainment by November 2003, since EPA is unaware of any evidence that Birmingham is affected by transport from a nonattainment area with an attainment date later than 2003.

Comment 4. "A new local stakeholder group should be required and constituted which includes representatives from health, government, business, environmental, and public interests. This group will advise and provide input for the SIP.

The potential exists for considerable local opposition to the plan if the public is not involved in the planning process."

Response: It is important to note that EPA does not require states to form a stakeholders group to assist with the development of SIPs, including attainment demonstrations. It is up to the state to decide whether or not to involve a stakeholder group. EPA does require that the State of Alabama hold a public hearing before submitting a final SIP. Therefore, the public will have an opportunity to provide input on the Birmingham 1-hour ozone attainment demonstration at the public hearing.

Although not required, in 1997, ADEM did form an Advisory Committee to assist with the development of a control strategy for the Birmingham area. Representatives from ADEM, other State agencies, EPA, private industry, and other local stakeholders made up this Advisory Committee.

Comment 5. "EPA's delay in addressing the draft SIP has put the EPA desired compliance deadline of May 2003 in jeopardy for Alabama Power. Without an approved SIP, we are quickly reaching the point where a May 2003 compliance deadline is not possible at any reasonable cost. We have already had to postpone awarding a contract for required equipment and are in the process of rescheduling the planned unit outages. We have control over our unit outages, however the equipment implementation challenges aren't necessarily confined to internal resources. In fact, most critical paths pertain to external circumstances. There are many NO_x control projects in the region, with many vying for the same supply materials, manufacturers, and labor. The more delay in obtaining an approved Alabama SIP from EPA, the longer it will take to procure these finite external resources."

Response: Alabama Power did not specify in its comment letter the types of controls that would be implemented at the two utility plants identified in the draft attainment demonstration. Even if Alabama Power chose a more complicated control to implement such as selective catalytic reduction, EPA has estimated that this control could be readily installed within 21 months which is within the timeframe to meet a 2003 compliance deadline. With respect to Alabama Power experiencing a delay due to the lack of supply materials, manufacturers, and labor, EPA examined each of these considerations and found that an adequate supply of each would be available. For a more detailed

discussion on all of this information, see the report released in September 1998, by the EPA Office of Air and Radiation, Acid Rain Division entitled, "Feasibility of Installing NO_x Control Technologies in 2003." The web address for the feasibility report is <http://www.epa.gov/capi/ipm/npr.htm>.

Comment 6. "The plan should address the underlying issues of transportation planning and sprawling development patterns that can result from unintelligent transportation investments. Thus, the plan should be comprehensive and incorporate a balanced portfolio of available control strategies. I agree that the State of Alabama should develop a plan that will solve the ozone pollution problem in Jefferson and Shelby counties. The plan needs to be comprehensive and must incorporate input from the public. The following elements should be included: all available control measures—including vehicle emissions testing and transportation control measures which were not included in the draft SIP revision."

Response: Birmingham is designated as a marginal nonattainment area for the ozone NAAQS. In marginal nonattainment areas, EPA does not require that vehicle emissions testing be used as a control measure. Further, EPA does not require states to implement any particular transportation control measures. To demonstrate attainment of the NAAQS, the State has the option of choosing between a variety of control measures. States are given this flexibility to ensure that the most effective and feasible control measures for the affected area are implemented. In its draft plan, Alabama has opted to place stricter standards on two utilities and to continue implementing its low sulfur fuel program. Alabama also adopted an emergency rule to require reformulated gasoline or a low sulfur fuel in 1998, to provide further reductions in ozone precursors in the Birmingham nonattainment area. Alabama's low sulfur fuel rule indirectly addresses concerns relating to the impact of mobile sources due to sprawl by requiring stricter standards for fuel. Further, on December 21, 1999, EPA finalized the Tier 2/Low Sulfur rules which place stricter standards on cars, light duty trucks and the fuel used to operate these vehicles. Under that program, cars will be cleaner nationwide starting in model year 2004.

Comment 7. "USEPA should call upon ADEM to educate and involve the public with respect to modeling of air quality conditions in the region and modeling of improvements to air quality resulting from alternative control

strategies. As we are beginning to see in Atlanta, strategies to comply with air quality standards have become a complex computer modeling exercise unknown, and without USEPA intervention unknowable, to even the most attentive and interested stakeholders. A public education and involvement program focusing upon the modeling component of SIP development should condition any extension of the submittal date."

Response: ADEM and the Jefferson County Bureau of Environmental Health both have Education and Outreach programs that focus on educating the public on various issues including air quality modeling. EPA does not have the authority to require states to sponsor such education and outreach programs. However, EPA does support the outreach efforts of both ADEM and Jefferson County through the CAA section 105 grant program, and encourages them to continue to work with and inform the public about air quality issues.

Final Action

EPA finds that the State of Alabama's SIP is inadequate in that it fails to assure attainment and maintenance of the 1-hour ozone NAAQS for the Birmingham nonattainment area. To address this inadequacy, EPA is calling on the State of Alabama to submit a 1-hour ozone attainment plan as a SIP revision for the Birmingham nonattainment area within six months of the publication date of today's action. In addition, the sanctions contained in sections 179(a) and (b) of the CAA and in 40 CFR 50.31 will apply in accordance with 40 CFR 50.31 if EPA determines that the State fails to submit the required attainment demonstration plan for Birmingham, or the State submits a plan that EPA finds is incomplete or that EPA disapproves.

V. 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 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 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."

This final rule does not have federalism implications. It 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. In issuing this SIP Call, EPA is acting under section 110(k)(5), which requires the Agency to require a State to correct a deficiency that EPA has found in the State implementation plan (SIP). Through this action, EPA has determined that the Birmingham 1-hour ozone nonattainment area has been in violation of the 1-hour ozone NAAQS over the last several 3-year periods and is requiring the State to submit a plan demonstrating how the area can be brought back into attainment. This action calling on the State does not change the established relationship between the State and EPA under title I of the CAA. Under title I of the CAA States have the primary responsibility to develop plans to attain and maintain the NAAQS. The State has discretion to choose the control requirements necessary to bring the area into attainment with the NAAQS. Finally, this action will not impose substantial direct compliance costs. This action affects one area in one State. While the State will incur some costs to develop the plan, those costs are not expected to be substantial. Moreover, under section 105 of the CAA, the federal government supports the States' SIP development activities by providing partial funding of State programs for the prevention and control of air pollution. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult extensively with State and local officials regarding the requirements of this SIP Call as noted in section I and in response to comment 1 above.

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 final rulemaking is not subject to Executive Order 13045 because it is not economically significant, nor does it involve decisions on environmental health or safety risks that may disproportionately affect children.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

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 requires the State of Alabama to develop a SIP to attain the national ambient air quality standard for ozone for the Birmingham, Alabama, area. There are no tribal governments affected by this rulemaking. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility

analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rulemaking on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 12.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

I certify that this action will not have a significant economic impact on a substantial number of small entities. The SIP Call does not establish any new requirements applicable to small entities. EPA is issuing this SIP call because it finds that the State of Alabama's SIP is inadequate to assure attainment and maintenance of the 1-hour ozone NAAQS for the Birmingham nonattainment area. In submitting its 1-hour ozone attainment plan SIP revisions as required by this SIP call, Alabama has discretion in formulating the components of that attainment plan.

F. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) ("UMRA"), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more * * * in any one year. A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal

assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

EPA believes that it is questionable whether a requirement to submit a SIP revision constitutes a federal mandate. The obligation for a State to revise its SIP arises out of sections 110(a) and 110(k)(5) of the CAA and is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for the condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

In addition, even if the obligation for a State to revise its SIP does create an enforceable duty within the meaning of UMRA, this SIP Call does not trigger section 202 of UMRA because the aggregate to the State, local, and tribal governments to comply are less than \$100,000,000 in any one year. Because this SIP Call does not trigger section 202 of UMRA, the requirement in section 205 of UMRA that EPA identify and consider a reasonable number of regulatory alternatives and adopt to the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule is not applicable.

Furthermore, EPA is not directly establishing any regulatory requirements that may significantly impact or uniquely affect small governments, including tribal governments. Thus, EPA is not obligated to develop under section 203 of UMRA a small government agency plan. Finally, with regard to the intergovernmental consultation provisions of section 204 of UMRA, EPA carried out numerous consultations with the State of Alabama over several years as noted in section I above and in response to comment 1.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act of 1995 (NTTAA) 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.

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

I. 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 December 26, 2000. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 19, 2000.

Carol M. Browner,
Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

2. Section 52.66 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 52.66 Control Strategy: Ozone.

* * * * *

(b) The State of Alabama is required to submit an attainment demonstration SIP for the Birmingham 1-hour ozone nonattainment area by April 27, 2000. For purposes of the SIP revision required by this section, EPA may make a finding as applicable under section 179(a)(1)–(4) of the CAA, 42 U.S.C. 7509(a)(1)–(4), starting the sanctions process set forth in section 179(a) of the CAA. Any such finding will be deemed a finding under § 52.31(c) and sanctions will be imposed in accordance with the order of sanctions and the terms for such sanctions established in § 52.31.

[FR Doc. 00–27584 Filed 10–26–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–25–7223a; A–1–FRL–6891–6]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are converting our limited approval under the Clean Air Act of the State of Connecticut's State Implementation Plan (SIP) revision for an enhanced vehicle inspection and maintenance (I/M) program, which was granted on March 10, 1999 (64 FR 12005), to a full approval. In our March 10, 1999 limited approval, we said Connecticut needed to submit revisions to its SIP to address eight sections of EPA's enhanced I/M regulation for full approval. We have determined that on November 16, 1999 Connecticut submitted revisions that meet all of the conditions for full approval. The intent of this action is to convert our limited approval of Connecticut's enhanced vehicle I/M program SIP to a full approval.

DATES: This direct final rule is effective on December 26, 2000 without further notice, unless EPA receives relevant adverse comment by November 27, 2000. If adverse comment is received, EPA will publish a timely withdrawal of

the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT:

Peter Hagerty, (617) 918–1049.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

- I. What action Is EPA taking today?
- II. What Connecticut SIP revision is the topic of this action?
- III. What were the requirements for full approval of the Connecticut program?
- IV. How did Connecticut fulfill these requirements for full approval?
- V. EPA Action
- VI. Administrative Requirements

I. What Action Is EPA Taking Today?

In this action, we are converting our limited approval of Connecticut's I/M program as a revision to the SIP to a full approval.

II. What Connecticut SIP Revision Is the Topic of This Action?

This notice deals with a revision to the State of Connecticut's Clean Air Act SIP submitted by the State of Connecticut on November 16, 1999 for certain program elements necessary to complete the enhanced vehicle inspection and maintenance (I/M) program. Today we are acting only upon this November 16, 1999 submittal to determine that Connecticut submitted revisions meeting all of the conditions necessary to convert the limited approval of the enhanced I/M plan to a full approval. In so doing we are not reopening our March 10, 1999 final rulemaking granting limited approval of Connecticut's enhanced I/M SIP submitted on June 24, 1998, as supplemented on November 13, 1998.