

Monday through Friday except Federal holidays.

A Notice of Proposed Rule Making, USCG–2008–1158, is being issued in conjunction with this Temporary Deviation to obtain public comments. The Notice of Proposed Rule Making will be in effect for two months from March 26, 2009 until May 26, 2009. The Coast Guard will evaluate public comments from this Temporary Deviation and the above referenced Notice of Proposed Rule Making to determine if a permanent change to the drawbridge operating regulation at 33 CFR 117.451(b) is warranted.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 9, 2009.

**David M. Frank,**

*Bridge Administrator.*

[FR Doc. E9–6689 Filed 3–25–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2009–0144]

#### **Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement.

**SUMMARY:** The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor in April 2009. This action is necessary to protect vessels and people from the hazards associated with fireworks displays. This safety zone will restrict vessel traffic from a portion of the Captain of the Port Lake Michigan Zone.

**DATES:** The regulations in 33 CFR 165.931 will be enforced from 7:30 p.m. through 8:30 p.m. on April 4, 2009, and from 7:30 p.m. through 8:30 p.m. on April 11, 2009.

**FOR FURTHER INFORMATION CONTACT:**

LCDR Bannan, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI, at (414) 747–7154.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Safety Zone, Navy Pier Southeast, Chicago Harbor, Chicago, IL, 33 CFR 165.931, for the following events:

(1) *Navy Pier Private Party*; on April 4, 2009, from 7:30 p.m. through 8:30 p.m.

(2) *Navy Pier Private Party*; on April 11, 2009, from 7:30 p.m. through 8:30 p.m.

All vessels must obtain permission from the Captain of the Port or designated representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or designated representative. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931, Safety Zone, Navy Pier Southeast, Chicago Harbor, Chicago, IL (72 FR 32520, Jun. 13, 2007), and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners and Local Notice to Mariners.

The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on channel 16, VHF–FM.

Dated: March 9, 2009.

**Bruce C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. E9–6809 Filed 3–25–09; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R04–OAR–2007–0359–200823(a); FRL8781–7]

#### **Approval and Promulgation of Implementation Plans; Revisions to the Alabama State Implementation Plan; Birmingham and Jackson Counties**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Alabama State Implementation Plan (SIP) for two separate areas: Birmingham nonattainment area and Jackson County nonattainment area for both the 8-hour ozone and the PM<sub>2.5</sub> National Ambient Air Quality Standard.

On March 7, 2007, and on January 8, 2009, revisions of the transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures were submitted to EPA for approval by the state of Alabama. The intended effect is to update the transportation conformity criteria and procedures in the Alabama SIP.

**DATES:** This direct final rule is effective May 26, 2009 without further notice, unless EPA receives adverse comment by April 27, 2009. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0359, by one of the following methods:

(a) <http://www.regulations.gov>:

Follow the on-line instructions for submitting comments.

(b) E-mail: [wood.amanetta@epa.gov](mailto:wood.amanetta@epa.gov).

(c) Fax: (404) 562–9019.

(d) Mail: “EPA–R04–OAR–2007–0359,” Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

(e) Hand Delivery or Courier: Amanetta Wood, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. “EPA–R04–OAR–2007–0359.” EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an “anonymous access” system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Amanetta Wood, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. Wood's telephone number is 404-562-9025. She can also be reached via electronic mail at [wood.amanetta@epa.gov](mailto:wood.amanetta@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Transportation Conformity
- II. Background for This Action
  - A. Federal Requirements
  - B. Birmingham Conformity SIP
  - C. Jackson County Conformity SIP
- III. State Submittal and EPA Evaluation
- IV. Public Comment and Final Action
- V. Statutory and Executive Order Reviews

**I. Transportation Conformity**

Transportation conformity is required under section 176(c) of the Clean Air Act ("CAA" or "Act") to ensure that federally supported highway, transit projects, and other activities are consistent with ("conform to") the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Act, for the following transportation related criteria pollutants: ozone, particulate matter (e.g., PM<sub>2.5</sub> and PM<sub>10</sub>), carbon monoxide (CO), and nitrogen dioxide (NO<sub>10</sub>).

Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant criteria pollutants, also known as national ambient air quality standards (NAAQS). The transportation conformity regulation is found in 40 CFR Part 93 and provisions related to conformity SIPs are found in 40 CFR 51.390.

**II. Background for This Action**

**A. Federal Requirements**

EPA promulgated the Federal transportation conformity criteria and procedures ("Conformity Rule") on November 24, 1993 (58 FR 62188). Among other elements, the rule required states to address all provisions of the Conformity Rule in their SIPs, frequently referred to as "conformity SIPs". Under 40 CFR 51.390, most sections of the Conformity Rule were required to be incorporated into the SIP verbatim. States were also allowed to tailor all or portions of the following three sections of the Conformity Rule to meet their states' individual circumstances: 40 CFR 93.105 (which addresses consultation procedures); 40 CFR 93.122(a)(4)(ii) (which addresses written commitments to control measures that are not included in a metropolitan planning organization's (MPO's) transportation plan and transportation improvement program that must be obtained prior to a conformity determination, and the requirement that such commitments,

when they exist, must be fulfilled); and 40 CFR 93.125(c) (which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments, when they exist).

On August 10, 2005, the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) was signed into law. SAFETEA-LU revised section 176(c) of the CAA's transportation conformity provisions. One of the changes streamlined the requirements for conformity SIPs. Under SAFETEA-LU, states are now required to address and tailor only the following three sections of the Conformity Rule in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and 40 CFR 93.125(c). In general, states are no longer required to submit conformity SIP revisions that address the other sections of the Conformity Rule. These changes took effect on August 10, 2005, when SAFETEA-LU was signed into law.

**B. Birmingham Conformity SIP**

Effective June 15, 2004, EPA designated the entire counties of Jefferson and Shelby in the Birmingham, Alabama Area, as nonattainment for the 1997 8-hour ozone standard. On May 12, 2006, EPA redesignated the 1997 8-hour ozone Birmingham Nonattainment Area to attainment for the 1997 8-hour ozone NAAQS (71 FR 27631). Effective April 5, 2005, EPA designated the entire counties of Jefferson and Shelby, and a portion of the county of Walker in the Birmingham Area, as nonattainment for the PM<sub>2.5</sub> standard. The current designation status of the Birmingham PM<sub>2.5</sub> Area is nonattainment. For further information, see 40 CFR 81 for Birmingham, Alabama air quality planning areas and designations.

The Birmingham Metropolitan Planning Organization (BMPO) is the MPO for the entire Birmingham 1997 8-hour ozone Area, and for most of the Birmingham PM<sub>2.5</sub> Area. BMPO's planning boundary includes Jefferson and Shelby Counties in Alabama. The portion of Walker County, Alabama that is designated nonattainment as part of the Birmingham PM<sub>2.5</sub> Nonattainment Area is not within the BMPO planning boundary, and thus is considered a "donut" area for the purposes of implementing transportation conformity in this area. Per the Transportation Conformity Rule, the MPO's conformity determination is not complete without a regional analysis that considers the projects in the MPO area as well as the donut areas that are within the

nonattainment/maintenance area. For the purposes of implementing 8-hour ozone and PM<sub>2.5</sub> conformity, BMPO serves as the lead agency for the preparation, consultation, and distribution of the conformity determinations. BMPO coordinates with the Alabama Department of Transportation for travel-related information for the portion of Walker County that is included in the PM<sub>2.5</sub> Nonattainment Area.

The Birmingham area has previously established a transportation conformity SIP. In 2002, EPA approved the State of Alabama's SIP revision which incorporated by reference 40 CFR part 93, subpart A (67 FR 50808), as well as rules consistent with 40 CFR 93.105, 93.122 (a)(4)(ii), and 93.125(c) for the Birmingham area. In addition, the Birmingham area had established a Memorandum of Agreement (MOA) for implementing the conformity Criteria and Consultation Procedure. The new conformity SIP (the subject of this rulemaking) has removed any incorporation by reference and has revised the MOA to be consistent with the SAFETEA-LU revisions to the CAA (Pub. L. 109-59) and subsequent regulations published on January 24, 2008 (73 FR 4420).

### *C. Jackson County Conformity SIP*

Effective April 5, 2005, EPA designated Hamilton County in Tennessee, and portions of Walker and Catoosa Counties in Georgia, and a portion of Jackson County, Alabama in the Tri-state Chattanooga Area, as nonattainment for the PM<sub>2.5</sub> standard. The current designation status of the Tri-state Chattanooga PM<sub>2.5</sub> Area is nonattainment (including the portion of Jackson County, Alabama). Thus, this area also has to meet transportation conformity requirements.

The Chattanooga Transportation Planning Organization (CHCNGA TPO) is the MPO for most of the Tri-state Chattanooga PM<sub>2.5</sub> Area. CHCNGA TPO's planning boundary includes Hamilton County in Tennessee, and Walker and Catoosa Counties in Georgia. Portions of Walker and Catoosa Counties in Georgia, and Jackson County, Alabama, are not within the CHCNGA TPO planning boundary, and thus are considered "donut" areas for the purposes of implementing transportation conformity in this area. CHCNGA TPO coordinates with the Alabama Department of Transportation for travel-related information for the portion of Jackson County that is included in the PM<sub>2.5</sub> Nonattainment Area. Additionally, the Georgia Department of Transportation

coordinates with the Alabama Department of Transportation for travel-related information for Walker and Catoosa that are included in the PM<sub>2.5</sub> Nonattainment Area.

As a newly designated nonattainment area, the portion of Jackson County, Alabama that is a part of the Tri-state Chattanooga PM<sub>2.5</sub> Area does not have a previous conformity SIP. The State of Tennessee and the State of Georgia will establish conformity procedures for Hamilton County in Tennessee, and portions of Walker and Catoosa Counties in Georgia for their respective states in their individual conformity SIPs. The SIP revision at issue now includes the conformity procedures for the portion of Jackson County, Alabama that is included as part of the Tri-state Chattanooga PM<sub>2.5</sub> Area.

### **III. State Submittal and EPA Evaluation**

On March 7, 2007, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted the State's transportation conformity and consultation interagency Memorandum of Agreement (MOA) to EPA as a revision to the SIP, addressing the 8-hour ozone maintenance area and the PM<sub>2.5</sub> Nonattainment Area. The Alabama transportation conformity MOA establishes procedures for interagency consultation and supersedes the April 3, 2003, incorporation into the SIP of Chapter 335-3-17 (which included previous procedures for interagency consultation). Alabama Administrative Code (AAC) Chapter 335-3-17 incorporated EPA regulations found in 40 CFR Part 93, Subpart A (July 1, 1997), and 62 FR 43780 (August 15, 1997), by reference and originally only applied to the 1997 8-hour ozone Birmingham Nonattainment Area. The revision to Chapter 335-3-17 that EPA is approving now no longer incorporates the federal transportation conformity rules by reference, but still includes all the minimum requirements of the federal rules. In addition, consistent with ADEM's SIP submittal, AAC Chapter 335-3-17 will now apply to all nonattainment and maintenance areas in Alabama.

On January 8, 2009, the State of Alabama, through ADEM, submitted a SIP revision to the March 2007 Alabama Administrative Code (AAC) Chapter 335-3-17-.01. This action addresses the March 7, 2007 as well as the January 8, 2009, submission.

The State of Alabama developed its consultation rule (AAC Chapter 335-3-17) based on the elements contained in 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c) and included it in the MOA.

As a first step, the State worked with the existing transportation planning organization's interagency committee that included representatives from: ADEM; the Alabama Department of Transportation (DOT); the Birmingham Regional Planning Commission (BRPC); Birmingham Metropolitan Planning Organization, Federal Highway Administration—Alabama Division; Federal Transit Administration; Jefferson County Department of Health (JCDH); Jefferson County Transit Authority (B-JCTA); and EPA. The interagency committee met regularly and drafted the consultation rules considering elements in 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c), and integrated the local procedures and processes into the consultation MOA. The consultation process developed in this MOA is for the State of Alabama. The MOA is enforceable against the parties by their consent in the MOA to allow the Attorney General for the State of Alabama to sue any or all of the agencies for specific performance or other relief on behalf of the citizens of Alabama. On January 4, 2007, ADEM held a public hearing for the transportation conformity MOA and rulemaking. The final MOA was issued by Alabama on April 3, 2007, and subsequently submitted to EPA as a SIP revision. On October 8, 2008, ADEM held a public hearing for a second revision to the transportation conformity rulemaking. The final rulemaking package for the second revision was issued by Alabama on December 12, 2008, and subsequently submitted to EPA as a SIP revision.

EPA has evaluated this SIP revision and has determined that the State has met the requirements of federal transportation conformity rules as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. ADEM has satisfied the public participation and comprehensive interagency consultation requirement during development and adoption of the MOA at the local level. Therefore, EPA is approving the revision to the Alabama SIP, as well as AAC Chapters 335-3-17-.01 and .02, "Conformity of Federal Actions to State Implementation Plans." EPA's rules require the states to develop their own processes and procedures for interagency consultation among the Federal, state, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and U.S. Department of Transportation in consulting with the state and local air quality agencies and

EPA before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and the U.S. Department of Transportation.

EPA has reviewed the submittal to ensure consistency with the CAA as amended by SAFETEA-LU and EPA regulations (40 CFR part 93 and 40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and have concluded that the submittal is approvable. Details of our review are set forth in a technical support document (TSD), which has been included in the docket for this action. Specifically, in the TSD, we identify how the submitted procedures satisfy our requirements under 40 CFR 93.105 for interagency consultation with respect to the development of transportation plans and programs, SIPs, and conformity determinations, the resolution of conflicts, and the provision of adequate public consultation, and our requirements under 40 CFR 93.122(a)(4)(ii) and 93.125(c) for enforceability of control measures and mitigation measures.

#### IV. Public Comment and Final Action

For the reasons set forth above, EPA is taking action under section 110 of the Act to approve the MOA implementing the conformity criteria and consultation procedures revision to the Alabama SIP pursuant to the CAA, as a revision to the Alabama SIP. As a result of this action, the Birmingham area's previously SIP-approved conformity procedures for the Birmingham area (79 FR 7487, April 23, 2003) will be replaced by the procedures adopted by State of Alabama on February 23, 2007, and December 12, 2008, submitted to EPA on March 7, 2007, and January 8, 2009, for approval, and now being approved into the SIP. This action also establishes consultation procedures for the portion of Jackson County designated nonattainment, adopted by the State of Alabama on February 23, 2007, and December 12, 2008, and submitted to EPA on March 7, 2007, and January 8, 2009, for approval. Additionally, this action will approve the revision of Chapter 335-3-1-.14 and the addition of Chapter 335-3-1-.16, in order to fulfill the emission reporting requirements under 40 CFR 51.125.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse

comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 26, 2009 without further notice unless the Agency receives adverse comments by April 27, 2009.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 26, 2009 and no further action will be taken on the proposed rule.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 26, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**; rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may

not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: February 25, 2009.  
**Beverly H. Banister,**  
*Acting Regional Administrator, Region 4.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart (B)—Alabama**

■ 2. Section 52.50(e) is amended by adding a new entry at the end of the table for “Conformity SIP for Birmingham and Jackson County” to read as follows:

**§ 52.50 Identification of plan.**

\* \* \* \* \*  
 (e) \* \* \*

**EPA-APPROVED ALABAMA NON-REGULATORY PROVISIONS**

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Conformity SIP for Birmingham and Jackson County.	Jefferson County, Shelby County, Jackson County.	12/12/2008	3/26/2009	[Insert citation of publication].

[FR Doc. E9-6647 Filed 3-25-09; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[EPA-R09-OAR-2008-0942; FRL-8781-2]

**Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Control of Emissions From Existing Other Solid Waste Incinerator Units; Arizona; Pima County Department of Environmental Quality**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a negative declaration submitted by the Pima County Department of Environmental Quality. The negative declaration certifies that other solid waste incinerator units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act, do not exist within the agency’s air pollution control jurisdiction.

**DATES:** This rule is effective on May 26, 2009 without further notice, unless EPA receives adverse comments by April 27, 2009. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2008-0942, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.

2. E-mail: [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).  
 3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California.

While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials,

please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, EPA Region IX, (415) 947-4124, [wang.mae@epa.gov](mailto:wang.mae@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

**Table of Contents**

- I. Background
- II. Final EPA Action
- III. Statutory and Executive Order Reviews

**I. Background**

Sections 111(d) and 129 of the Clean Air Act (CAA or the Act) require States to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA also requires EPA to promulgate EG for solid waste incineration units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).