

Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

**FOR FURTHER INFORMATION CONTACT:**

Cynthia G. Allen, Rulemaking Office [AIR-4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1189

**SUPPLEMENTARY INFORMATION:** This document concerns Placer County Air Pollution Control District Rule 101, Title; Rule 102, Definitions; Rule 103, Validity; Rule 201, Coverage; Rule 202, Visible Emissions; Rule 203, Exemptions to Rule 202; Rule 204, Wet Plumes; Rule 208, Orchard or Citrus Heaters; Rule 209, Fossil Fuel-Steam Facility; Rule 210, Specific Contaminants; Rule 211, Process Weight; Rule 213, Gasoline Transfer into Stationary Storage Containers; Rule 214, Transfer of Gasoline into Tank Trucks, Trailers and Railroad Cars at Loading Facilities; Rule 217, Cutback and Emulsified Asphalt Paving Materials; Rule 219, Organic Solvents; Rule 220, Abrasive Blasting; Rule 221, Compliance Tests; Rule 222, Reduction of Animal Matter; Rule 225, Wood Fired Appliances; Rule 226, Sulfur Content of Fuels—Lake Tahoe Basin; Rule 228, Fugitive Dust—Lake Tahoe Air Basin; Rule 406, Combination of Emissions; Rule 407, Circumvention; and Rule 408, Source Recordkeeping and Reporting. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: April 14, 1997.

**Felicia Marcus,**

*Regional Administrator.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[AL-40-7142; FRL-5818-4]

**Approval and Promulgation of Implementation Plans for the State of Alabama—Proposed Disapproval of the Request to Redesignate the Birmingham, Alabama (Jefferson and Shelby Counties) Marginal Ozone Nonattainment Area to Attainment and the Associated Maintenance Plan**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove the State of Alabama's request submitted through the Alabama Department of Environmental Management (ADEM) to redesignate the Birmingham marginal ozone nonattainment area (Jefferson and Shelby Counties) to attainment and the associated maintenance plan as a revision to the State Implementation Plan (SIP). Prior to the end of the close of the administrative record, EPA determined that the area registered a violation of the ozone national ambient air quality standard (NAAQS). As a result, the Birmingham area no longer meets the statutory criteria for redesignation to attainment of the ozone NAAQS.

**DATES:** Comments on this proposed action must be received in writing by May 30, 1997.

**ADDRESSES:** Written comments on this action should be addressed to Kimberly Bingham at the Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file AL-40-7142. The Region 4 office may have additional background documents not available at the other locations.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Kimberly Bingham, (404) 562-9038.

Alabama Department of Environmental Management, 1751 Congressman, W. L. Dickinson Drive, Montgomery, Alabama 36109.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Bingham at (404) 562-9038.

**SUPPLEMENTARY INFORMATION:** On March 16, 1995, ADEM submitted a request to EPA to redesignate the Birmingham, Alabama, marginal ozone nonattainment area to attainment. On that date, they also submitted a maintenance plan for the area as a revision to the Alabama SIP.

According to section 107(d)(3)(E) of the Clean Air Act (CAA), 42 U.S.C. 7407(d)(3)(E), redesignation requests must meet five specific criteria in order for EPA to redesignate an area from nonattainment to attainment:

1. The Administrator determines that the area has attained the ozone NAAQS;

2. The Administrator has fully approved the applicable implementation plan for the area under section 110(k);

3. The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollution control regulations and other permanent and enforceable reductions;

4. The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

5. The State containing such area has met all requirements applicable to the area under section 110 and part D.

The EPA provided guidance on redesignation in the General Preamble for the Implementation of the CAAA of 1990, 57 FR 13498 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992). The primary memorandum providing further guidance with respect to section 107(d)(3)(E) of the amended Act is dated September 4, 1992, and issued by the Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Calcagni Memorandum).

The State submitted its request for redesignation on March 16, 1995. The request included information showing that the Birmingham area had three years of air quality attainment data from 1990-1993. The area continued to maintain the ozone NAAQS through 1994. The submittal was rendered administratively complete on April 11, 1995. Supplemental information needed for the submittal to be approvable which was initially requested from ADEM in a February 15, 1995, letter addressing the prehearing submittal was submitted on July 21, 1995. A direct final rule approving the redesignation request was signed by the Regional Administrator and forwarded to the EPA Federal Register Office on August 15, 1995. The direct final rule as drafted contained a thirty day period for public comment on the redesignation request.

Prior to publication of the document and therefore prior to close of the administrative record, EPA determined that the area registered a violation of the ozone NAAQS on August 18, 1995. The EPA directed the Office of Federal Register to recall the document from being published. The ambient data has been quality assured according to established procedures for validating such monitoring data. The State of Alabama does not contest that the area violated the NAAQS for ozone during

the 1995 ozone season. As a result, the Birmingham area no longer meets the statutory criteria for redesignation to attainment of the ozone NAAQS found in section 107(d)(3)(E)(i) of the CAA. The maintenance plan SIP revision is also not approvable because its demonstration is based on a level of ozone precursor emissions in the ambient air thought to represent an inventory of emissions that would provide for attainment and maintenance. That underlying basis of the maintenance plan's demonstration is no longer valid due to the violation of the NAAQS that occurred during the 1995 ozone season.

Even though the Regional Administrator signed the direct final rule prior to the violation, the document was not published. Since the Agency's decision was neither published nor subject to notice or comment, EPA neither proposed nor took final action with respect to the redesignation.

The Administrator is prohibited under section 107(d)(3)(E)(i) from redesignating an area to attainment when it has not attained the NAAQS. Furthermore, section 107(d)(1)(A) defines a nonattainment area as "any area that does not meet" the NAAQS. Consequently, if a violation occurs prior to EPA's final action on redesignation, the area is no longer in attainment and does not meet the definition of an attainment area under section 107. The EPA has consistently followed these principles in disapproving redesignations for areas that violate the NAAQS while their requests are pending. In the September 4, 1992, policy memorandum of John Calcagni, EPA stated: "Regions should advise States of the practical planning consequences if EPA disapproves the redesignation request or if the request is invalidated because of violations recorded during EPA's review." See for example, 59 FR 22757 dated May 3, 1994, disapproving the redesignation of Richmond, Virginia due to violations occurring after the proposed approval; 61 FR 50718 dated September 27, 1996, disapproving the redesignation request for the Kentucky portion of the Cincinnati-Hamilton nonattainment area; and 61 FR 19193 dated May 1, 1996, disapproving of the redesignation request for Pittsburgh, Pennsylvania.

#### Proposed Action

EPA is proposing to disapprove the State of Alabama's March 16, 1995, redesignation request and maintenance plan SIP revision.

EPA is soliciting public comments on this document and on issues relevant to EPA's proposed action. Comments will

be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the person listed in the ADDRESSES section.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the CAA. The Agency has determined that this action does not conform with the statute as amended and should be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental

justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### Redesignation—State-Submitted Requests

EPA's denial of the State's redesignation request under section 107(d)(3)(E) does not affect any existing requirements applicable to small entities nor does it impose new requirements. The area retains its current designation status and will continue to be subject to the same statutory requirements. To the extent that the area must adopt regulations, based on its nonattainment status, EPA will review the effect of those actions on small entities at the time the state submits those regulations. Therefore, I certify (for Table 2 and 3 redesignations, use: "The Administrator certifies \* \* \*") that denial of the redesignation request will not affect a substantial number of small entities.

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: April 15, 1997.

**A. Stanley Meiburg,**

*Acting Regional Administrator.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

[FRL-5819-6]

#### Outer Continental Shelf Consistency Update for Florida

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

**ACTION:** Notice of proposed rulemaking, consistency update.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf