

## Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.ID which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this is one of a category of actions which, individually or cumulatively, is not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.493, paragraph (a) is revised to read as follows:

#### § 117.493 Sabine River.

(a) The draw of the Union Pacific railroad bridge, mile 19.3 near Echo shall open on signal if at least 14 days notice is given.

\* \* \* \* \*

Dated: March 9, 2009.

**J.R. Whitehead,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. E9–6679 Filed 3–25–09; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R06–OAR–2009–0014; FRL–8783–1]

### Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Baton Rouge 1-Hour Ozone Nonattainment Area; Determination of Attainment of the 1-Hour Ozone Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the Baton Rouge (BR) 1-hour ozone nonattainment area is currently attaining the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 1-hour ozone NAAQS for the 2006–2008 monitoring period. If this proposed determination is made final, the requirements for this area to submit a severe attainment demonstration, a severe reasonable further progress plan, applicable contingency measures plans, and other planning State Implementation Plan (SIP) requirements related to attainment of the 1-hour ozone NAAQS, shall be suspended for so long as the area continues to attain the 1-hour ozone NAAQS. EPA is proposing this action in accordance with section 110 and part D of the Federal Clean Air Act (the Act or CAA) and EPA's regulations and consistent with EPA's guidance.

**DATES:** Comments must be received on or before April 27, 2009.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA–R06–OAR–2009–0014, by one of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *U.S. EPA Region 6 “Contact Us” Web site:* <http://epa.gov/region6/r6coment.htm>. Please click on “6PD” (Multimedia) and select “Air” before submitting comments.

- *E-mail:* Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov). Please also send a copy by email to the person

listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R06–OAR–2009–0014. 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 the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail that you consider to be CBI or otherwise protected from disclosure. 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.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,

will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Rennie, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7367, fax (214) 665-7263, e-mail address [rennie.sandra@epa.gov](mailto:rennie.sandra@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, “we,” “us,” and “our” means EPA. This supplementary information section is arranged as follows:

- I. What Is the Background for This Action?
- II. What Is the Impact of a United States Court of Appeals Decision in the South Coast Case Regarding EPA’s Phase 1 Ozone Implementation Rule on This Proposed Rule?
- III. Proposed Determination of Attainment
- IV. What Action Is EPA Taking?
- V. Statutory and Executive Order Reviews

**I. What Is the Background for This Action?**

The Act requires us to establish NAAQS for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (sections 108 and 109 of the Act). In 1979, we promulgated the revised 1-hour ozone standard of 0.12 parts per million (ppm) (44 FR 8202, February 8, 1979). For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm × 1000. Thus, 0.12 ppm becomes 120 ppb or 124 ppb when rounding is considered.

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.12 ppm in

any given day. Only the highest 1-hour ozone concentration at the monitor during any 24-hour day is considered when determining the number of exceedance days at the monitor. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of exceedances occur at the same monitor. For more information please see “National 1-hour primary and secondary ambient air quality standards for ozone” (40 CFR 50.9) and “Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone” (40 CFR part 50, Appendix H).

The fourth-highest daily ozone concentration over the 3-year period is called the design value (DV). The DV indicates the severity of the ozone problem in an area; it is the ozone level around which a state designs its control strategy for attaining the ozone standard. A monitor’s DV is the fourth highest ambient concentration recorded at that monitor over the previous 3 years. An area’s DV is the highest of the design values from the area’s monitors.

The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period (section 107(d)(4) of the Act; 56 FR 56694, November 6, 1991). The Act further classified these areas, based on their ozone DVs, as marginal, moderate, serious, severe, or extreme.

The control requirements and date by which attainment is to be achieved vary with an area’s classification. Marginal areas are subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while severe and extreme areas are subject to more stringent planning requirements and are provided more time to attain the standard.

*Baton Rouge’s History*

EPA first designated the Baton Rouge area as an ozone nonattainment area in 1978. 43 FR 8964, 8998 (March 3, 1978). The BR 1-hour ozone nonattainment area contains five parishes: East Baton Rouge; West Baton Rouge; Ascension; Iberville; and Livingston Parishes (40 CFR 81.319). In 1991, the BR area was designated nonattainment by operation of law and EPA classified the BR area as a “serious” ozone nonattainment area with a statutory deadline of November 15, 1999. 56 FR 56694 (November 6, 1991). EPA approved the serious attainment demonstration SIP and its associated elements, e.g., attainment Motor Vehicle Emissions Budgets (MVEB), the Reasonably Available

Control Measures (RACM) demonstration, on July 2, 1999. 64 FR 35930. The BR area, however, did not attain by the serious area statutory deadline of November 15, 1999. Before this deadline however, EPA had issued a guidance memorandum that allowed an area to retain its existing classification and receive a later attainment deadline if the EPA found that area met all of its existing classification requirements, approved a demonstration that the area would attain but for the transport from another area, and approved the attainment demonstration SIP with its associated elements. See EPA’s “Guidance on Extension of Attainment Dates for Downwind Transport Areas” (the Extension Policy) (Richard D. Wilson, Acting Assistant Administrator for Air and Radiation) July 16, 1998. On October 2, 2002, EPA approved the revised attainment demonstration SIP and its associated elements, found the area met all of the serious area requirements, found there was transport from Texas affecting the BR area reaching attainment, and extended the attainment date for the BR area to November 15, 2005, without reclassifying the area from serious to severe, consistent with the policy. 67 FR 61786 (October 2, 2002).

On December 11, 2002, the U.S. Court of Appeals for the Fifth Circuit vacated EPA’s Extension Policy used to extend the 1-hour ozone attainment deadline for the Beaumont-Port Arthur, Texas, area without reclassifying the area. *Sierra Club v. EPA*, 314 F.3d 735 (5th Cir. 2002). Thereupon, EPA on April 24, 2003, withdrew its approval of the BR area’s revised attainment demonstration and the granting of an extended attainment deadline, finalized its finding of the area failing to attain the standard by the serious area deadline and reclassified the BR area by operation of law, to severe nonattainment. See 68 FR 20077 (April 24, 2003).<sup>1</sup> Once reclassified to severe,

<sup>1</sup> Petitions for review of the October 2, 2002, rulemaking were filed in the U.S. Court of Appeals for the Fifth Circuit (*Louisiana Environmental Action Network (LEAN) v. EPA*, No. 02-60991). The issues raised concerned EPA’s decision to approve Louisiana’s substitute contingency measures plan, the revised attainment demonstration SIP with a later attainment deadline without reclassifying the area to severe, and the associated precursor trading provision of the NSR rules. On February 25, 2003, the court granted EPA’s partial voluntary remand to allow EPA the time to meet the December 2002 court decision by withdrawing its approval of the revised attainment demonstration SIP that extended the attainment deadline without reclassifying the area and the associated NSR precursor trading provision. The court also addressed the substitute contingency measures claim, and vacated and

the statutory attainment date for BR was November 15, 2005. As a result of the reclassification to severe, the State was required to submit an attainment demonstration SIP with an attainment date of November 15, 2005. The April 24, 2003, action also set 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.

Under section 182(d) and section (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 and all the requirements for severe area plans.

In 1997, EPA promulgated a new, more protective standard for ozone based on an 8-hour average concentration (the 1997 8-hour ozone standard). In 2004, EPA published the 1997 8-hour ozone designations and classifications and a rule governing certain facets of implementation of the 8-hour ozone standard (Phase 1 Rule) (69 FR 23858 and 69 FR 23951, respectively, April 30, 2004). The BR area was designated as nonattainment for the 1997 8-hour ozone standard. The 8-hour nonattainment area is composed of the same five parishes as the 1-hour ozone nonattainment area. The area was classified as marginal under the 1997 8-hour ozone standard. At the time of designation, the five parishes remained in nonattainment for the 1-hour standard.

The Phase 1 Rule revoked the 1-hour ozone standard. See 69 FR 23951. The Phase 1 Rule also provided that 1-hour ozone nonattainment areas are required to adopt and implement "applicable requirements" according to the area's classification under the 1-hour ozone standard for anti-backsliding purposes. See 40 CFR 51.905(a)(i). On May 26, 2005, we determined that an area's 1-hour designation and classification as of June 15, 2004 would dictate what 1-hour obligations remain as "applicable requirements" under the Phase 1 Rule. 40 CFR 51.900(f). (70 FR 30592).<sup>2</sup>

remanded EPA's approval of the contingency measures.

<sup>2</sup> As detailed in Section II below, various parties challenged the Phase 1 rule. In particular, the Chamber of Baton Rouge challenged EPA's authority to continue to enforce the 1-hour area requirements.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Phase 1 Rule. *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist. v. EPA*, Docket No. 04-1201, in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. With respect to the challenges to the anti-backsliding provisions of the rule, the court vacated three provisions that would have allowed States to remove from the SIP or not to adopt three 1-hour obligations once the 1-hour standard was revoked to transition to the implementation of the 8-hour ozone standard: (1) Nonattainment area new source review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas that fail to attain the 1-hour standard by the 1-hour attainment date; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS or for failure to attain that NAAQS. The court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

The provisions in 40 CFR 51.905(a)-(c) concerning anti-backsliding remain in effect and areas must continue to meet those requirements. However, the court decision vacated the portions of § 51.905(e) that removed the obligations to meet the three provisions noted above. As a result, states must continue to meet the obligations for 1-hour NSR; 1-hour contingency measures; and, for severe and extreme areas, the obligations related to a section 185 fee program. Currently, EPA has proposed one rule and is developing other actions to address the court's vacatur and remand with respect to these three requirements. We address below how the 1-hour obligations that currently continue to apply under EPA's anti-backsliding rule (as interpreted and directed by the court) apply where EPA has made a determination that the area is currently attaining the 1-hour NAAQS.

The Baton Rouge 1-hour nonattainment area was still classified as severe on June 15, 2004, so the 1-hour

ozone standard requirements applicable to the five-parish area are those that apply to nonattainment areas classified as severe. This includes meeting the serious area requirements. Louisiana submitted and EPA approved all the requirements for a 1-hour ozone area classified as serious. EPA's approval of the serious area Contingency Measures was challenged in the U.S. Court of Appeals for the Fifth Circuit (See footnote 1). The Court vacated the serious area contingency measure and remanded it to EPA.

The severe area requirements include Reasonably Available Control Technology (RACT) for both VOC and NO<sub>x</sub>, NSR Emissions Offset Requirement, Vehicle Miles Traveled (VMT) Analysis, Post-1999 Rate of Progress Plan, Contingency Measures, and an Attainment Demonstration. The State has submitted many required severe area plan requirements, including the severe area ROP Plan, but has not submitted others, including the attainment demonstration and the contingency measures. The VMT Analysis was approved November 21, 2006 (71 FR 67308).

Under the Phase 1 rule and as a result of the *South Coast* decision, the requirement to provide a severe attainment demonstration SIP and the serious and severe RFP/failure-to-attain contingency measures remain in place. However, as discussed below, these requirements would be suspended based on a finding of attainment of the 1-hour ozone standard, and for so long as the area remains in attainment of the standard in the future.

## II. Proposed Determination of Attainment

EPA is proposing to determine that the Baton Rouge 1-hour ozone nonattainment area is currently in attainment of the 1-hour standard based on the most recent 3 years of quality-assured air quality data. Certified ambient air monitoring data show that the area has monitored attainment of the 1-hour ozone NAAQS for the 2006-2008 monitoring period. Consistent with 40 CFR part 50, Appendix H, Table 1 contains the 1-hour ozone data for the BR 1-hour ozone nonattainment area monitors that show that the area is currently attaining the 1-hour ozone NAAQS.

TABLE 1—1-HOUR OZONE DATA FOR THE BATON ROUGE 1-HOUR OZONE NONATTAINMENT AREA

Site	Design value (ppb)	Actual and expected number of exceedances <sup>a</sup>			3-year exceedance average
	2006–2008	2006	2007	2008	2006–2008
Plaquemine (22–047–0009) .....	114	0	0	0	0
Carville (22–047–0012) .....	113	0	0	0	0
Dutchtown (22–005–0004) .....	112	0	1	0	0.33
Baker (22–033–1001) .....	111	1	0	0	0.33
LSU (22–033–0003) .....	110	0	2	0	0.67
Grosse Tete (22–047–0007) .....	110	1	1	0	0.67
Port Allen (22–121–0001) .....	106	1	0	0	0.33
Pride (22–033–0013) .....	101	0	0	0	0
French Settlement (22–063–0002) .....	100	1	0	0	0.33
Capitol (22–033–0009) .....	97	0	0	0	0

<sup>a</sup> The actual and expected number of exceedances were equal in all cases.

Pursuant to the interpretation set forth in the May 10, 1995 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone Ambient Air Quality Standard” (Clean Data Policy), EPA is proposing to make a finding of attainment based on current air quality. Under this policy, if EPA determines through rulemaking that the Baton Rouge 1-hour ozone nonattainment area is meeting the 1-hour ozone standard, the requirements for the State to submit and have an approved attainment demonstration, and related components such as reasonably available control measures (RACM), a reasonable further progress (RFP) demonstration, contingency measures for failure to attain or make reasonable further progress are suspended as long as the area continues to attain the 1-hour ozone NAAQS. EPA intends to address the impact of a Clean Data determination on a CAA section 185 fees program separately based on the outcome of a rulemaking to address the *South Coast* decision with respect to this issue, discussed above. See 74 FR 2936, 2941 (January 16, 2009).

As stated above, the suspension of requirements continues for so long as the area remains in attainment. If the area subsequently violates the ozone NAAQS, EPA would initiate notice-and-comment rulemaking to withdraw the determination of attainment, which would result in reinstatement of the requirements for the State to submit such suspended plans.

The Tenth, Seventh and Ninth Circuits have upheld EPA rulemakings applying the Clean Data Policy. See *Sierra Club v. EPA*, 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004) and *Our Children's*

*Earth Foundation v. EPA*, No. 04–73032 (9th Cir. June 28, 2005) memorandum opinion.<sup>3</sup> See also the discussion and rulemakings cited in the Phase 2 Rule, 70 FR 71644–71646 (November 29, 2005).

#### IV. What Action Is EPA Taking?

EPA proposes to find that the BR 1-hour ozone nonattainment area has attained the 1-hour ozone standard; thus the requirements for submitting the severe attainment demonstration SIP with its RACM demonstration and other associated elements, the severe RFP requirements, and section 172(c)(9) and section 182(c)(9) serious and severe contingency measures are suspended for so long as the area is attaining the 1-hour ozone standard.

Thus, pursuant to our proposed determination of attainment and in accordance with our Clean Data Policy, the effect of the finding is that the following requirements to submit SIP measures under the 1-hour anti-backsliding provisions (40 CFR 51.905) are suspended for so long as the area continues to attain the 1-hour standard:

RFP reductions under sections 182(d) and 182(c)(2)(B) (for severe areas).

Attainment demonstration under sections 182(d) and 182(c)(2) (for severe areas) and associated RACM demonstration.

Contingency measures for failure to meet RFP under section 172(c)(9) and section 182(c)(9) (for serious and severe areas) and contingency measures for failure to attain under sections 172(c)(9) and 182(c)(9) (for severe areas).

<sup>3</sup> The Clean Data Policy, as it is embodied in 40 CFR 51.918, is being challenged in the context of the 8-hour ozone standard in the Phase 2 Rule ozone litigation pending in the DC Circuit, *NRDC v. EPA*, No. 06–1045 (DC Cir.).

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it 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). This proposed 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 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does 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 it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it proposes to determine that air quality in the affected area is meeting Federal standards. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Under Executive Order 12898, EPA finds that this rule involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

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

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

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

Dated: March 5, 2009.

#### Lawrence Starfield,

*Acting Regional Administrator, Region 6.*

[FR Doc. E9-6598 Filed 3-25-09; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2007-0359-200823(b); FRL-8781-6]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision 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.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before April 27, 2009.

**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.

(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.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

#### FOR FURTHER INFORMATION CONTACT:

Amanetta Wood of the Air Quality Modeling and Transportation Section at the 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.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: February 25, 2009.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E9-6644 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-8781-1]

#### 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:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a negative declaration submitted by the