

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**ACE KS E5 Johnson, KS**

Johnson, Stanton County Municipal Airport, KS

(Lat. 37°34'58"N., long. 101°43'58" W.)

Bear Creek NDB

(Lat. 37°38'08"N., long. 101°44'05" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Stanton County Municipal Airport and within 1.9 miles each side of the 359° bearing from Bear Creek NDB extending from the 6.5-mile radius of the airport to 7 miles north of the NDB.

\* \* \* \* \*

Issued in Kansas City, MO, on March 4, 2004.

**David W. Hope,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 04–5682 Filed 3–11–04; 8:45 am]

**BILLING CODE 4910–13–M**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 81**

[AL–63–200412; FRL–7634–9]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Alabama; Redesignation of Birmingham Ozone Nonattainment Area to Attainment for Ozone**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of the redesignation of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment area of Birmingham, Alabama, to attainment, and finalizing approval of Alabama's State Implementation Plan (SIP) revision containing a 10-year maintenance plan for the 1-hour ozone NAAQS for the Birmingham area. Additionally, through this action, EPA is providing notification of its determination that the motor vehicle emission budgets (MVEBs) for the year 2015 contained in the 10-year maintenance plan SIP revision for the 1-hour ozone standard for the Birmingham area (submitted on January 30, 2004, by the Alabama Department of Environmental Management (ADEM)), are adequate for transportation conformity purposes. Because EPA is approving these 2015 MVEBs as part of its approval of Alabama's 10-year maintenance plan SIP revision for the Birmingham area, the 2015 MVEBs contained in the Birmingham area's 10-year maintenance plan for the 1-hour ozone standard, can be used for future conformity determinations on the date of publication of this Final rule.

**DATES:** This final rule is effective on April 12, 2004.

**ADDRESSES:** Copies of documents relative to this action are available at the following address for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** Kelly Sheckler, 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. The telephone number is (404) 562–9042. Ms. Sheckler can also be reached via electronic mail at [sheckler.kelly@epa.gov](mailto:sheckler.kelly@epa.gov).

Sean Lakeman, Regulatory Development 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. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

On November 19, 2003, the State of Alabama, through ADEM, submitted (1) a request to redesignate the 1-hour ozone NAAQS nonattainment area of Birmingham, Alabama, to attainment, and (2) a request for parallel processing of a draft Alabama SIP revision containing a 10-year maintenance plan for the 1-hour ozone standard for the Birmingham area. ADEM held a public meeting on January 9, 2004, to receive comments on these requested actions. Alabama's comment period for these actions closed January 13, 2004. With the exception of a positive comment concerning the redesignation ADEM did not receive any adverse comments. On January 30, 2004, ADEM submitted to EPA the final Maintenance Plan SIP revision request for final review and approval. The final Maintenance Plan submittal did not contain any changes from the Draft Maintenance Plan submitted to EPA on November 19, 2003.

On January 6, 2004, (69 FR 558) EPA published a notice of proposed rulemaking (NPR) proposing to approve the redesignation of the 1-hour ozone NAAQS nonattainment area of Birmingham, Alabama, to attainment, and proposing to approve the SIP revision containing a 10-year maintenance plan for the 1-hour ozone standard for the Birmingham area. In the January 6, 2004 NPR, EPA also provided the public with an opportunity to review and comment on the adequacy of new volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) MVEBs for the year 2015 for purposes of determining transportation conformity. The January 6, 2004 NPR provides a detailed description of each of these matters and the rationale for each of EPA's proposed actions, together with a discussion of the opportunity to comment on the adequacy of the 2015 MVEBs. The public comment period for

these actions ended on February 5, 2004. No comments, adverse or otherwise, were received on EPA's proposed actions or on the adequacy of the 2015 MVEBs for transportation conformity purposes.

## II. Today's Action

Section 107(d)(3)(D) allows a Governor to initiate the redesignation process for an area to apply for attainment status. On January 30, 2004, Alabama requested redesignation of the 1-hour ozone attainment status for the Birmingham area. Today, EPA is approving the 1-hour ozone redesignation request and the 10-year maintenance plan SIP revision. EPA's approval of the 1-hour ozone redesignation request is based on its determination that the Birmingham, Alabama, area has met the five criteria for redesignation to attainment specified in the Clean Air Act, including a demonstration that the area has attained the 1-hour ozone NAAQS. The 1990 Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment: (1) The area has attained the applicable NAAQS; (2) the area has met all applicable requirements under section 110 and part D of the CAA; (3) the area has a fully approved SIP under section 110(k) of the CAA; (4) the air quality improvement is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions, and (5) the area has a fully approved maintenance plan pursuant to section 175A of the CAA. EPA's analysis of the five criteria as applied to Alabama's redesignation request are discussed in detail in the January 6, 2004 NPR.

The State of Alabama's request is based on an analysis of quality-assured ozone air quality data which is relevant to the redesignation request and reflects attainment of the 1-hour ozone standard. The data used to support the redesignation request come from the State and Local Air Monitoring Station network. The request is based on ambient air ozone monitoring data collected for 3 consecutive years from 2001 through 2003.

In a letter dated December 3, 2003, ADEM certified that the Shelby County 2003 data is accurate and in a letter dated December 3, 2003, Jefferson County Department of Health certified that the Jefferson County 2003 data is accurate. The ozone monitoring data for the April through October ozone season

from 2001 to 2003 has been quality assured and is recorded in AIRS. During the 2001 to 2003 time period, the design value is 0.113 ppm. The average annual number of expected exceedances is 1.0 for that same time period.

The data satisfies the CAA requirements of no more than one exceedance per annual monitoring period. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient data is available to warrant the redesignation and the area meets the other four CAA redesignation requirements. As noted above, and as discussed in detail in the January 6, 2004 NPR, EPA has determined that sufficient data is available to warrant redesignation and that the other four redesignation criteria have been met in the Birmingham area for the 1-hour ozone national ambient air quality standard.

Today, EPA is also approving Alabama's SIP revision to provide for the maintenance of the 1-hour ozone NAAQS in the Birmingham area for at least 10 years after redesignation. The underlying strategy of the maintenance plan is to show compliance and maintenance of the 1-hour ozone standard by assuring that current and future emissions of VOC and NO<sub>x</sub> remain at or below attainment year (2003) emissions levels. Under section 175A of the CAA, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any future 1-hour ozone violations.

As discussed in detail in the January 6, 2004 NPR, EPA has determined that the 10-year maintenance plan meets the elements for maintenance plans set out in section 175A of the Clean Air Act. Because the 1-hour ozone 10-year maintenance plan for the Birmingham area meets the requirements of section 175A of the CAA, EPA is approving the maintenance plan and the 2015 MVEBs for VOC and NO<sub>x</sub> that are contained within the 10-year maintenance plan. Because EPA is approving the 2015 MVEBs for VOC and NO<sub>x</sub> as part of its approval of Alabama's 10-year maintenance plan for the 1-hour ozone standard, the 2015 MVEBs for VOC and

NO<sub>x</sub> can be used for future conformity determinations on the date of publication of this Final rule. The specific 2015 MVEBs to be used on the date of publication of this Final rule are: 23 tons per day of VOCs and 41 tons per day of NO<sub>x</sub>.

Finally, through this rulemaking, EPA is providing notice that it has determined that the 2015 MVEBs for VOC and NO<sub>x</sub>, as contained in the 10-year maintenance plan discussed above, meet the substantive criteria for "adequacy" as set out in 40 CFR 93.118(e)(4), and are adequate for purposes of transportation conformity. EPA Region 4 sent a letter to ADEM on March 3, 2004, stating that the MVEB in the Birmingham 1-Hour Ozone Maintenance SIP revision submitted on January 30, 2004, are adequate. These 2015 MVEBs, as they relate to adequacy determinations for transportation conformity purposes, are discussed in detail in the January 6, 2004 NPR, which provided public notice and requested comment on the adequacy of the 2015 MVEBs. EPA received no comments on the "adequacy" determination for the 2015 MVEBs.

EPA's adequacy determination for the 2015 MVEBs contained in the 1-hour ozone 10-year maintenance plan has also been announced on EPA's conformity Web site: *BM\_1* <http://www.epa.gov/otaq/transp.htm>, (once there, click on the "Transportation Conformity" text icon, then look for "Adequacy Review of State Implementation Plan (SIP) Submissions for Conformity"). As noted above, because EPA is approving the 2015 MVEBs for VOC and NO<sub>x</sub> as part of its approval of Alabama's 10-year maintenance plan for the 1-hour ozone standard for the Birmingham area, the 2015 MVEBs can be used for future conformity determinations on the date of publication of this Final rule. The specific 2015 MVEBs to be used on the date of publication of this Final rule are: 23 tons per day of VOCs and 41 tons per day of NO<sub>x</sub>.

## III. Final Action

EPA is approving the redesignation of the 1-hour ozone NAAQS nonattainment area of Birmingham, Alabama, to attainment, and approving Alabama's SIP revision containing a 10-year maintenance plan for the 1-hour ozone standard for the Birmingham area because the redesignation and the maintenance plan meet the requirements of sections 107(d) and 175A of the Clean Air Act, respectively. EPA is also providing notice that it has determined the 2015 VOC and NO<sub>x</sub> MVEBs, as contained in the 10-year

maintenance plan for the 1-hour ozone standard for the Birmingham area, to be adequate under the requirements of 40 CFR 93.118(e)(4).

**IV. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. 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 approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, 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 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 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). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This 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 is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, 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. This 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.*).

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. 804(2).

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 May 11, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

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

*40 CFR Part 81*

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

Dated: March 1, 2004.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

■ Parts 52 and 81, chapter I, title 40, Code of Federal Regulations, are 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 for “Maintenance plan for the Birmingham area”.

**§ 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
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Maintenance plan for the Birmingham area ...	Jefferson County and Shelby County .....	01/30/2004	03/12/2004	

**PART 81—[AMENDED]**

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

“Jefferson County” and “Shelby County” to read as follows:

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

■ 2. In § 81.301, the table entitled “Alabama-Ozone (1-Hour Standard)” is amended by revising the entries for

**§ 81.301 Alabama.**  
\* \* \* \* \*

**ALABAMA-OZONE (1-HOUR STANDARD)**

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Birmingham Area:				
Jefferson County .....	4/12/04	Attainment.		
Shelby County .....	4/12/04	Attainment.		
* * * * *				

<sup>1</sup> This date is October 18, 2000, unless otherwise noted.

\* \* \* \* \*  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 262 and 271**  
[FRL-7634-4]

**Massachusetts: Final Authorization of State Hazardous Waste Management Program Revisions; State-Specific Modification to Federal Hazardous Waste Regulations, Pursuant to ECOS Program Proposal; Extension of Site-Specific Regulations for New England Universities' Laboratories XL Project**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** Today's action consists of three distinct but related final rulemakings briefly characterized here and further discussed in the supplementary information section of this rule. First, the EPA is granting final authorization to the Commonwealth of Massachusetts, under the Resource Conservation and Recovery Act (RCRA), for revisions to the State's hazardous waste program which meet the standard EPA regulatory requirements for authorization of State programs. The revisions consist of updated State regulations covering hazardous waste definitions and miscellaneous provisions, for the identification and listing of hazardous wastes, and standards for hazardous waste generators, which correspond to RCRA Consolidated Checklists C1, C2 and C3, respectively. These State regulations have been updated to address most Federal RCRA requirements listed in Checklists C1, C2 and C3 through at least July 1, 1990.

Second, the State regulations submitted for authorization also include comprehensive regulations governing hazardous wastes being recycled on-site by generators. These regulations do not meet the standard EPA requirements for State authorization but have been determined by the EPA to meet the RCRA statutory test of protecting human health and the environment. The EPA also has determined that these Massachusetts regulations are at least as environmentally protective overall as the Federal program. Thus the EPA is today making a State-specific modification to the Federal hazardous waste regulations to enable the EPA to authorize these Massachusetts regulations, pursuant to a proposal for flexibility submitted by the Massachusetts Department of Environmental Protection (MADEP) under the program established by the Joint EPA/State Agreement To Pursue Regulatory Innovation between the EPA and the Environmental Council of States (ECOS program). As part of this same rulemaking, the EPA is also today authorizing these Massachusetts hazardous waste recyclable materials regulations.

Third, the EPA is today extending the expiration date of site-specific regulations previously adopted by the EPA under the eXcellence and Leadership program (Project XL) allowing alternative RCRA generator requirements to be followed for laboratories at certain universities in Massachusetts (and Vermont). As part of this same rulemaking, the EPA is also today authorizing the Massachusetts regulations which track these EPA regulations. The EPA already has authorized the Vermont regulations which track these EPA regulations and expects to extend the authorization of the Vermont regulations through a separate rulemaking.

On October 21, 2003, the EPA proposed to take these three actions. No negative public comments were received in response to the proposal. **DATES:** This final rulemaking, covering both the revisions to the federal regulations and the EPA's authorization of the State regulations, is effective immediately without further notice as of March 12, 2004.

**ADDRESSES:** Dockets containing copies of the Commonwealth of Massachusetts' revision application, the materials which the EPA used in evaluating the revision, and materials relating to the State-specific and site-specific Federal regulation changes, have been established at the following two locations: (i) Massachusetts Department of Environmental Protection, Business Compliance Division, One Winter Street—8th Floor, Boston, MA 02108, business hours Monday through Friday 9 a.m. to 5 p.m., tel: (617) 556-1096; and (ii) EPA Region I Library, One Congress Street—11th Floor, Boston, MA 02114-2023, business hours Monday through Thursday 10 a.m.-3 p.m., tel: (617) 918-1990. Records in these dockets are available for inspection and copying during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Robin Biscaia, Hazardous Waste Unit, EPA Region I, One Congress St., Suite 1100 (CHW), Boston, MA 02114-2023, tel: (617) 918-1642, e-mail: [biscaia.robina@epa.gov](mailto:biscaia.robina@epa.gov).

**SUPPLEMENTARY INFORMATION:** As indicated above, the EPA published a **Federal Register** notice on October 21, 2003 (68 FR 60060) proposing to take the three actions which are the subject of this notice. No negative public comments were received by the EPA in response to the proposal. Thus the EPA is today taking final actions in accordance with its prior proposal. Note that the EPA proposed to approve the