New York's 1994 attainment demonstration documented that the New York Metro Area could not attain the ozone standard without significant emission reductions from upwind sources. This documentation, along with documentation developed by EPA, led EPA to promulgate the NO_X SIP Call (63 FR 57356) to reduce the transport of pollution into downwind nonattainment areas. In the NO_X SIP Call, EPA concluded that reductions from various upwind states were necessary to provide for timely attainment in various downwind states. The NO_X SIP Call therefore established requirements for control of sources of significant emissions in all upwind states. However, these reductions are not scheduled for full implementation until May 2003. Further, the United States Court of Appeals for the District of Columbia Circuit recently ordered that EPA could not require full implementation of the NO_X SIP Call prior to May 2004. *Michigan, et al.,* v. *EPA*, D. C. Cir. No. 98–1497, Order of Aug. 30, 2000. New York complied with the NO_X SIP Call and established a NO_X trading program as its control program. On May 22, 2001 (66 FR 28059), EPA approved New York's regulations to comply with the NO_X SIP Call. New York requires full implementation by May 2003 for its NO_X sources.

New York, in cooperation with the other OTR states, worked to consider regional control measures and strategies to bring the New York Metro Area into attainment of the ozone standard. New York has committed to adopt the measures to account for this shortfall noted previously by October 31, 2001. In fact, New York has taken a leadership role in the OTC process of identifying and developing regional control strategies that would achieve the necessary additional reductions to attain the 1-hour ozone standard. New York will be implementing regulations consistent with the OTC which include; revisions to the consumer products and architectural and industrial coatings rules, a mobile equipment refinishing rule, controls on portable fuel containers as well as the NO_X model rule (NO_X reductions from sources that are not included in the 1994 OTC NO_X Memorandum of Understanding for regional NO_X reductions or covered by EPA's NO_X SIP Call). New York has begun its regulatory development process for these measures.

Administrative Requirements

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. This proposed 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 proposed 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 approve 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 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it 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 Act. This proposed rule also is not subject to Executive Order 13045 (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 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 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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.*).

List of Subjects in 40 CFR Part 52

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

Dated: August 31, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 01–22739 Filed 9–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–056–2–200031; FRL–7053–2]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Alabama: Control of Gasoline Sulfur and Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to fully approve a SIP revision submitted by the State of Alabama establishing low-sulfur and low-Reid Vapor Pressure (RVP) requirements for gasoline distributed in the Birmingham nonattainment area (Shelby and Jefferson counties in Alabama). Alabama developed these fuel requirements to reduce emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) as part of the State's strategy to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the Birmingham nonattainment area. EPA is approving Alabama's fuel requirement into the SIP because these fuel requirements are in accordance with the requirements of the Clean Air Act (the Act), and are necessary for the Birmingham nonattainment area to achieve the 1-hour ozone NAAQS in a timely manner.

DATES: Comments should be received on or before October 11, 2001.

ADDRESSES: All comments should be addressed to: Lynorae Benjamin at the

EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Lynorae Benjamin, (404) 562–9040

Alabama Department of Environmental Management (ADEM), 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059

FOR FURTHER INFORMATION CONTACT: Lynorae Benjamin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9040. Ms. Benjamin can also be reached via electronic mail at benjamin.lynorae@epa.gov.

SUPPLEMENTARY INFORMATION: The following section provides the rationale for EPA's granting Alabama a preemption waiver, as provided in Section 211(c)(4)(C) of the Act, for the low-sulfur/low-RVP requirements for gasoline sold in the Birmingham nonattainment area during the regulatory control period (June 1 through September 15) each year through 2003. After that time, the State control of sulfur terminates, and Federal controls on sulfur in gasoline will then apply. There is no termination date for the low-RVP portion of Alabama's fuel regulation.

I. Analysis of State's Submittal

What Did the State Submit?

On November 1, 2000, the State of Alabama submitted an attainment demonstration for the 1-hour ozone NAAQS for the Birmingham nonattainment area for inclusion into the Alabama SIP. The rule for the fuel program (the subject of this proposed rulemaking) is included in this submittal in Appendix I; the request for a waiver from Federal preemption pursuant to 211(c)(4)(C) of the Act (also the subject of this proposed rulemaking) is included as Appendix II of this submittal. Specifically, Appendix II of the Alabama submittal contains data and analyses to support a finding under section 211(c)(4)(C) that the State's low-sulfur and low-RVP requirements are necessary for the Birmingham nonattainment area to achieve the ozone NAAQS.

Does the State Submittal Meet the SIP Approval Requirements Under Section 110?

This SIP submittal, including the fuel rule for Alabama's low-sulfur/low-RVP fuel control program, meets the requirements outlined in section 110. The fuel rule was formally adopted by the ADEM Board on October 24, 2000, and became effective December 1, 2000.

How Does the Low-Sulfur/Low-RVP Proposal Relate to Other SIP Activities in the State?

The attainment demonstration for the Birmingham nonattainment area, submitted November 1, 2000, relies upon the emission reductions from the low-sulfur/low-RVP fuel program. The SIP submittal includes a list of controls currently in place in both Jefferson and Shelby counties, and provides additional emission reductions control measures necessary to achieve the 1-hour ozone NAAQS. Specifically, the attainment demonstration includes a low-sulfur/low-RVP fuel program (the subject of this proposed rulemaking) and controls on Alabama Power Company's Gorgas and Miller Steam Plants. EPA action on the controls for the Gorgas and Miller Steam Plants are being taken in a separate rulemaking.

What Are the Clean Air Act Requirements?

This action is pursuant to section 110 of the Clean Air Act as amended in 1990 (the Act). The approval of the State's fuel control measure must also meet the requirements of section 211(c)(4)(C). Under this section of the Act, EPA may approve a state fuel control into a SIP if it is found that the control is ''necessary'' to achieve a NAAQS.

The EPA's August 21, 1997, Guidance on Use of Opt-in to RFG and Low-RVP Requirements in Ozone SIPs gives further guidance on what EPA is likely to consider in making a finding of necessity. The guidance sets out four issues to be analyzed:

1. The quantity of emission reductions needed to achieve the NAAQS;
2. Other possible control measures and the reductions each would achieve;
3. The explanation for rejecting alternatives as unreasonable or impracticable; and
4. A demonstration that reductions are needed even after implementation of reasonable and practicable alternatives, and that the fuel control will provide some or all of the needed reductions.

In this notice of proposed rulemaking and accompanying Technical Support Document (TSD), EPA addresses these issues.

What Does the State's Low-Sulfur/Low-RVP Regulation Include?

The State's low-sulfur/low-RVP regulation establishes a maximum sulfur content limit of 150 ppm, averaged on a volume-weighted basis, for all gasoline sold in Jefferson and Shelby counties during the regulatory period beginning June 1 and ending September 15. The sulfur limit will remain in effect through the 2003 control period. After that time, the State control of sulfur terminates, and Federal controls on sulfur in gasoline will then apply. As Alabama noted in its submittal, EPA promulgated its newest standards for vehicle tailpipe emissions as well as a national clean fuel (Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements) on February 10, 2000. EPA's rule sets an initial corporate pool average for sulfur of 120 parts per million (ppm) beginning in 2004, and will require a refinery average of 30 ppm sulfur for all gasoline sold nationwide beginning in 2006.

The State's low-sulfur/low-RVP regulation also establishes a maximum RVP limit of 7.0 pounds per square inch (psi) for all gasoline sold in Jefferson and Shelby counties during the aforementioned regulatory period of *any* calendar year beginning in 1999. For ethanol blends meeting specified conditions sold during the regulatory period in Jefferson and Shelby counties, Alabama's regulations limits RVP to a maximum of 8.0 psi. The RVP limit on gasoline and ethanol blends is a per gallon standard. There is no termination date for the low-RVP portion of Alabama's fuel regulation.

How Will the Program Be Enforced?

ADEM will enforce the low-sulfur/low-RVP rule. Producers, importers, terminals, pipelines, truckers, rail carriers, and retail dispensing outlets are subject to provisions of this rule. Registration, recordkeeping, reporting, and certification requirements are included. ADEM will conduct sampling for the fuel program in accordance with the ''Methodology for Randomized Sampling to Estimate Mean Sulfur in Gasoline During a Specified Ozone Season'' (see Appendix I of the attainment demonstration) or by some EPA-approved modification of this sampling plan. Samples, the number to be determined in coordination with ADEM and EPA, will be collected and analyzed for sulfur and RVP throughout

the control period. Any sample that exceeds the limits specified in the fuel rule (i.e., 150 ppm sulfur and 7.0 psi—with the consideration of the allowable margin of error), will be considered a violation and may require an enforcement action. If an enforcement action is warranted, ADEM would use one of two approaches. ADEM would either issue an administrative order or consent order, or initiate a civil action. Another provision of the fuel rule provides that the seasonal sulfur average will not exceed 140 ppm. If the seasonal sulfur average exceeds 140 ppm, ADEM will require 100 percent terminal testing in lieu of testing at the retail level for future control periods.

EPA finds that this fuel rule is an acceptable approach for enforcing the State's fuel program.

Will the Low-Sulfur/Low-RVP Fuel Control Program Provide Some or All of the Needed Emission Reductions?

Implementation of the low-sulfur/low-RVP fuel program will provide 3.3 (tons per day) TPD of NO_X and 7.0 TPD of VOC emission reductions, which provides some or all of the emission reductions needed for the Birmingham nonattainment area to achieve the 1-hour ozone NAAQS. Reducing the sulfur and RVP of gasoline reduces NO_X and VOC emissions, respectively.

On May 1, 1998, EPA released a staff paper presenting EPA's understanding of the impact of gasoline sulfur on emissions from motor vehicles and exploring what gasoline producers and automobile manufacturers could do to reduce sulfur's impact on emissions. The staff paper noted that gasoline sulfur degrades the effectiveness of catalytic converters and that high sulfur levels in commercial gasoline could affect the ability of future automobiles—especially those designed for very low emissions—to meet more stringent standards that are in use. The paper also pointed out that sulfur control will provide additional benefits by lowering emissions from the current fleet of vehicles.

Lowering the RVP in gasoline reduces VOC emissions, primarily through reducing evaporative losses from vehicle fuel tanks, lines, and carburetors as well as losses from gasoline storage and transfer facilities. To a lesser degree, a reduction in the VOCs in vehicle exhaust also results from low-RVP gasoline.

Are There Any Reasonable and Practicable Alternatives to Alabama's Fuel Program?

The State conducted thorough analyses of control measures available for the Birmingham nonattainment area. The attainment demonstration for the Birmingham nonattainment area contains a long list of stationary and point source controls that are required for Jefferson and Shelby counties. In brief, this attainment demonstration discusses Alabama's implementation of VOC reasonably achievable control technology (RACT), Stage I vapor recovery controls and open burning bans, among other controls for Jefferson and Shelby counties. Further, NO_X controls for the Alabama Power Company's Gorgas and Miller plant are included in this attainment demonstration. This attainment SIP uses a weight-of-evidence analysis to show that implementation of these controls, including the low sulfur/low-RVP program, should bring the Birmingham nonattainment area into attainment of the 1-hour ozone NAAQS. The discussion below summarizes the controls that have been adopted and evaluates the reasonableness and practicability of the non-fuel alternatives that are still available.

In February 1997, ADEM formed an Advisory Committee to assist in determining the course(s) most appropriate to reduce ozone precursor emissions in the Birmingham nonattainment area. As a result of these meetings, many discussions centered on a fuel control strategy (in conjunction with other strategies). For the purpose of this fuel waiver request, ADEM referred to the results of the aforementioned meetings and reconsidered the potential implementation of an inspection and maintenance (I/M) program, and Stage II vapor recovery controls.

The conclusion drawn from ADEM's analysis of these controls was that implementing an I/M program is not practicable as a strategy to achieve attainment by the year 2003 because: (1) the implementation of an I/M program would require a modification to Alabama law; (2) full implementation of an I/M program could not be achieved by 2003 (the attainment year) and little or no emission reductions would be achieved by that year; and (3) the program would require significant funding (i.e., ''start-up'' costs) and human resources to implement.

ADEM did not consider implementation of the Stage II controls because, in 1994, EPA promulgated regulations for Onboard Refueling Vapor Recovery and because modeling revealed that even if the Stage II program were implemented, the fuel control program would still be necessary. Implementation of a Stage II program would only provide VOC emission reductions of 2.09 TPD and no NO_X emission reductions.

In addition to evaluating the potential for NO_X reductions from an I/M program, ADEM evaluated potential additional NO_X emission reductions from various point source groups. Of the point source groups considered, only six of these point source groups have potentially significant NO_X emissions that are reasonably evaluated for possible controls. These point source groups include the following: coke oven underfiring of coke by-product manufacturing; quenching process of coke by-product manufacturing; industrial internal combustion engines utilizing natural gas as a fuel; reheat furnaces at steel manufacturing sources; lime kilns at lime manufacturing sources; and cement kilns at cement manufacturing sources. After further analysis of each of the above sources, ADEM concluded that it was either not reasonable or practicable to further control these sources, or controls on available sources would not provide all the emission reductions needed. We concur with ADEM's assessment as described in the TSD.

Based on the State's analysis of the cost-effectiveness and the time required to implement these measures, we agree that, other than those proposed in the attainment demonstration and those described in the TSD, there are no reasonable or practicable non-fuel control measures available to the State to achieve the 1-hour ozone NAAQS in a timely manner. Compared to all of the potentially available measures outlined in the TSD, the low-sulfur/low-RVP fuel is the most reasonable and practicable measure available to reduce the emissions from ozone precursor emissions for the Birmingham nonattainment area. The low-sulfur/low-RVP fuel is readily available to the State because it is also being provided to the Atlanta nonattainment area. The benefits of this fuel program are already being felt in the Birmingham nonattainment area.

The TSD includes a detailed review of the controls that the State has already proposed or adopted and the reasonableness and practicability of the non-fuel alternatives that are still available.

Is the Low-Sulfur/Low-RVP Program Necessary for the Birmingham Nonattainment Area To Achieve the 1-Hour Ozone NAAQS?

Implementation of the low-sulfur/low-RVP fuel program will provide 3.3 TPD of NO_X and 7.0 TPD of VOC emission reductions for the Birmingham nonattainment area. Without the

proposed fuel controls, the Birmingham nonattainment area subject to these controls would receive gasoline with a sulfur level in excess of 300 ppm and a RVP of up to 7.8 psi during the summer months. The State, based on modeling results using EPA's Complex Model, estimates that the proposed low-sulfur/low-RVP program will reduce NO_X emissions from automobiles by at least 6.2 percent and VOC emissions from automobiles by at least 3.6 percent. Thus, we concur with the State's conclusion that implementation of the low-sulfur/low-RVP fuel program will provide some or all of the emission reductions necessary for the Birmingham nonattainment area to achieve the ozone NAAQS in 2003.

Proposed Action by EPA

EPA is proposing to approve Alabama's low-sulfur/low-RVP fuel program into the federally enforceable SIP. The State has demonstrated that the fuel program will provide some or all of the NO_X and VOC emission reductions needed to reduce ozone levels for the Birmingham nonattainment area. Additionally, the State has demonstrated necessity for a preemption waiver as required by section 211(c)(4)(C) of the Act. Without the program, the design values for the nonattainment area will continue to exceed the 1-hour ozone NAAQS. In the Birmingham attainment demonstration, the State examined control measures, not previously implemented for this nonattainment area, and concluded that, even with adoption of all reasonable and practicable non-fuel control measures, additional VOC and NO_X reductions in the area are necessary to achieve the 1-hour ozone NAAQS. The State further demonstrated that the fuel control satisfies the requirements of section 110 and will supply some or all of the reductions needed to achieve the ozone NAAQS.

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

Administrative Requirements

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 proposes to approve 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 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it 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 Act. This rule also is not subject to Executive Order 13045 (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 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 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. 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.*).

List of Subjects in 40 CFR Part 52

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

Dated: August 30, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–22735 Filed 9–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–056–200110; FRL–7053–1]

Approval and Promulgation of Implementation Plans; Alabama; Attainment Demonstration of the Birmingham 1-hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the additions to Alabama's Air Quality Regulations and the ground-level 1-hour ozone attainment demonstration State Implementation Plan (SIP) for the Birmingham nonattainment area submitted by the Alabama Department of Environmental Management (ADEM) on November 1, 2000. This proposed rule is based on the requirements of the Clean Air Act as amended in 1990 (CAA) related to 1-hour ozone attainment demonstrations. EPA will be proposing approval of the fuel control measure in a separate **Federal Register** action.

DATES: Written comments must be received on or before October 11, 2001.

ADDRESSES: All comments should be addressed to: Sean Lakeman at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours: