

**PART 401—SEAWAY REGULATIONS AND RULES****Subpart B—[Amended]**

1. The authority citation for part 401 would continue to read as follows:

**Authority:** 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

2. Paragraph (a) of § 401.102 is amended by removing the number “\$27,500” and adding, in its place, the number “\$31,625”.

Issued in Washington, DC on October 28, 2002.

Saint Lawrence Seaway Development Corporation.

**Albert S. Jacquez,**  
*Administrator.*

[FR Doc. 02–28021 Filed 11–1–02; 8:45 am]

**BILLING CODE 4910–61–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[AL—200302; FRL—7403–5]

**Determination of Attainment of 1-hour Ozone Standard as of November 15, 1993, for the Birmingham, AL, Marginal Ozone Nonattainment Area**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing the determination that the Birmingham, Alabama, marginal ozone nonattainment area attained the 1-hour ozone National Ambient Air Quality Standard by November 15, 1993, the date required by the Clean Air Act to be used for making this determination.

**DATES:** This final rule is effective on December 4, 2002.

**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:** Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 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).

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**I. Today's Action**

In this final rulemaking, Environmental Protection Agency (EPA) is responding to comments made on EPA's proposed rulemaking published August 21, 2002 (67 FR 54159). In the August 21, 2002, **Federal Register** notice, EPA proposed to determine that the Birmingham marginal ozone nonattainment area (hereinafter referred to as the Birmingham area) attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by November 15, 1993, the date required by the Clean Air Act (CAA) to be used for making this determination since it is Birmingham's attainment date.

**II. Background**

On August 21, 2002, EPA published a proposed rule to determine that the Birmingham marginal ozone nonattainment area (hereinafter referred to as the Birmingham area) attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by November 15, 1993, the date required by the Clean Air Act (CAA). The Birmingham area is comprised of Jefferson and Shelby Counties. On July, 10, 2002, the United States District Court for the District of Columbia concluded that EPA failed to exercise its non-discretionary duty to make a final attainment determination for the Birmingham area by May 15, 1994. The Court required that EPA make a formal attainment determination within 120 days from date of opinion. *Sierra Club v. Whitman*, No. 00–2206 (D.D.C. July 10, 2002). Therefore, in response to the Court's order, EPA is publishing this rule.

**III. Response to Comments****What Comments Did We (EPA) Receive and What Are Our Responses?**

EPA received adverse comments from one commenter regarding the proposed determination that Birmingham attained the 1-hour ozone standard as of November 15, 1993. The commenter, Earthjustice, submitted the comments on behalf of the Sierra Club Alabama Chapter, the Sierra Club Cahaba Group, the Alabama Environmental Council, and Alabama Physicians for Social

Responsibility. They raised a number of policy and legal issues that EPA has considered and is responding to below.

**Comment 1:** According to the commenter, “EPA's proposal flies in the face of the Clean Air Act's mandate to protect \* \* \* people from the health threats posed by smog.”

**Response:** EPA is not failing to protect the people of Birmingham from the health threats posed by ozone. As described below in response to Comment 5, EPA has already taken steps to require the State of Alabama to deal with Birmingham's ozone problems and the State has taken the necessary steps and adopted additional significant control measures that will be implemented no later than the spring of next year. Furthermore, the State has demonstrated that those additional measures will lead to attainment of the 1-hour ozone standard in Birmingham by November of next year, which is the date for attainment that EPA determined was as expeditiously as practicable. That EPA disagrees with the commenter about the precise statutory mechanism to utilize in achieving attainment of the 1-hour ozone standard in Birmingham does not mean that EPA is not acting to fulfill the objective of the Clean Air Act of achieving attainment of the ozone standard as expeditiously as practicable. To the contrary, EPA has already acted to fulfill that objective and is protecting the people of Birmingham from ozone pollution.

**Comment 2:** The commenter asserts that EPA proposed to find that the Birmingham area “has attained” the 1-hour ozone standard “solely on the basis of air quality data in the 1991–93 period,” even though Birmingham has violated the standard since then and continues to do so. The commenter concludes that Birmingham has not attained the ozone NAAQS and that for “EPA to assert otherwise, based on air quality conditions ten years or more ago, defies reality.”

**Response:** The pertinent statutory provision of the Clean Air Act clearly and explicitly establishes the criteria to be applied in determining whether a 1-hour ozone nonattainment area classified under subpart 2 of part D of Title I of the Clean Air Act has failed to attain the 1-hour standard and must be reclassified by operation of law. Section 181(b)(2)(A) provides that: “Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. \* \* \* [A]ny area that the

Administrator finds has not attained the standard by that date shall be reclassified by operation of law \* \* \* (Emphasis added.) Thus, section 181(b)(2) clearly directs EPA to determine whether an area attained the ozone standard by its attainment date based on the area's design value as of that date. The only areas subject to mandatory reclassification under section 181(b)(2) are those that the Administrator finds have "not attained the standard by that date." Whether or not Birmingham is attaining the ozone standard today or, for that matter, any date after its November 15, 1993 attainment date, is simply irrelevant to the determination of whether Birmingham had attained as of November 15, 1993. EPA is not purporting to determine that the Birmingham area "has attained" the standard in the sense that the area came into attainment and continues to be in attainment today; EPA is simply following the words of the statute to determine whether the Birmingham area attained the standard as of its November 15, 1993 attainment date. The fact that Birmingham violated the standard after November 15, 1993, does not, and cannot, detract from the conclusion that Birmingham "attained the standard by" its attainment date. Contrary to the suggestion of the commenter, the Act simply does not call for EPA, when acting pursuant to section 181(b)(2)(A), to determine whether an area is still attaining the standard after its attainment date. In contrast, in determining which classification an area being reclassified should receive, section 181(b)(2)(A)(ii) clearly and explicitly requires EPA to determine the design value of an area as of the time of the **Federal Register** notice identifying an area as having failed to attain by its attainment date. Clearly, Congress knew how to distinguish between directing EPA to make one determination as of the area's attainment date and a second determination as of the date of the **Federal Register** notice announcing the first determination. The commenter, however, advances an interpretation of the Act that it asserts EPA is compelled to follow that conflates one provision of a statute setting forth one criterion with another provision setting forth a different criterion. The validity and reasonableness of EPA's interpretation is supported by the 1998 decision of the U.S. District Court for the Northern District of Alabama in *Vahle v. Browner* (Memorandum Opinion, dated Sept. 4, 1998) concerning the reclassification of Birmingham. In that case, the plaintiff, just like the commenter, argued that

section 181(b)(2) "should be interpreted so as to require the EPA to reclassify an area that "backslides" into nonattainment after its attainment date." The court ruled, however, that "the clear wording of the statute prevents such interpretation. The statute provides that the determination shall be 'whether the area attained the standard by that date.' 42 U.S.C. 7511(b)(2)(A) (emphasis added). There can be no question that the date referred to is the attainment date established in 42 U.S.C. 7511(a)(1), November 15, 1993, in the case of the Jefferson/Shelby area. Therefore, the statute is not remotely subject to the interpretation suggested by the plaintiff." (Memorandum Opinion at 5-6.) EPA's interpretation is clearly a reasonable one.

*Comment 3:* The commenter claims that EPA's proposed action is based on a "crabbed reading" of the Clean Air Act. The commenter asserts that EPA's reading of the language of section 181(b)(2)(A) of the Act to limit the pertinent data to that for the 1991-93 period "improperly ignores subsequent language in the same subsection requiring reclassification of any area that 'the Administrator finds has not attained the standard by that date.' Thus, the issue is whether the Administrator can currently 'find' that the area 'has attained' the standard—not whether the area 'was' meeting the standard at some time in the past. Here, EPA cannot possibly find that the Birmingham area 'has attained' the standard by the attainment date, because that area continues to violate the standard." The commenter further asserts that, in the context of redesignations to attainment, EPA stated that the statutory phrase "has attained" means that an area must be attaining the standard at the time of redesignation to attainment. According to the commenter, the "very same analysis applies here. EPA must reclassify any area that the Administrator finds 'has not' (in the present tense) attained the standard."

*Response:* As explained more fully in response to Comment 2, EPA's reading of the Act is fully consistent with its language and with the opinion in the *Vahle* case, which rejected the view espoused by the commenter as an interpretation to which the Act is "not remotely subject." As for the commenter's reference to redesignations to attainment, the statutory language that is pertinent to that issue differs from the language of section 181(b)(2)(A) regarding reclassifications. Section 107(d)(3)(e) prohibits EPA from redesignating an area from nonattainment to attainment unless it

determines that the area "has attained" the standard. In contrast to the reclassification provision, which specifies the attainment date as the point of reference for making the attainment determination, section 107(d)(3)(E) sets no date to use for making that determination. Furthermore, in light of the fact that an attainment area is defined in section 107(d)(1) as an area that "meets" the standard it is clear that for EPA to take an action affirmatively designating an area as attainment it must be meeting the standard at the time of the decision to designate it as attainment. Section 181(b)(2)(A), however, expressly directs EPA to determine whether an area attained as of a specified date in the past, its attainment date.

*Comment 4:* The commenter asserts that language in section 181(b)(2)(A) expressly stating that EPA's determination of attainment is to be based on the area's design value as of the attainment date, "[b]y its terms \* \* \* only applies to attainment determinations made within 6 months of the attainment date." The commenter states that "nowhere did Congress suggest that EPA could ignore post-attainment date violations if the agency delayed its attainment determination substantially beyond the 6-month window." The commenter also argues that even if EPA's reading of the first sentence of section 181(b)(2)(A) were correct "the second sentence of that subsection plainly requires reclassification to take place where the Administrator finds that the area "has not attained" by that date. Thus, even if EPA finds that the area was meeting the standard on November 15, 1993, the second sentence of section 181(b)(2)(A) still requires reclassification because, as EPA itself has found (and as the data unequivocally shows), the area "has not attained."

*Response:* EPA does not believe that Congress intended for the language regarding determining attainment as of the attainment date not to apply when an attainment determination occurs more than six months after the attainment date. There is no statutory language supporting the commenter's reading that eliminates this language from the Act when EPA takes action more than six months after an area's design value. Furthermore, contrary to the commenter's assertion, the second sentence of section 181(b)(2)(A) does not somehow override the language of the first sentence and require reclassification if an area slips back into nonattainment after its attainment date. Rather, the second sentence reinforces the validity of EPA's view of the

straightforward language of the first sentence by stating that “[e]xcept for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law \* \* \*” (Emphasis added.) EPA is finding that Birmingham attained by “that date,” its November 15, 1993 attainment date, and, consequently, no reclassification occurs regardless of whether the area slipped back into nonattainment after that date. See also Responses to Comments 2 and 3.

*Comment 5:* According to the commenter, EPA’s approach is “wholly inconsistent with the Act’s structure and purpose. To accept EPA’s reading, one must conclude that Congress did not care about unhealthful air after 1993, and meant to forever exempt such areas from reclassification even if their air pollution problems had not actually been cured.” The commenter further contends that there is no “plausible basis for denying to Birmingham residents the same level of air quality protection mandated for” other cities.

*Response:* EPA’s approach is not only consistent with the express language of section 181(b)(2), it is consistent with the Clean Air Act’s structure and purpose. Moreover, accepting EPA’s reading of this provision does not mean that either Congress or EPA does not care about unhealthful air in Birmingham after 1993 and does not deny to the residents of Birmingham the same level of air quality protection that is afforded to the other residents of the United States. This comment would be accurate only if Congress precluded EPA from dealing with air quality problems in areas such as Birmingham. Congress has not done so, however, and EPA has exercised its authority available under other provisions of the Clean Air Act to require that steps be taken to improve air quality in Birmingham. In fact, EPA undertook a rulemaking action to require the State of Alabama to submit a SIP revision to provide for attainment of the 1-hour ozone standard in Birmingham. EPA took final action on this rulemaking on October 19, 2000. 65 FR 64352 (Oct. 27, 2000). The State of Alabama submitted a SIP revision to provide for attainment based on photochemical grid modeling (which is only required by the Clean Air Act for ozone nonattainment areas classified as serious or higher) on November 1, 2000. The attainment demonstration relied upon additional fuel controls and controls on emission controls on two major power plants and demonstrated that attainment would occur by November 15, 2003, on the basis of these additional control

measures, which are to be implemented by May 2003. EPA approved that SIP submission on October 24, 2001. 66 FR 56223 (Nov. 7, 2001). Consequently, even though EPA is not reclassifying Birmingham as the commenter desires, EPA and the State of Alabama have taken steps to rectify the problems with Birmingham’s SIP and to achieve attainment of the 1-hour ozone standard as expeditiously as practicable, thereby affording Birmingham’s citizens the health protections of that air quality standard.

*Comment 6:* The commenter claims that in *Whitman v. American Trucking Ass’ns*, “the Supreme Court soundly rejected the very sort of evasion of the Act’s reclassification provisions that EPA is proposing here.” According to the commenter, that decision held “that EPA could not construe the Act in a way that renders Subpart 2 “abruptly obsolete” \* \* \* Yet that is precisely what the Agency proposes here.” In the view of the commenter, EPA’s reliance on other provisions of the Act, such as section 110, is an approach that “effectively nullifies the Subpart 2 reclassification provisions as to the affected area” and claims that such an approach “was squarely rejected by the Supreme Court in *Whitman*.”

*Response:* The Supreme Court’s decision in *Whitman v. American Trucking Ass’ns*, 431 U.S. 537, 121 S.Ct. 903 (2001), did not grapple with the issue presented in this rulemaking. At issue in *Whitman* was the implementation regime for the revised ozone standard, the 8-hour ozone standard promulgated by EPA in 1997. There, the Court dealt with the issue of “whether Subpart 1 [of Part D] alone (as the agency determined), or rather Subpart 2 or some combination of Subparts 1 and 2, controls the implementation of the revised ozone NAAQS in nonattainment areas.” The Court ruled that EPA could not establish an implementation program for a new ozone NAAQS that eliminated subpart 2 but left it to the Agency to resolve ambiguities in the Clean Air Act concerning how subparts 1 and 2 interact with respect to the implementation of revised ozone standards. The Court did not deal with an issue of how a particular provision of subpart 2 should be interpreted and implemented, which is the issue in this rulemaking. In this rulemaking EPA is not seeking to supplant the provisions of subpart 2, it is merely applying those provisions in a way consistent with their language and a prior court decision interpreting the provisions at issue. The fact that EPA disagrees with the commenter’s suggested interpretation of

section 181(b)(2)(A) does not mean that EPA is effectively nullifying that provision, which, in EPA’s review, provides for the reclassification of areas that fail to attain as of their attainment date.

*Comment 7:* The commenter also claims that EPA’s reading of the Clean Air Act leads to absurd results because an area that was violating the standard on November 15, 1993, would be subject to more stringent requirements than Birmingham even if its air were cleaner than Birmingham’s after 1993. Another absurd result that EPA’s approach leads to in the eyes of the commenter is the possibility that Birmingham would remain classified as marginal, while other areas with better air quality could be reclassified up to severe status “solely because they happened to be in violation on November 15, 1993.”

*Response:* EPA’s approach does not lead to absurd results. EPA’s approach merely follows the language of the statute and gives full force and effect to the clearly expressed intent of Congress. If EPA’s approach meant that nothing could be done to address air quality problems in Birmingham because the area was not reclassified, then there might be legitimate questions that could be raised about the validity of such an approach, which would mean that the fundamental objective of attainment of the ozone standard could not be achieved. That is not the case, however. As described above in response to Comment 5, EPA exercised its statutory authority to issue a SIP call to the State of Alabama requiring an attainment demonstration for Birmingham. The State then submitted that SIP, which was based on photochemical modeling and which contained significant additional control measures. EPA approved that SIP and the SIP for Birmingham now provides for attainment of the 1-hour ozone standard next year. Also, the Clean Air Act clearly contemplates that areas that once achieved attainment of the ozone standard may be categorized differently than areas that have not achieved attainment even if an area that was once clean violates the standard again. Section 175A(d), which applies to areas that were once designated nonattainment but are seeking redesignation to attainment after attaining a standard, requires that such areas submit SIP revisions containing contingency provisions “to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.” Neither section 175A nor any other provision of the Act establishes a mandatory duty for EPA to

redesignate an attainment area back to nonattainment status after a violation, although such action by EPA is authorized by section 107(d)(3)(A). This is the case even though such an area could have air quality worse at some point than another area that had remained designated nonattainment and may have even been classified at a higher level than the area that had been redesignated to attainment. Clearly, Congress expected that there would be areas that had been redesignated to attainment that were in fact violating a standard but did not require that such areas be redesignated to nonattainment. Instead of compelling EPA to change their designation status, Congress required such areas to have provisions in their SIPs to address the air quality problems (the contingency measures). Thus, Congress clearly expected that two areas could be in different categories (one attainment and one nonattainment) even though the area designated attainment might have worse air quality than the area designated nonattainment. Congress also expected that the area designated attainment would have SIP provisions designed to address the air quality problems. EPA is treating Birmingham in an analogous fashion. EPA does not view Birmingham, having attained the standard by its attainment date, as being subject to the mandatory reclassification provisions of section 181(b)(2); EPA, however, did require the State of Alabama to revise the Birmingham SIP to address the air quality problems Birmingham was experiencing and it has done so.

*Comment 8:* The commenter asserts that EPA has relied on post-attainment date conditions in making attainment and reclassification determinations under the Act and that it is arbitrary, capricious, and contrary to law for the Agency to find areas in attainment and waive reclassification, but refuse to consider post-attainment date conditions to find areas in nonattainment. The commenter offers two examples of this. One is where EPA decided not to reclassify Kent & Queen Anne's County in Maryland from marginal to moderate when it had come into attainment of the 1-hour ozone standard a year after its attainment date, and the second was EPA's decision not to reclassify the Liberty Borough, Pennsylvania PM-10 area from moderate to serious when it had attained by the time of EPA's decision.

*Response:* The fact that EPA did not reclassify certain other areas that were in violation as of their attainment dates but attained shortly thereafter does not compel the result that EPA reclassify

areas that did attain by their attainment date on the basis of post-attainment date information. In the first situation, where an area attains after its attainment date, the purpose of the reclassification has been fulfilled because the area achieved attainment of the standard (albeit somewhat late). In the second situation, for the reasons explained in response to other comments, the language of the Act requires that only areas that failed to attain as of their attainment date be reclassified. That EPA may not have acted to reclassify all such areas does not lead to the conclusion that EPA must now consider post-attainment date information in every case and make reclassification decisions on the basis of such data.

*Comment 9:* The commenter asserts that since EPA has elsewhere recognized that a nonattainment area with clean air can fall back into nonattainment and must be subject to the enforcement of the Act's nonattainment area requirements. Citing EPA's "clean data" policy, the commenter argues that the post-attainment deadline violations in Birmingham "compel an EPA finding of nonattainment and reclassification."

*Response:* As explained elsewhere in the responses to comments, the post-attainment deadline violations in Birmingham do not compel a finding of nonattainment and reclassification. In addition, the "clean data policy" to which the commenter refers is not relevant to the reclassification provisions of the Act and does not compel such a finding or action. The "clean data" policy concerns other provisions of the Act, such as the attainment demonstration and reasonable further progress requirements, and sets forth EPA's view that the SIP submission requirements contained in those provisions may be suspended for so long as the purpose of those provisions is being achieved, *i.e.*, for so long as the area is attaining the standard. Under that policy, if an area violates the standard during the period in which the requirements are suspended, the requirements are to be reimposed. This simply does not involve the reclassification provisions and their attendant requirements to impose additional requirements on areas that fail to attain by their attainment dates.

*Comment 10:* Even if the attainment status of Birmingham as of November 15, 1993, were the only relevant issue, the commenter asserts that the "post-1993 data strongly suggests that the area was not in fact in attainment on that date." The commenter claims that the only monitor in Shelby County recorded

2 exceedances in 1993 and two other monitored readings of .124 ppm—"barely within the NAAQS, and within only because of EPA's 'rounding' convention." The commenter asks EPA to determine whether the actual values were .1245 or higher, which the commenter states would mean they should have been reported as .125, indicating a violation. The commenter asserts that, based on the post-1993 monitored violations and the "limited size" of the Birmingham monitoring network, "it is highly unlikely that the area was in fact 'in attainment' as of November 15, 1993." Citing a statement made by EPA in 1997 that Birmingham is subject to ozone exceedances "whenever meteorological conditions are conducive to ozone formation," the commenter claims that EPA "cannot rationally find that the Birmingham area was in fact 'in attainment' as of November 15, 1993."

*Response:* EPA does not believe that the post-1993 data suggests that the Birmingham area was not attaining as of November 15, 1993. First, that data was affected by emissions levels in those years and meteorological conditions that occurred in the post-1993 period, which may or may not have been present in the 1991–93 period when the area attained. Thus, the fact that exceedances occurred in 1995 or 1996 does not suggest that unmonitored exceedances were occurring in the 1991–93 period. Second, the Birmingham monitoring network is not insufficient. The area's monitoring network met or exceeded the requirements of EPA's regulatory requirements for National Air Monitoring Stations (NAMS) and for State and Local Air Monitoring Stations (SLAMS) (contained in 40 CFR part 58 Appendix D). Third, as EPA has explained elsewhere, the "rounding convention" referred to by the commenter was established by EPA in guidance issued in 1977 and 1979, guidance that was carried forward by Congress in 1990 when it enacted section 193 of the Clean Air Act. Moreover, the rounding convention is perfectly consistent with the standard as defined in 40 CFR 50.9, which defines the 1-hour ozone standard as 0.12 parts per million (ppm), not .120 ppm or 120 parts per billion. Since the one-hour ozone standard is specified as two significant digits, the appropriate data handling convention is to round to two decimal places. See 67 FR 5152, 5160 (Feb. 4, 2002). Finally, EPA did examine the 1993 data as requested by the commenter and determined that 1-hour ozone data is stored to three decimal places in AIRS-AQS.

*Comment 11:* The commenter contends that not only must EPA reclassify Birmingham as a moderate area, it must reclassify the area as severe since the moderate and serious area attainment dates have passed and the area is still not attaining the standard.

*Response:* For the reasons given in response to the previous comments, EPA does not believe that it must reclassify Birmingham as a moderate area. Even if it were required to reclassify Birmingham as a moderate area at this time, whether it would have to reclassify the Birmingham area immediately as severe is open to question. In another case where EPA acted to reclassify a moderate ozone area as serious after the serious area attainment deadline of 1999 had passed, EPA determined that it would be appropriate to reclassify the area as serious and establish an attainment date satisfying the principle that the attainment date be as expeditiously as practicable even though that date post-dated the 1999 attainment date for serious areas. 66 FR 15578, 15584–85, 15587 (Mar. 19, 2001). In any event, as EPA is not reclassifying Birmingham, EPA is not taking any final action with respect to what a new classification for Birmingham should be and is not resolving that issue on a hypothetical basis.

#### IV. Final Action

Pursuant to Section 181(b)(2)(A) of the CAA, EPA is finalizing the determination that the Birmingham area has attained the 1-hour NAAQS for ozone by November 15, 1993, the date required by section 181(a)(1) of the CAA. This determination is based upon three years of complete, quality-assured, ambient air monitoring data for the years 1991–1993 which indicate that Birmingham area attained the 1-hour ozone NAAQS.

#### V. 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 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 (Public Law 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.

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 to this action since it is simply a determination that Birmingham was in attainment of the 1-hour ozone NAAQS as of November 15, 1993. 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. section 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. section 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 January 3, 2003. 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 in 40 CFR Part 52

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

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

Dated: October 24, 2002.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 02–27828 Filed 11–1–02; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

[Docket No. FEMA–7795]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

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**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the