

County in the Birmingham Area for the 1997 Annual PM<sub>2.5</sub> NAAQS, found at 40 CFR part 81, from nonattainment to attainment.

### XI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For this reason, these proposed actions:

- Are not "significant regulatory action[s]" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

application of those requirements would be inconsistent with the CAA; and

- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this proposed rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

### List of Subjects

#### 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, and Particulate matter.

#### 40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: November 2, 2011.

**Gwendolyn Keyes Fleming,**  
Regional Administrator, Region 4.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R04-OAR-2011-0043-201110; FRL-9490-6]

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Alabama; Redesignation of the Birmingham 2006 24-Hour Fine Particulate Matter Nonattainment Area to Attainment

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

**ACTION:** Proposed rule.

**SUMMARY:** On June 17, 2010, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), Air Division, submitted a request for EPA to redesignate the Birmingham fine particulate matter (PM<sub>2.5</sub>) nonattainment area (hereafter referred to as the "Birmingham Area" or "Area") to attainment for the 2006 24-hour PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS); and to approve a State

Implementation Plan (SIP) revision containing a maintenance plan for the Area. The Birmingham 2006 24-hour PM<sub>2.5</sub> nonattainment area is comprised of Jefferson and Shelby Counties in their entirety and a portion of Walker County. EPA is proposing to approve the redesignation request for the Birmingham Area, along with the related SIP revision, including Alabama's 2009 emissions inventory for the Area and Alabama's plan for maintaining attainment of the PM<sub>2.5</sub> standard in the Area. EPA is also proposing to approve the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and PM<sub>2.5</sub> for the year 2024 for the Birmingham Area. These actions are being proposed pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

**DATES:** Comments must be received on or before December 12, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2011-0043, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *Email:* [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

3. *Fax:* (404) 562-9019.

4. *Mail:* EPA-R04-OAR-2011-0043, 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.

5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, 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. 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.

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2011-0043. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov) or email, information that you consider to be CBI

or otherwise protected. The [www.regulations.gov](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 email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the 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. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joel Huey of the Regulatory Development Section, in 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. Joel Huey may be reached by phone at (404) 562-9104, or via electronic mail at [huey.joel@epa.gov](mailto:huey.joel@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. What are the actions EPA is proposing to take?**

EPA is proposing to take the following three separate but related actions, some of which involve multiple elements: (1) To redesignate the Birmingham Area to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS, provided EPA approves the emissions inventory submitted with the maintenance plan; (2) to approve, under CAA section 172(c)(3), the emissions inventory submitted with the maintenance plan; and (3) to approve into the Alabama SIP, under section 175A of the CAA, Alabama's 2006 24-hour PM<sub>2.5</sub> NAAQS maintenance plan, including the associated MVEBs (EPA is also notifying the public of the status of EPA's adequacy determination for the Birmingham Area MVEBs for the PM<sub>2.5</sub> NAAQS). These actions are summarized below and described in greater detail throughout this notice of proposed rulemaking.

First, EPA proposes to determine that, if EPA finalizes approval of the 2009 baseline emissions inventory for the Birmingham Area, the Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. In this action, EPA is proposing to approve a request to change the legal designation of Jefferson and Shelby Counties in their entirety and the designated portion of Walker County in the Birmingham Area from nonattainment to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. As discussed below, the emissions inventory is being proposed for approval today.

Second, EPA is proposing to approve Alabama's 2009 emissions inventory for the Birmingham Area (under CAA section 172(c)(3)). Alabama selected

2009 as the attainment emissions inventory year for the Birmingham Area. This attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS and is a current, comprehensive inventory that meets the requirements of section 172(c)(3).

Third, EPA is proposing to approve Alabama's 2006 24-hour PM<sub>2.5</sub> NAAQS maintenance plan for the Birmingham Area as meeting the requirements of section 175A (such approval being one of the CAA criteria for redesignation to attainment status). The recently promulgated Cross State Air Pollution Rule (CSAPR),<sup>1</sup> requires reductions of NO<sub>x</sub> and SO<sub>2</sub> associated with power plants to be permanent and enforceable. The maintenance plan is designed to help keep the Birmingham Area in attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS through 2024. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the year 2024 for the Birmingham Area. EPA is proposing to approve (into the Alabama SIP) the 2024 MVEBs that are included as part of Alabama's maintenance plan for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

On a matter related matter to this third action, EPA is also notifying the public of the status of EPA's adequacy process for the newly-established NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2024 for the Birmingham Area. ADEM submitted MVEBs for NO<sub>x</sub> and PM<sub>2.5</sub> in its original June 17, 2010, redesignation request. On May 2, 2011, ADEM submitted additional revisions to the MVEBs for the 24-hour redesignation request.<sup>2</sup> The adequacy comment period for the new Birmingham Area 2024 MVEBs began on March 24, 2011, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (<http://www.epa.gov/otaq/stateresources/transconf/currsips.htm>). The adequacy comment period for these MVEBs closed on April 25, 2011. No adverse comments were received during the adequacy public comment period. Please see section VII of this proposed rulemaking for further explanation of

<sup>1</sup> See "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States" (76 FR 48208, August 8, 2011).

<sup>2</sup> On March 2, 2011, ADEM submitted a proposed revision to the 24-hour NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs originally submitted on June 17, 2010. The final MVEBs were submitted on May 2, 2011, with ADEM's 1997 Annual PM<sub>2.5</sub> NAAQS redesignation submittal. A copy of the submittal is included in the docket for this proposed rulemaking (EPA-R04-OAR-2011-0043) and can be obtained from the [www.regulations.gov](http://www.regulations.gov) Web site.

this process and for more details on the MVEBs.

Today's notice of proposed rulemaking is in response to Alabama's June 17, 2010, SIP submittal and subsequent supplement of May 2, 2011. Those documents address the specific issues summarized above and the necessary elements described in section 107(d)(3)(E) of the CAA for redesignation of the Birmingham Area to attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS.

## II. What is the background for EPA's proposed actions?

Fine particle pollution can be emitted directly or formed secondarily in the atmosphere. The main precursors of PM<sub>2.5</sub> are sulfur dioxide (SO<sub>2</sub>), NO<sub>x</sub>, ammonia and volatile organic compounds (VOC). Unless otherwise noted by the State or EPA, ammonia and VOCs are presumed to be insignificant contributors to PM<sub>2.5</sub> formation, whereas SO<sub>2</sub> and NO<sub>x</sub> are presumed to be significant contributors to PM<sub>2.5</sub> formation. Sulfates are a type of secondary particle formed from SO<sub>2</sub> emissions of power plants and industrial facilities. Nitrates, another common type of secondary particle, are formed from NO<sub>x</sub> emissions of power plants, automobiles, and other combustion sources.

On July 18, 1997, EPA promulgated the first air quality standards for PM<sub>2.5</sub>. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>), based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 µg/m<sup>3</sup>, based on a 3-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual average NAAQS at 15 µg/m<sup>3</sup> but revised the 24-hour NAAQS to 35 µg/m<sup>3</sup>, based again on the 3-year average of the 98th percentile of 24-hour concentrations.<sup>3</sup> Under EPA regulations at 40 CFR part 50, the primary and secondary 2006 24-hour PM<sub>2.5</sub> NAAQS are attained when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35 µg/m<sup>3</sup> at all relevant

monitoring sites in the subject area over a 3-year period.

On January 5, 2005, at 70 FR 944, and supplemented on April 14, 2005, at 70 FR 19844, EPA designated the Birmingham Area as nonattainment for the 1997 PM<sub>2.5</sub> NAAQS based upon air quality data for calendar years 2001–2003. In that action, EPA defined the 1997 PM<sub>2.5</sub> Birmingham nonattainment area to include Jefferson and Shelby Counties in their entireties and a portion Walker County. On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 2006 PM<sub>2.5</sub> NAAQS, designating the Birmingham Area (with the same boundaries as for the 1997 PM<sub>2.5</sub> nonattainment area) as nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS based upon air quality data for calendar years 2006–2008. That action also clarified that the Birmingham Area was classified unclassifiable/attainment for the 1997 24-hour PM<sub>2.5</sub> NAAQS. EPA did not promulgate designations for the annual average NAAQS promulgated in 2006 since that NAAQS was essentially identical to the 1997 annual PM<sub>2.5</sub> NAAQS. Therefore, the Birmingham Area is designated nonattainment for the annual NAAQS promulgated in 1997 and for the 24-hour NAAQS promulgated in 2006. Today's action only addresses the designation for the 24-hour NAAQS promulgated in 2006.

All 2006 PM<sub>2.5</sub> NAAQS areas were designated under subpart 1 of title I, part D, of the CAA. Subpart 1 contains the general requirements for nonattainment areas for any pollutant governed by a NAAQS and is less prescriptive than the other subparts of title I, part D. On April 25, 2007 (72 FR 20664), EPA promulgated its PM<sub>2.5</sub> implementation rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and Tribal plans to implement the PM<sub>2.5</sub> NAAQS. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory impacts of attaining the NAAQS, as discussed below.

On May 12, 2005, EPA published the Clean Air Interstate Rule (CAIR), which addressed the interstate transport requirements of the CAA and required states to significantly reduce SO<sub>2</sub> and NO<sub>x</sub> emissions from power plants (70 FR 25162). The associated Federal Implementation Plans (FIPs) were published on April 28, 2006 (71 FR 25328). However, on July 11, 2008, the DC Circuit Court issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety (*North Carolina v. EPA*, 531 F.3d 836 (DC Cir., 2008)). EPA petitioned for rehearing, and the Court issued an order

remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs (*North Carolina v. EPA*, 550 F.3d 1176 (DC Cir., 2008)). The Court left CAIR in place to “temporarily preserve the environmental values covered by CAIR” until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to “remedy CAIR's flaws” consistent with its July 11, 2008, opinion but declined to impose a schedule on EPA for completing that action. *Id.* As a result of these court rulings, the power plant emission reductions that resulted solely from the development, promulgation, and implementation of CAIR, and the associated contribution to air quality improvement that occurred solely as a result of CAIR in the Birmingham Area could not be considered to be permanent.

On August 8, 2011, EPA published CSAPR in the **Federal Register** under the title, “Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States” (76 FR 48208, August 8, 2011) to address interstate transport of emissions and resulting secondary air pollutants and to replace CAIR. The CAIR emission reduction requirements limit emissions in Alabama and states upwind of Alabama through 2011, and CSAPR requires similar or greater reductions in the relevant areas in 2012 and beyond. The emission reductions that CSAPR mandates may be considered to be permanent and enforceable. In turn, the air quality improvement in the Birmingham Area that has resulted from electric generating units (EGUs) emission reductions associated with CAIR (as well as the additional air quality improvement that would be expected to result from full implementation of CSAPR) may also be considered to be permanent and enforceable. EPA proposes that the requirement in section 107(d)(3)(E)(iii) has now been met because the emission reduction requirements of CAIR address emissions through 2011 and EPA has now promulgated CSAPR which requires similar or greater reductions in the relevant areas in 2012 and beyond. Because the emission reduction requirements of CAIR are enforceable through the 2011 control period, and because CSAPR has now been promulgated to address the requirements previously addressed by CAIR and gets similar or greater reductions in the relevant areas in 2012 and beyond, EPA is proposing to determine that the pollutant transport

<sup>3</sup>In response to legal challenges of the annual standard promulgated in 2006, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded this NAAQS to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (DC Circuit 2009). However, given that the 1997 and 2006 annual NAAQS are essentially identical, attainment of the 1997 Annual NAAQS would also indicate attainment of the remanded 2006 Annual NAAQS.

part of the reductions that led to attainment in the Birmingham Area can now be considered permanent and enforceable. Therefore, EPA proposes to find that the transport requirement of CAA section 107(d)(3)(E)(iii) has been met for the Birmingham Area.

The 3-year ambient air quality data for 2007–2009 indicated no violations of the 2006 PM<sub>2.5</sub> NAAQS for the Birmingham Area. As a result, on June 17, 2010, Alabama requested redesignation of the Birmingham Area to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the 2006 24-hour PM<sub>2.5</sub> NAAQS for 2007–2009, indicating that the 2006 24-hour PM<sub>2.5</sub> NAAQS had been achieved for the Birmingham Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). From 2007 through the present, the 24-hour PM<sub>2.5</sub> design values for the Birmingham Area have declined. While 24-hour PM<sub>2.5</sub> concentrations are dependent on a variety of conditions, the overall downtrend in PM<sub>2.5</sub> concentrations in the Birmingham Area can be attributed to the reduction of emissions, as will be discussed in more detail in section V of this proposed rulemaking.

### III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing the following criteria are met: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such

area has met all requirements applicable to the area under section 110 and part D of title I of the CAA.

EPA has provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (April 16, 1992, 57 FR 13498, and supplemented on April 28, 1992, 57 FR 18070) and has provided further guidance on processing redesignation requests in the following documents:

1. “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the “Calcagni Memorandum”);
2. “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and
3. “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

### IV. Why is EPA proposing these actions?

On June 17, 2010, the State of Alabama, through ADEM, requested the redesignation of the Birmingham Area to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA’s evaluation indicates that the Birmingham Area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS and meets the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. As a result, EPA is proposing to take the three related actions summarized in section I of this notice.

### V. What is EPA’s analysis of the request?

As stated above, in accordance with the CAA, EPA proposes in today’s action to: (1) Redesignate the Birmingham Area to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS; (2) approve the Birmingham Area emissions inventory submitted with the maintenance plan; and (3) approve into the Alabama SIP Birmingham’s 2006 24-hour PM<sub>2.5</sub> NAAQS maintenance plan, including the associated MVEBs. These actions are based upon EPA’s determination that the Birmingham Area continues to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS and that all other redesignation criteria have been met for

the Birmingham Area, provided EPA approves the emissions inventory submitted with the maintenance plan. The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section.

### Criteria (1)—The Birmingham Area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). EPA is proposing to determine that the Birmingham Area continues to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS. For PM<sub>2.5</sub>, an area may be considered to be attaining the 2006 24-hour PM<sub>2.5</sub> NAAQS if it meets the 2006 24-hour PM<sub>2.5</sub> NAAQS, as determined in accordance with 40 CFR 50.13 and Appendix N of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain these NAAQS, the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35 µg/m<sup>3</sup> at all relevant monitoring sites in the subject area over a 3-year period. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

On September 20, 2010, at 75 FR 57186, EPA determined that the Birmingham Area was attaining the 2006 24-hour PM<sub>2.5</sub> NAAQS. For that action EPA reviewed PM<sub>2.5</sub> monitoring data from monitoring stations in the Birmingham Area for the 2006 24-hour PM<sub>2.5</sub> NAAQS for 2007–2009. These data have been quality-assured and are recorded in AQS. EPA has reviewed more recent data which indicates that the Birmingham Area continues to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS beyond the submitted 3-year attainment period of 2007–2009. The 98th percentiles of the PM<sub>2.5</sub> concentrations for 2007–2010 and the 3-year average of these values (*i.e.*, design values) are summarized in Table 1. Data available to date in AQS for 2011, which have not yet been certified, indicate the Birmingham Area continues to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE BIRMINGHAM 2006 24-HOUR PM<sub>2.5</sub> AREA (µg/M<sup>3</sup>)

Location	County	Monitor ID	98th Percentile 24-hour concentrations				3-Year design values	
			2007	2008	2009	2010	2007–2009	2008–2010
North Birmingham .....	Jefferson .....	01–073–0023	42.8	33.5	24.4	28.7	34	29
McAdory .....	Jefferson .....	01–073–1005	30.9	25.8	21.3	22.7	26	23
Bruce Shaw Rd. (Providence).	Jefferson .....	01–073–1009	31.4	27.3	22.1	18.4	27	23
Asheville Road (Leeds) .....	Jefferson .....	01–073–1010	33.0	24.6	19.1	22.3	26	22
Wylam .....	Jefferson .....	01–073–2003	37.7	33.5	25.2	25.4	32	28
Hoover .....	Jefferson .....	01–073–2006	29.8	25.9	20.4	21.6	25	23
Pinson High School .....	Jefferson .....	01–073–5002	34.2	26.4	21.3	20.0	27	23
Corner School Road .....	Jefferson .....	01–073–5003	32.5	30.0	21.3	18.3	28	23
Pelham High School .....	Shelby .....	01–117–0006	30.9	24.8	21.2	<sup>4</sup> 20.0	26	<sup>4</sup> 22
Highland Avenue (Walker Co.).	Walker .....	01–127–0002	30.9	24.3	22.1	18.8	26	22

<sup>4</sup> The Pelham High School site did not meet completeness criteria for the third quarter of 2010. However, the maximum third quarter value from 2008–2010 was 33.6 µg/m<sup>3</sup> (which occurred in 2008). If this value were used as the 98th percentile 24-hour concentration for 2010, the 24-hour design value for the 2008–2010 period would be 27 µg/m<sup>3</sup> and the 2010 design value for the Birmingham Area (from the North Birmingham site) would be unchanged at 29 µg/m<sup>3</sup>.

The 3-year design value for 2007–2009 submitted by Alabama for redesignation of the Birmingham Area is 34 µg/m<sup>3</sup>, which meets the NAAQS as described above. Air quality data for 2010 show that the Area continues to attain the PM<sub>2.5</sub> NAAQS, with a 3-year design value of 29 µg/m<sup>3</sup>, and that ambient 24-hour concentrations of PM<sub>2.5</sub> continue to decline. As mentioned above, on September 20, 2010 (75 FR 57186) EPA published a clean data determination for the Birmingham Area for the 2006 24-hour PM<sub>2.5</sub> NAAQS. In today's action, EPA is proposing to determine that the Area is continuing to attain the 2006 PM<sub>2.5</sub> NAAQS. EPA will not go forward with the redesignation if the Area does not continue to attain until the time that EPA finalizes the redesignation. As discussed in more detail below, the State of Alabama has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

*Criteria (5)—Alabama Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA; and Criteria (2)—Alabama Has a Fully Approved SIP Under Action 110(k) for the Birmingham Area*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Alabama has met all applicable SIP requirements for the Birmingham Area under section 110 of the CAA (general SIP requirements) for

purposes of redesignation. Additionally, EPA proposes to find that the Alabama SIP satisfies the criterion that it meet applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to 2006 24-hour PM<sub>2.5</sub> nonattainment areas) in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. The Birmingham Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

*General SIP requirements.* Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures

needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants (e.g., NO<sub>x</sub> SIP Call,<sup>5</sup> CAIR,<sup>6</sup> and

<sup>5</sup> On October 27, 1998 (63 FR 57356), EPA issued a NO<sub>x</sub> SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO<sub>x</sub> in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO<sub>x</sub> SIP Call, Alabama developed rules governing the control of NO<sub>x</sub> emissions from EGUs, major non-EGU industrial boilers, major cement kilns, and internal combustion engines. On December 27, 2002, EPA approved Alabama's rules as fulfilling Phase I (67 FR 78987).

<sup>6</sup> On May 12, 2005 (70 FR 25162), EPA promulgated CAIR, which required 28 upwind States and the District of Columbia to revise their SIPs to include control measures that would reduce emissions of SO<sub>2</sub> and NO<sub>x</sub>. Various aspects of CAIR rule were petitioned in court and on December 23, 2008, the U.S. Court of Appeals for the District of Columbia Circuit remanded CAIR to EPA (see *Alabama v. EPA*, 550 F.3d 1176 (DC Circuit, December 23, 2008)), which left CAIR in place to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's ruling. The Court directed EPA to remedy various areas of the rule that were petitioned consistent with its July 11, 2008 (see *Alabama v. EPA*, 531 F.3d 836 (DC Circuit, July 11, 2008)), opinion, but declined to

CSAPR). The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation. However, as discussed later in this notice, addressing pollutant transport from other states is an important part of an area's maintenance demonstration.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

EPA has not yet completed rulemaking on a submittal from Alabama dated September 23, 2009, addressing "infrastructure SIP" elements required under CAA section 110(a)(2). However, these are statewide requirements that are not a consequence of the nonattainment status of the Birmingham Area. As stated above, EPA believes that section 110 elements not

linked to an area's nonattainment status are not applicable for purposes of redesignation. Therefore, notwithstanding the fact that EPA has not yet completed rulemaking on Alabama's submittal for the PM<sub>2.5</sub> infrastructure SIP elements of section 110(a)(2), EPA believes it has approved all SIP elements under section 110 that must be approved as a prerequisite for redesignating the Birmingham Area to attainment.

*Title I, Part D requirements.* EPA proposes that if EPA approves Alabama's base year emissions inventory, which is part of the maintenance plan submittal, the Alabama SIP will meet applicable SIP requirements under part D of the CAA. As discussed in greater detail below, EPA believes the emissions inventory is approvable because the 2009 direct PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> emissions for Alabama were developed consistent with EPA guidance for emission inventories and represent a comprehensive, accurate and current inventory as required by CAA section 172(c)(3).

*Part D, subpart 1 applicable SIP requirements.* EPA has determined that if the approval of the base year emissions inventory, discussed in section VIII of this rulemaking, is finalized, the Alabama SIP will meet the applicable SIP requirements for the Birmingham Area for purposes of redesignation under title I, part D of the CAA. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 1997 Annual PM<sub>2.5</sub> NAAQS were designated under this subpart of the CAA and the requirements applicable to them are contained in sections 172 and 176.

For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and in section 176. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498, April 16, 1992).

*Subpart 1 Section 172 Requirements.* Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all Reasonable Available Control Measures (RACM) as expeditiously as practicable and to provide for attainment of the national primary ambient air quality standards. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement

such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. However, pursuant to 40 CFR 51.1004(c), EPA's September 20, 2010, determination that the Birmingham area was attaining the 24-hour PM<sub>2.5</sub> standard suspended Alabama's obligation to submit most of the attainment planning requirements that would otherwise apply. Specifically, the determination of attainment suspended Alabama's obligation to submit an attainment demonstration and planning SIPs to provide for reasonable further progress (RFP), reasonable available control measures, and contingency measures under section 172(c)(9).

The General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992) also discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard (General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992)).

Because attainment has been reached in the Birmingham Area, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the Area continues to attain the standard until redesignation. *See also* 40 CFR 51.1004(c).

The RFP plan requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because EPA has determined that the Birmingham Area has monitored attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS. *See* General Preamble, 57 FR 13564. *See also* 40 CFR 51.1004(c). In addition, because the Birmingham Area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS and is no longer subject to a RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. As part of Alabama's redesignation request for the Birmingham Area, Alabama submitted a

impose a schedule on EPA for completing that action. *Id.* Therefore, CAIR is currently in effect in Alabama.

2009 base year emissions inventory. As discussed below in section VIII, EPA is proposing to approve the 2009 base year inventory submitted with the redesignation request as meeting the section 172(c)(3) emissions inventory requirement.

Section 172(c)(4) requires the identification and quantification of emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Alabama has demonstrated that the Birmingham Area will be able to maintain the NAAQS without part D NSR in effect, and therefore Alabama need not have fully approved part D NSR programs prior to approval of the redesignation request. Nonetheless, Alabama currently has a fully-approved part D NSR program in place. Alabama's PSD program will become effective in the Birmingham Area upon redesignation to attainment. Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes the Alabama SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

**Section 176 Conformity Requirements.** Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or

approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements<sup>7</sup> as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Thus, the Birmingham Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

b. The Birmingham Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

If EPA issues a final approval of the base year emissions inventory, EPA will have fully approved the applicable Alabama SIP for the Birmingham 2006 24-hour PM<sub>2.5</sub> nonattainment area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*see Calcagni Memorandum at p. 3; Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein). Following passage of the CAA of 1970, Alabama has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 2006 24-hour PM<sub>2.5</sub> NAAQS SIP elements applicable in the Birmingham Area (May 31, 1972, 37 FR 10842; July 13, 2011, 76 FR 41100).

As indicated above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation. In addition, EPA believes

that since the part D subpart 1 requirements did not become due prior to submission of the redesignation request, they are also not applicable requirements for purposes of redesignation. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004); 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis-East St. Louis Area to attainment of the 1-hour ozone NAAQS). With the approval of the emissions inventory, EPA will have approved all part D subpart 1 requirements applicable for purposes of this redesignation.

**Criteria (3)—The Air Quality Improvement in the Birmingham 2006 24-Hour PM<sub>2.5</sub> NAAQS Nonattainment Area 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**

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area 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 (CAA section 107(d)(3)(E)(iii)). EPA believes that Alabama has demonstrated that the observed air quality improvement in the Birmingham Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state adopted measures.

State, local and Federal measures enacted in recent years have resulted in permanent emission reductions. Most of these emission reductions are enforceable through regulations. A few non-regulatory measures also result in emission reductions.

The state and local measures that have been implemented to date and relied upon by Alabama to demonstrate attainment and/or maintenance include local NO<sub>x</sub> controls on cement plants in the Area due to the 8-hour ozone contingency plan, Jefferson and Shelby County burn bans, and voluntary on-road and off-road diesel retrofit projects.

As shown in Table 2, local reasonably available control technology (RACT) PM controls installed in the Birmingham Area have reduced direct PM<sub>2.5</sub> emissions by approximately 62 tons per year (tpy) as of the end of 2009. These

<sup>7</sup> CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining

transportation conformity. Transportation conformity SIPs are different from the MVEBs that

are established in control strategy SIPs and maintenance plans.

controls are associated with the Birmingham Annual PM<sub>2.5</sub> Attainment Demonstration SIP, submitted to EPA on March 13, 2009.

TABLE 2—SUMMARY OF RACT CONTROLS IN THE BIRMINGHAM AREA

Facility	Source	RACT controls	PM <sub>2.5</sub> reduction (tpy)	Installation date
W.J. Bullock	Crucible furnaces	Baghouse	3.891	2009
McWane Pipe	Charge handling area	Wet suppression	0.385	2008
Sloss Industries	Coal piles	Wet suppression	0.398	2008
American Cast Iron Pipe	Charge make-up	Wet suppression	11.91	2008
	Roads & process areas	Paving	3.58	2007/2008
	Cupola melting furnace	New Cupola/Bag house & spray suppression.	5.84	2007/2008
Nucor Steel	Sand & cement silos	Baghouse	0.09	2008
	Meltshop fugitives	Baghouse & physical improvements.	28.1	2008
U.S. Pipe	Cupola charge make-up	Wet suppression	1.818	2008
	Sand & cement silos	Bin vents	5.93	2008
<b>Total</b>			<b>61.942</b>	

In addition, closures of certain facilities have resulted in continued reductions of local PM<sub>2.5</sub> emissions in the Birmingham Area. In late 2009, W.J. Bullock and Sloss Mineral Wool in Jefferson County announced plans to cease operations, resulting in additional PM<sub>2.5</sub> emission reductions of 0.13 tpy and 130 tpy, respectively. In March 2010, U.S. Pipe ceased production, resulting in an additional emission reduction of 46 tpy of PM<sub>2.5</sub>. In total, the

RACT controls and facility closures amount to reductions of greater than eight percent of direct PM<sub>2.5</sub> point source emissions in Jefferson County.

Furthermore, control equipment installed at utilities in the Birmingham Area have decreased emissions of NO<sub>x</sub> and SO<sub>2</sub>. These reductions, prompted by the NO<sub>x</sub> SIP Call and CAIR, are summarized in Table 3 below. In 2007, flue gas desulfurization systems were added to units 8–10 of Alabama Power

Company's (APC) Gorgas Plant in anticipation of CAIR. Selective catalytic reduction (SCR) systems were installed on units 3 and 4 at APC Miller Plant in 2003 as a result of the NO<sub>x</sub> SIP Call, with a consent decree requiring year round operation beginning in 2008 in preparation for CAIR. The year round SCR operation requirements have been incorporated into the facilities' title V operating permits and are thus enforceable.

TABLE 3—SUMMARY OF EMISSIONS AND CONTROLS AT UTILITIES IN THE BIRMINGHAM AREA<sup>8</sup>

Facility	Date control installed		Emissions reductions from 2006–2009 (tpy)		
	NO <sub>x</sub>	SO <sub>2</sub>	NO <sub>x</sub>	SO <sub>2</sub>	Percent
APC Miller Unit 3	2008		4,680		71
APC Miller Unit 4	2008		3,786		70
APC Gorgas Unit 8		2007		10,007	96
APC Gorgas Unit 9		2007		9,975	96
APC Gorgas Unit 10		2007		40,779	97
APC Gaston Unit 5*		2010		43,579	78
<b>Total Reductions</b>			<b>8,466</b>	<b>104,341</b>	

\*Gaston Unit 5 data reflects reductions from 2006–2010.

The Federal measures that have been implemented include the following:

*Tier 2 vehicle standards.* In addition to requiring NO<sub>x</sub> controls, the Tier 2 rule reduced the allowable sulfur content of gasoline to 30 parts per million (ppm) starting in January of 2006. Most gasoline sold in North Carolina prior to this had a sulfur content of approximately 300 ppm.

*Heavy-duty gasoline and diesel highway vehicle standards.* The second

phase of the standards and testing procedures, which began in 2007, reduces particulate matter (PM) and NO<sub>x</sub> from heavy-duty highway engines and also reduces highway diesel fuel sulfur content to 15 ppm. The total program is expected to achieve a 90 and 95 percent reduction in PM and NO<sub>x</sub> emissions from heavy-duty highway engines, respectively.

*Nonroad spark-ignition engines and recreational engines standards.* Tier 1 of this standard, implemented in 2004, and Tier 2, implemented in 2007, have reduced and will continue to reduce PM emissions.

*Large nonroad diesel engine standards.* Promulgated in 2004, this rule is being phased in between 2008 and 2014. This rule will reduce sulfur content in nonroad diesel fuel and, when fully implemented, will reduce NO<sub>x</sub> and direct PM<sub>2.5</sub> emissions by over 90 percent from these engines.

*NO<sub>x</sub> SIP Call.* On October 27, 1998 (63 FR 57356), EPA issued a NO<sub>x</sub> SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO<sub>x</sub>. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. Emission reductions

<sup>8</sup>Data in Tables 3 and 4 reflect reported actual emissions from the Clean Air Markets Division Database <http://camddataandmaps.epa.gov/gdm/index.cfm?fuseaction=emissions.wizard>.



resulting from regulations developed in response to the NO<sub>x</sub> SIP Call are permanent and enforceable.

*CAIR and CSAPR.* As previously discussed, the remanded CAIR, originally promulgated to reduce transported pollution, was left in place to “temporarily preserve the environmental values covered by CAIR” until EPA replaced it with a rule consistent with the Court’s opinion. To remedy CAIR’s flaws, EPA promulgated the final CSAPR on August 8, 2011. CSAPR addresses the interstate

transport requirements of the CAA with respect to the 1997 ozone, 1997 PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> NAAQS. As noted previously, the requirements of CAIR address emissions through the 2011 control period and CSAPR requires similar or greater emission reductions in the relevant areas in 2012 and beyond.

Because PM<sub>2.5</sub> concentrations in the Birmingham area are impacted by the transport of sulfates and nitrates, the area’s air quality is affected by regulation of SO<sub>2</sub> and NO<sub>x</sub> emissions from power plants. Table 4, below,

presents statewide EGU emissions data compiled by EPA’s Clean Air Markets Division for the years 2002 and 2009. Emissions for 2009 reflect implementation of CAIR. Table 4 shows that Alabama and states impacting the Birmingham Area for the 24-hour PM<sub>2.5</sub> NAAQS, as indicated in CSAPR, reduced NO<sub>x</sub> and SO<sub>2</sub> emissions from EGUs by 1,173,566 tpy and 2,425,474 tpy, respectively, between 2002 and 2009.

TABLE 4—COMPARISON OF 2002 AND 2009 STATEWIDE EGU NO<sub>x</sub> AND SO<sub>2</sub> EMISSIONS (TPY) FOR STATES IMPACTING THE BIRMINGHAM AREA<sup>8</sup>

State	NO <sub>x</sub>			SO <sub>2</sub>		
	2002	2009	Net change 2002–2009	2002	2009	Net change 2002–2009
Alabama .....	161,559	49,609	– 111,950	448,248	277,972	– 170,276
Georgia .....	146,456	57,566	– 88,890	512,654	262,258	– 250,396
Indiana .....	281,146	110,969	– 170,177	778,868	413,726	– 365,142
Kentucky .....	198,599	78,767	– 119,832	482,653	252,002	– 230,651
Ohio .....	370,497	95,785	– 274,712	1,132,069	600,687	– 531,382
Pennsylvania .....	200,909	110,239	– 90,670	889,766	573,619	– 316,147
Tennessee .....	155,996	27,912	– 128,084	336,995	108,042	– 228,953
West Virginia .....	225,371	36,120	– 189,251	507,110	174,583	– 332,527
Total .....	1,740,533	566,967	– 1,173,566	5,088,363	2,662,889	– 2,425,474

As was noted earlier, EPA promulgated CSAPR to address interstate transport of emissions and resulting secondary air pollutants and to replace CAIR. CAIR, among other things, required emission reductions that contributed to the air quality improvement in the Birmingham Area. CSAPR requires substantial reductions of SO<sub>2</sub> and NO<sub>x</sub> emissions from EGUs across most of the Eastern United States, with implementation beginning on January 1, 2012. CAIR will continue to be implemented through 2011, and will be replaced by CSAPR beginning in 2012. CSAPR requires reductions of NO<sub>x</sub> and SO<sub>2</sub> emissions to levels below the levels that led to attainment of the 1997 24-hour PM<sub>2.5</sub> standard in the Birmingham Area. Given the remanded status of CAIR, this air quality improvement could not be considered permanent at the time ADEM submitted its request for redesignation of the Birmingham Area. However, since that time CSAPR has been finalized, which mandates even greater reductions than have already occurred under CAIR and, more importantly, more reductions than are needed to maintain the standard in the Area. The reductions of EGU emissions of SO<sub>2</sub> and NO<sub>x</sub> contributed to the air quality improvement in the Birmingham Area. Therefore, the final promulgation of CSAPR in combination

with the other measures cited by Alabama and described above, ensure that the emission reductions that led the Area to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS can be considered permanent and enforceable for purposes of section 107(d)(3)(E)(iii).

*Criteria (4)—The Birmingham Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Birmingham Area to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS, ADEM submitted a SIP revision to provide for the maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA believes this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under

section 175A, 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 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future 2006 24-hour PM<sub>2.5</sub> violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA finds that Alabama’s maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Alabama SIP.

b. Attainment Emissions Inventory

The Birmingham Area attained the 2006 24-hour PM<sub>2.5</sub> NAAQS based on monitoring data for the 3-year period

from 2007–2009. Alabama selected 2009 as the attainment emissions inventory year. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS. Alabama began development of the attainment inventory by first generating a baseline emissions inventory for the Birmingham Area. As noted above, the year 2009 was chosen as the base year for developing a comprehensive emissions inventory for direct PM<sub>2.5</sub> and the primary PM<sub>2.5</sub> precursors, SO<sub>2</sub> and NO<sub>x</sub>, for which projected emissions could be developed for 2012, 2015, 2018, 2021, and 2024. ADEM used actual point source emissions data for 2009 for all sources in Jefferson County and a majority of sources in Shelby County. The Visibility Improvement—State and Tribal Association of the Southeast (VISTAS) projected 2009 emissions were used only where actual emissions were unavailable. The projected inventory included with the maintenance plan estimates emissions forward to 2024, which is beyond the 10-year interval required in section 175A of the CAA. In addition to comparing the final year of the plan, 2024, to the base year, 2009, Alabama compared interim years to the baseline to demonstrate that these years are also expected to show continued maintenance of the 24-hour PM<sub>2.5</sub> standard. On March 7, 2011, at the request of EPA, ADEM submitted a letter in support of the June 17, 2010, redesignation request. The letter

contains revisions to emissions data in Tables 4.3–1, 4.3–2, and 4.3–3 of the redesignation request to correct administrative errors and a clarification on how the 2009 point source inventory was developed. A copy of the letter is included in the docket for this proposed rulemaking (EPA–R04–OAR–2011–0043) and can be obtained from the [www.regulations.gov](http://www.regulations.gov) Web site.

The emissions inventory is composed of four major types of sources: Point, area, on-road mobile and non-road mobile. The future year emissions inventories have been estimated using projected rates of growth in population, traffic, economic activity, expected control programs, and other parameters. Due to the remand of CAIR, ADEM did not include any emissions reductions expected under the rule past 2012. The promulgation of CSAPR ensured that reductions expected under CAIR would remain, thus EPA considers ADEM’s projections to be conservative estimates. Non-road mobile emissions estimates were based on the EPA’s NONROAD2008a non-road mobile model, with the exception of the railroad locomotives, commercial marine, and aircraft engine. These emissions are estimated by taking activity data, such as landings and takeoffs, and multiplying by an Economic Growth Analysis System (EGAS) emission factor. On-road mobile source emissions were calculated using EPA’s MOVES2010 mobile emission factors model. The 2009 SO<sub>2</sub>, NO<sub>x</sub> and

PM<sub>2.5</sub> emissions for the Birmingham Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Tables 5 through 8 of the following subsection discussing the maintenance demonstration.

c. Maintenance Demonstration

The June 17, 2010, final submittal includes a maintenance plan for the Birmingham nonattainment area. The maintenance plan:

(i) Shows compliance with and maintenance of the 24-hour PM<sub>2.5</sub> standard by providing information to support the demonstration that current and future emissions of SO<sub>2</sub>, NO<sub>x</sub> and PM<sub>2.5</sub> remain at or below 2009 emissions levels.

(ii) Uses 2009 as the attainment year and includes future emissions inventory projections for 2012, 2015, 2018, 2021, and 2024.

(iii) Identifies an “out year” at least 10 years (and beyond) after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs were established for the last year (2024) of the maintenance plan (see section VI below).

(iv) Provides actual and projected emissions inventories, in tons per day (tpd), for the Birmingham nonattainment area, as shown in Tables 5 through 8 below.

TABLE 5—ACTUAL AND PROJECTED 24-HOUR PM<sub>2.5</sub> EMISSIONS (TPD) FOR THE BIRMINGHAM AREA

Sector	2009	2012	2015	2018	2021	2024
Point Area	11.22	9.75	10.29	10.88	11.47	12.10
Nonroad	12.35	12.18	12.37	12.57	12.78	12.98
Mobile	1.60	1.49	1.32	1.15	1.05	1.00
	2.36	1.90	1.45	1.30	1.15	0.96
Total	27.53	25.32	25.43	25.90	26.45	27.04

TABLE 6—ACTUAL AND PROJECTED 24-HOUR NO<sub>x</sub> EMISSIONS (TPD) FOR THE BIRMINGHAM AREA

Sector	2009	2012	2015	2018	2021	2024
Point Area	96.25	96.41	98.01	99.66	101.65	103.69
Nonroad	11.24	11.42	11.59	11.77	11.94	12.12
Mobile	27.31	24.60	21.74	19.65	19.19	19.42
	72.05	57.74	43.43	37.34	31.25	25.20
Total	206.85	190.17	174.77	168.42	164.03	160.43

TABLE 7—ACTUAL AND PROJECTED 24-HOUR SO<sub>2</sub> EMISSIONS (TPD) FOR THE BIRMINGHAM AREA

Sector	2009	2012	2015	2018	2021	2024
Point Area	493.41	203.71	204.41	205.17	205.84	206.92
Nonroad	1.06	1.09	1.11	1.14	1.16	1.19
	0.50	0.20	0.19	0.19	0.19	0.20

TABLE 7—ACTUAL AND PROJECTED 24-HOUR SO<sub>2</sub> EMISSIONS (TPD) FOR THE BIRMINGHAM AREA—Continued

Sector	2009	2012	2015	2018	2021	2024
Mobile .....	0.43	0.37	0.29	0.30	0.32	0.33
Total .....	495.40	205.37	206.00	206.80	207.51	208.64

TABLE 8—EMISSION ESTIMATES FOR BIRMINGHAM AREA

Year	PM <sub>2.5</sub> (tpd)	NO <sub>x</sub> (tpd)	SO <sub>2</sub> (tpd)
2009 .....	27.53	206.85	495.40
2012 .....	25.32	190.17	205.37
2015 .....	25.43	174.77	206.00
2018 .....	25.90	168.42	206.80
2021 .....	26.45	164.03	207.51
2024 .....	27.04	160.43	208.64
Difference from 2009 to 2024 .....	-0.49	-46.42	-286.76

Tables 5 through 8 summarize the 2009 and future projected emissions of direct PM<sub>2.5</sub> and precursors from the counties in the Birmingham Area. In situations where local emissions are the primary contributor to nonattainment, the ambient air quality standard should not be violated in the future as long as emissions from within the nonattainment area remain at or below the baseline with which attainment was achieved. Alabama has projected emissions as described previously and determined that emissions in the Birmingham Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

As discussed in section VI of this proposed rulemaking, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Alabama selected 2009 as the attainment emissions inventory year for the Birmingham Area. Alabama calculated the safety margins in its submittal as 46.42 tpd for NO<sub>x</sub> and 0.49 tpd for PM<sub>2.5</sub>. The State has decided to allocate 23.21 tpd of the available NO<sub>x</sub> safety margin and 0.245 tpd of the available PM<sub>2.5</sub> safety margin to the 2024 MVEBs for the Birmingham Area. Therefore, the remaining safety margin for NO<sub>x</sub> will be 23.21 tpd and the remaining safety margin for PM<sub>2.5</sub> will be 0.245 tpd. This allocation and the resulting available safety margin for the Birmingham Area are discussed further in section VI of this proposed rulemaking.

#### d. Monitoring Network

There are currently ten monitors measuring PM<sub>2.5</sub> in the Birmingham Area. The State of Alabama, through ADEM, has committed to continue operation of the monitors in the Birmingham Area in compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved Alabama's 2010 monitoring plan on October 8, 2010.

#### e. Verification of Continued Attainment

The State of Alabama, through ADEM, has the legal authority to enforce and implement the requirements of the Birmingham Area 2006 24-hour PM<sub>2.5</sub> maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future PM<sub>2.5</sub> attainment problems.

ADEM will track the progress of the maintenance plan by performing future reviews of triennial emission inventories for the Birmingham Area as required in the Air Emissions Reporting Rule (AERR) and Consolidated Emissions Reporting Rule (CERR). For these periodic inventories, ADEM will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, then ADEM will re-project emissions for the Birmingham Area.

#### f. Contingency Measures in the Maintenance Plan

The contingency measures are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the

state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the State. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the June 17, 2010, submittal, Alabama affirms that all programs instituted by the State and EPA will remain enforceable and that sources are prohibited from reducing emissions controls following the redesignation of the Area. The contingency plan included in the submittal includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The State of Alabama will use actual ambient monitoring data as the triggering event to determine when contingency measures should be implemented.

As previously mentioned, on March 7, 2011, at the request of EPA, ADEM submitted a letter in support of the June 17, 2010, redesignation request. The letter contains clarifying information regarding the contingency measures included in the maintenance plan and an additional emissions inventory-based contingency measure trigger. A copy of the letter is included in the docket for this proposed rulemaking (EPA-R04-OAR-2011-0043) and can be obtained from the [www.regulations.gov](http://www.regulations.gov) Web site.

Alabama has identified a primary trigger as occurring when the 24-hour PM<sub>2.5</sub> NAAQS, as described in section II above, are violated. Alabama commits to adopting, within 18 months of a certified violation of the 24-hour PM<sub>2.5</sub> NAAQS, one or more of the control measures discussed below.

Additionally, Alabama has identified a secondary trigger to occur when the 98th percentile 24-hour concentration for a single year at any monitor in the nonattainment area records a concentration of 36 µg/m<sup>3</sup> or greater. In such a case, the state will evaluate existing controls measures and determine whether any further emission reduction measures should be implemented. ADEM will consider several factors in its evaluation of the need for additional controls measures in the event of a future year violation of the 2006 24-hour PM<sub>2.5</sub> NAAQS. Depending on the timing of the future year violations, additional local and regional emissions reductions may still be planned. ADEM will evaluate the air quality impacts of those regulatory programs in determining if further reductions are required to ensure continued maintenance of the 24-hour PM<sub>2.5</sub> NAAQS in the Birmingham Maintenance Area.

In addition to the triggers indicated above, Alabama will monitor regional emissions through the CERR and AERR and compare them to the projected inventories and the attainment year

inventory. If the actual emissions from these inventories are greater than ten percent above the projected emissions presented in the maintenance plan, than ADEM will evaluate whether additional planning or control measures are needed to prevent the Area from violating the NAAQS or to correct a potential violation.

In the event that further reductions are needed to ensure continued maintenance, the list of “culpable sources” developed by Alabama in the State’s 2009 attainment demonstration for the Annual PM<sub>2.5</sub> NAAQS will be evaluated for additional control of direct PM<sub>2.5</sub> emissions. As additional information, a copy of section 8.2 of the Birmingham Annual PM<sub>2.5</sub> Attainment Demonstration SIP, submitted to EPA on March 13, 2009, was included with the March 7, 2011, letter to EPA, which is included in the docket for this proposed rulemaking (EPA–R04–OAR–2011–0043). This section contains the detailed contingency measures for the annual PM<sub>2.5</sub> SIP and was referenced in the redesignation request and maintenance plan for the 24-hour PM<sub>2.5</sub> NAAQS. In addition, ADEM will consider the possibility of expanding the current voluntary diesel retrofit program currently in place in the Birmingham Area.

Once a primary trigger is initiated, ADEM will commence analysis, including review of expected emissions reductions from local and regional

regulatory programs, air quality modeling, and emissions inventory assessment to determine emission control measures that will be required to attain or maintain the 2006 24-hour PM<sub>2.5</sub> NAAQS. All controls that will be relied upon for contingency purposes are scheduled to be installed in 2012 or later and are therefore not already relied upon in for maintenance. The schedule for implementation of this plan and details of steps ADEM will take to bring the area back into compliance are outlined in Table 9.

At least one of the following contingency measures will be adopted and implemented upon a primary triggering event:

- Continued implementation of previously adopted controls which have not yet been realized but are sufficient to address the violation, including future year emission reductions from Federal measures to address interstate pollutant transport and from the Georgia multi-pollutant rule;
- Additional controls of direct PM<sub>2.5</sub> emissions from the list of “culpable sources” developed in the PM<sub>2.5</sub> annual attainment SIP and included in the March 7, 2011, letter;
- Expansion of the current voluntary diesel retrofit program in the Birmingham Area;
- Any additional controls deemed beneficial to address the violation at the time of the trigger.

TABLE 9—SCHEDULE FOR PERMIT REVISIONS AND/OR RULE REVISIONS FOR IMPLEMENTING CONTINGENCY MEASURES

Step	Description of action	Schedule
1 .....	Identify and quantify the emissions reductions expected to result from current and future state and Federal regulatory programs.	3 months.
2 .....	Use the best available air quality modeling to evaluate the air quality improvement expected from step 1 above.	6 months.
3 .....	Draft any needed permit conditions or SIP regulations .....	3 months.
4 .....	Complete rulemaking or permit revision process and submit to EPA .....	6 months.
	Maximum time required for completion	18 months.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, monitoring network, verification of continued attainment, and a contingency plan. Therefore, the maintenance plan SIP revision submitted by the State of Alabama for the Birmingham Area meets the requirements of section 175A of the CAA and is approvable.

**VI. What is EPA’s analysis of Alabama’s proposed NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the Birmingham area?**

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must “conform” to (*i.e.*, be consistent with) the part of the state’s air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform,

most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to

attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the Birmingham Area, Alabama has elected to develop MVEBs for NO<sub>x</sub> and PM<sub>2.5</sub> for the entire nonattainment area (Jefferson, Shelby, and the nonattainment portion of Walker Counties). Alabama is developing these MVEBs, as required, for the last year of its maintenance plan, 2024. The MVEBs reflect the total on-road emissions for 2024, plus an allocation from the available NO<sub>x</sub> and PM<sub>2.5</sub> safety margin. Under 40 CFR 93.101, the term "safety margin" is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. The NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled and new emission factor models. The NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the Birmingham Area are defined in Table 10 below.

TABLE 10—BIRMINGHAM AREA PM<sub>2.5</sub> NO<sub>x</sub> MVEBs [tpd]

	PM <sub>2.5</sub>	NO <sub>x</sub>
2024 On-road Mobile Emissions (tpd) .....	0.96	25.20
Safety Margin Allocated to MVEB ....	0.245	23.21
2024 Conformity MVEB .....	1.21	48.41

As mentioned above, the Birmingham Area has chosen to allocate a portion of the available safety margins to the NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2024. This allocation is 23.21 tpd and 0.245 tpd for NO<sub>x</sub> and PM<sub>2.5</sub>, respectively. Therefore, the remaining safety margins for 2024 are 23.21 tpd and 0.245 tpd for NO<sub>x</sub> and PM<sub>2.5</sub>, respectively.

Through this rulemaking, EPA is proposing to approve the MVEBs for NO<sub>x</sub> and PM<sub>2.5</sub> for 2024 for the Birmingham Area because EPA has determined that the Area maintains the 2006 24-hour PM<sub>2.5</sub> NAAQS with the emissions at the levels of the budgets. Once the MVEBs for the Birmingham Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations. After thorough review, EPA has determined that the budgets meet the adequacy criteria, as outlined in 40 CFR 93.118(e)(4), and is proposing to approve the budgets because they are consistent with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS through 2024.

#### VII. What is the status of EPA's adequacy determination for the proposed NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2024 for the Birmingham Area?

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted

MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Alabama's maintenance plan submission includes NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the Birmingham Area for 2024, the last year of the maintenance plan. EPA reviewed the NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs through the adequacy process. The Alabama SIP submission, including the Birmingham Area NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs, was open for public comment on EPA's adequacy Web site on March 24, 2011, found at: <http://www.epa.gov/otaq/state/resources/transconf/cursips.htm>. The EPA public comment period on adequacy for the MVEBs for 2024 for Birmingham Area closed on April 25, 2011. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal.

EPA intends to make its determination on the adequacy of the 2024 MVEBs for the Birmingham Area for transportation conformity purposes in the near future by completing the adequacy process that was started on March 24, 2011. After EPA finds the 2024 MVEBs adequate or approves them, the new MVEBs for NO<sub>x</sub> and PM<sub>2.5</sub> must be used for future transportation conformity determinations. For required regional emissions analysis years that involve 2024 or beyond, the applicable budgets will be the new 2024 MVEBs established in the maintenance plan, as defined in section VI of this proposed rulemaking.

#### VIII. What is EPA's analysis of the proposed 2009 base year emissions inventory for the Birmingham area?

As discussed above, section 172(c)(3) of the CAA requires areas to submit a base year emissions inventory. As part of Alabama's request to redesignate the

Birmingham Area, the State submitted a 2009 base year emissions inventory to meet this requirement. Emissions contained in the submittal cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources.

All emission summaries were accompanied by source-specific descriptions of emission calculation procedures and sources of input data. Alabama’s submittal documents 2009 emissions in the Birmingham Area in units of tpd. Table 11 below provides a

summary of the 2009 emissions of direct PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub> for the Birmingham Area. In today’s notice, EPA is proposing to approve this 2009 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

TABLE 11—BIRMINGHAM AREA 2009 EMISSIONS FOR PM<sub>2.5</sub>, NO<sub>x</sub>, AND SO<sub>2</sub> [tpd (percent total)]

Source	PM <sub>2.5</sub>		NO <sub>x</sub>		SO <sub>2</sub>	
	tpd	(%)	tpd	(%)	tpd	(%)
Point Source Total	11.22	[40.8]	96.25	[46.5]	493.41	[99.6]
Area Source Total	12.35	[44.9]	11.24	[5.4]	1.06	[0.2]
On-Road Mobile Source Total	2.36	[8.6]	72.05	[34.8]	0.43	[0.1]
Non-Road Mobile Source Total	1.60	[5.8]	27.31	[13.2]	0.50	[0.1]
<b>Total for all Sources</b>	<b>27.53</b>	<b>.....</b>	<b>206.85</b>	<b>.....</b>	<b>495.40</b>	<b>.....</b>

**IX. What is the effect of EPA’s proposed actions?**

EPA’s proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Alabama’s redesignation request would change the legal designation of Jefferson and Shelby Counties and the designated portion of Walker County in Alabama for the 2006 24-hour PM<sub>2.5</sub> NAAQS, found at 40 CFR part 81, from nonattainment to attainment. Approval of Alabama’s request would also incorporate a plan for maintaining the 2006 24-hour PM<sub>2.5</sub> NAAQS in the Birmingham Area through 2024 into the Alabama SIP. This maintenance plan includes contingency measures to remedy any future violations of the 2006 24-hour PM<sub>2.5</sub> NAAQS and procedures for evaluation of potential violations. The maintenance plan also establishes NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the Birmingham Area. The NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2024 for the Birmingham Area are 48.41 tpd and 1.21 tpd, respectively. Final action would also approve the Area’s emissions inventory under CAA section 172(c)(3). Additionally, EPA is notifying the public of the status of EPA’s adequacy determination for the newly-established PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs for 2024 for the Birmingham Area.

**X. Proposed Actions on the Redesignation Request and Maintenance Plan SIP Revisions Including Approval of the NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2024 for the Birmingham Area**

EPA previously determined that the Birmingham Area was attaining the 2006 24-hour PM<sub>2.5</sub> NAAQS on September 20, 2010, at 75 FR 57186. EPA is now taking three separate but related actions regarding the Area’s

redesignation and maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS.

First, EPA is proposing to determine, based on complete, quality-assured and certified monitoring data for the 2007–2009 monitoring period, and after review of preliminary data in AQS for 2008–2010, that the Birmingham Area continues to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is proposing to determine that the Birmingham Area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. On this basis, EPA is proposing to approve Alabama’s redesignation request for the Birmingham Area.

Second, EPA is proposing to approve Alabama’s 2009 emissions inventory for the Birmingham Area (under CAA section 172(c)(3)). Alabama selected 2009 as the attainment emissions inventory year for the Birmingham Area. This attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS and also is a current, comprehensive inventory that meets the requirements of section 172(c)(3).

Third, EPA is proposing to approve the maintenance plan for the Birmingham Area, including the PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs for 2024, into the Alabama SIP (under CAA section 175A). The maintenance plan demonstrates that the Area will continue to maintain the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the budgets meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5). Further, as part of today’s action, EPA is describing the status of its adequacy determination for the PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs for 2024 in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA’s adequacy determination for the MVEBs or the effective date for the final rule for

this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs pursuant to 40 CFR 93.104(e).

If finalized, approval of the redesignation request would change the official designation of Jefferson and Shelby Counties in their entirety and the nonattainment portion of Walker County in the Birmingham Area for the 2006 24-hour PM<sub>2.5</sub> NAAQS, found at 40 CFR part 81, from nonattainment to attainment.

**XI. Statutory and Executive Order Reviews**

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For this reason, these proposed actions:

- Are not “significant regulatory action[s]” subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Do 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);

- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, and Particulate matter.

##### 40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: November 2, 2011.

**Gwendolyn Keyes Fleming,**

*Regional Administrator, Region 4.*

[FR Doc. 2011-29183 Filed 11-9-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-1983-0002; FRL-9488-6]

#### National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List: Partial Deletion of the Tar Lake Superfund Site

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 5 is issuing a Notice of intent of Partial Deletion of the following two parcels of the Tar Lake Site Superfund (Site) located in Mancelona, Michigan from the National Priorities List (NPL): the non-East Tailings Area (ETA) part of property PIN 05-11-129-006-00 (41.4 acres); and the non-ETA part of property PIN 05-11-129-007-00 (33.63 acres) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of Michigan, through the Michigan Department of Environmental Quality, have determined that all appropriate response actions at these two parcels under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains only to the two property PINs listed above. The deletion of these two parcels from the Site affects all surface soils, subsurface soils, structures and groundwater within the boundaries of these parcels. In 2005, the ETA, approximately 45.49 acres, in the northeastern part of the Site, was deleted from the NPL when EPA determined that the ETA was acceptable for unrestricted use and unlimited exposure (UU/UE). The two parcels being proposed for deletion are adjacent to and south of the ETA. The current remaining areas of the Site will remain on the NPL and are not being considered for deletion as part of this action.

**DATES:** Comments must be received by December 12, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-1983-0002, by one of the following methods:

- <http://www.regulations.gov>: Follow on-line instructions for submitting comments.

- **Email:** Karen Cibulskis, Remedial Project Manager, at [cibulskis.karen@epa.gov](mailto:cibulskis.karen@epa.gov) or Megan McSeveney, Community Involvement Coordinator, at [mcseveney.megan@epa.gov](mailto:mcseveney.megan@epa.gov).

- **Fax:** Gladys Beard, Deletion Process Manager, at (312) 697-2077.

- **Mail:** Karen Cibulskis, Remedial Project Manager, U.S. Environmental Protection Agency (SR-6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886-1843, or Megan McSeveney, Community Involvement Coordinator, U.S. Environmental Protection Agency (SI-7J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886-1972 or (800) 621-8431.

- **Hand delivery:** Megan McSeveney, Community Involvement Coordinator, U.S. Environmental Protection Agency, Region 5 (SI-7J), 77 West Jackson Boulevard, Chicago, IL 60604. Such deliveries are only accepted during the docket's normal hours of operations, and special arrangements should be made for deliveries of boxed information. The normal business hours are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-SFUND-1983-0002. 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 whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. 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 email comment directly to EPA without going through <http://www.regulations.gov>, your email 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