

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded

from further review, under paragraph L49, of chapter 3, table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2023–0912 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy

and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### List of Subjects in 33 CFR Part 117

Bridges.

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

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. [From the date of publication in the **Federal Register**], through 11:59 p.m. on March 31, 2025, § 117.647(e) is temporarily added to read as follows:

#### § 117.647 Saginaw River.

\* \* \* \* \*

(e) The draw of the Independence Bridge, mile 3.88, over the Saginaw River, will require a 2-hour advance notice of arrival to be given to move barges away from the draw to allow vessels to pass through the bridge from April 24, 2024, through November 30, 2024, and the bridge need not open for the passage of vessels from December 1, 2024, through March 31, 2025.

**Jonathan Hickey,**

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

[FR Doc. 2023–27385 Filed 12–12–23; 8:45 am]

**BILLING CODE 9110–04–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R04–OAR–2021–0367; FRL–11573–01–R4]

#### Air Plan Approval; Alabama; Birmingham Limited Maintenance Plan for the 2006 24-Hour PM<sub>2.5</sub> NAAQS

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State implementation plan (SIP) revision submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), via a letter dated February 2, 2021. The SIP revision includes the 2006 24-hour fine particulate matter (PM<sub>2.5</sub>) national

ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Birmingham, Alabama maintenance area (Birmingham Area or Area). The Birmingham 2006 24-hour PM<sub>2.5</sub> maintenance area is comprised of Jefferson County, Shelby County, and a portion of Walker County. EPA is proposing to approve the Birmingham Area LMP because it provides for the maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS within the Birmingham Area through the end of the second 10-year portion of the maintenance period in 2034. The effect of this action would be to incorporate into the Alabama SIP certain commitments related to maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in the Birmingham Area, making them federally enforceable. EPA is also starting the adequacy process, consistent with requirements in the transportation conformity rule, for this LMP.

**DATES:** Comments must be received on or before January 12, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2021-0367 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Dianna Myers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9207. Ms. Myers can also be reached via electronic mail at [myers.dianna@epa.gov](mailto:myers.dianna@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Summary of EPA's Action**

In accordance with the Clean Air Act (CAA or Act), EPA is proposing to approve the Birmingham Area LMP for the 2006 24-hour PM<sub>2.5</sub> NAAQS, adopted by ADEM on February 2, 2021, and submitted by ADEM as a revision to the Alabama SIP under a cover letter with the same date.<sup>1</sup> The Birmingham Area LMP is designed to maintain the 2006 24-hour PM<sub>2.5</sub> NAAQS within the Birmingham Area through the end of the second 10-year portion of the maintenance period beyond redesignation. EPA is proposing to approve the plan because it meets all applicable requirements under CAA sections 110 and 175A. As a general matter, the Birmingham Area LMP relies on the same control measures and similar contingency measures to maintain the 2006 24-hour PM<sub>2.5</sub> NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by ADEM for the first 10-year period, which is not a limited maintenance plan.

**II. Background**

Fine particulate matter, particulate matter with an aerodynamic diameter of 2.5 microns or less, can be emitted directly into the atmosphere as a solid or liquid particle ("primary PM<sub>2.5</sub>" or "direct PM<sub>2.5</sub>") or can be formed in the atmosphere as a result of various chemical reactions among precursor pollutants such as nitrogen oxides (NO<sub>x</sub>), sulfur oxides, volatile organic compounds (VOC), and ammonia (NH<sub>3</sub>) ("secondary PM<sub>2.5</sub>").<sup>2</sup> Epidemiological studies have shown statistically significant correlations between elevated levels of PM<sub>2.5</sub> and premature mortality. Other important health effects associated with PM<sub>2.5</sub> exposure include

aggravation of respiratory and cardiovascular disease, changes in lung function, and increased respiratory complications, contributing to premature mortality and increased hospital admissions and emergency room visits. Individuals particularly sensitive to PM<sub>2.5</sub> exposure include older adults, people with heart and lung disease, and children.<sup>3</sup>

On July 18, 1997, EPA promulgated the first air quality standards for PM<sub>2.5</sub>. See 62 FR 38652. 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.<sup>4</sup> On October 17, 2006, EPA 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. See 71 FR 61144.<sup>5</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 3-year average of the 98th percentile of 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.

Following promulgation of a new revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On November 13, 2009, EPA promulgated designations for the 2006 24-hour PM<sub>2.5</sub> NAAQS, designating the Birmingham Area, which includes Jefferson County, Shelby County, and a portion of Walker County, as nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS based upon air quality data for calendar years 2006 through 2008. See 74 FR 58688. Under the CAA, States are also required to adopt and submit SIPs to implement, maintain, and enforce the NAAQS in designated nonattainment areas and throughout the State.

A State may submit a request to redesignate a nonattainment area that is attaining the NAAQS, and, if the area has met the required criteria described in section 107(d)(3)(E) of the CAA, EPA may approve the redesignation to

<sup>3</sup> See *id.*; "Fact Sheet Final Revisions to the National Ambient Air Quality Standards for Particle Pollution (Particulate Matter)," September 21, 2006, accessible at: [https://www.epa.gov/sites/production/files/2016-04/documents/20060921\\_standards\\_factsheet.pdf](https://www.epa.gov/sites/production/files/2016-04/documents/20060921_standards_factsheet.pdf); 71 FR 61144, 61145 (October 17, 2006).

<sup>4</sup> In the same rulemaking, EPA promulgated an annual standard at a level of 15.0 micrograms per cubic meter (µg/m<sup>3</sup>), based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations. See 62 FR 38652.

<sup>5</sup> On January 15, 2013, and December 18, 2020, EPA retained the 24-hour primary and secondary PM<sub>2.5</sub> NAAQS at the 2006 level of 35 µg/m<sup>3</sup>. See 78 FR 3086 and 85 FR 82684.

<sup>1</sup> EPA notes the Agency received the submittal on February 17, 2021.

<sup>2</sup> See 78 FR 3086 at 3090, 3121 (January 15, 2013).

attainment for the area.<sup>6</sup> One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the State must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (*i.e.*, ensuring maintenance for 20 years after redesignation).

In 2009, the Birmingham Area was designated as nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. On June 17, 2010, ADEM submitted to EPA a request to redesignate the Birmingham Area to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. This submittal included a plan to provide for maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in the Birmingham Area through 2024 as a revision to the Alabama SIP. On September 20, 2010, EPA issued a clean data determination under the Agency's Clean Data Policy based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for the years 2007–2009 showing that the Birmingham Area had monitored attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS. *See* 75 FR 57186. Subsequently, on January 25, 2013, EPA approved the Birmingham Area's maintenance plan and the State's request to redesignate the Birmingham Area to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. *See* 78 FR 5306.

EPA has published long-standing guidance for States on developing maintenance plans.<sup>7</sup> The Calcagni Memo provides that States may generally demonstrate maintenance by either performing air quality modeling

<sup>6</sup> Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

<sup>7</sup> *See* Memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, "Procedures for Processing Requests to Redesignate Areas to Attainment," September 4, 1992 (Calcagni Memo). A copy of this guidance is available in the docket for this proposed rulemaking.

to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.*, attainment year inventory). *See* Calcagni Memo at 9. EPA clarified in subsequent guidance memos that certain areas could meet the CAA section 175A requirement to provide for maintenance by showing that the area was unlikely to violate the NAAQS in the future, using information such as the area's design value<sup>8</sup> being significantly below the standard and the area having a historically stable design value.<sup>9</sup> EPA refers to a maintenance plan containing this streamlined demonstration as an LMP, and in guidance, EPA has discussed certain criteria that it intends to evaluate, including consistency with EPA regulations along with other information as is relevant, in determining if this option is appropriate for an area.

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may provide for maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in EPA's LMP guidance, States seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni Memo, including: an attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, a State seeking an LMP as its section 175A maintenance plan must submit it as a revision to its SIP, with all

<sup>8</sup> The 24-hour PM<sub>2.5</sub> design value for a monitoring site is the 3-year average of the annual 98th-percentile 24-hour average PM<sub>2.5</sub> concentrations. The design value for a PM<sub>2.5</sub> nonattainment area is the highest design value of any monitoring site in the area.

<sup>9</sup> *See* "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas," from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas," from Joseph Paisie, OAQPS, dated October 6, 1995; "Limited Maintenance Plan Option for Moderate PM<sub>10</sub> Nonattainment Areas," from Lydia Wegman, OAQPS, dated August 9, 2001 (2001 PM<sub>10</sub> LMP Guidance); and Guidance on the Limited Maintenance Plan Option for Moderate PM<sub>2.5</sub> Nonattainment Areas and PM<sub>2.5</sub> Maintenance Areas (2022 PM<sub>2.5</sub> LMP Guidance). Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,<sup>10</sup> EPA has extended the LMP interpretation of section 175A to certain other NAAQS and pollutants not specifically covered by the previous guidance memos.<sup>11</sup>

At the time ADEM was developing its February 2, 2021, SIP revision, EPA had not developed specific LMP guidance for PM<sub>2.5</sub>, and ADEM consulted with the Agency in extending the rationale from the 2001 PM<sub>10</sub> LMP Guidance, which was written for particulate matter with an aerodynamic diameter of 10 microns or less (PM<sub>10</sub>), to the PM<sub>2.5</sub> maintenance plan.<sup>12</sup> Accordingly, ADEM prepared its second maintenance plan submission in accordance with the 2001 PM<sub>10</sub> LMP Guidance. Since the time of the February 2, 2021, submittal, EPA has released LMP guidance for PM<sub>2.5</sub>. Specifically, on October 27, 2022, EPA published clarifying guidance that focuses on the distinctions that are relevant specifically for PM<sub>2.5</sub> LMPs for Moderate PM<sub>2.5</sub> Nonattainment and PM<sub>2.5</sub> Maintenance Areas.<sup>13</sup> The 2022 PM<sub>2.5</sub> LMP Guidance applies the 2001 Limited Maintenance Plan Option for Moderate PM<sub>10</sub> Nonattainment Areas guidance for PM<sub>2.5</sub> LMP submissions, except for the specific topics where the 2001 guidance is superseded. Therefore, EPA has evaluated the February 2, 2021, submittal in light of the criteria discussed in the 2022 PM<sub>2.5</sub> LMP Guidance, as well as the relevant statutory and regulatory requirements.

EPA is proposing to approve the Birmingham Area LMP because the State has made a showing, consistent with EPA's current PM<sub>2.5</sub> LMP guidance, that the Birmingham Area's PM<sub>2.5</sub> concentrations are well below the 2006 24-hour PM<sub>2.5</sub> NAAQS and have been historically stable, and that it has met the other maintenance plan requirements. EPA's evaluation of the Birmingham Area LMP is presented in Section IV of this notice of proposed rulemaking (NPRM).

<sup>10</sup> Prior memos addressed unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM<sub>10</sub> (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment areas for the carbon monoxide (CO) NAAQS.

<sup>11</sup> *See, e.g.*, 79 FR 41900 (July 18, 2014) (approval of second ten-year LMP for Grant County 1971 sulfur dioxide (SO<sub>2</sub>) maintenance area).

<sup>12</sup> As discussed further below, ADEM prepared its second maintenance plan submission following the 2001 PM<sub>10</sub> LMP Guidance.

<sup>13</sup> A copy is available in the docket for this proposed action and also available via <https://www.epa.gov/system/files/documents/2023-03/PM%202.5%20Limited%20Maintenance%20Plan%20Guidance.pdf>.

**III. Alabama’s SIP Submittal**

Under CAA section 175A(b), States must submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. Accordingly, on February 2, 2021, Alabama submitted a second maintenance plan for the Birmingham Area that shows that the Area is expected to remain in attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS through 2034, *i.e.*, through the end of the full 20-year maintenance period.

In recognition of the continuing record of air quality monitoring data showing ambient 24-hour PM<sub>2.5</sub> concentrations in the Birmingham Area well below the 2006 24-hour PM<sub>2.5</sub> NAAQS, ADEM chose the LMP option for the development of a second 2006 24-hour PM<sub>2.5</sub> NAAQS maintenance plan. On February 2, 2021, ADEM adopted the second 10-year maintenance plan for the 2006 24-hour PM<sub>2.5</sub> NAAQS and submitted the Birmingham Area LMP to EPA as a revision to the Alabama SIP.

The February 2, 2021, submittal includes the LMP, air quality data and other information demonstrating qualification for the LMP, emissions inventory information, and appendices, as well as certification of adoption of the plan by ADEM. Appendices to the plan include a copy of the 2001 PM<sub>10</sub> LMP Guidance, supplemental information on ADEM’s mobile source emissions analysis, emissions inventory

development data, and qualifying calculations in accordance with the 2001 PM<sub>10</sub> LMP Guidance. The submittal also includes documentation of notice, hearing, and public participation prior to adoption of the plan by ADEM on February 2, 2021. The Birmingham Area LMP relies on the same emission reduction strategy and other already-implemented measures as the Area’s first 10-year maintenance plan, which provides for the maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS through 2024. Specifically, the Birmingham Area LMP relies on the following measures: the continuation of programs such as the local Jefferson County and Shelby County burn bans, prioritizing funding for diesel emissions reduction projects within the Birmingham Area, continued implementation of Federal measures (for example, Tier 3 Motor Vehicle Emission and Fuel Standards,<sup>14</sup> and interstate transport rules<sup>15</sup>), and emission reductions achieved and documented for the first CAA section 175A maintenance plan.<sup>16</sup> Since Alabama submitted its maintenance plan for the first 10-year portion of the maintenance period, other changes that have decreased PM<sub>2.5</sub> and precursor emissions in the Area have taken place, as noted in the February 2, 2021, submittal. Examples include the permanent shutdown of Units 1–5 at the Tennessee Valley Authority’s Colbert Plant, the permanent shutdown of Alabama Power Company’s Plant Gorgas, the installation of a baghouse with an electrostatic precipitator at

Alabama Power Company’s Plant Gaston, and the conversion of the coal-fired units to natural gas at Alabama Power Company’s Greene County Steam Plant.<sup>17</sup>

**IV. EPA’s Evaluation of Alabama’s SIP Submittal**

EPA has reviewed the Birmingham Area LMP, which is designed to maintain the 2006 24-hour PM<sub>2.5</sub> NAAQS within the Birmingham Area through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b). The following is a summary of EPA’s interpretation of the section 175A requirements<sup>18</sup> and EPA’s evaluation of how each requirement is met.

*A. Attainment Emissions Inventory*

For maintenance plans, a State should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A State should develop this inventory consistent with EPA’s most recent guidance on emissions inventory development. For the 24-hour PM<sub>2.5</sub> NAAQS, the inventory should be based on representative daily emissions of direct PM<sub>2.5</sub> and precursor emissions, including SO<sub>2</sub>, NO<sub>x</sub>, VOC, and NH<sub>3</sub>. The Birmingham Area LMP includes a PM<sub>2.5</sub> attainment inventory for the Birmingham Area with emissions from 2017. Table 1 presents a summary of the inventory for 2017 contained in the LMP for PM<sub>2.5</sub> and precursor emissions.

**TABLE 1—2017 SO<sub>2</sub>, NO<sub>x</sub>, PM<sub>2.5</sub>, VOC, AND NH<sub>3</sub> EMISSIONS FOR THE BIRMINGHAM AREA**  
[Tons/day]

	Point source	Non-point source	On-road mobile source	Nonroad mobile source	Event	Total
SO <sub>2</sub> .....	52.95	0.5	0.27	0.02	0.14	53.88
NO <sub>x</sub> .....	73.06	10.02	27.96	9.44	0.32	120.8
PM <sub>2.5</sub> .....	9.0	13.94	0.80	1.07	1.17	25.98
VOC .....	9.4	171.17	12.91	7.75	2.99	204.22
NH <sub>3</sub> .....	0.40	1.77	0.95	0.02	0.16	3.30

The Attainment Emissions Inventory section of the Birmingham Area LMP describes the methods, models, and assumptions used to develop the attainment inventory. As described in the Attainment Emissions Inventory section of the LMP, ADEM relied on the

2017 National Emissions Inventory (NEI) for point source, non-point (or area source), and event emissions (which typically consist of activities such as wildfires), except as described below.<sup>19</sup>

Nonroad mobile source emissions were, in part, estimated using the latest version of the EPA’s motor vehicle emissions model, MOVES3 (which provides the ability to estimate nonroad emissions from agricultural, commercial, mining, industrial, and

<sup>14</sup> See 79 FR 23414 (April 28, 2014). The February 17, 2021, submittal lists this as “Tier IV,” which is an error, as only Tier 3 standards have been set for on-road mobile source emissions standards. EPA understands this to be in reference to the latest emissions standards, referred to as “Tier 3.”

<sup>15</sup> See, e.g., 63 FR 57355 (October 27, 1998).

<sup>16</sup> See also 78 FR 5306 (January 25, 2013), 76 FR 70091 (November 10, 2011), and the submittal at docket ID EPA–R04–OAR–2011–0043.

<sup>17</sup> See also EPA docket EPA–HQ–OAR–2017–0003 and item EPA–HQ–OAR–2017–0003–0213 supporting EPA’s air quality designations for the 2010 1-hour SO<sub>2</sub> NAAQS.

<sup>18</sup> See Calcagni Memo.

<sup>19</sup> Documentation and data for the 2017 NEI can be accessed via the following website: <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data>.

recreational equipment, and commercial and residential lawn and garden equipment, among others). Locomotives, aircraft, and marine nonroad sources are not included in MOVES, and ADEM relied on EPA-generated emissions for these sectors.<sup>20</sup> ADEM estimated on-road mobile source emissions using MOVES3 and local data such as vehicle type, activity, and vehicle speeds from the Birmingham metropolitan planning organization (MPO) to estimate vehicular emissions for 2017. ADEM's estimates for vehicles reflect emissions inventories and ancillary data files used for emissions modeling, as well as the meteorological, initial condition, and boundary condition files needed to run the air quality model.

Based on EPA's review of the methods, models, and assumptions used by Alabama to develop the inventory, as well as EPA's review of the 2017 daily emissions data, EPA proposes to find

that the Birmingham Area LMP includes a comprehensive, accurate inventory of actual PM<sub>2.5</sub> and precursor emissions in attainment year 2017 and proposes to conclude that this is acceptable for the purposes of a maintenance plan under CAA section 175A(b).

*B. Maintenance Demonstration*

The maintenance demonstration requirement is considered to be satisfied in an LMP if the State can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the NAAQS, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation during the second 10-year maintenance period is low.<sup>21</sup> These criteria are evaluated below with regard to the Birmingham Area. As noted in Section II of this NPRM, EPA has evaluated ADEM's submittal and, considering the submittal's contents and EPA's

conclusions based thereon, finds the LMP to be consistent with EPA's current LMP guidance for PM<sub>2.5</sub> Maintenance Areas. Although ADEM developed the Birmingham Area LMP in accordance with the 2001 PM<sub>10</sub> LMP Guidance, the LMP is nonetheless consistent with the portions of the 2022 PM<sub>2.5</sub> LMP Guidance that superseded the 2001 PM<sub>10</sub> LMP Guidance.

1. Evaluation of PM<sub>2.5</sub> Air Quality Levels

To attain the 2006 24-hour PM<sub>2.5</sub> NAAQS, the three-year average of the 98th percentile 24-hour average PM<sub>2.5</sub> concentrations (design value) at each monitor within an area must not exceed 35 µg/m<sup>3</sup>. Table 2 includes the Area-wide monitor design values for the 2006 24-hour PM<sub>2.5</sub> NAAQS from EPA's Air Quality System (AQS) for the period 2015–2019, which covers the overall period from 2013–2019.<sup>22</sup>

TABLE 2—2015–2019 DESIGN VALUES (DV) (µg/m<sup>3</sup>) FOR THE 2006 24-HOUR PM<sub>2.5</sub> NAAQS AT MONITORING SITES IN THE BIRMINGHAM AREA <sup>a b c</sup>

AQS site ID	Location	2013–2015	2014–2016	2015–2017	2016–2018	2017–2019
01–073–0023	North Birmingham	23	23	22	21	<sup>d</sup> 20
01–073–1005	McAdory	<sup>e</sup> 20	<sup>e</sup> 18	18	17	18
01–073–1010	Leeds	20	19	17	18	18
01–073–2003	Wylam	20	19	18	18	17

<sup>a</sup> The Metropolitan Statistical Area (MSA) is required to have a minimum of three PM<sub>2.5</sub> monitoring sites. The MSA still maintains five regulatory PM<sub>2.5</sub> monitoring sites, offering adequate coverage of the MSA.

<sup>b</sup> Some of the data in this table is different than that transmitted in the February 2, 2021, submittal. EPA queried AQS to substitute the data for the 2014–2016 design values for the Leeds, McAdory, and Wylam sites and understands these differences to be the result of typographical errors.

<sup>c</sup> There is one additional monitor in Jefferson County recording PM<sub>2.5</sub> data. The Arkadelphia/Near Road site in AQS with ID 01–073–2059, identified as the West Birmingham monitor in the February 2, 2021, SIP revision, began recording data to AQS in calendar year 2014, so 2014–2016 comprises the first period with three full years of data to calculate a DV. However, until Quarter 3 of 2020, data collected were incomplete because the Federal reference method monitor was operating on a 1-in-6-day sampling frequency rather than a 1-in-3-day sampling frequency as required by 40 CFR 58.12(d). The incomplete data means that resulting calculated DVs are invalid. Accordingly, those data are not presented here or included in further analysis.

<sup>d</sup> The 2017–2019 DV for the North Birmingham site differs from the DV submitted in the February 2, 2021, SIP revision because the updated value presented in Table 2 reflects EPA-approved exclusion of data from one monitor at the site and utilization of data recorded at a collocated monitor for NAAQS-comparison purposes.

<sup>e</sup> These data are incomplete due to the need to relocate the monitor in the first quarter of 2014, and the resulting DVs for 2013–2015 and 2014–2016 are invalid.

From the available data in Table 2, the representative complete DV for the Birmingham Area was the North Birmingham monitor DV for each three-year period. The highest complete DV in

this time period is 23 µg/m<sup>3</sup>, which is 66% of the 24-hour NAAQS. The most recent official DVs are for 2020–2022 and are as follows: North Birmingham, 17 µg/m<sup>3</sup>; McAdory, 17 µg/m<sup>3</sup>; Leeds, 18

µg/m<sup>3</sup>; and Wylam, 18 µg/m<sup>3</sup>. These most recent data are slightly lower than those presented in Table 2 and continue to show the general downward trend.<sup>23</sup>

<sup>20</sup> EPA developed emissions for these sectors based on AP-42 emissions factors, and information supplied by the Eastern Regional Technical Advisory Committee for locomotives and Federal Aviation Administration's Aviation Environmental Design Tool. See 2017 National Emissions Inventory: January 2021 Updated Release, Technical Support Document available via the following website: <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-technical-support-document-tds>.

<sup>21</sup> See 2022 PM<sub>2.5</sub> LMP Guidance; see also 2001 p.m.<sub>10</sub> LMP Guidance; "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November

16, 1994; and "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, OAQPS, dated October 6, 1995.

<sup>22</sup> 40 CFR 58.11(e) requires agencies to assess data from Class III PM<sub>2.5</sub> Federal equivalent methods (FEMs) operating in their network alongside collocated Federal reference methods (FRMs) in accordance with table C-4 to subpart C of 40 CFR part 53. The Jefferson County Department of Health (JCDH) submitted a demonstration on November 28, 2022, showing that the FEM operating at AQS site 01–073–0023 did not meet these performance criteria and therefore should not be used for comparison to the NAAQS. EPA approved this demonstration on February 2, 2023. As stated in EPA's approval (which is included in the docket for

this proposed rulemaking), JCDH included its demonstration and EPA's approval thereof in the 2023 network plan that was posted for public comment. See the docket for this proposed rulemaking for more information.

<sup>23</sup> For more information on the air quality data, see additional information in the document titled "Technical Support Document for EPA's Notice of Proposed Rulemaking: Air Plan Approval; Alabama; Birmingham Limited Maintenance Plan for the 2006 24-Hour PM<sub>2.5</sub> NAAQS" (Birmingham TSD) with the file name "AL-124 TSD Alabama Limited Maintenance Plan for 2006 PM<sub>2.5</sub>.pdf" in the docket for this proposed rulemaking.

To qualify for the LMP option pursuant to EPA’s 2022 PM<sub>2.5</sub> LMP Guidance, a State must analyze the design value (DV) trends to determine a critical design value (CDV), which is typically calculated based on the five-

year average of the most recent DVs for the area and the statistical variation of the average DV. If each site in the maintenance area has an average design value (ADV) that is less than the CDV, it would demonstrate that the area has

PM<sub>2.5</sub> concentrations that will likely remain below the level of the standard in the future.

The ADVs are used to determine the CDV for the area. See Table 3 for relevant equations.

**Table 3 – Eligibility Calculations Used to Redetermine Qualification for the LMP**

Standard Deviation ( $\sigma$ )	$\sigma = \sqrt{\frac{\sum (x_i - ADV)^2}{n-1}}$
Coefficient of Variation (CV)*	$CV = \sigma / ADV$
Critical Design Value (CDV)*	$CDV = NAAQS / (1 + (t_c * CV))$

*ADV = Average of 3-year design values.*

*DV = Design value.*

*NAAQS = Applicable standard (35  $\mu\text{g}/\text{m}^3$ ).*

*t<sub>c</sub> = Critical t-value (based on the one-tail student’s t-distribution, at a significance level of 0.10).*

*x<sub>i</sub> = A given three-year period design value for the area.*

*n = The total number of design values evaluated, which in this case is five.*

*\*See 2022 Guidance on the Limited Maintenance Plan Option for Moderate PM<sub>2.5</sub> Nonattainment Areas and PM<sub>2.5</sub> Maintenance Areas (p. 7).*

EPA notes that ADEM made use of a different calculation of the standard deviation than that shown in Table 3, which affects the calculations of the CV and the CDV. Specifically, ADEM made use of a population standard deviation, which treats the seven-year period and five resultant DVs as the entire set of available data needed to assess the stability of the DVs over time. The 2001 PM<sub>10</sub> LMP Guidance, which ADEM followed when it developed the LMP, did not specify the approach for

determining the standard deviation of DV data analyzed. However, the seven-year period and five resultant DVs used to assess the stability of the DVs over time are a subset, or sample, of all of the available historical data. Therefore, EPA considers the sample standard deviation, presented in Table 3, to be the most appropriate approach for determining the variability in the data.<sup>24</sup>

ADEM calculated the CDV across the entire area to be 33.3  $\mu\text{g}/\text{m}^3$  for the Birmingham Area, and the ADV across

the Area to be 22.2  $\mu\text{g}/\text{m}^3$ . ADEM determined the CDV and ADV based on the controlling, or highest, DV across all monitoring sites in the Birmingham Area for each three-year period. EPA clarified in the 2022 PM<sub>2.5</sub> LMP Guidance that the CDV approach is specifically intended to be conducted for each monitoring site in an area. Therefore, EPA has included the CDV and ADV calculations across each site in Table 4.

**TABLE 4—STATISTICAL ANALYSIS OF 2015–2019 DVs AT MONITORING SITES IN THE BIRMINGHAM AREA**

AQS site ID	Location	ADV ( $\mu\text{g}/\text{m}^3$ )	$\Sigma$	CV	CDV ( $\mu\text{g}/\text{m}^3$ )	CDV–ADV ( $\mu\text{g}/\text{m}^3$ )
01–073–0023 .....	North Birmingham .....	21.8	1.30	0.060	32.1	10.3
01–073–1005 .....	McAdory .....	18.2	1.10	0.060	32.0	13.8
01–073–1010 .....	Leeds .....	18.4	1.14	0.062	32.0	13.6
01–073–2003 .....	Wylam .....	18.4	1.14	0.062	32.0	13.6

EPA has calculated the CDVs over this time and across the Area, with the highest CDV being 32.1  $\mu\text{g}/\text{m}^3$  at the North Birmingham site and the lowest being 32.0  $\mu\text{g}/\text{m}^3$  at the other sites. The ADVs across the Birmingham Area in Table 4 are far below the CDVs, with the lowest margin between these values shown as 10.3  $\mu\text{g}/\text{m}^3$ , so the Area qualifies for the LMP based on this portion of the analysis.

The most recent DVs for 2018–2020, 2019–2021, and 2020–2022, available through EPA’s AQS, do not alter the conclusions of the analysis conducted based on the 2015–2019 DVs. The available margins between the updated CDV and ADV for the 2018–2022 DVs covering the seven-year period from 2016–2022 for each site are as follows: North Birmingham, 11.8  $\mu\text{g}/\text{m}^3$ ; McAdory, 15.9  $\mu\text{g}/\text{m}^3$ ; Leeds, 15  $\mu\text{g}/\text{m}^3$ ;

and Wylam, 15.9  $\mu\text{g}/\text{m}^3$ . These most recent margins between the calculated CDVs and ADVs are greater than those presented in Table 4, meaning the data at the monitoring sites more easily meet the criteria in the 2022 PM<sub>2.5</sub> LMP Guidance.<sup>25</sup>

The 2022 PM<sub>2.5</sub> LMP Guidance describes circumstances in which an LMP may be appropriate for a first and/or second 10-year maintenance plan.

<sup>24</sup> See the February 2, 2021, submittal and the Birmingham TSD for more information on ADEM’s calculations.

<sup>25</sup> See the Birmingham TSD for additional information.

For example, the 2022 PM<sub>2.5</sub> LMP Guidance discusses how an LMP might be especially appropriate for second maintenance plans, considering that the given area will have demonstrated attainment of the applicable PM<sub>2.5</sub> NAAQS for at least eight years. With respect to second maintenance plans, the 2022 PM<sub>2.5</sub> LMP Guidance indicates that the LMP submission should address the area's PM<sub>2.5</sub> air quality trends and historical and projected vehicle miles traveled (VMT) to meet the regulatory requirements at 40 CFR 93.109(e). The LMP would need to include documentation supporting the demonstration that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur, per 40 CFR 93.109(e). The 2022 PM<sub>2.5</sub> LMP Guidance goes on to note that if re-entrained road dust emissions have been found to be significant for PM<sub>2.5</sub> transportation conformity purposes under 40 CFR 93.102(b)(3), then the LMP should include an additional motor vehicle emissions analysis.

As a result of neither the EPA Regional Administrator nor the ADEM director having made a finding that re-entrained road dust emissions within the Birmingham Area were a significant contributor to the PM<sub>2.5</sub> nonattainment problem, this LMP and ADEM's first 10-year maintenance plan did not include emissions of re-entrained road dust as significant for transportation conformity analyses under 40 CFR 93.102(b)(3). Therefore, it was not necessary to perform additional on-road emissions analysis. The Birmingham Area MPO provided local VMT data, and ADEM included these VMT data, which show only a 12 percent projected VMT growth from the base year of 2017 to the final year of the plan in 2034, in the submittal. Additionally, EPA considered the regional emissions analysis results from the most recent transportation conformity determination adopted by the Birmingham MPO,<sup>26</sup> shown in Table 5, to include on-road emissions in the year 2024 of 0.57 and 16.48 tons per day of PM<sub>2.5</sub> and NO<sub>x</sub>, respectively.

TABLE 5—BIRMINGHAM MPO 2006 ON-ROAD EMISSIONS IN TONS/DAY (tpd)

Analysis year	On-road emissions	
	PM <sub>2.5</sub>	NO <sub>x</sub>
2024 .....	0.57	16.48
2034 .....	0.38	9.14
2044 .....	0.37	8.41
2050 .....	0.38	8.61

The PM<sub>2.5</sub> on-road emissions are 47 percent below the 2024 budget of 1.21 tpd. The PM<sub>2.5</sub> on-road emissions continue to decline steadily from years 2034 to 2050 to 31 percent of the budget. The NO<sub>x</sub> on-road emissions are 34 percent below the 2024 budget of 48.41 tpd and continue to decline steadily from years 2034 to 2050 to 18 percent of the budget. Because the on-road emissions show an overall downward trend for PM<sub>2.5</sub> and NO<sub>x</sub>, it would be unreasonable to expect that the Area would experience enough motor vehicle emissions growth for a PM<sub>2.5</sub> NAAQS violation to occur as shown by the ADV and CDV calculations above. For the preceding reasons, the low projected growth in VMT over the 17-year period, and the downward trend in PM<sub>2.5</sub> and NO<sub>x</sub> on-road vehicle emissions compared to the budget, the mobile source emissions are not expected to adversely impact the Area's ability to continue to maintain compliance with the 2006 24-hour PM<sub>2.5</sub> NAAQS.

Therefore, the Birmingham Area is eligible for the LMP option, and the more detailed mobile source analysis that is found in the PM<sub>10</sub> LMP Guidance is not required.<sup>27</sup> EPA proposes to find that the long record of monitored PM<sub>2.5</sub> concentrations that attain the NAAQS, ADEM's air quality statistical analysis and EPA's updated analysis, together with the continuation of existing emissions control programs, adequately provide for the maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in Birmingham through the second 10-year maintenance period and beyond.

2. Stability of PM<sub>2.5</sub> Levels

As discussed above, the Birmingham Area has maintained air quality well below the 2006 24-hour PM<sub>2.5</sub> NAAQS during the first maintenance period. Additionally, the DV data shown within

Table 2 illustrate that 24-hour PM<sub>2.5</sub> levels have been relatively stable over this timeframe, with a modest downward trend. For example, the data within Table 2 indicate that the highest year-over-year change in complete DVs at any given monitor between 2015–2019 was 2 µg/m<sup>3</sup>, which represented a 10 percent change. See, e.g., the change at the Leeds monitor (AQS 01–073–1010) from 2014–2016 to 2015–2017. Furthermore, the overall trend in DVs for the Birmingham Area between 2015 and 2019 shows a decrease of 13 percent at the highest-reading monitor with valid DVs, North Birmingham 01–073–0023, with overall decreases in DVs at each individual monitoring site in the Birmingham Area. Considering the 2020, 2021, and 2022 DVs, which were finalized after ADEM's February 2, 2021, submittal, the trend between 2015–2022 shows a decrease of 26.1 percent at the North Birmingham monitor, 01–073–0023. This downward trend in PM<sub>2.5</sub> levels, coupled with the relatively small, year-over-year variation in PM<sub>2.5</sub> DVs, makes it reasonable to conclude that the Birmingham Area will not exceed the 2006 24-hour PM<sub>2.5</sub> NAAQS during the second 10-year maintenance period.

C. Monitoring Network and Verification of Continued Attainment

EPA periodically reviews the PM<sub>2.5</sub> monitoring network that the Jefferson County Department of Health (JCDH) operates and maintains in accordance with 40 CFR part 58. This network plan, which is submitted annually to EPA, is consistent with the most recent ambient air quality monitoring network assessment. The annual network plans developed by ADEM and JCDH follow a public notification and review process. EPA has reviewed and approved the 2023 Ambient Air Monitoring Network Plan for JCDH.<sup>28, 29</sup>

To verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, JCDH's Network Plan for Birmingham, covering the PM<sub>2.5</sub> network, has been approved by EPA in accordance with 40 CFR part 58, and the State has committed to continue operating all required PM<sub>2.5</sub> monitors in the Area in accordance with part 58. EPA therefore proposes to find that the monitoring network is adequate to

<sup>27</sup> ADEM completed additional motor vehicle emissions analysis based on the 2001 PM<sub>10</sub> LMP Guidance. This analysis is not required for the Birmingham Area under the 2022 PM<sub>2.5</sub> LMP Guidance, and EPA is not relying on it here. See the February 2, 2021, SIP revision for more details on this analysis.

<sup>28</sup> ADEM does not monitor PM<sub>2.5</sub> in the Birmingham MSA.

<sup>29</sup> The letter approving this network plan, except for the SO<sub>2</sub> network, is available in the docket for this rulemaking.

<sup>26</sup> A copy of the August 9, 2023, conformity determination is included in the docket for more information.

verify continued attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS in the Birmingham Area.

#### D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to prevent future violations of the NAAQS or to promptly remedy any NAAQS violations that might occur during the maintenance period. The State should identify specific triggers which will be used to determine when the contingency measures need to be implemented.

The LMP contains a commitment from Alabama to adopt, within 18 months of certification of a violating DV<sup>30</sup> of the 2006 24-hour PM<sub>2.5</sub> NAAQS in the Birmingham Area, one or more control measures as needed to reattain the NAAQS.<sup>31</sup> If a certified violation occurs, Alabama will assess the violation and consider planned local and regional emission reductions and consider additional control measures as needed to attain the NAAQS.

EPA proposes to find that the contingency provisions in Alabama's second maintenance plan for the 2006 24-hour PM<sub>2.5</sub> NAAQS meet the requirements of CAA section 175A(d).<sup>32</sup>

#### E. Conclusion

EPA proposes to approve the Birmingham LMP for the 2006 24-hour PM<sub>2.5</sub> NAAQS, which includes updates of the various elements (including attainment inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions) of the initial EPA-approved maintenance plan for the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA also finds that the Birmingham Area qualifies for the LMP option and adequately provides for maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS through 2034, *i.e.*, beyond the 20 years following redesignation of the Area to attainment, and thereby satisfies the requirements for such a plan under CAA section 175A(b). EPA is therefore proposing to approve Alabama's February 2, 2021, submission of the Birmingham Area 2006 24-hour PM<sub>2.5</sub>

NAAQS LMP as a revision to the Alabama SIP.

#### V. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93, subpart A, requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (budget) contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. A motor vehicle emissions budget is defined as "that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions." *See* 40 CFR 93.101.

Under the transportation conformity rule, LMP areas may demonstrate conformity without a regional emissions analysis. *See* 40 CFR 93.109(e). For LMPs, which do not include budgets, EPA also reviews whether the LMP makes the demonstration that it would be unreasonable to expect so much motor vehicle emissions growth that the area would violate the NAAQS. *See* 40 CFR 93.109(e). As discussed in the Section IV above, the low VMT growth from 2017 to 2034, the downward trend in PM<sub>2.5</sub> and NO<sub>x</sub> on-road vehicle emissions documented in the Birmingham MPO's recent conformity determination, and the emission results from the MPO's conformity determination compared to the 2024 budgets collectively demonstrate that it is unreasonable to expect so much motor vehicle emissions growth that the area would violate the NAAQS.<sup>33</sup>

<sup>33</sup> On January 25, 2013, EPA approved the 2024 motor vehicle emissions budgets associated with the first 10-year maintenance plan for the Birmingham Area for the 2006 24-hour PM<sub>2.5</sub> NAAQS. *See* 78 FR 5306.

EPA's substantive criteria for determining the adequacy of certain SIP submissions, including maintenance plans, are set out in 40 CFR 93.118(e)(4). The process for determining adequacy is outlined in 40 CFR 93.118(f). EPA intends to make its determination regarding the adequacy of the Birmingham Area LMP for transportation conformity purposes in the near future by completing the adequacy process together with any final decision on this proposed rulemaking.

Today's proposal notifies the public that EPA has received this LMP, which EPA will review for adequacy, and begins the public comment period. EPA invites the public to comment on the adequacy of the LMP as well as other aspects of the action EPA is proposing in this notice. Comments submitted as part of the adequacy process must be submitted by the close of the comment period on this NPRM.

If EPA approves this LMP or makes an adequacy finding for this LMP, after 2024, the motor vehicle emissions in the Birmingham Area may be treated as essentially not constraining for the second 10-year maintenance period because EPA would have concluded that it is unreasonable to expect that the area will experience so much motor vehicle emissions growth during this period of time that a violation of the PM<sub>2.5</sub> NAAQS would result. When determining conformity of transportation plans and TIPs after the year 2024, MPOs would not have to do a regional emissions analysis. Birmingham has approved budgets from the first 10-year maintenance plan for the year 2024, and if a transportation conformity determination is needed and 2024 is in the timeframe of the determination, the MPO would have to perform a regional emissions analysis and compare the results to the 2024 budgets. All actions for transportation plans and transportation improvement programs that would require a transportation conformity determination for the Birmingham 2006 24-hour PM<sub>2.5</sub> maintenance area under EPA's transportation conformity rule provisions are considered to have already satisfied the regional emissions analysis and "budget test" requirements in 40 CFR 93.118. *See* 40 CFR 93.109(e) and 69 FR 40004 (July 1, 2004).

However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. As stated in 40 CFR 93.109(e), "A conformity determination that meets other applicable criteria in Table 1 of

<sup>30</sup> A certified air quality design value would be quality assured and quality controlled.

<sup>31</sup> ADEM also states that in the event that any given year's 98th percentile 24-hour concentrations is 36 µg/m<sup>3</sup> or higher at any monitor in the Area the State will evaluate existing control measures to determine whether any further emission reductions should be implemented at that time.

<sup>32</sup> See the Contingency Plan section of the LMP for further information regarding the contingency plan, including measures that ADEM will consider for adoption if a certified violation occurs.



paragraph (b) of this section is still required.” Specifically, consultation (40 CFR 93.112) is required for all transportation conformity determinations. Conformity determinations for RTPs and TIPs still will have to demonstrate that they are fiscally constrained (40 CFR 93.108) and provide for timely implementation of Transportation Control Measures from the applicable implementation plan (40 CFR 93.113). Any conformity determinations made for transportation projects must demonstrate that there is a currently conforming transportation plan and TIP (40 CFR 93.114) and that the project is from that conforming plan and TIP (40 CFR 93.115), meet the hot-spot requirements for projects (40 CFR 93.116), and ensure that the project complies with any PM control measures in the SIP (40 CFR 93.117).

Additionally, conformity of transportation plans and TIPs, plan and TIP amendments, and transportation projects must be demonstrated in accordance with the timing requirements specified in 40 CFR 93.104; for RTPs and TIPs, this is no less frequently than every four years.

## VI. General Conformity

The conformity requirement under CAA section 176(c) ensures that Federal activities implemented by Federal agencies will not interfere with a State’s ability to attain and maintain the NAAQS. Under CAA 176(c)(1), the requirement prohibits Federal agencies from approving, permitting, licensing, or funding activities that do not conform to the purpose of the applicable SIP for the control and prevention of air pollution. See CAA section 176(c)(1)(A). Under CAA section 176(c)(1)(B), conformity to an implementation plan means that Federal activities will not cause or contribute to any new violations of the NAAQS, increase the frequency or severity of any existing NAAQS violation, or delay timely attainment or any required interim emissions reductions or other milestones contained in the applicable SIP.

The general conformity program implements CAA section 176(c)(4)(A), and the criteria and procedures for determining conformity of general Federal activities to the applicable SIP are established under 40 CFR part 93, subpart B, sections 93.150 through 93.165. General conformity requirements apply to Federal activities that (1) would cause emissions of relevant criteria or precursor pollutants to originate within nonattainment areas or areas that have been redesignated to attainment with an approved CAA

section 175A maintenance plan (*i.e.*, maintenance areas), as given under 40 CFR 93.153(b), and (2) are not Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) transportation projects as defined in 40 CFR 93.101 under the transportation conformity requirements. See 40 CFR 93.153(a).

The general conformity regulations do not provide special flexibility to account for when EPA establishes a LMP for a maintenance area. EPA notes that the PM<sub>10</sub> LMP Guidance (2001) stated that Federal actions subject to the general conformity regulations could be considered to satisfy the “budget test” because the budgets are essentially considered to be unlimited (*i.e.*, unconstrained). However, unlike the transportation conformity regulations, the concept of unconstrained emissions budgets has no meaning under the general conformity regulations. There is no provision in the general conformity regulations for a LMP claiming unconstrained emissions budgets and no exception to applying the limitations of the *de minimis* threshold rates to an action’s emissions that could trigger the requirement for a general conformity determination. The concept of an unconstrained budget cannot be relied upon by a Federal agency to make a general conformity determination. Thus, for general Federal actions proposed for maintenance areas with LMPs, such as this proposed rulemaking, the criteria and procedures outlined in subpart B shall apply in the same way as for any non-LMP maintenance area.

## VII. Proposed Action

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve the Birmingham Area LMP for the 2006 24-hour PM<sub>2.5</sub> NAAQS, submitted by ADEM on February 2, 2021, as a revision to the Alabama SIP. EPA is proposing to approve the Birmingham Area LMP because it includes an acceptable update of the various elements of the 2006 24-hour PM<sub>2.5</sub> NAAQS maintenance plan approved by EPA for the first 10-year period (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions), and retains the relevant provisions of the SIP.

EPA also finds that the Birmingham Area qualifies for the LMP option. We propose to approve the LMP because the Birmingham Area LMP adequately provides for maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS over the second 10-year maintenance period, through

2034, and thereby satisfies the requirements for such a plan under CAA section 175A(b).

## VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. See 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 action proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
  - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
  - Is 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.*);
  - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
  - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
  - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
  - Is 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.
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- Executive Order 12898 (Federal Actions To Address Environmental

Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

ADEM did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

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

Environmental Protection, Air Pollution Control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: December 7, 2023.

#### Jeanne Gettle,

*Acting Regional Administrator, Region 4.*  
[FR Doc. 2023–27297 Filed 12–12–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA–R10–OAR–2023–0224; FRL–10859–01–R10]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Spokane Regional Clean Air Agency; Control of Emissions From Existing Large Municipal Waste Combustors

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove a Clean Air Act (CAA) State Plan submitted by the Spokane Regional Clean Air Agency (SRCAA). This State Plan establishes emission limits for existing large municipal waste combustors (MWC) and provides for the implementation and enforcement of these limits. SRCAA submitted this State Plan to fulfill its requirements under the CAA in response to the EPA’s promulgation of Emissions Guidelines and Compliance Times for Large MWC Constructed on or before September 20, 1994 (Emission Guidelines). The EPA is partially approving the State Plan because it meets the requirements of the Emission Guidelines for existing large MWC known to operate in Spokane County, Washington. The EPA is partially disapproving the State Plan because it omits requirements for fluidized bed combustors and air curtain incinerators, which are required elements of a State Plan.

**DATES:** Written comments must be received on or before January 12, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2023–0224 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web,

cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Bryan Holtrop (he/him), U.S. EPA, Region 10. He can be reached by phone at (206) 553–4473 or by email at [holtrop.bryan@epa.gov](mailto:holtrop.bryan@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 111(d) of the CAA requires the EPA to establish a procedure for a state to submit a plan to the EPA that establishes standards of performance for any air pollutant: (1) for which air quality criteria have not been issued or which is not included on a list published under CAA section 108 or emitted from a source category which is regulated under CAA section 112 and (2) to which a standard of performance under CAA section 111 would apply if such existing source were a new source. Section 129(b)(2) of the CAA requires that after the EPA promulgates guidelines for a category of solid waste incineration units, each state in which units in the category are operating shall submit to the EPA a plan to implement and enforce the guidelines with respect to such units. Such plans shall be at least as protective as the guidelines promulgated by the EPA. The EPA established requirements for State Plan submittals in the Code of Federal Regulations (CFR) at 40 CFR part 60, subpart B. State submittals under CAA sections 111(d) and 129 must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart Cb, and the requirements of 40 CFR part 60, subpart B.

On May 10, 2006, the EPA revised the regulations established for Emissions Guidelines and Compliance Times for Large MWC That Are Constructed on or before September 20, 1994, in 40 CFR part 60, subpart Cb (71 FR 27324). This action was taken under sections 111(d) and 129 of the CAA.

On July 18, 2022, SRCAA submitted to the EPA a section 111(d)/129 plan for existing large MWC. The submitted section plan was in response to the May 10, 2006, promulgation of Federal emission guidelines requirements for large MWC, 40 CFR part 60, subpart Cb (71 FR 27336).