



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0367; FRL-11573-02-R4]

Air Plan Approval; Alabama; Birmingham Limited Maintenance Plan for the 2006 24-Hour PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the approval of 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_{2.5}) 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_{2.5} maintenance area is comprised of Jefferson County, Shelby County, and a portion of Walker County. EPA is approving the Birmingham Area LMP because it provides for the maintenance of the 2006 24-hour PM_{2.5} NAAQS within the Birmingham Area through the end of the second 10-year portion of the maintenance period. The effect of this action would be to make certain commitments related to maintenance of the 2006 24-hour PM_{2.5} NAAQS in Birmingham federally enforceable as part of the Alabama SIP. EPA is also notifying the public of the status of EPA's adequacy determination, consistent with the requirements in the transportation conformity rule, for this LMP.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0367. All documents in the docket are listed on the www.regulations.gov

website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information 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 through www.regulations.gov or in hard copy at the 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. EPA requests that 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 a.m. to 4:30 p.m., excluding Federal holidays.

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.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Clean Air Act (CAA or Act), EPA is approving the Birmingham LMP for the 2006 24-hour PM_{2.5} 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.¹ On November 13, 2009, EPA promulgated designations for the 2006 24-hour PM_{2.5} 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_{2.5} NAAQS based upon air quality data for calendar years 2006 through 2008. *See* 74 FR 58688. Subsequently, on January

¹ EPA notes the Agency received the submittal on February 17, 2021.

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_{2.5} NAAQS. *See* 78 FR 5306.

The Birmingham LMP for the 2006 24-hour PM_{2.5} NAAQS is designed to maintain the 2006 24-hour PM_{2.5} NAAQS within Birmingham through the end of the second 10-year portion of the maintenance period beyond redesignation or 2034. EPA is approving the plan because it meets all applicable requirements under CAA sections 110 and 175A. As a general matter, the Birmingham LMP for the 2006 24-hour PM_{2.5} NAAQS relies on the same control measures and similar contingency provisions to maintain the 2006 24-hour PM_{2.5} NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by ADEM for the first 10-year period.

In a notice of proposed rulemaking (NPRM) published on December 13, 2023 (88 FR 86303), EPA proposed to approve the Birmingham LMP because the State made a showing, consistent with EPA's LMP guidance, that the Birmingham Area's PM_{2.5} concentrations are well below the 2006 24-hour PM_{2.5} NAAQS, have been historically stable, and that it has met all other maintenance plan requirements. The details of Alabama's submission and the rationale for EPA's action are explained further in the December 13, 2023, NPRM. Comments on the December 13, 2023, NPRM were due on or before January 12, 2024. No comments were received on the NPRM, adverse or otherwise.

II. Final Action

In accordance with sections 110(k) and 175A of the CAA, and for the reasons set forth above and in the NPRM, EPA is finalizing its approval of the Birmingham Area LMP for the 2006 24-hour PM_{2.5} NAAQS, submitted by ADEM on February 2, 2021, as a revision to the Alabama SIP. EPA is finalizing the approval of the Birmingham Area LMP because it includes an acceptable update of the various elements of the 2006 24-hour PM_{2.5} 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 and adequately demonstrates maintenance of the 2006 24-hour PM_{2.5} NAAQS through documentation of monitoring data showing maximum 24-hour PM_{2.5} levels well below the NAAQS (including, as explained the NPRM, average design values below the critical design values), the historically stable design values, and the continuation of existing control measures. EPA finds the Birmingham Area's 2006 24-hour PM_{2.5} LMP to be sufficient to provide for maintenance of the 2006 24-hour PM_{2.5} NAAQS in the Birmingham Area over the second 10-year maintenance period, through 2034, and thereby satisfy the requirements for such a plan under CAA section 175A(b).

EPA is approving this second 10-year LMP and notifying the public that EPA finds the LMP adequate for transportation conformity purposes because it meets the adequacy criteria in 40 CFR 93.118(e)(4). 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 concludes that it is unreasonable to expect that the area will experience enough motor vehicle emissions growth that a violation of the PM_{2.5} NAAQS would result. Therefore, all actions for transportation plans and transportation improvement programs that would require a transportation conformity determination for the Birmingham 2006 24-hour PM_{2.5} 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).

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air 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 Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 Clean Air Act.

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 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, February 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 environmental justice 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 action. Due to the nature of the action being taken here, this 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 action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the

finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 29, 2024.

Jeaneanne Gettle,
Acting Regional Administrator,
Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart B – Alabama

2. In § 52.50(e), amend the table by adding an entry for “2006 24-hour PM_{2.5} Second Maintenance Plan (Limited Maintenance Plan) for the Birmingham Area” at the end of the table to read as follows:

§ 52.50 Identification of plan.

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(e) * * *

EPA Approved Alabama Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
2006 24-hour PM _{2.5} Second Maintenance Plan (Limited Maintenance Plan) for the Birmingham Area	Birmingham PM _{2.5} Maintenance Area	2/2/2021	[Insert date of publication in Federal Register], [Insert citation of publication]	