

resource under § 416.1218 in the month following the month of receipt.

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§§ 416.1104, 416.1121, 416.1124, 416.1130, 416.1133, 416.1140, 416.1142, 416.1144, 416.1145, 416.1147, 416.1148, 416.1149, 416.1157 [Amended]

4. Remove the words “food, clothing, or shelter” and add, in their place, the words “food or shelter” in the following sections:

- a. Section 416.1104;
- b. Section 416.1121(b) and (h);
- c. Section 416.1124(c)(3);
- d. Section 416.1130(a) and (b);
- e. Section 416.1133(a);
- f. Section 416.1140(a)(1), (a)(2)(i), (a)(2)(ii), (b)(1), and (b)(2);
- g. Section 416.1142(b);
- h. Section 416.1144(b)(2);
- i. Section 416.1145;
- j. Section 416.1147(c) and (d)(1);
- k. Section 416.1148(b)(1) and (b)(2);
- l. Section 416.1149(c)(1)(i) and (c)(1)(ii); and
- m. Section 416.1157(b).

Subpart L—[Amended]

5. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

6. Section 416.1210 is amended by revising paragraphs (b) and (c) to read as follows:

§ 416.1210 Exclusions from resources; general.

* * * * *

(b) Household goods and personal effects as defined in § 416.1216;

(c) An automobile, if used for transportation, as provided in § 416.1218;

* * * * *

7. Section 416.1216 is revised to read as follows:

§ 416.1216 Exclusion of household goods and personal effects.

(a) *Household goods.* (1) We do not count household goods as a resource to an individual (and spouse, if any) if they are:

(i) Items of personal property, found in or near the home, that are used on a regular basis; or

(ii) Items needed by the householder for maintenance, use and occupancy of the premises as a home.

(2) Such items include but are not limited to: Furniture, appliances, electronic equipment such as personal computers and television sets, carpets, cooking and eating utensils, and dishes.

(b) *Personal effects.* (1) We do not count personal effects as resources to an individual (and spouse, if any) if they are:

(i) Items of personal property ordinarily worn or carried by the individual; or

(ii) Articles otherwise having an intimate relation to the individual.

(2) Such items include but are not limited to: Personal jewelry including wedding and engagement rings, personal care items, prosthetic devices, and educational or recreational items such as books or musical instruments. We also do not count as resources items of cultural or religious significance to an individual and items required because of an individual's impairment. However, we do count items that were acquired or are held for their value or as an investment because we do not consider these to be personal effects. Such items can include but are not limited to: Gems, jewelry that is not worn or held for family significance, or collectibles. Such items will be subject to the limits in § 416.1205.

8. Section 416.1218 is amended by revising paragraph (b)(1), removing paragraph (b)(2), revising and redesignating paragraph (b)(3) as (b)(2), and removing paragraph (c) to read as follows:

§ 416.1218 Exclusion of the automobile.

* * * * *

(b) * * *

(1) *Total exclusion.* One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household.

(2) *Other automobiles.* Any other automobiles are considered to be nonliquid resources. Your equity in the other automobiles is counted as a resource. (See § 416.1201(c).)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AL–62–200403; FRL–7607–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Alabama; Redesignation of Birmingham Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 19, 2003, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted a request to redesignate the 1-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment area of Birmingham, Alabama to attainment, and a request for EPA approval of a draft Alabama State Implementation Plan (SIP) revision containing a 10-year maintenance plan for the Birmingham area. Today, EPA is proposing approval of the 1-hour ozone redesignation request and the draft maintenance plan SIP revision. EPA's proposed approval of the 1-hour ozone redesignation request is based on its determination that the Birmingham, Alabama area has met the five criteria for redesignation to attainment specified in the Clean Air Act, including a demonstration that the area has attained the 1-hour ozone national ambient air quality standard. EPA is parallel processing the draft maintenance plan SIP revision (a required component of any redesignation to attainment) and is proposing approval of this draft maintenance plan because EPA has determined that the draft plan complies with the requirements of section 175A of the Clean Air Act.

Additionally, through this proposed action, EPA is providing the public an opportunity to review and comment on the adequacy of new volatile organic compounds (VOC) and nitrogen oxides (NO_x) motor vehicle emission budgets (MVEBs) for purposes of determining transportation conformity. These new MVEBs are contained within the draft maintenance plan SIP revision for the Birmingham area. If EPA concludes, after reviewing any comments submitted, that Alabama's proposed new NO_x and VOC MVEBs are adequate, and if Alabama submits a final maintenance plan SIP revision with no substantive changes that would affect EPA's adequacy determination, then the new MVEB budgets would be applicable for transportation conformity determinations after the effective date of an EPA adequacy determination (published in the **Federal Register**) or on the date of final rulemaking of an EPA approval of Alabama's maintenance plan SIP revision if EPA chooses to make its final adequacy determination in that maintenance plan final rulemaking notice.

DATES: Written comments must be received on or before February 5, 2004.

ADDRESSES: Comments may be submitted by mail to: Sean Lakeman, 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.

Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections VII.B.1. through 3. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation 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. The telephone number is (404) 562-9042. Ms. Sheckler can also be reached via electronic mail at sheckler.kelly@epa.gov.

Sean Lakeman, 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. The telephone number is (404) 562-9043. Mr. Lakeman can also be reached via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking?

EPA is proposing to take two related actions and is providing public notice and seeking public comment on a third action. First, EPA is proposing to approve a change in the legal designation of the Birmingham area from nonattainment to attainment for the 1-hour ozone national ambient air quality standard. Second, in a related action, EPA is proposing to approve Alabama's draft maintenance plan SIP revision for the Birmingham area (such approval being a CAA criteria for redesignation to attainment status). The draft maintenance plan is designed to keep the Birmingham area in attainment for ozone for the next 10 years. Third, in support of the transportation conformity process, EPA is, through this

proposal, providing public notice and taking public comment on Alabama's new draft VOC and NO_x MVEBs for the year 2015 that are part of its draft maintenance plan SIP revision for the Birmingham area. The availability of the draft maintenance plan SIP revision with the MVEBs for 2015 was announced on EPA's web page on <http://www.epa.gov/oms/transp> (Once there, click on the "Transportation Conformity" link, then click on "Adequacy Review of SIP Submissions"). More information on the MVEBs is contained in Section VI: Public notice and request for comment on adequacy of Alabama's new 2015 NO_x and VOC MVEB for transportation conformity purposes.

II. What Is the Background for This Action?

The CAA requires EPA to establish NAAQS for certain pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (CAA sections 108 and 109). In 1979, EPA promulgated the 1-hour 0.12 parts per million (ppm) ground-level ozone NAAQS (44 FR 8202 (February 8, 1979)). Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_x and VOC react in the presence of sunlight to form ground-level ozone. NO_x and VOC are referred to as precursors of ozone.

The CAA also required EPA to designate as nonattainment any area that was violating the 1-hour ozone NAAQS, generally based on air quality monitoring data from the three-year period from 1987-1989, or any area contributing to a violation (CAA section 107(d)(4); 56 FR 56694 (November 6, 1991)). The CAA further classified these nonattainment areas, based on the area's design value (*i.e.*, the 4th highest ozone value during the relevant three year period at the violating monitor with the highest ozone levels), as marginal, moderate, serious, severe or extreme (CAA section 181(a)), with marginal areas experiencing the least significant air pollution problems. The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date. Marginal areas were required to attain the 1-hour NAAQS by November 15, 1993 under section 181(a) of the Clean Air Act.

Under EPA regulations at 40 CFR part 50, the 1-hour ozone standard is attained when the expected number of days per calendar year with maximum hourly average ozone concentrations above 0.12 ppm or higher is equal to or

less than 1, as determined in appendix H of part 50. Under Appendix H, the basic method is to record the number of exceedances of the standard monitored at each site in an area for each calendar year and then average the past three calendar years to determine if this average is less than or equal to one. In other words, an area has attained the 1-hour ozone NAAQS if there are three or fewer exceedances recorded over a three-year period at each of the monitoring sites within the area. If there are more than three exceedances over a three-year period at any of the monitoring sites, the area has not attained the standard.

The Birmingham area was originally designated as a 1-hour ozone nonattainment area by EPA on March 3, 1978 (43 FR 8962). At that time, the Birmingham nonattainment area was geographically defined as Jefferson County, Alabama. On November 6, 1991, by operation of law under section 181(a) of the CAA as amended in 1990, EPA classified the Birmingham nonattainment area as a marginal nonattainment area for ozone and added Shelby County to the nonattainment area (56 FR 56693). The 1991 classification for the Birmingham marginal 1-hour ozone nonattainment area was based on ambient air sampling measurements for ozone made during 1987-1989. As noted above, the area was required to attain the 1-hour ozone NAAQS by November 15, 1993.

After the summer of 1993, Alabama had three years of air monitoring data (1991, 1992 and 1993) which demonstrated that the 1-hour ozone NAAQS was attained making the Birmingham nonattainment area eligible for redesignation to attainment. The State submitted a final redesignation request on March 16, 1995, that was deemed administratively complete by EPA on April 11, 1995. A direct final rule proposing approval of the redesignation request was signed by the Regional Administrator and forwarded to the Office of the Federal Register on August 15, 1995, for publication. Prior to publication of the document, a violation of the 1-hour ozone NAAQS occurred on August 18, 1995. EPA directed the Office of the Federal Register to recall the proposed direct final rule from publication. The final action disapproving the redesignation request was published in the **Federal Register** on September 19, 1997, (62 FR 49154).

Following EPA's 1997 disapproval of the Birmingham redesignation request, EPA proposed a SIP call to Alabama in the **Federal Register** on December 16, 1999 (64 FR 70205). In the SIP call, EPA

proposed to require the State to submit an attainment demonstration SIP for Birmingham within six months after final action is taken on the SIP call and to implement controls by May 2003. The final rulemaking on the attainment demonstration SIP call was published October 28, 2000, with an effective date of November 27, 2000 (65 FR 64352).

ADEM submitted its 1-hour ozone attainment demonstration for Birmingham to EPA on November 1, 2000. In the attainment demonstration SIP, ADEM elected to develop a control strategy based on photochemical grid modeling, even though such modeling is not required by the Clean Air Act for marginal nonattainment areas. EPA approved the Alabama's attainment demonstration SIP on November 7, 2001 (66 FR 56223).

On November 19, 2003, Alabama requested redesignation of the ozone attainment status for the Birmingham area. This request is the subject of the current proposed rulemaking. The redesignation request included data for the period of 2001 through 2003, indicating the 1-hour NAAQS standard for ozone had been achieved for the Birmingham area. The data satisfies the CAA requirements of no more than one exceedance per annual monitoring period. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient data is available to warrant the redesignation and the area meets the other four (4) CAA redesignation requirements.

III. Why Is EPA Taking This Action?

The 1990 Amendments revised section 107(d)(3)(E) to provide five

specific requirements that an area must meet in order to be redesignated from nonattainment to attainment: (1) The area has attained the applicable NAAQS; (2) the area has met all applicable requirements under section 110 and part D of the CAA; (3) the area has a fully approved SIP under section 110(k) of the CAA; (4) the air quality improvement 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, and (5) the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 107(d)(3)(D) allows a Governor to initiate the redesignation process for an area to apply for attainment status. On November 19, 2003, Alabama requested redesignation of the ozone attainment status for the Birmingham area.

IV. What Evaluation Criteria was Used?

EPA is proposing to determine that the Birmingham nonattainment area has attained the 1-hour ozone standard because all five redesignation criteria have been met. The basis for EPA's proposed determination is as follows:

1. *Birmingham has attained the 1-hour ozone NAAQS:* EPA has determined that the Birmingham area has attained the 1-hour ozone national ambient air quality standard. For ozone, an area may be considered attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and Appendix H, based on three complete, consecutive calendar years of quality-assured air

quality monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 per year at a monitoring site. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is 0.125 parts per million (ppm) or higher. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in Aerometric Information Retrieval System (AIRS). The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

ADEM submitted ozone monitoring data for the April through October ozone season from 2001 to 2003. This data has been quality assured and is recorded in AIRS. During the 2001 to 2003 time period, the design value is 0.113 ppm. The average annual number of expected exceedances is 1.0 for that same time period. The State of Alabama's request is based on an analysis of quality-assured ozone air quality data which is relevant to the redesignation request. The data come from the State and Local Air Monitoring Station network. The request is based on ambient air ozone monitoring data collected for 3 consecutive years from 2001 through 2003. In a letter dated December 3, 2003, ADEM certified the Shelby County 2003 data is accurate and in a letter dated December 3, 2003, Jefferson County Department of Health certified the Jefferson County 2003 data is accurate. The exceedances are summarized in the following table:

Monitor	County	2001-2003	2001	2002	2003
Fairfield	Jefferson	0	0	0	0
McAdory	Jefferson	1	1	0	0
Hoover	Jefferson	0	0	0	0
Pinson	Jefferson	0	0	0	0
Tarrant	Jefferson	1	1	0	0
Corner	Jefferson	0	0	0	0
Providence	Jefferson	0	0	0	0
N Birmingham	Jefferson	0	0	0	0
Helena	Shelby	2	1	1	0
Leeds	Jefferson	1	0	1	0

In addition, ADEM has committed to continue monitoring in these areas in accordance with 40 CFR part 58. In summary, EPA believes that the data submitted by Alabama provides an adequate demonstration that Birmingham area has attained the 1-hour ozone NAAQS.

2. *Birmingham has met all applicable requirements under section 110 and part D of the CAA.* EPA has determined

that Alabama has met all applicable SIP requirements for the Birmingham area under section 110 of the CAA (general SIP requirements). EPA has also determined that the Alabama SIP meets applicable SIP requirements under part D of the Clean Air Act (requirements specific to marginal nonattainment areas).

General SIP requirements: Section 110(a)(2) of the CAA delineates the

general requirements for a SIP, which include enforceable emission 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. These requirements are discussed in the following EPA documents: "Procedures for Processing Requests to Redesignate

Areas to Attainment,” John Calcagni, Director, Air Quality Management Division, September 4, 1992; “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,” John Calcagni, Director, Air Quality Management Division, October 28, 1992; and “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,” Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993. These documents are available at the address above.

EPA has analyzed the Alabama SIP and determined that it is consistent with the requirements of CAA section 110(a)(2). The SIP contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications to existing ones; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and requires stationary source emissions monitoring and reporting.

Part D requirements: EPA has also determined that the Alabama SIP meets applicable SIP requirements under part D of the Clean Air Act. Under part D, an area’s classification (marginal, moderate, serious, severe, and extreme) indicates the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, found in section 182 of the CAA, establishes additional specific requirements depending on the area’s nonattainment classification.

Part D, Subpart 1 applicable requirements: EPA has determined that requirements of part D, subpart I, are not applicable requirements for the purpose of evaluating redesignations.

Part D, subpart 2 applicable requirements: For purposes of evaluating this redesignation, the applicable part D, subpart 2 requirements for the Birmingham marginal nonattainment area are contained in section 182(a)(1)–(4), and EPA is proposing to determine that these applicable requirements have been met for the reasons noted below:

- 1990 Base Year Inventory—Alabama submitted this inventory on November 13, 1992. It was approved June 4, 1999 (64 FR 29958).

- Reasonably Available Control Technology (RACT) Requirements—Alabama revised its RACT rules which were approved September 27, 1993 (62 FR 30991).

- Saving Clause for Vehicle Inspection and Maintenance (I/M)—A I/M program was not required or implemented in the Birmingham area prior to 1990, therefore, this provision was not applicable.

- Permit Program—Alabama has an approved permit program.

- Periodic Inventory—The most recent inventory for Birmingham was compiled for 1999. Alabama’s emissions statements program was approved August 4, 1994 (59 FR 39683).

- General Offset Requirement—Approval of Alabama’s revised offsets program (for at least a 1.1 to 1.0 offset of new major sources of VOC emissions only) was granted on August 30, 1993 (58 FR 45439).

3. *The area has a fully approved SIP under section 110(k) of the CAA.* EPA has fully approved the Alabama SIP for the Birmingham area under section 110(k) of the Clean Air Act. Following passage of the CAA of 1970, Alabama has adopted and submitted and EPA has fully approved at various times provisions addressing the various SIP elements applicable in the Birmingham area. No Birmingham area SIP provisions are currently disapproved, conditionally approved, or partially approved.

(4) *The air quality improvement in the Birmingham 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.* EPA approved Alabama’s SIP control strategy for the Birmingham area, including rules and the emission reductions achieved as a result of those rules that are enforceable. Several Federal and Statewide rules are in place which have significantly improved the ambient air quality in these areas. Beginning in 2003, utility NO_x controls on Alabama Power Company plants Gorgas and Miller will operate for the period May 1 to September 30 each year beginning in 2003. These controls will provide for 68.2 tons per day (tpd) reduction of NO_x emissions. These emission limitations will be enforced by establishing a 0.21 lb/mmBtu NO_x emission limit for the two plants based on a rolling 30 day average from May 1 through September 30 of each year. The limit is based on a two plant average and the rolling 30 day averages are based on a heat input-weighted average of NO_x emissions from all units at the two plants.

On November 1, 2000, the State of Alabama requested that EPA consider and approve their request for low-Reid Vapor Pressure (RVP) and low-sulfur fuel controls to apply in both Jefferson and Shelby counties. The controls required that all gasoline sold during the control period (June 1 through September 15) in these counties contain a maximum RVP of 7.0 pounds per square inch and maximum sulfur levels of 150 parts per million volume-weighted average. The State provided the fuel rule and the necessary justification for this rule as a part of the Birmingham Attainment Demonstration (see appendix I and II of that document). The State control on sulfur applied only through the summer of 2003. After that time, the State control for sulfur terminated, and Federal controls on sulfur in gasoline (*i.e.*, through EPA’s 2004 Tier 2/Low Sulfur Rule—see 65 FR 6698) apply. The RVP controls for the Alabama fuel control area does not have a sunset date. On September 11, 2001, EPA proposed approval of the Birmingham fuel control program (66 FR 47142). The final rulemaking for EPA’s approval was published in the **Federal Register** on November 7, 2001 (66 FR 56218).

Also, existing programs, such as the Federal Motor Vehicle Control Programs, the Federal Reid Vapor Pressure Control Program, Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements and the Regional NO_x Reduction Program, will not be lifted upon redesignation. These programs and others will counteract emissions growth as the areas experience economic growth over the life of their maintenance plans. The applicable RACT rules will also remain in place in Birmingham. In addition, the State permits program, the PSD permits program, and the Operating Permits program will help counteract emissions growth. EPA finds that the combination of existing EPA-approved SIP and Federal measures ensure the permanence and enforceability of reductions in ambient ozone levels that have allowed the area to attain the NAAQS.

(5) *The area has a fully approved maintenance plan pursuant to section 175A of the CAA.*

In conjunction with its request to redesignate the Birmingham nonattainment area to attainment status, Alabama submitted a draft SIP revision to provide for the maintenance of the 1-hour ozone NAAQS in the Birmingham area for at least 10 years after redesignation. Because the maintenance plan SIP revision is not yet State-

effective, Alabama requested that EPA "parallel process" the SIP revision. Under this procedure, the Regional Office works closely with Alabama while developing new or revised regulations. The State submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed State action, and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the **Federal Register** during the same time frame that Alabama is holding its public hearing. Alabama and EPA then provide for concurrent public comment periods on both the State action and the Federal action.

After Alabama submits the formal State-effective SIP revision request (including a response to all public comments raised during the state's public participation process, and the approved Maintenance Plan for the Birmingham area), EPA will prepare a final rulemaking notice on the maintenance plan SIP revision. If Alabama's formal maintenance plan SIP revision contains changes which occur after EPA's notice of proposed rulemaking, such changes must be described in EPA's final rulemaking action. If Alabama's changes are significant, then EPA must decide whether it is appropriate to re-propose the State's maintenance plan SIP revision action. In addition, if Alabama's formal maintenance plan SIP revision changes significantly and is disapprovable in its final form, EPA will also propose disapproval of the Birmingham redesignation request because the existence of a fully EPA-approved maintenance plan is a necessary criteria for redesignation to attainment status.

Section 175A of the CAA sets forth the elements of 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 ten 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 ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan contains contingency measures, with a schedule for implementation, adequate to assure prompt correction of any future 1-hour ozone violations.

On November 19, 2003, ADEM submitted its draft revision to the Alabama SIP to include a 10-year maintenance plan as required by section 175A of the Clean Air Act. The underlying strategy of the maintenance plan is to show compliance and maintenance of the 1-hour ozone standard by assuring that current and future emissions of VOC and NO_x remain at or below attainment year (2003) emission levels. Using 2002 as the base year, the subsequent inventory years were generally chosen as 2003 (attainment year), an interim year set as 2008 (to demonstrate continuing emission reductions) and 2015 which is the end of the 10 year maintenance plan.

NO_x EMISSIONS TPD

County	Source category	2002	2003	2008
Total for the Birmingham Area:				
Point	207	182	157	165
Area	4	4	4	5
Mobile	57	50	35	20
Nonroad	25	25	26	29
Total	293	261	222	219

Maintenance Plan Decrease from 2003:

NO_x Safety Margin: 42

VOC EMISSIONS TPD

County/Source Category	2002	2003	2008	2015
Total for the Birmingham Area:				
Point	19	19	21	23
Area	55	55	58	63
Mobile	39	34	23	16
Nonroad	18	17	14	12
Total	131	125	116	114

Maintenance Plan Decrease from 2003:

VOC Safety Margin: 11

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. For example, the Birmingham area attained the 1-hour ozone NAAQS during the 2001-2003 time period. Alabama uses 2003 as the attainment level of emissions for the area. The emissions from point, area, nonroad,

and mobile sources in 2003 equaled 125 tpd of VOC for the Birmingham area. Projected VOC emissions out to the year 2015 equaled 114 tpd of VOC. The safety margin for VOCs is calculated to be the difference between these amounts or, in this case, 11 tpd of VOC for 2015. By this same method, 42 tpd (*i.e.*, 261 tpd less 219 tpd) is the safety margin for NO_x for 2015. The emissions are projected to maintain the area's air quality consistent with the NAAQS. The safety margin is the extra emissions that can be allocated as long as the total attainment level of emissions is maintained. The credit, or a portion thereof, can be allocated to any of the source categories. The State of Alabama has also committed in the maintenance plan to the necessary continued operation of the ozone monitoring network in compliance with 40 CFR part 58.

In addition, the maintenance plan includes the following contingency measures to correct any future violations of the 1-hour ozone standard and timeline for development:

1. Identify potential stationary sources for reductions: 3 months.
2. Identify applicable RACT: 3 months.
3. Initiate a stakeholder process: 3 months.
4. Draft SIP regulations: 3 months.
5. Initiate rulemaking process (including public comment period, hearing, Commission adoption and final submission to EPA): 6 months.

Completion no later than: 18 months.

Based on Alabama's draft maintenance plan SIP revision submittal, EPA is proposing to approve the maintenance plan for the Birmingham area because it meets the requirements of section 175A.

V. Proposed Action on the Redesignation Request and the Draft Maintenance Plan SIP Revision

EPA is proposing to approve the redesignation of Birmingham nonattainment area from nonattainment to attainment for the 1-hour ozone NAAQS. EPA has evaluated the State of Alabama's redesignation request and determined that it meets the five redesignation criteria set out in section 107(d) of the Clean Air Act. EPA believes that the redesignation request and monitoring data demonstrate that this area has attained the 1-hour ozone standard. The final approval of this redesignation request would change the official designation for the Birmingham area from nonattainment to attainment for the 1-hour ozone standard.

EPA is also proposing to approve the draft maintenance plan SIP revision

submitted by Alabama for the Birmingham area in conjunction with its redesignation request. EPA is proposing to approve the maintenance plan for the Birmingham area because it meets the requirements of section 175A as described more fully above.

VI. Public Notice and Request for Comment on Adequacy of Alabama's New 2015 NO_x and VOC MVEB for Transportation Conformity Purposes

Through this proposed rulemaking, EPA is also providing public notice and seeking public comment on the adequacy of Alabama's new proposed NO_x and VOC motor vehicle emissions budget for the year 2015. The public comment period for commenting on the adequacy of Alabama's new proposed NO_x and VOC MVEB is 30 days from the publication date of this notice. For further information on commenting, see section VII below.

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*e.g.* reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans create motor vehicle emission budgets (MVEBs) for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. 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 revise the MVEB.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (*e.g.* 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 national ambient air quality standards. If a transportation plan does not "conform," most 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 state implementation plan.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA must

affirmatively find the MVEB budget contained therein "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and federal agencies in determining whether proposed transportation projects "conform" to the state implementation plan as required by section 176(c) of the Clean Air Act. EPA's substantive criteria for determining "adequacy" of an MVEB is set out in 40 CFR 93.118(e)(4).

EPA's process for determining "adequacy" consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEB budgets is set out in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision". This guidance is incorporated into EPA's June 30, 2003, EPA proposed rulemaking entitled "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (68 FR 38974). EPA follows this guidance in making its adequacy determination.

EPA's "adequacy" processing guidance allows EPA to "parallel process" a MVEB adequacy review. Under parallel processing, as noted above, a state submits a proposed SIP to EPA, and the state and EPA then request public comment on the proposed SIP and the adequacy of the MVEBs included in the SIP at the same time. If no significant adverse comments are received at either the state or Federal levels, EPA could then make an adequacy finding as soon as the state formally adopts the SIP and submits it to EPA, as long as no substantive changes to the SIP have occurred that would affect the adequacy of the MVEBs. However, if the formal maintenance plan submission changes in a way that affects the adequacy of the proposed MVEBs, the adequacy review process would start over: EPA would announce that we have a submitted SIP under adequacy review and reopen the comment period.

Alabama's currently effective NO_x and VOC MVEBs for 2003 were submitted to EPA in its 1-hour ozone attainment demonstration SIP on November 1, 2000, and deemed adequate through a June 7, 2001, **Federal Register** notice (66 FR 30737) effective June 22, 2001. Alabama's new draft maintenance plan SIP revision that is the subject of this proposed notice and which was submitted to EPA on November 19, 2003, contains Alabama's

new proposed NO_x and VOC MVEBs for transportation conformity purposes for the year 2015. The availability of the draft maintenance plan SIP revision with the MVEBs for 2015 was announced on EPA's Web page on:

<http://www.epa.gov/oms/transp> (Once there, click on the "Transportation Conformity" link, then click on "Adequacy Review of SIP Submissions"). The following table highlights the 2003 MVEB and defines the 2015 MVEB for Birmingham.

BIRMINGHAM NONATTAINMENT AREA MVEB

	2003	2015
NO _x TPD	65	41
VOC TPD	52	23

For the year 2015, the available safety margin was 42 tpd for NO_x and 11 tpd for VOC. After partial allocation of the safety margin to the MVEB, the remaining safety margins are 21 tpd for NO_x and 4 tpd for VOC.

EPA is parallel processing this 2015 NO_x and VOC MVEB adequacy review. Because Alabama's maintenance plan is a draft submittal that contains these 2015 MVEBs, EPA is electing to use this proposed rulemaking (consistent with our May 14, 1999 Conformity Guidance) as a vehicle to provide public notice of, and request public comment on, the adequacy of the proposed new NO_x and VOC MVEBs for transportation conformity purposes. EPA intends to finalize its adequacy determination for the new 2015 NO_x and VOC MVEBs following a thorough review of all public comments received and an evaluation of whether the adequacy criteria have been met. If EPA concludes, after reviewing any comments submitted, that Alabama's proposed new 2015 NO_x and VOC MVEBs are adequate, and if Alabama submits a final maintenance plan SIP revision with no substantive changes that would affect EPA's adequacy determination, then the new 2015 MVEB budgets would be applicable for transportation conformity determinations after the effective date of an EPA adequacy determination (published in the **Federal Register**) or on the date of final rulemaking of an EPA approval of Alabama's maintenance plan SIP revision if EPA chooses to make its final adequacy determination in that maintenance plan final rulemaking notice.

VII. General Information

A. How Can I Get Copies Of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under AL-62. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing 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 contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency, Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110-2059.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in

the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking AL-62." in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to lakeman.sean@epa.gov, please include the text "Public comment on proposed rulemaking AL-62." in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at <http://www.regulations.gov>, then select

Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Sean Lakeman, 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. Please include the text "Public comment on proposed rulemaking AL-62." in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, 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, 9 to 3:30, excluding federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the

outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

VIII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: December 23, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 04-211 Filed 1-5-04; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS-2188-P]

RIN 0938-AN01

Medicaid Program; Time Limitation on Recordkeeping Requirements Under the Drug Rebate Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: On August 29, 2003, we published a final rule with comment period in the **Federal Register** that finalized two specific provisions: it established new 3-year recordkeeping requirements for drug manufacturers under the Medicaid drug rebate program and set a 3-year time limitation during which manufacturers must report changes to average manufacturer price and best price for purposes of reporting data to us. In addition, it announced the pressing need for codification of fundamental recordkeeping requirements. On September 26, 2003, we issued a correction notice to change the effective date of the August 29, 2003 rule from October 1, 2003 to January 1, 2004. In this proposed rule, we propose removing the 3-year recordkeeping requirements and replacing them with 10-year recordkeeping requirements. We also propose that manufacturers must retain records beyond the 10-year period if the records are the subject of an audit or a government investigation.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 8, 2004.

ADDRESSES: In commenting, please refer to file code CMS-2188-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail.

Mail written comments (one original and two copies) to the following address