

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Docket No. FAA-2006-23674; Directorate Identifier 2005-NM-234-AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by February 24, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to EMBRAER Model EMB-120, -120ER, -120FC, -120QC, and -120RT airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 120-55-0015, dated January 14, 2005.

**Unsafe Condition**

(d) This AD results from corrosion in torque tubes of the elevators found during scheduled maintenance. We are issuing this AD to detect and correct corrosion in the torque tubes of the elevators, which could lead to an unbalanced elevator and result in reduced controllability of the airplane.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Detailed Inspection and Corrective Actions**

(f) Within 4,000 flight hours or 730 days after the effective date of this AD, whichever is first: Do a detailed inspection of the interior of the internal elevator torque tube of each elevator control surface for oxidation and corrosion, and the applicable corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 120-55-0015, dated January 14, 2005. The corrective actions must be done before further flight after accomplishing the inspection.

**Note 1:** For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

**Alternative Methods of Compliance (AMOCs)**

(g)(1) The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

**Related Information**

(h) Brazilian airworthiness directive 2005-10-03, dated November 3, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on January 17, 2006.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E6-902 Filed 1-24-06; 8:45 am]

**BILLING CODE 4910-13-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 81**

**[EPA-R04-OAR-2005-AL-0003-200539; FRL-8024-6]**

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Alabama; Redesignation of the Birmingham 8-Hour Ozone Nonattainment Area to Attainment for Ozone**

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

**ACTION:** Proposed rule.

**SUMMARY:** On November 16, 2005, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted a request for parallel processing to redesignate the Birmingham 8-hour ozone nonattainment area (Birmingham area) to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS); and for EPA approval of an Alabama draft State Implementation Plan (SIP) revision containing a maintenance plan with a 2017 end year for the Birmingham area. The Birmingham area is composed of two counties, Jefferson and Shelby. EPA is proposing to approve the 8-hour ozone redesignation request for the Birmingham area. Additionally, EPA is parallel processing the redesignation request and draft 8-hour ozone maintenance plan SIP revision for the Birmingham area (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 (CAA).

This proposed approval is based on EPA's determination that Alabama has demonstrated that the Birmingham area has met the criteria for redesignation to attainment specified in the CAA, including the determination that the entire Birmingham area has attained the 8-hour ozone standard. In this action, EPA is also providing information on the status of its transportation conformity adequacy determination for the new motor vehicle emissions budgets (MVEBs) for the year 2017 that is contained in the 8-hour ozone maintenance plan for the Birmingham area. EPA is proposing to approve the 2017 MVEBs.

**DATES:** Written comments must be received on or before February 24, 2006.

**ADDRESSES:** Submit your comments, identified Docket ID No. EPA-R04-OAR-2005-AL-0003, by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. E-mail: [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).
3. Fax: 404.562.9019.
4. Mail: "EPA-R04-OAR-2005-AL-0003", Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier. 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, 8:30 to 4:30, excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. "EPA-R04-OAR-2005-AL-0003". EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov) or e-mail,

information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** 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](mailto:lakeman.sean@epa.gov).

## SUPPLEMENTARY INFORMATION:

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### I. What Proposed Actions Is EPA Taking?

Through this rulemaking, EPA is proposing to take several related actions. The Birmingham area is a basic 8-hour nonattainment ozone area and is composed of two counties, Jefferson and Shelby. EPA is proposing to determine that the Birmingham area has attained the 8-hour ozone standard, and has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is proposing to approve the redesignation request to change the legal designation of the Birmingham area from nonattainment to attainment for the 8-hour ozone NAAQS.

EPA is also proposing to approve Alabama's 8-hour ozone maintenance plan for the Birmingham area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Birmingham area in attainment for the 8-hour ozone NAAQS through 2017.

Additionally, through this rulemaking, EPA is announcing the status of EPA's Adequacy Process for the newly-established 2017 MVEBs for the Birmingham area. The Adequacy comment period for the 2017 MVEBs began on November 17, 2005, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (at <http://www.epa.gov/otaq/transp/conform/adequacy.htm>). The Adequacy comment period for the 2017 MVEBs closed on December 19, 2005. No requests or adverse comments on this submittal were received during EPA's Adequacy comment period. EPA is proposing to approve the 2017 MVEBs. Please see section VII of this rulemaking for further explanation of this process.

### II. What Is the Background for the Proposed Actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO<sub>x</sub> and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.* 0.084 ppm when rounding is considered). (See 69 FR 23857 (April 30, 2004) for further information). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "Comparisons with the Primary and Secondary Ozone Standards" states:

The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The Birmingham 8-hour ozone nonattainment area was designated using 2001 to 2003 ambient air quality data. The **Federal Register** document making these designations was signed on April 15, 2004, and published on

April 30, 2004, (69 FR 23857). The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as “basic” nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as “classified” nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other 8-hour ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA’s Phase I 8-hour ozone implementation rule (69 FR 23857), signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour ambient air quality design values. The Birmingham area was originally designated as a “basic” 8-hour ozone nonattainment area by EPA on April 30, 2004, (69 FR 23857) and is subject to subpart 1 of part D. In 2005, the ambient ozone data for the Birmingham nonattainment area indicated no further violations of the 8-hour ozone standard, using data from the 3-year period of 2003–2005 (with the 2003–2005 design value of 0.084 ppm), to demonstrate attainment.

On November 16, 2005, Alabama requested redesignation to attainment for the 8-hour ozone standard for the Birmingham area. The redesignation request includes three years of complete, quality-assured ambient air quality data for the ozone seasons of 2003 through 2005, indicating the 8-hour ozone NAAQS had been achieved for the Birmingham area. The ozone season for this area is from April 1 until October 31 of a calendar year. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

### III. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area

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

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

1. “Ozone and Carbon Monoxide Design Value Calculations.” Memorandum from Bill Laxton, June 18, 1990;
2. “Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas.” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. “Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
5. “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. “Technical Support Documents (TSD’s) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. “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,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. “Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO

Nonattainment Areas,” Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

9. “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

### IV. Why Is EPA Proposing These Actions?

On November 16, 2005, Alabama requested redesignation of the Birmingham area to attainment for the 8-hour ozone standard. EPA believes that Alabama has demonstrated that the Birmingham area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA.

### V. What Is the Effect of EPA’s Proposed Actions?

Approval of this redesignation request would change the official designation of the Birmingham area for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Alabama SIP a plan for maintaining the 8-hour ozone NAAQS in the area through 2017. The 8-hour ozone maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS, and establishes MVEBs of 23 tons per day (tpd) for VOC, and 42 tpd for NO<sub>x</sub> for the year 2017.

### VI. What Is EPA’s Analysis of the Request?

EPA is proposing to determine that the Birmingham 8-hour ozone nonattainment area has attained the 8-hour ozone standard, and that all redesignation criteria have been met. The basis for EPA’s determination is as follows:

(1) *The Birmingham area has attained the 8-hour ozone NAAQS.*

EPA is proposing to determine that the area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over

each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and

recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment. ADEM submitted ozone monitoring data from ten ambient ozone monitoring stations in the Birmingham area for the

ozone seasons from 2003 to 2005. This data has been quality assured and is recorded in AQS. The fourth high averages for 2003, 2004 and 2005, and the 3-year average of these values (i.e. design value), are summarized in the following table:

8-HOUR OZONE  
[Parts per million, ppm]

Monitor	County	4th high 8-hr ozone average			
		2003	2004	2005	3-year average
Fairfield .....	Jefferson .....	0.075	0.070	0.081	0.075
McAdory .....	Jefferson .....	0.073	0.073	0.085	0.077
Hoover .....	Jefferson .....	0.077	0.077	0.085	0.079
Pinson .....	Jefferson .....	0.081	0.068	0.072	0.073
Tarrant .....	Jefferson .....	0.075	0.068	0.084	0.075
Corner .....	Jefferson .....	0.077	0.068	0.077	0.074
Providence .....	Jefferson .....	0.070	0.070	0.079	0.073
N. Birmingham .....	Jefferson .....	0.068	0.070	0.079	0.072
Leeds .....	Jefferson .....	0.070	0.073	0.071	0.071
Helena .....	Shelby .....	0.083	0.084	0.085	0.084

The design value for an area is the highest design value recorded at any monitor in the area. Therefore, the design value for the Birmingham area is 0.084 ppm, which meets the standard as described above.

ADEM has also 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 the Birmingham 8-hour ozone nonattainment area has attained the 8-hour ozone NAAQS.

(2) *Alabama has a fully approved SIP under section 110(k) for the Birmingham area and*

(5) *Alabama has met all applicable requirements under section 110 and part D of the CAA.*

Below is a summary of how these two criteria were met.

EPA has determined that Alabama has met all applicable SIP requirements for purposes of redesignation for the Birmingham area under section 110 of the CAA (general SIP requirements). EPA has also determined that the Alabama SIP satisfies the criterion that it meets applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to subpart 1 basic 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these

determinations, EPA ascertained which requirements are applicable to the area for purposes of redesignation and that if applicable they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

*a. Alabama has met all applicable requirements under section 110 and part D of the CAA.*

The September 4, 1992, Calcagni memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465-66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, MI). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA; *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

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

the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

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

However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity (i.e. for redesignations) and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request. Therefore, as discussed above, for purposes of redesignation, they are not considered applicable requirements.

EPA has previously approved general requirements in the Alabama SIP addressing section 110 elements (May 31, 1972, 37 FR 10842).

Part D requirements: EPA has also determined that the Alabama SIP meets applicable SIP requirements under part D of the CAA since no requirements applicable for purposes of redesignation became due prior to submission of the area's redesignation request. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Subpart 2 is not applicable to the Birmingham area.

Part D, subpart 1 applicable SIP requirements: For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). No requirements applicable for purposes of redesignation under part D became due prior to submission of the redesignation request, and therefore none is applicable to the area for purposes of redesignation. For example, the requirements for an attainment demonstration that meets the requirements of section 172(c)(1) are not yet applicable, nor are the requirements for Reasonably Achievable Control Technology (RACT) and Reasonably Available Control Measures (RACM) (section 172(c)(1)), Reasonable Further Progress (RFP) (section 172(c)(2)), and contingency measures (section 172(c)(9)).

In addition to the fact that no part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and NSR requirements as not requiring approval prior to redesignation.

Section 176 Conformity Requirements: Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code and the Federal Transit Act (“transportation conformity”) as well as to all other Federally supported or funded projects (“general conformity”). State conformity revisions must be

consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate. EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995, Tampa, FL).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled “Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.” Alabama has demonstrated that the area will be able to maintain the standard without part D NSR in effect, and therefore, Alabama need not have a fully approved part D NSR program prior to approval of the redesignation request. Alabama's PSD program will become effective in the area upon redesignation to attainment. See rulemakings for Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the area has satisfied all requirements applicable for purposes of redesignation under section 110 and part D of the CAA.

b. *The area has a fully approved applicable SIP under section 110(k) of the CAA.*

EPA has fully approved the applicable Alabama SIP for the Birmingham area under section 110(k) of the Clean Air Act for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, see Calcagni Memo at p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001); plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein.

Following passage of the CAA of 1970, Alabama has adopted and submitted, and EPA has fully approved at various times, provisions addressing section 110 elements under the 1-hour standard applicable in the Birmingham area (May 31, 1972, 37 FR 10842).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation.

(3) *The air quality improvement in the Birmingham 8-hour ozone 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 believes that Alabama has demonstrated that the observed air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. EPA has determined that the implementation of the following permanent and enforceable emissions controls have reduced local NO<sub>x</sub> and VOC emissions and brought the area into attainment during 2003–2005:

The Reid Vapor Pressure (RVP) Control Program—gasoline sold from June 1st until September 15th of each year, in Jefferson and Shelby Counties was required to have a RVP no greater than 7.0 pounds per square inch (psi).

Since 2003, utility NO<sub>x</sub> controls on Alabama Power Company plants Gorgas (in Jefferson Co.) and Miller (in Shelby Co.) have been required for the period of May 1st to September 30th each year. NO<sub>x</sub> emission limitations have been established at 0.21 lb/mmbtu for the two plants, based on a rolling 30-day average.

Alabama's NO<sub>x</sub> SIP Call established a NO<sub>x</sub> budget from 2004 and beyond for large industrial sources such as boilers, turbines, and electric generating units that are subject to the NO<sub>x</sub> SIP Call.

EPA has implemented several programs that have resulted in reduced emissions in recent years. For cars and light trucks, EPA has instituted the National Low Emissions Vehicles (NLEV) program, which went into effect nationally in 2001, and EPA's Tier 2 rules, which went into effect in 2004. In addition, Tier 2 standards for nonroad diesel engines were phased in between 2001 and 2004. Over time the phase-in of these programs has resulted in reductions in emissions as new vehicles have replaced older, higher-polluting vehicles. Further reductions have occurred as a result of further implementation of EPA standards for small spark-ignited engines (e.g. lawnmowers) and locomotives. The heavy duty highway truck engine rule also implemented reductions beginning in 2004.

EPA promulgated the Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements in 2000 (65 FR 6697).

In addition to the reductions mentioned above, the State of Alabama is also relying on the following controls to maintain the 8-hour standard:

1. Onboard Refueling Vapor Recovery for Light-Duty Vehicles

2. Federal Non-road Diesel Engine Standards
3. Federal Marine Engine Requirements
4. Federal Locomotive Requirements
5. Consumer Solvents Requirements
6. Architectural and Industrial Maintenance Coatings Requirements
7. Automobile Refinishing Requirements
8. The National Emission Standards for Hazardous Air Pollutants (NESHAP); the majority of which are also VOCs
9. Phase II Acid Rain Program for NO<sub>x</sub>
10. Clean Air Interstate Rule (CAIR)
11. NO<sub>x</sub> SIP Call Phase II
12. Highway Diesel Fuel Sulfur Requirements

Alabama has demonstrated that the implementation of permanent and enforceable emissions controls have reduced local VOC and NO<sub>x</sub> emissions. Alabama has also demonstrated that year-to-year meteorological changes and trends have an impact on ozone precursor emissions and the formation of ozone but, that they are not the likely source of the overall, long-term improvement in ozone levels. EPA believes that permanent and enforceable emissions reductions in and surrounding the nonattainment area are the cause of the long-term improvement in ozone levels, and resulted in the area achieving attainment of the 8-hour ozone standard. Jefferson County alone has reduced point source NO<sub>x</sub> emissions by 37 percent from 2002 to 2004 and will reduce them by 65 percent by 2017. The whole area has reduced the total NO<sub>x</sub> emissions by 22 percent from 2002 to 2004 and will reduce them by 45 percent by 2017. Additional reductions from outside the Birmingham area will be realized as the above programs are implemented throughout the State.

NO<sub>x</sub> EMISSIONS FROM 2002 TO 2004

[Tons per Summer Day, tpsd]

County/source category	2002	2004
Jefferson:		
Point .....	110	69
Area .....	3	3
Non-road .....	18	17
Total .....	131	89
Shelby:		
Point .....	97	94
Area .....	1	1
Non-road .....	6	6
Total .....	104	101
Total for the Birmingham area:		
Point .....	207	163
Area .....	4	4
Mobile .....	57	54

NO<sub>x</sub> EMISSIONS FROM 2002 TO 2004—Continued  
[Tons per Summer Day, tpsd]

County/source category	2002	2004
Non-road .....	24	23
Total .....	292	244

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

In conjunction with its request to redesignate the Birmingham 8-hour ozone nonattainment area to attainment status, ADEM submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the Birmingham area for at least 10 years after the effective date of redesignation to attainment. Alabama requested that EPA “parallel process” the redesignation request and maintenance plan 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** between the time frame Alabama submits its prehearing and final submittal. Alabama and EPA then provide for public comment periods on both the State action and the Federal action.

After Alabama submits the final request and State-effective SIP revision (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 redesignation request and 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 final maintenance plan SIP revision changes significantly and/or is disapprovable in its final form, EPA will also not take final action to approve the Birmingham redesignation request because the existence of a fully EPA-approved maintenance plan is a necessary criterion for redesignation to attainment status.

*a. What Is Required in a Maintenance Plan?*

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, Alabama must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum, dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan.

*b. Attainment Emissions Inventory*

Point source emissions were obtained for calendar year 2004 as a result of the

annual data obtained from regulated facilities and projected to 2009, 2015 and 2017. Non-road mobile emissions were calculated using the most recent non-road model. On-road mobile source emissions were calculated using MOBILE 6.2 for 2004 and three horizon years, 2009, 2015 and 2017. Area source emissions were grown from the 2002 National Emissions Inventory for 2004, 2009, 2015 and 2017. The maintenance plan establishes an attainment inventory for the year 2004. This attainment inventory identifies the level of emissions in the area which is sufficient to attain the 8-hour ozone standard.

*c. Maintenance Demonstration*

The November 16, 2005, submittal includes a maintenance plan with a 2017 end year for the Birmingham area. This demonstration:

(i) Shows compliance and maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and NO<sub>x</sub> remain at or below attainment year 2004 emissions levels. The year 2004 was chosen as the attainment year because it is one of the most recent three years (*i.e.*, 2003, 2004, and 2005) for which the Birmingham area has clean air quality data for the 8-hour ozone standard.

(ii) Uses 2004 as the attainment year and includes future inventory projected years for 2009, 2015, and 2017.

(iii) Identifies an “out year” at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, MVEBs were established for the last year of the maintenance plan. See section VII below.

(iv) Provides the following actual and projected emissions inventories for the Birmingham area.

NO<sub>x</sub> EMISSIONS TPSD

County/source category	2004	2009	2015	2017
Jefferson:				
Point .....	69	45	48	49
Area .....	3	4	4	4

NO<sub>x</sub> EMISSIONS TPSD—Continued

County/source category	2004	2009	2015	2017
Non-road .....	17	14	11	10
Total .....	89	63	63	63
Shelby:				
Point .....	94	69	72	73
Area .....	1	1	1	1
Non-road .....	6	5	4	4
Total .....	101	75	77	78
Total for the Birmingham area:				
Point .....	163	114	120	122
Area .....	4	5	5	5
Mobile <sup>1</sup> .....	54	39	24	21
Non-road .....	23	19	15	14
Total .....	244	177	164	162
2004 NO <sub>x</sub> Safety Margin * .....	.....	67	80	82

\* After assigning 21 tpsd of the NO<sub>x</sub> safety margin to the NO<sub>x</sub> MVEB, the revised 2017 NO<sub>x</sub> safety margin will be 61 tpsd.

<sup>1</sup> Since the transportation network is based on the two-County (Jefferson and Shelby) area, mobile source emissions were not broken out by county.

VOC EMISSIONS TPSD

County/source category	2004	2009	2015	2017
Jefferson:				
Point .....	13	14	17	18
Area .....	57	47	51	52
Non-road .....	10	8	7	7
Total .....	80	69	75	77
Shelby:				
Point .....	2	2	2	2
Area .....	11	9	9	10
Non-read .....	5	4	4	3
Total .....	18	15	15	15
Total for the Birmingham NA:				
Point .....	15	16	19	20
Area .....	68	56	60	62
Mobile <sup>2</sup> .....	32	28	20	19
Non-road .....	15	12	11	10
Total .....	130	112	110	111
2004 VOC Safety Margin * .....	.....	18	20	19

\* After assigning 4 tpsd of the VOC safety margin to the VOC MVEB, the revised 2017 VOC safety margin will be 15 tpsd.

<sup>2</sup> Since the transportation network is based on the two-County (Jefferson and Shelby) area, mobile source emissions were not broken out by county.

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.

d. Monitoring Network

There are currently ten monitors measuring ozone, located within Jefferson and Shelby Counties which

provide air quality data for the entire Birmingham area. Alabama has committed in the maintenance plan to continue operation of the ozone monitors in compliance with 40 CFR part 58, and has addressed the requirement for monitoring.

e. Verification of Continued Attainment

Alabama has the legal authority to enforce and implement the requirements of the ozone maintenance plan for the Birmingham area. This

includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Alabama will track the progress of the maintenance plan by performing future reviews of actual emissions for the area using the latest emissions factors, models and methodologies. For the purpose of verifying continued attainment based upon the emissions inventory, major point sources of air



pollution will continue to submit data on an annual basis and area and mobile sources will continue to be quantified on a three-year cycle. The next overall emissions inventory will be compiled for 2005. For these periodic inventories, Alabama will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions result in future growth greater than or equal to 10 percent, Alabama will re-project emissions and reassess the area's ability to maintain attainment.

#### f. Contingency Plan

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

In the November 16, 2005, submittal, Alabama commits to implement all measures that were contained in the SIP before the redesignation as expeditiously as possible. Alabama also affirms that all programs instituted by Alabama and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the area. In the submittal, Alabama commits to adopt, within 18 months of a violation, one or more contingency measures as needed to re-attain the standard. Alabama also identified that in the event that any individual monitor in the Birmingham area records an annual fourth high reading of 0.085 ppm or higher, Alabama will evaluate existing control measures to determine if further emission reduction measures should be implemented. Also, if periodic emissions inventory shows a future growth greater than or equal to ten percent, Alabama will re-project emissions and reassess the area's ability to maintain attainment. Alabama notes

that all regulatory programs will be implemented within 18 months of a violation. The State will consider and implement one or more of the following contingency measures:

*RACT for NO<sub>x</sub> sources*—The State would investigate other smaller point sources of lower thresholds for specific controls.

*RACT for additional VOC sources*—Rules would be implemented for application of RACT to additional VOC sources not currently subject to RACT.

*Schedule for Point Source Regulation Development*—A schedule for the development of NO<sub>x</sub> and/or VOC regulations from the time of a violation of the 8-hour ozone standard or inventory trigger of future growth follows:

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

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

#### VII. What Is an Adequacy Determination and What Is the Status of EPA's Adequacy Determination for the Birmingham 8-Hour Ozone Maintenance Area's New MVEBs for the Year 2017?

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 MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB is established for the last year of the maintenance plan. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. 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 (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not "conform," most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEBs contained therein "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and federal agencies in determining whether proposed transportation projects "conform" to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining "adequacy" of MVEBs are 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 MVEBs was initially outlined in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance was finalized in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change" on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

Alabama's maintenance plan submission contained new VOC and NO<sub>x</sub> MVEBs for the year 2017. The availability of the SIP submission with these MVEBs was announced for public comment on EPA's adequacy Web page

on November 17, 2005, at: <http://www.epa.gov/otaq/transp/conform/cursips.htm>.

The EPA public comment period on adequacy of the 2017 MVEBs for the Birmingham area closed on December 19, 2005. EPA did not receive any adverse comments or requests for the submittal.

EPA intends to make its determination of the adequacy of the 2017 MVEBs for the Birmingham area for transportation conformity purposes in the final rulemaking on the Birmingham area 8-hour ozone redesignation. If EPA finds the 2017 MVEBs adequate for transportation conformity purposes prior to EPA's final approval, or finds the 2017 MVEBs adequate and approves the 2017 MVEBs in the final rulemaking action, the new MVEBs must be used for future transportation conformity determinations. The new 2017 MVEBs, if found adequate and approved in the final rulemaking, will be effective the date of publication of EPA's final rulemaking in the **Federal Register**. For required regional emissions analysis years that involve the year 2016 or before, the applicable budget for the purposes of conducting transportation conformity will be the applicable MVEBs from the Birmingham 1-hour ozone attainment demonstration or the 1-hour ozone maintenance plan. The 1-hour ozone attainment demonstration established MVEBs for the year 2003 of 65 tpd for NO<sub>x</sub> and 52 tpd for VOCs. The 1-hour ozone maintenance plan established MVEBs for the year 2015 of 41 tpd for NO<sub>x</sub> and 23 tpd for VOCs. For required regional emissions analysis years that involve the year 2017 or beyond, the applicable budget for the purposes of conducting transportation conformity analyses will be the 2017 VOC (23 tpsd) and NO<sub>x</sub> (42 tpsd) MVEB for this maintenance area.

#### **Birmingham Area 2017 MVEBs**

NO<sub>x</sub>, tpsd—42  
VOC, tpsd—23

EPA is proposing to approve the 2017 MVEBs because the maintenance plan demonstrates that expected emissions for the area in 2017, including the 2017 MVEBs plus the estimated emissions for all other source categories, will continue to maintain the 8-hour ozone standard.

#### **VIII. Proposed Action on the Redesignation Request, the Maintenance Plan SIP Revision Including Proposed Approval of the 2017 MVEBs**

After evaluating Alabama's redesignation request, EPA has determined that it meets the

redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Based on the discussion of compliance with the redesignation criteria above, and on the fact that Alabama is in the process of completing the adoption of a maintenance plan meeting the requirements of section 175A, we conclude that the area will comply with the criteria for redesignation to attainment of the 8-hour ozone NAAQS. Therefore we are proposing to approve this redesignation request and maintenance plan. If the State substantially revises the maintenance plan from the version proposed by the State and reviewed here, this may result in the need for additional proposed rulemaking.

Additionally, EPA is providing the status of its Adequacy Determination for the 2017 MVEBs and is proposing to approve the 2017 MVEBs, submitted by Alabama for the Birmingham area, in conjunction with its redesignation request. Within 24 months from the effective date of the final rule for this action, the transportation partners will need to demonstrate conformity to these new MVEBs pursuant to 40 CFR 93.104(e) as effectively amended by new section 172(c)(2)(E) of the CAA as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005.

#### **IX. 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. Redesignation of an area to attainment under section 107(d)(3)(e) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. 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 affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements 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 and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

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. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, 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: January 17, 2006.

#### A. Stanley Meiburg,

Acting Regional Administrator, Region 4.  
[FR Doc. E6-907 Filed 1-24-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2005-0487; FRL-7754-8]

#### Pesticides: Minimal Risk Tolerance Exemptions

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to reorganize certain existing tolerance exemptions. All of these chemical substances were reviewed as part of the tolerance reassessment process required under the Food Quality Protection Act of 1996 (FQPA). As a result of that review, 13 chemical substances are now classified as "minimal risk." The Agency intends to shift the existing tolerance exemptions for these chemicals to 40 CFR 180.950(e). The Agency is merely moving certain tolerance exemptions from one section of the CFR to another section: No tolerance exemptions are lost or added as a result of this action.

**DATES:** Comments must be received on or before March 27, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2005-0487, by one of the following methods:

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

- Agency Website: <http://www.epa.gov/edocket/>. EDOCKET, EPA's electronic public docket and

comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- *E-mail:* Comments may be sent by e-mail to [opp-docket@epa.gov](mailto:opp-docket@epa.gov), Attention: Docket ID number EPA-HQ-OPP-2005-0487.

- *Mail:* Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID number EPA-HQ-OPP-2005-0487.

- *Hand delivery:* Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP-2005-0487. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

- *Instructions:* Direct your comments to docket ID number EPA-HQ-OPP-2005-0487. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the [regulations.gov](http://www.regulations.gov) websites are *anonymous access* systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information

about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL-7181-7).

*Docket:* All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

#### FOR FURTHER INFORMATION CONTACT:

Kathryn Boyle, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6304; fax number: (703) 305-0599; e-mail address: [boyle.kathryn@epa.gov](mailto:boyle.kathryn@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.