

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R04-OAR-2011-0316-201117; FRL-9293-3]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Alabama: Birmingham; Determination of Attaining Data for the 1997 Annual Fine Particulate Matter Standards**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to determine that the Birmingham, Alabama, fine particulate (PM_{2.5}) nonattainment area (hereafter referred to as the "Birmingham Area" or "Area") has attained the 1997 annual average PM_{2.5} National Ambient Air Quality Standards (NAAQS). The Birmingham Area is comprised of Jefferson and Shelby Counties in their entirety, and a portion of Walker County in Alabama. This proposed determination of attaining data is based upon complete, quality-assured and certified ambient air monitoring data for the 2008–2010 period showing that the Area has monitored attainment of the 1997 annual PM_{2.5} NAAQS. If EPA finalizes this proposed determination of attaining data, the requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended so long as the Area continues to attain the annual PM_{2.5} NAAQS.

DATES: Comments must be received on or before May 12, 2011.**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2011-0316, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: benjamin.lynorae@epa.gov.
3. *Fax*: (404) 562-9040.
4. *Mail*: EPA-R04-OAR-2011-0316, 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*: Lynorae Benjamin, Chief, Regulatory Development Section,

Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2011-0316. 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 *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *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 *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 federal holidays.

FOR FURTHER INFORMATION CONTACT: Sara Waterson or Joel Huey, 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. Ms. Waterson may be reached by phone at (404) 562-9061 or via electronic mail at waterson.sara@epa.gov. Mr. Huey may be reached by phone at (404) 562-9104. Mr. Huey can also be reached via electronic mail at huey.joel@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. What action is EPA taking?
- II. What is the background for this action?
- III. Does the Birmingham area meet the annual PM_{2.5} NAAQS?
 - A. Criteria
 - B. Birmingham Area Air Quality
- IV. What is the effect of this action?
- V. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is proposing to determine that the Birmingham Area (comprised of Jefferson and Shelby Counties in their entirety, and a portion of Walker County) has attaining data for the 1997 annual PM_{2.5} NAAQS. The proposal is based upon complete, quality-assured and certified ambient air monitoring data for the 2008–2010 monitoring period that show that the Area has monitored attainment of the 1997 annual PM_{2.5} NAAQS.

II. What is the background for this action?

On July 18, 1997 (62 FR 36852), EPA established an annual PM_{2.5} NAAQS at 15.0 micrograms per cubic meter (µg/m³) based on a 3-year average of annual mean PM_{2.5} concentrations. At that time, EPA also established a 24-hour NAAQS of 65 µg/m³. See 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 PM_{2.5} NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on

April 5, 2005. The Birmingham Area was designated nonattainment for the 1997 annual PM_{2.5} NAAQS. See 40 CFR 81.301.

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual PM_{2.5} NAAQS at 15.0 µg/m³ based on a 3-year average of annual mean PM_{2.5} concentrations, and promulgated a 24-hour NAAQS of 35 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. On November 13, 2009, EPA designated the Birmingham Area as nonattainment for the 2006 24-hour NAAQS (74 FR 58688).¹ In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Birmingham Area was designated as nonattainment for the annual NAAQS but attainment for the 24-hour NAAQS. Thus, today's action does not address attainment of either the 1997 24-hour NAAQS.

In response to legal challenges of the annual NAAQS promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded this NAAQS to EPA for

further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual NAAQS are essentially identical, attainment of the 1997 annual NAAQS would also indicate attainment of the remanded 2006 annual NAAQS.

On April 25, 2007 (72 FR 20664), EPA promulgated its PM_{2.5} implementation rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 PM_{2.5} NAAQS. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the NAAQS, as discussed below.

III. Does the Birmingham area meet the annual PM_{2.5} NAAQS?

A. Criteria

Today's rulemaking proposes to find that the Birmingham Area is attaining the 1997 annual PM_{2.5} NAAQS, and provides a basis for that final action. The Birmingham Area is comprised of

Jefferson and Shelby Counties in their entirety, and a portion of Walker County in Alabama.

Under EPA regulations at 40 CFR 50.7, the annual primary and secondary PM_{2.5} NAAQS are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 µg/m³ at all relevant monitoring sites in the Area.

B. Birmingham Area Air Quality

EPA has reviewed the ambient air monitoring data for the Birmingham Area in accordance with the provisions of 40 CFR part 50, Appendix N. All data considered have been quality-assured, certified, and recorded in EPA's Air Quality System database. This review addresses air quality data collected in the 3-year period from 2008–2010.

The following table provides the annual average concentrations averaged over 2008–2010 at all the sites in the Birmingham Area with at least 75 percent complete data in each quarter of each of those 3 years:

TABLE 1—ANNUAL AVERAGE PM_{2.5} CONCENTRATIONS FOR MONITORS IN THE BIRMINGHAM, ALABAMA NONATTAINMENT AREA

Location	Site No.	2008 98th Percentile (µg/m ³)	2009 98th Percentile (µg/m ³)	2010 98th Percentile (µg/m ³)	2008–2010 Design value (µg/m ³)
North Birmingham	01–073–0023	15.5	11.7	13.8	13.7
McAdory	01–073–1005	12.2	10.4	11.8	11.5
Bruce Shaw Road	01–073–1009	10.8	9.6	10.1	10.2
Asheville Road	01–073–1010	13.2	10.3	12.1	11.9
Wylam	01–073–2003	14.4	11.3	12.4	12.7
Hoover	01–073–2006	12.1	10.3	11.8	11.4
Pinson High School	01–073–5002	11.9	9.9	10.9	10.9
Corner School Road	01–073–5003	11.5	9.7	10.7	10.6
Pelham High School	01–117–0006	11.6	9.8	² 11.3	10.9
Highland Avenue	01–127–0002	11.7	10.1	11.3	11.0

² The Pelham High School monitor did not meet data completeness in the 3rd quarter of 2010.

The Pelham High School monitor did not meet data completeness for the 3rd quarter of 2010. The 2010 average annual concentration for Pelham High School monitor without data substitution is 11.3 µg/m³. The 2010 average annual concentrations for 2008–2010 with data substitution is 13.9 µg/m³. The 3-year 2008–2010 design value with data substitution is 11.8 µg/m³; therefore, the monitor passes the data substitution test. The official design value for the monitor is 10.9 µg/m³. The complete procedure for the maximum value data substitution test can be found in the EPA guidance document

“Guideline on Data Handling Conventions for the PM NAAQS,” dated April 1999. The highest 3-year average annual concentration for 2008–2010 is 13.7 µg/m³ at the North Birmingham monitor.

EPA believes that the Birmingham Area is now meeting the 1997 annual PM_{2.5} NAAQS. Since few data are available for 2011, the 2008–2010 data represent the most recent available data for EPA to use in its assessment. On the basis of this review, EPA is proposing to determine that the Birmingham Area has attained the 1997 annual PM_{2.5} NAAQS. EPA is soliciting public

comments on its proposal to determine that the Birmingham Area has attained the 1997 annual PM_{2.5} NAAQS.

IV. What is the effect of this action?

If this proposed determination of attaining data is made final, the requirements for the Birmingham Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 annual PM_{2.5} NAAQS would be suspended for so long as the Area continues to attain the PM_{2.5} NAAQS. See 40 CFR 51.1004(c). Notably, as

¹ Although the Birmingham Area is designated nonattainment for the 2006 PM_{2.5} NAAQS, EPA

finalized a determination that the Area is currently attaining the 2006 PM_{2.5} NAAQS. See 75 FR 57186.

described below, any such determination would not be equivalent to the redesignation of the Area to attainment for the annual PM_{2.5} NAAQS.

If this proposed rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Area has violated the annual PM_{2.5} NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Birmingham Area, and the Area would thereafter have to address the applicable requirements. See 40 CFR 51.1004(c).

Finalizing this proposed action would not constitute a redesignation of the Area to attainment of the annual PM_{2.5} NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this proposed action does not involve approving a maintenance plan for the Area as required under section 175A of the CAA, nor would it find that the Area has met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Birmingham Area would remain nonattainment for the 1997 annual PM_{2.5} NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

This action is only a proposed determination of attaining data that the Birmingham Area has attained the 1997 annual PM_{2.5} NAAQS. Today's action does not address the 24-hour PM_{2.5} NAAQS.

If the Birmingham Area continues to monitor attainment of the annual PM_{2.5} NAAQS, the requirements for the Birmingham Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the annual PM_{2.5} NAAQS will remain suspended.

V. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would, if finalized, result in the suspension of certain federal requirements, and it would not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

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

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

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

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

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this proposed 1997 annual average PM_{2.5} NAAQS data determination for the Birmingham Area does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: April 4, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011-8702 Filed 4-11-11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2011-0029-201103; FRL-9293-2]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Charlotte-Gastonia-Rock Hill, North Carolina and South Carolina: Determination of Attainment for the 1997 8-Hour Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina nonattainment area has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS) based on quality assured, quality controlled monitoring data from 2008-2010. The Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-hour ozone nonattainment area (hereafter referred to as the "bi-state Charlotte Area") is comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell (Davidson and Coddle Creek Townships) Counties in North Carolina; and a portion of York County in South Carolina. If this proposed determination is made final, the requirement for the States of North Carolina and South Carolina to submit an attainment demonstration and associated reasonably available control measures (RACM) analyses, reasonable further progress (RFP) plans, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area, shall be suspended for as long as the Area continues to meet the 1997 8-hour ozone NAAQS.

DATES: Written comments must be received on or before May 12, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2011-0029 by one of the following methods:

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

2. *E-mail:* benjamin.lynnora@epa.gov.

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

4. *Mail:* "EPA-R04-OAR-2011-0029,"

Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,