

definitions, and selection criteria proposed in this notice do not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

Further, this proposed regulatory action may help a small entity determine whether it has the interest, need, or capacity to implement activities under the program and, thus, prevent a small entity that does not have such an interest, need, or capacity from absorbing the burden of applying.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program and with any matching funds provided by private-sector partners.

The Secretary invites comments from small nonprofit organizations and small LEAs as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, requests evidence to support that belief.

#### *Intergovernmental Review*

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact*.

**Electronic Access to This Document:** You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>. To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**Note:** The official version of this document is the document published in the **Federal**

**Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: February 22, 2010.

**Thelma Meléndez de Santa Ana,**  
*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2010-3963 Filed 2-25-10; 8:45 am]

**BILLING CODE 4000-01-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 52 and 81**

**[EPA-R05-OAR-2009-0928; EPA-R05-OAR-2010-0046; FRL-9116-7]**

### **Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Indiana; Redesignation of the Ohio and Indiana Portions of the Cincinnati-Hamilton Area to Attainment for Ozone**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the requests of Ohio and Indiana to redesignate the Ohio and Indiana portions of the Cincinnati-Hamilton, OH-KY-IN 8-hour ozone nonattainment area, "the Cincinnati-Hamilton area," to attainment for that standard, because these requests meet the statutory requirements for redesignation under the Clean Air Act (CAA). The Ohio Environmental Protection Agency (Ohio EPA) and the Indiana Department of Environmental Management (IDEM) submitted these requests on December 14, 2009, and January 21, 2010, respectively. (EPA will address the Kentucky portion of the Cincinnati-Hamilton area in a separate rulemaking action.)

These proposed approvals involve several related actions. EPA is proposing to determine that the Cincinnati-Hamilton area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Cincinnati-Hamilton area includes Butler, Clermont, Clinton, Hamilton, and Warren Counties in Ohio, Lawrenceburg Township in Dearborn County, Indiana, and Boone, Campbell, and Kenton Counties in Kentucky. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2007–2009 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been

attained in the area. EPA is also proposing to approve, as revisions to the Ohio and Indiana State Implementation Plans (SIPs), the States' plans for maintaining the 8-hour ozone NAAQS through 2020 in the area.

EPA is proposing to approve the 2002 base year emissions inventory submitted by IDEM on June 13, 2007, as meeting the base year emissions inventory requirement of the CAA for the Indiana portion of the Cincinnati-Hamilton area. EPA is proposing to approve the 2005 base year emissions inventory submitted by Ohio EPA as part of its redesignation request as meeting the base year emissions inventory requirements of the CAA for the Ohio portion of the Cincinnati-Hamilton area. Finally, EPA finds adequate and is proposing to approve the States' 2015 and 2020 Motor Vehicle Emission Budgets (MVEBs) for the Ohio and Indiana portion of the Cincinnati-Hamilton area.

**DATES:** Comments must be received on or before March 29, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0928 and EPA-R05-OAR-2010-0046, by one of the following methods:

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

2. *E-mail:* [damico.genevieve@epa.gov](mailto:damico.genevieve@epa.gov).

3. *Fax:* (312) 692-2511.

4. *Mail:* Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand delivery:* Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. 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 a.m. to 4:30 p.m., excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2009-0928 and EPA-R05-OAR-2010-0046. 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 information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. 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 instructions on submitting comments, go to section I of this document, "What Should I Consider as I Prepare My Comments for EPA?"

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886-1767 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, [dagostino.kathleen@epa.gov](mailto:dagostino.kathleen@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean

EPA. This supplementary information section is arranged as follows:

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

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

## II. What Action Is EPA Proposing To Take?

EPA is proposing to take several related actions. EPA is proposing to determine that the Cincinnati-Hamilton nonattainment area has attained the 1997 8-hour ozone standard and that the Ohio and Indiana portions of this area

have met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve requests from Ohio EPA and IDEM to change the legal designation of the Ohio and Indiana portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve, as revisions to the Ohio and Indiana SIPs, the States' maintenance plans (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plans are designed to keep the Cincinnati-Hamilton area in attainment of the ozone NAAQS through 2020. EPA is proposing to approve the 2005 base year emissions inventory for the Ohio portion of the Cincinnati-Hamilton area, and the 2002 base year emissions inventory for Dearborn County, Indiana, as meeting the requirements of section 172(c)(3) of the CAA. If EPA's determination of attainment is finalized, under the provisions of 40 CFR 51.918, the requirement to submit certain planning SIPs related to attainment (the Reasonably Available Control Measure (RACM) requirement of section 172(c)(1) of the CAA, the Reasonable Further Progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) are not applicable to the area as long as it continues to attain the NAAQS and would cease to be applicable upon redesignation. In addition, as set forth in more detail below, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. Finally, EPA finds adequate and is proposing to approve the newly established 2015 and 2020 MVEBs for the Ohio and Indiana portion of the Cincinnati-Hamilton area. The adequacy comment period for the MVEBs began on December 10, 2009, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>). The adequacy comment period for these MVEBs ended on January 11, 2010. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. In letters dated January 14, 2010, EPA informed Ohio EPA and IDEM that we had found the 2015 and 2020 MVEBs to be adequate for use in transportation conformity analyses. Please see section VI. B. of this rulemaking, "Adequacy of the MVEBs," for further explanation of

this process. Therefore, we find adequate, and are proposing to approve, the States' 2015 and 2020 MVEBs for transportation conformity purposes.

### III. What Is the Background for These Actions?

#### A. What Is the General Background Information?

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 VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the 8-hour standard, the ozone NAAQS was based on a 1-hour standard. On November 6, 1991 (56 FR 56693 and 56813), the Cincinnati-Hamilton area was designated as a moderate nonattainment area under the 1-hour ozone NAAQS. Dearborn County, Indiana, was not included as part of the Cincinnati-Hamilton area, and was designated as attainment/unclassifiable under the 1-hour standard. The Ohio portion of the Cincinnati-Hamilton area was subsequently redesignated to attainment of the 1-hour standard effective June 14, 2005. (See 70 FR 35946, published June 21, 2005). This attainment designation was thus in effect at the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005.

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million parts (ppm). On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in Title I, part D, of the CAA; 42 U.S.C. 7501–7509a and 7511–7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment areas.

Under EPA's implementation rule for the 1997 8-hour ozone standard, (69 FR 23951 (April 30, 2004)), an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.* the

three-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The Cincinnati-Hamilton area was designated as a subpart 1, 8-hour ozone nonattainment area by EPA on April 30, 2004 (69 FR 23857, 23900, 23905, and 23926), based on air quality monitoring data from 2001–2003 (69 FR 23860).

40 CFR 50.10 and 40 CFR part 50, Appendix I provide that the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. See 40 CFR part 50, Appendix I, 2.3(d).

The Ohio EPA and IDEM submitted requests to redesignate the Ohio and Indiana portions of the Cincinnati-Hamilton area to attainment for the 8-hour ozone standard on December 14, 2009, and January 21, 2010, respectively. The redesignation requests included three years of complete, quality-assured data for the period of 2007 through 2009, indicating the 8-hour NAAQS for ozone, as promulgated in 1997, had been attained for the Cincinnati-Hamilton area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are 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).

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. In May 2008, States, environmental groups and industry groups filed petitions with the DC Circuit Court of Appeals for review of the 2008 ozone standards. In March 2009, the court granted EPA's request to stay the litigation so EPA could review the standards and determine whether they should be reconsidered. On September 16, 2009, we announced that we are reconsidering our 2008 decision setting national standards for ground-level ozone. The designation process for that standard has been stayed. On January 6, 2010, EPA proposed to set the level of the primary 8-hour ozone standard within the range of 0.060 to 0.070 ppm, rather than at 0.075 ppm.

We expect by August 2010 to have completed our reconsideration of the standard and also expect that thereafter we will proceed with designations. The actions addressed in today's proposed rulemaking relate only to the 1997 8-hour ozone standard.

#### B. What Are the Impacts of the December 22, 2006, and June 8, 2007, United States Court of Appeals Decisions Regarding EPA's Phase 1 Implementation Rule?

##### 1. Summary of Court Decision

On December 22, 2006, in *South Coast Air Quality Management Dist. v. EPA*, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. *Id.*, Docket No. 04 1201. Therefore, several provisions of the Phase 1 Rule remain effective: Provisions related to classifications for areas currently classified under subpart 2 of Title I, part D, of the CAA as 8-hour nonattainment areas; the 8-hour attainment dates; and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS. The June 8, 2007, decision also left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8, 2007, decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8, 2007, decision

clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation or prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

## 2. Requirements Under the 8-Hour Standard

With respect to the 8-hour standard, the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. In its January 16, 2009, proposed rulemaking in response to the South Coast decision, EPA has proposed to classify Cincinnati-Hamilton under subpart 2 as a moderate area. 74 FR 2936, 2944. If EPA finalizes this rulemaking, the requirements under subpart 2 will become applicable when they are due, a deadline that EPA has proposed to be one year after the effective date of a final rulemaking classifying areas as moderate or marginal. 74 FR 2940–2941. Although a future final decision by EPA to classify this area under subpart 2 would trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and, (2) consideration of the inequity of applying retroactively any requirements that might be applied in the future.

First, at the time the redesignation request was submitted, the Cincinnati-Hamilton area was not classified under subpart 2, nor were there any subpart 2 requirements yet due for this area. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to

the submittal of a complete redesignation request. *See* September 4, 1992, Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division). *See also* Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). *See Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld EPA's redesignation rulemaking applying this interpretation. *See, e.g. also* 68 FR 25418, 25424, 25427 (May 12, 2003) (Redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking. In *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002), the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: "Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly here it would be unfair to penalize the area by applying to it, for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect or yet due at the time it submitted its redesignation request.

## 3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the Cincinnati-Hamilton area was an attainment area subject to a CAA section 175A maintenance plan under the 1-hour standard. The DC Circuit's decisions with respect to 1-hour nonattainment anti-backsliding requirements do not impact redesignation requests for these types of areas, except to the extent that the Court in its June 8, 2007, decision clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement,

conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, the Cincinnati-Hamilton area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus, the decision in South Coast Air Quality Management Dist. would not preclude EPA from finalizing the redesignation of this area.

## IV. 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 provided 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:

"Ozone and Carbon Monoxide Design Value Calculations," Memorandum from William G. Laxton, Director Technical Support Division, June 18, 1990;

"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;

"Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,"

Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

“Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

“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;

“Technical Support Documents (TSD’s) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

“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;

“Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,”

Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, November 30, 1993.

“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

“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.

#### V. What Is the Effect of These Actions?

Approval of the redesignation requests would change the official designation of the Ohio and Indiana portions of the Cincinnati-Hamilton area for the 1997 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Ohio and Indiana SIPs, plans for maintaining the 8-hour ozone NAAQS through 2020. The maintenance plans include contingency measures as required under CAA section 175A to remedy future violations of the 8-hour NAAQS. They also establish MVEBs for the Ohio and Indiana portions of the Cincinnati-Hamilton area of 31.73 and 28.82 tons per day (tpd) VOC and 49.00 and 34.39 tpd NO<sub>x</sub> for the years 2015 and 2020, respectively.

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

##### A. Attainment Determination and Redesignation

EPA is proposing to determine that the Cincinnati-Hamilton area has attained the 1997 8-hour ozone standard and that the area has met all other applicable redesignation criteria under CAA section 107(d)(3)(E). The basis for EPA’s proposed approvals of the redesignation requests is as follows:

##### 1. The Area Has Attained the 8-hour Ozone NAAQS (Section 107(d)(3)(E)(i))

EPA is proposing to make a determination that the Cincinnati-Hamilton area has attained the 1997 8-

hour ozone NAAQS. 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 part 50, Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-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’s 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.

Ohio and Indiana included in their redesignation requests ozone monitoring data for the 2007 to 2009 ozone seasons. Monitoring data for 2007 and 2008 have been certified by the States; 2009 data has not yet been certified. However, Ohio and Kentucky have quality-assured all of the ambient monitoring data in accordance with 40 CFR 58.10, and have recorded it in the AQS database. (There are no monitoring locations in Dearborn County, Indiana.) The data meet the completeness criteria in 40 CFR 50, Appendix I, which requires a minimum completeness of 75 percent annually and 90 percent over each three-year period. Monitoring data are presented in Table 1 below.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND THREE YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS

State	County	Monitor	2007 4th high (ppm)	2008 4th high (ppm)	2009 4th high (ppm)	2007–2009 average (ppm)
Ohio	Butler	Hamilton ..... 39–017–0004 .....	0.091	0.071	0.073	0.078
		Middletown ..... 39–017–1004 .....	0.091	0.079	0.076	0.082
	Clermont	Batavia ..... 39–025–0022 .....	0.086	0.071	0.069	0.075
	Clinton	Wilmington ..... 39–027–1002 .....	0.082	0.076	0.070	0.076
	Hamilton	Grooms Rd., Cincinnati ..... 39–061–0006 .....	0.089	0.086	0.072	0.082

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND THREE YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS—Continued

State	County	Monitor	2007 4th high (ppm)	2008 4th high (ppm)	2009 4th high (ppm)	2007–2009 average (ppm)
		Cleves ..... 39–061–0010 .....	0.086	0.077	0.065	0.076
		250 Wm. Howard Taft, Cincinnati ..... 39–061–0040 .....	0.086	0.080	0.074	0.080
	Warren .....	Lebanon ..... 39–165–0007 .....	0.088	0.082	0.077	0.082
	Boone .....	KY 338 & Lower River Road ... 21–015–0003 .....	0.078	0.064	0.064	0.068
	Campbell .....	Highland Heights ..... 21–037–3002 .....	0.086	0.075	0.068	0.076
	Kenton .....	Covington ..... 21–117–0007 .....	0.085	0.073	0.074	0.077

In addition, as discussed below with respect to the Ohio maintenance plan, Ohio EPA has committed to continue to operate an EPA-approved monitoring network as necessary to demonstrate ongoing compliance with the NAAQS. Ohio EPA commits to continue monitoring ozone at the sites indicated in Table 1 and to consult with EPA prior to making changes to the existing monitoring network, should changes become necessary in the future. Ohio EPA remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into AQS in accordance with Federal guidelines. Indiana does not operate any ozone monitors in Dearborn County, which contains Lawrenceburg Township, the Indiana portion of the Cincinnati-Hamilton area. In summary, EPA believes that the data show that the Cincinnati-Hamilton area has attained the 8-hour ozone NAAQS.

**2. The Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))**

We have determined that Ohio and Indiana have met all currently applicable SIP requirements for purposes of redesignation for the Cincinnati-Hamilton area under section 110 of the CAA (general SIP requirements). We are also proposing to determine that the Ohio and Indiana SIPs meet all SIP requirements currently applicable for purposes of redesignation under part D of Title I of the CAA (requirements specific to subpart 1 nonattainment areas), in accordance

with section 107(d)(3)(E)(v). In addition, with the exception of the base year emissions inventory, we have determined that the Ohio and Indiana SIPs are fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is proposing to approve Ohio's 2005 base year emissions inventory and Indiana's 2002 base year emissions inventory as meeting the section 172(c)(3) emissions inventory requirement.

In proposing these determinations, we have ascertained which SIP requirements are applicable to the area for purposes of redesignation, and have determined that there are SIP measures meeting those requirements and that they are fully approved under section 110(k) of the CAA. As discussed more fully below, for purposes of evaluating a redesignation request, SIPs must be fully approved only with respect to requirements that became due prior to the submission of the redesignation request.

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) of the CAA. Under this interpretation, a State and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the State's submittal of a complete redesignation request for the area. See also the September 17, 1993 Michael Shapiro memorandum and 60 FR 12459,

12465–12466 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the State's submittal of a complete request remain applicable until a redesignation to attainment 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).

Since EPA is proposing here to determine that the area has attained the 1997 8-hour ozone standard, under 40 CFR 51.918, if that determination is finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (c)(6) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) would not be applicable to the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble EPA stated that:

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans \* \* \* provides specific requirements for contingency measures that effectively

supersede the requirements of section 172(c)(9) for these areas. “General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990,” (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

*See also* Calcagni memorandum at 6 (“The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard”).

a. The Ohio and Indiana Portions of the Cincinnati-Hamilton Area Have Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA

i. Section 110 General SIP Requirements

Section 110(a) of Title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a State must have been adopted by the State after reasonable public notice and hearing, and that, among other things, it includes enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provides for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provides for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; includes provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; includes criteria for stationary source emission control measures, monitoring, and reporting; includes provisions for air quality modeling; and provides for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain 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 transport of air pollutants (NO<sub>x</sub> SIP Call<sup>1</sup> and Clean Air

Interstate Rule (CAIR) (70 FR 25162, May 12, 2005)). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area’s designation and classification. 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 believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area’s attainment status are also not applicable requirements for purposes of redesignation. A State remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area’s designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA’s existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, 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 (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Ohio’s SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously

approved provisions of the Ohio SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.1870). Further, in submittals dated December 5, 2007 and September 19, 2008, Ohio confirmed that the State continues to meet the section 110 requirements for the 8-hour ozone standard. EPA has not yet taken rulemaking action on these submittals; however, such approval is not necessary for redesignation.

We have also reviewed Indiana’s SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of the Indiana SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.773). Further, in a submittal dated December 10, 2007, Indiana confirmed that the State continues to meet the section 110 requirements for the 8-hour ozone standard. EPA has not yet taken rulemaking action on this submittal; however, such approval is not necessary for redesignation.

ii. Part D Requirements

EPA has determined that, if EPA finalizes the approval of the base year emissions inventories discussed in section VI.C. and D. of this rulemaking, the Ohio and Indiana SIPs will meet the applicable SIP requirements for their portions of the Cincinnati-Hamilton area applicable for purposes of redesignation under part D of the CAA. 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, which includes section 182 of the CAA, establishes additional specific requirements depending on the area’s nonattainment classification.

Since the Cincinnati-Hamilton area was not classified under subpart 2 of Part D at the time its redesignation request was submitted, the subpart 2 requirements do not apply for purposes of evaluating the States’ redesignation requests. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176.

Subpart 1 Section 172 Requirements

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Cincinnati-Hamilton area 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, April 16, 1992).

<sup>1</sup> On October 27, 1998 (63 FR 57356), EPA issued a NO<sub>x</sub> SIP Call requiring the District of Columbia and 22 States to reduce emissions of NO<sub>x</sub> in order to reduce the transport of ozone and ozone precursors. In compliance with EPA’s NO<sub>x</sub> SIP Call, both Ohio EPA and IDEM have developed rules governing the control of NO<sub>x</sub> emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, major cement kilns, and internal combustion engines. EPA approved Ohio’s rules as

fulfilling Phase I of the NO<sub>x</sub> SIP Call on August 5, 2003 (68 FR 46089) and June 27, 2005 (70 FR 36845), and as meeting Phase II of the NO<sub>x</sub> SIP Call on February 4, 2008 (73 FR 6427). EPA approved Indiana’s rules as fulfilling requirements of Phase I of the NO<sub>x</sub> SIP Call on November 8, 2001 (66 FR 56465) and December 11, 2003 (68 FR 69025), and as meeting Phase II of the NO<sub>x</sub> SIP Call on October 1, 2007 (72 FR 55664).



Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the national primary ambient air quality standards. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. On June 15, 2007 and April 22, 2008, Ohio EPA submitted an attainment demonstration and identified the control measures necessary to attain the NAAQS in the Cincinnati-Hamilton area. Indiana submitted an attainment demonstration for the Cincinnati-Hamilton area on June 13, 2007. However, because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. 40 CFR 51.918. If EPA finalizes approval of the redesignation of the Ohio and Indiana portions of the Cincinnati-Hamilton area, EPA will take no further action on the attainment demonstrations submitted by Ohio and Indiana for the area.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Cincinnati-Hamilton area has monitored attainment of the ozone NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918. In addition, because the Cincinnati-Hamilton area has attained the ozone NAAQS and is no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. As part of Ohio's redesignation request for the Cincinnati-Hamilton area, the State submitted a 2005 base year emissions inventory. As discussed below in section VI.C., EPA is proposing to approve the 2005 base year inventory that Ohio submitted with the redesignation request as meeting the section 172(c)(3) emissions inventory requirement. As part of Indiana's June 13, 2007, attainment demonstration submittal for the Cincinnati-Hamilton area, IDEM included a 2002 base year emissions inventory. As discussed

below in section VI.D., EPA is proposing to approve Indiana's 2002 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, 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 NAAQS without part D NSR. A more detailed 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." Ohio and Indiana have demonstrated that the Cincinnati-Hamilton area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the States need not have fully approved part D NSR programs prior to approval of the redesignation request. The States' PSD programs will become effective in the Cincinnati-Hamilton area upon redesignation to attainment. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Ohio and Indiana SIPs meet the requirements of section 110(a)(2) applicable for purposes of redesignation.

#### Subpart 1 Section 176 Conformity Requirements

Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the

applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 of the U.S. 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, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if State rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. *See also* 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida).

EPA approved Ohio's general and transportation conformity SIPs on March 11, 1996 (61 FR 9646), and May 30, 2000 (65 FR 34395), respectively. Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005 (Pub. L. 109–59). Among the changes Congress made to this section of the CAA was to streamline the requirements for State conformity SIPs. Ohio is in the process of updating its transportation conformity SIP to meet these new requirements. EPA approved Indiana's general conformity SIP on January 14, 1998 (63 FR 2146). Indiana does not have a Federally-approved transportation conformity SIP. However, conformity analyses are performed pursuant to EPA's Federal conformity rules. Ohio and Indiana have submitted onroad motor vehicle budgets for the Ohio and Indiana portion of the



Cincinnati-Hamilton area of 31.73 and 28.82 tpd VOC and 49.00 and 34.39 tpd NO<sub>x</sub> for the years 2015 and 2020, respectively. The area must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

**b. The Ohio and Indiana Portions of the Cincinnati-Hamilton Area Have Fully Approved Applicable SIPs Under Section 110(k) of the CAA**

If EPA issues a final approval of the base year emissions inventories, EPA will have fully approved the Ohio and Indiana SIPs for the Cincinnati-Hamilton area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*See* page 3 of the September 4, 1992, John Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (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 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio and Indiana have adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under the 1-hour ozone standard. In this action, EPA is proposing to approve Ohio's 2005 base year emissions inventory and Indiana's 2002 base year emissions inventory for the Cincinnati-Hamilton area as meeting the requirement of section 172(c)(3) of the CAA. No Cincinnati-Hamilton area SIP provisions are currently disapproved, conditionally approved, or partially approved.

**3. The Improvement in Air Quality 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 (Section 107(d)(3)(E)(iii))**

EPA finds that Ohio and Indiana have demonstrated that the observed air quality improvement in the Cincinnati-Hamilton area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIPs, Federal measures, and other State-adopted measures.

In making this demonstration, Ohio EPA and IDEM have calculated the change in emissions between 2005 and 2008. Ohio and Indiana are using 2005 base year emissions inventories developed in conjunction with the Lake

Michigan Air Directors Consortium (LADCO) as the nonattainment inventories. The States developed an attainment inventory for 2008, one of the years the Cincinnati-Hamilton area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Cincinnati-Hamilton and upwind areas have implemented in recent years.

**a. Permanent and Enforceable Controls Implemented**

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

**i. Stationary Source NO<sub>x</sub> Rules**

Ohio EPA and IDEM have developed rules governing the control of NO<sub>x</sub> emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, major cement kilns, and internal combustion engines. EPA approved Ohio's rules as fulfilling Phase I of the NO<sub>x</sub> SIP Call on August 5, 2003 (68 FR 46089), and June 27, 2005 (70 FR 36845), and as fulfilling Phase II of the SIP Call on February 4, 2008 (73 FR 6427). EPA approved Indiana's rules as fulfilling requirements of Phase I of the NO<sub>x</sub> SIP Call on November 8, 2001 (66 FR 56465), and December 11, 2003 (68 FR 69025), and as meeting Phase II of the NO<sub>x</sub> SIP Call on October 1, 2007 (72 FR 55664). Ohio and Indiana began complying with Phase I of this rule in 2004. Compliance with Phase II of the SIP Call, which requires the control NO<sub>x</sub> emissions from large internal combustion engines, began in both Ohio and Indiana in 2007, and was projected to result in an 82 percent NO<sub>x</sub> reduction from 1995 levels.

**ii. Federal Emission Control Measures**

Reductions in VOC and NO<sub>x</sub> emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

*Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards.* These emission control requirements result in lower VOC and NO<sub>x</sub> emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO<sub>x</sub> emission reductions will occur nationwide: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans,

and sports utility vehicles (86 percent); and, larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Some of these emission reductions occurred by the attainment years (2007–2009) and additional emission reductions will occur during the maintenance period.

*Heavy-Duty Diesel Engine Rule.* EPA issued this rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which further reduced the highway diesel fuel sulfur content to 15 parts per million, leading to additional reductions in combustion NO<sub>x</sub> and VOC emissions. This rule is expected to achieve a 95 percent reduction in NO<sub>x</sub> emissions from diesel trucks and busses.

*Non-Road Diesel Rule.* EPA issued this rule in 2004. This rule applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO<sub>x</sub> emissions from non-road diesel engines by up to 90 percent. This rule is currently achieving emission reductions, but will not be fully implemented until 2010.

**iii. Control Measures in Upwind Areas**

On October 27, 1998 (63 FR 57356), EPA issued a NO<sub>x</sub> SIP Call requiring the District of Columbia and 22 States to reduce emissions of NO<sub>x</sub>. Affected States were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. The reduction in NO<sub>x</sub> emissions has resulted in lower concentrations of transported ozone entering the Cincinnati-Hamilton area. Emission reductions resulting from regulations developed in response to the NO<sub>x</sub> SIP Call are permanent and enforceable.

**b. Emission Reductions**

Ohio and Indiana are using 2005 base year emissions inventories developed in conjunction with the LADCO as the nonattainment inventories. The main purpose of LADCO is to provide technical assessments for and assistance to its member States on problems of air quality. LADCO's primary geographic focus is the area encompassed by its member States (Illinois, Indiana, Michigan, Ohio and Wisconsin) and any areas which affect air quality in its member States. In developing the 2005 nonattainment year inventory, Ohio EPA and IDEM provided point and area source inventories to LADCO. LADCO processed these inventories through the Emission Modeling System (EMS) to

generate summer weekday emissions for VOC and NO<sub>x</sub>. The point source data provided to LADCO is a combination of EPA's EGU inventory and source specific data reported to Ohio EPA and IDEM for non-EGU sources. Area source emissions were estimated by Ohio EPA and IDEM using published Emission Inventory Improvement Program methodologies or methodologies shared by other States. The methodology used for each area source category was documented. Nonroad mobile emissions were generated for LADCO using EPA's National Mobile Inventory Model (NMIM), with the following exceptions: Recreational motorboat populations and spatial surrogates were updated; emissions estimates were developed for commercial marine vessels, aircraft, and

railroads, three nonroad categories not included in NMIM. The States and LADCO also developed emissions inventories for 2009 and 2018 using similar methodologies. Onroad mobile emissions were prepared by the Ohio, Kentucky and Indiana Council of Governments (OKI) using the MOBILE6.2 emissions model. Ohio has submitted this 2005 emissions inventory to meet the requirement for a base year emissions inventory pursuant to section 172(c)(3) of the CAA.

Ohio and Indiana are using 2008 for the attainment year inventory. Ohio EPA used growth factors provided by LADCO to project the area and nonroad source sectors of the 2005 base year inventory to 2008. IDEM used the 2005 nonattainment inventory and the 2009

emissions inventory prepared in conjunction with LADCO to extrapolate 2008 emissions for the area and nonroad mobile source sectors. Point source emissions for 2008 were compiled from Ohio EPA's 2008 annual emissions inventory database, IDEM's 2008 annual emissions statement database, and EPA's Clean Air Markets database. Onroad mobile emissions were calculated for 2008 by OKI using the MOBILE6.2 emissions model.

Using the inventories described above, as well as emissions inventories provided by Kentucky, Ohio and Indiana have documented changes in VOC and NO<sub>x</sub> emissions from 2005 to 2008 for the Cincinnati-Hamilton area. Emissions data are shown in Tables 2 through 5 below.

TABLE 2—CINCINNATI-HAMILTON AREA VOC AND NO<sub>x</sub> EMISSIONS FOR NONATTAINMENT YEAR 2005 (TPD)

County	VOC					NO <sub>x</sub>				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Butler .....	3.67	11.96	9.94	6.88	32.45	15.91	2.15	18.88	10.25	47.19
Clermont .....	0.73	6.98	6.86	4.33	18.90	43.11	1.65	13.04	5.03	62.83
Clinton .....	0.00	3.24	3.02	1.77	8.03	0.00	0.42	5.07	2.26	7.75
Hamilton .....	2.94	33.04	29.47	17.45	82.90	21.95	5.19	56.51	20.57	104.22
Warren .....	0.53	8.40	7.97	4.79	21.69	2.68	1.15	15.15	6.10	25.08
Dearborn, IN .....	3.24	2.07	1.00	0.82	7.13	30.40	0.26	1.44	1.26	33.36
Boone, KY .....	2.57	8.13	4.33	1.71	16.74	23.94	4.99	10.27	12.96	52.16
Campbell, KY .....	0.25	4.77	2.52	1.76	9.30	0.00	1.41	5.98	6.33	13.72
Kenton, KY .....	1.20	8.53	4.32	2.33	16.38	0.04	4.17	10.39	8.43	23.03
OH-IN Total .....	11.11	65.69	58.26	36.04	171.10	114.05	10.82	110.09	45.47	280.43
Area Total .....	15.13	87.12	69.43	41.84	213.52	138.03	21.39	136.73	73.19	369.34

TABLE 3—CINCINNATI-HAMILTON VOC AND NO<sub>x</sub> EMISSIONS FOR ATTAINMENT YEAR 2008 (TPD)

County	VOC					NO <sub>x</sub>				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Butler .....	2.80	10.31	7.87	5.68	26.66	13.40	2.18	16.05	8.89	40.52
Clermont .....	0.36	6.05	5.42	3.68	15.51	22.79	1.67	11.05	4.22	39.73
Clinton .....	0.00	2.85	2.33	1.65	6.83	0.00	0.43	3.87	2.01	6.31
Hamilton .....	3.09	28.80	22.70	14.66	69.25	19.09	5.27	46.80	17.21	88.37
Warren .....	0.82	7.30	6.26	4.10	18.48	3.14	1.17	12.76	5.19	22.26
Dearborn, IN .....	3.58	2.42	0.75	0.74	7.49	30.55	0.26	1.14	1.14	33.09
Boone, KY .....	2.81	8.41	4.00	5.07	20.29	23.27	5.02	8.53	11.02	47.84
Campbell, KY .....	0.28	4.34	2.29	1.51	8.42	0.02	1.32	4.88	5.34	11.56
Kenton, KY .....	1.17	7.88	3.85	1.95	14.85	0.03	4.06	8.37	7.33	19.79
OH-IN Total .....	10.65	57.73	45.33	30.51	144.22	88.97	10.98	91.67	38.66	230.28
Area Total .....	14.91	78.36	55.47	39.04	187.78	112.29	21.38	113.45	62.35	309.47

TABLE 4—COMPARISON OF 2005 AND 2008 VOC AND NO<sub>x</sub> EMISSIONS FOR THE OHIO AND INDIANA PORTION OF THE CINCINNATI-HAMILTON AREA (TPD)

	VOC			NO <sub>x</sub>		
	2005	2008	Net change (2005–2008)	2005	2008	Net change (2005–2008)
Point .....	11.11	10.65	– 0.46	114.05	88.97	– 25.08
Area .....	65.69	57.73	– 7.96	10.82	10.98	0.16
Onroad .....	58.26	45.33	– 12.93	110.09	91.67	– 18.42
Nonroad .....	36.04	30.51	– 5.53	45.47	38.66	– 6.81

TABLE 4—COMPARISON OF 2005 AND 2008 VOC AND NO<sub>x</sub> EMISSIONS FOR THE OHIO AND INDIANA PORTION OF THE CINCINNATI-HAMILTON AREA (TPD)—Continued

	VOC			NO <sub>x</sub>		
	2005	2008	Net change (2005–2008)	2005	2008	Net change (2005–2008)
Total .....	171.10	144.22	– 26.88	280.43	230.28	– 50.15

TABLE 5—COMPARISON OF 2005 AND 2008 VOC AND NO<sub>x</sub> EMISSIONS FOR THE ENTIRE CINCINNATI-HAMILTON AREA (TPD)

	VOC			NO <sub>x</sub>		
	2005	2008	Net change (2005–2008)	2005	2008	Net change (2005–2008)
Point .....	15.13	14.91	– 0.22	138.03	112.29	– 25.74
Area .....	87.12	78.36	– 8.76	21.39	21.38	– 0.01
Onroad .....	69.43	55.47	– 13.96	136.73	113.45	– 23.28
Nonroad .....	41.84	39.04	– 2.80	73.19	62.35	– 10.84
Total .....	213.52	187.78	– 25.74	369.34	309.47	– 59.87

Table 4 shows that the Ohio and Indiana portion of the Cincinnati-Hamilton area reduced VOC emissions by 26.88 tpd and NO<sub>x</sub> emissions by 50.15 tpd between 2005 and 2008. As shown in Table 5, the entire Cincinnati-Hamilton area reduced VOC emissions by 25.74 tpd and NO<sub>x</sub> emissions by 59.87 tpd between 2005 and 2008. Based on the information summarized above, Ohio and Indiana have adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with their requests to redesignate the Cincinnati-Hamilton nonattainment area to attainment status, Ohio and Indiana submitted SIP revisions to provide for the maintenance of the 8-hour ozone NAAQS in the area through 2020.

a. Maintenance Plan Requirements

Section 175A of the CAA sets forth the required 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 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 ten years following the initial ten-year maintenance period. To address the

possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum clarifies that an ozone maintenance plan should address the following items: The attainment VOC and NO<sub>x</sub> emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The Ohio EPA and IDEM developed emissions inventories for 2008, one of the years used to demonstrate monitored attainment of the 8-hour NAAQS, as described above. The attainment level of emissions is summarized in Table 3, above.

c. Demonstration of Maintenance

Along with the redesignation requests, Ohio EPA and IDEM submitted revisions to the Ohio and Indiana 8-hour ozone SIPs to include maintenance plans for the Cincinnati-Hamilton area, in compliance with section 175A of the CAA. These demonstrations show maintenance of the 8-hour ozone standard through 2020 by showing that current and future emissions of VOC and NO<sub>x</sub> for the Cincinnati-Hamilton

area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Ohio and Indiana are using emissions inventory projections for the years 2015 and 2020 to demonstrate maintenance. OKI calculated onroad emissions for 2015 and 2020 using the MOBILE6.2 emissions model. Emissions estimates for the remaining source categories were based on future year inventories developed by the States and LADCO for the years 2009 and 2018. (*See* section VI.A.3.b., above.) The 2015 interim year emissions were estimated based on the 2009 and 2018 inventories, using growth factors provided by LADCO. The 2020 maintenance year emissions were estimated by applying growth factors provided by LADCO to the 2018 inventory.

Ohio is in the process of revising its State rules for its Best Available Technology (BAT) minor source permitting program. As discussed above, a State can demonstrate maintenance of the standard by showing that future emissions of VOC and NO<sub>x</sub> for the area remain at or below attainment year emission levels. Ohio EPA's emissions projections for this maintenance plan assume no emissions benefits from implementation of the BAT program. The LADCO growth factors used to project future emissions were developed using techniques consistent among the LADCO States and assume implementation of no minor

source permitting programs for any State, including Ohio. The emission projections show that Ohio EPA does not expect emissions in the Cincinnati-Hamilton area to exceed the level of the 2008 attainment year inventory during the maintenance period. Ohio's maintenance plan demonstrates that the area can maintain the standard through 2020 applying standard growth factors

and without the BAT program. EPA believes that Ohio has provided adequate demonstration of maintenance, and that any changes to the BAT program should not impact the Cincinnati-Hamilton area's ability to attain or maintain the 1997 8-hour ozone NAAQS. Therefore, the issues associated with the BAT program are not being considered for purposes of

this redesignation. Nothing in this rule or redesignation is intended to affect the SIP approvability or non-approvability of any revised Ohio BAT rules, and EPA will evaluate the approvability of such rules when Ohio submits them. Emissions data are shown in Tables 6–9, below.

TABLE 6—CINCINNATI-HAMILTON AREA VOC AND NO<sub>x</sub> EMISSIONS FOR INTERIM YEAR 2015 (TPD)

County	VOC					NO <sub>x</sub>				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Butler .....	4.27	9.76	4.87	4.95	23.85	14.84	2.19	7.55	5.91	30.49
Clermont .....	0.78	5.74	3.29	3.13	12.94	50.23	1.67	5.10	2.76	59.76
Clinton .....	0.00	2.72	1.47	1.26	5.45	0.00	0.43	2.02	1.39	3.84
Hamilton .....	3.28	27.38	13.44	12.70	56.80	35.71	5.30	21.11	11.18	73.30
Warren .....	0.57	6.94	4.02	3.39	14.92	2.70	1.17	6.23	3.22	13.32
Dearborn, IN .....	3.95	1.79	0.50	0.62	6.86	30.42	0.27	0.60	0.78	32.07
Boone, KY .....	3.04	8.50	3.17	4.55	19.26	25.08	5.03	4.63	9.77	44.51
Campbell, KY .....	0.30	4.20	1.74	1.29	7.53	0.02	1.30	2.54	4.57	8.43
Kenton, KY .....	1.31	7.66	2.85	1.76	13.58	0.03	4.02	4.23	6.15	14.43
OH-IN Total .....	12.85	54.33	27.59	26.05	120.82	133.90	11.03	42.61	25.24	212.78
Area Total .....	17.50	74.69	35.35	33.65	161.19	159.03	21.38	54.01	45.73	280.15

TABLE 7—CINCINNATI-HAMILTON AREA VOC AND NO<sub>x</sub> EMISSIONS FOR MAINTENANCE YEAR 2020 (TPD)

County	VOC					NO <sub>x</sub>				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Butler .....	4.58	9.76	4.50	4.80	23.64	14.86	2.19	5.37	4.64	27.06
Clermont .....	0.80	5.74	3.04	2.96	12.54	51.65	1.67	3.63	2.17	59.12
Clinton .....	0.00	2.72	1.22	1.08	5.02	0.00	0.43	1.41	1.13	2.97
Hamilton .....	3.43	27.38	12.00	12.19	55.00	36.69	5.30	14.44	8.73	65.16
Warren .....	0.57	6.94	3.88	3.15	14.54	2.70	1.17	4.63	2.38	10.88
Dearborn, IN .....	4.15	1.79	0.42	0.60	6.96	31.22	0.27	0.42	0.65	32.56
Boone, KY .....	3.20	8.50	2.96	4.36	19.02	26.47	5.03	3.45	9.48	44.43
Campbell, KY .....	0.31	4.20	1.55	1.22	7.28	0.03	1.30	1.81	4.34	7.48
Kenton, KY .....	1.42	7.66	2.56	1.73	13.37	0.03	4.02	3.01	5.75	12.81
OH-IN Total .....	13.53	54.33	25.06	24.78	117.70	137.12	11.03	29.90	19.70	197.75
Area Total .....	18.46	74.69	32.13	32.09	157.37	163.65	21.38	38.17	39.27	262.47

TABLE 8—COMPARISON OF 2008, 2015 AND 2020 VOC AND NO<sub>x</sub> EMISSIONS FOR THE OHIO AND INDIANA PORTION OF THE CINCINNATI-HAMILTON AREA (TPD)

	VOC					NO <sub>x</sub>				
	2008	2015	2020	Net change (2008–2015)	Net change (2008–2020)	2008	2015	2020	Net change (2008–2015)	Net change (2008–2020)
Point .....	10.65	12.85	13.53	2.20	2.88	88.97	133.90	137.12	44.93	48.15
Area .....	57.73	54.33	54.33	–3.40	–3.40	10.98	11.03	11.03	0.05	0.05
Onroad .....	30.51	27.59	25.06	–2.92	–5.45	91.67	42.61	29.90	–49.06	–61.77
Nonroad .....	45.33	26.05	24.78	–19.28	–20.55	38.66	25.24	19.70	–13.42	–18.96
Total .....	144.22	120.82	117.70	–23.40	–26.52	230.28	212.78	197.75	–17.50	–32.53

TABLE 9—COMPARISON OF 2008, 2015 AND 2020 VOC AND NO<sub>x</sub> EMISSIONS FOR THE ENTIRE CINCINNATI-HAMILTON AREA (TPD)

	VOC					NO <sub>x</sub>				
	2008	2015	2020	Net change (2008–2015)	Net change (2008–2020)	2008	2015	2020	Net change (2008–2015)	Net change (2008–2020)
Point .....	14.91	17.50	18.46	2.59	3.55	112.29	159.03	163.65	46.74	51.36
Area .....	78.36	74.69	74.69	–3.67	–3.67	21.38	21.38	21.38	0.00	0.00
Onroad .....	55.47	35.35	32.13	–20.12	–23.34	113.45	54.01	38.17	–59.44	–75.28
Nonroad .....	39.04	33.65	32.09	–5.39	–6.95	62.35	45.73	39.27	–16.62	–23.08
Total .....	187.78	161.19	157.37	–26.59	–30.41	309.47	280.15	262.47	–29.32	–47.00

The emission projections show that Ohio, Indiana, and Kentucky do not expect emissions in the Cincinnati-Hamilton area to exceed the level of the 2008 attainment year inventory during the maintenance period, even without implementation of CAIR. (See also discussion below.) As shown in Table 8, VOC and NO<sub>x</sub> emissions in the Ohio and Indiana portion of the Cincinnati-Hamilton area are projected to decrease by 26.52 tpd and 32.53 tpd, respectively, between 2008 and 2020. As shown in Table 9, VOC and NO<sub>x</sub> emissions in the entire Cincinnati-Hamilton area are projected to decrease by 30.41 tpd and 47.00 tpd, respectively, between 2008 and 2020.

In addition, LADCO performed a regional modeling analysis to address the effect of the recent court decision vacating CAIR. This analysis is documented in LADCO's "Regional Air

Quality Analyses for Ozone, PM<sub>2.5</sub>, and Regional Haze: Final Technical Support Document (Supplement), September 12, 2008." LADCO produced a base year inventory for 2005 and future year inventories for 2009, 2012, and 2018. To estimate future EGU NO<sub>x</sub> emissions without implementation of CAIR, LADCO projected 2007 EGU NO<sub>x</sub> emissions for all States in the modeling domain based on Energy Information Administration growth rates by State (North American Electric Reliability Corporation (NERC) region) and fuel type for the years 2009, 2012 and 2018. The assumed 2007–2018 growth rates were 8.8% for Illinois, Iowa, Missouri and Wisconsin; 13.5% for Indiana, Kentucky, Michigan and Ohio; and 15.1% for Minnesota. Emissions were adjusted by applying legally enforceable controls, e.g., consent decree or rule.

EGU NO<sub>x</sub> emissions projections for the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin are shown below in Table 11. The emission projections used for the modeling analysis do not account for certain relevant factors such as allowance trading and potential changes in operation of existing control devices. The NO<sub>x</sub> projections indicate that, due to the NO<sub>x</sub> SIP Call, certain State rules, consent decrees resulting from enforcement cases, and ongoing implementation of a number of mobile source rules, EGU NO<sub>x</sub> is not expected to increase in Ohio, Indiana, or any of the States in the immediate region, and overall NO<sub>x</sub> emissions in Ohio, Indiana, and the nearby region are expected to decrease substantially between 2005 and 2020.<sup>2</sup> Total NO<sub>x</sub> emissions projections are shown in Table 11, below.

TABLE 10—EGU NO<sub>x</sub> EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR 2007, 2009, 2012, AND 2018

	2007	2009	2012	2018
EGU .....	1,582	1,552	1,516	1,524

TABLE 11—TOTAL NO<sub>x</sub> EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR THE YEARS 2005, 2009, 2012, AND 2018

	2005	2009	2012	2018
Total NO <sub>x</sub> .....	8,260	6,778	6,076	4,759

Given that 2007 is one of the years Ohio and Indiana used to demonstrate monitored attainment of the 8-hour NAAQS, Table 10 shows that EGU NO<sub>x</sub> emissions will remain below attainment levels through 2018. If the rate of emissions increase between 2012 and 2018 continues through 2020, EGU NO<sub>x</sub> emissions would still remain below attainment levels in 2020. Furthermore,

as shown in Table 11, total NO<sub>x</sub> emissions clearly continue to decrease substantially throughout the maintenance period.

Ozone modeling performed by LADCO supports the conclusion that the Cincinnati-Hamilton area will maintain the standard throughout the maintenance period. Peak modeled ozone levels in the area for 2009, 2012

and 2018 are 0.082 ppm, 0.081 ppm, and 0.078 ppm, respectively. These projected ozone levels were modeled applying only legally enforceable controls; e.g., consent decrees, rules, the NO<sub>x</sub> SIP Call, Federal motor vehicle control programs, etc. Because these programs will remain in place, emission levels, and therefore ozone levels, would not be expected to increase

<sup>2</sup> There is more uncertainty about the use of SO<sub>2</sub> allowances and future projections for SO<sub>2</sub>

emissions; thus, further review and discussion will be needed regarding the appropriateness of using

these emission projections for future PM<sub>2.5</sub> SIP approvals and redesignation requests.

significantly between 2018 and 2020. Given that projected emissions and modeled ozone levels continue to decrease substantially through 2018, it is reasonable to infer that a 2020 modeling run would also show levels well below the 1997 8-hour ozone standard.

EPA has considered the relationship of the maintenance plans to the reductions required pursuant to CAIR. This rule was remanded to EPA, and the process of developing a replacement rule is ongoing. However, the remand of CAIR does not alter the requirements of the NO<sub>x</sub> SIP Call, and Ohio and Indiana have demonstrated maintenance without any additional CAIR requirements (beyond those required by the NO<sub>x</sub> SIP Call). Therefore, EPA believes that Ohio and Indiana's demonstration of maintenance under sections 175A and 107(d)(3)(E) is valid.

The NO<sub>x</sub> SIP Call requires States to make significant, specific emissions reductions. It also provided a mechanism, the NO<sub>x</sub> Budget Trading Program, which States could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO<sub>x</sub> Budget Trading Program, 40 CFR 51.121(r), but created another mechanism, the CAIR ozone season trading program, which States could use to meet their SIP Call obligations (70 FR 25289–90). EPA notes that a number of States, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program, removed the SIP provisions that required sources to participate in the NO<sub>x</sub> Budget Trading Program. In addition, because the provisions of CAIR, including the ozone season NO<sub>x</sub> trading program, remain in place during the remand, EPA is not currently administering the NO<sub>x</sub> Budget Trading Program. Nonetheless, all States, regardless of the current status of their regulations that previously required participation in the NO<sub>x</sub> Budget Trading Program, will remain subject to all of the requirements in the NO<sub>x</sub> SIP Call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO<sub>x</sub> SIP Call, including the statewide NO<sub>x</sub> emission budgets, continue to apply after revocation of the 1-hour standard.

Indiana has submitted a SIP revision which would discontinue the allocation of NO<sub>x</sub> allowances under the NO<sub>x</sub> Budget Trading Program beginning in 2010. EPA has not yet acted on this SIP revision. Ohio currently retains the SIP provisions requiring sources to

participate in the NO<sub>x</sub> Budget Trading Program. Ohio EPA is in the process of promulgating a rule change stating that the NO<sub>x</sub> Budget Trading Program would not be applicable so long as CAIR or its replacement remains in place. However, the drafted rule revision also provides that should CAIR requirements be removed and not replaced with another program, the NO<sub>x</sub> Budget Trading Program would once again apply, on condition that EPA maintains a NO<sub>x</sub> Budget Trading Program.

All NO<sub>x</sub> SIP Call States have SIPs that currently satisfy their obligations under the SIP Call, the SIP Call reduction requirements are being met, and EPA will continue to enforce the requirements of the NO<sub>x</sub> SIP Call even after any response to the CAIR remand. For these reasons, EPA believes that regardless of the status of the CAIR program, the NO<sub>x</sub> SIP Call requirements can be relied upon in demonstrating maintenance. Here, Ohio and Indiana have demonstrated maintenance based in part on those requirements.

As part of their maintenance plans, the States elected to include a “safety margin” for the area. 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 which continues to demonstrate attainment of the standard. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The Cincinnati-Hamilton area attained the 8-hour ozone NAAQS during the 2007–2009 time period. Ohio and Indiana used 2008 as the attainment level of emissions for the area. For the Ohio and Indiana portion of the Cincinnati-Hamilton area, the emissions from point, area, nonroad, and mobile sources in 2008 equaled 144.22 tpd of VOC. In the maintenance plans, Ohio EPA and IDEM projected emission levels for 2020. Ohio EPA and IDEM projected VOC emissions for the year 2020 to be 117.70 tpd of VOC. The SIP submissions demonstrate that the Cincinnati-Hamilton area will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 26.52 tpd of VOC for 2020. By this same method, 32.53 tpd (*i.e.*, 230.28 tpd less 197.75 tpd) is the safety margin for NO<sub>x</sub> for 2020. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

#### d. Monitoring Network

Indiana has no ozone monitor in Dearborn County. Ohio currently operates eight ozone monitors and Kentucky operates three monitors in the Cincinnati-Hamilton area. In its redesignation request, Ohio EPA has committed to continue to operate the ozone monitors. Further, Ohio EPA commits to consult with EPA prior to making changes to the existing monitoring network, should changes become necessary in the future. Ohio and Kentucky remain obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System in accordance with Federal guidelines.

#### e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Cincinnati-Hamilton area depends, in part, on the States' efforts toward tracking indicators of continued attainment during the maintenance period. Ohio's plan for verifying continued attainment of the 8-hour standard in the Cincinnati-Hamilton area consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. Ohio EPA and IDEM will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions.

#### f. Contingency Plan

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

As required by section 175A of the CAA, Ohio and Indiana have adopted contingency plans for the Cincinnati-Hamilton area to address possible future ozone air quality problems. The contingency plans adopted by Ohio and Indiana have two levels of response, a warning level response and an action level response.

In Ohio's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.088 ppm or higher is monitored within the maintenance area. In Indiana's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.089 ppm or higher occurs in a single ozone season, or when a two-year average fourth high value of 0.085 ppm or greater occurs within the maintenance area. While the triggers selected by Ohio and Indiana differ slightly, both are acceptable. A warning level response will consist of Ohio EPA and IDEM conducting studies to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The studies will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The studies will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

In the plans submitted by both Ohio and Indiana, a violation of the standard (a three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration of 0.085 ppm or greater) in the maintenance area triggers an action level response. In Ohio's plan, an action level response is also triggered when a two-year average fourth high value of 0.085 ppm is monitored within the maintenance area. When an action level response is triggered, Ohio EPA and IDEM will determine what additional control measures are needed to assure future attainment of the ozone standard. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. Ohio EPA and IDEM may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

Ohio EPA included the following list of potential contingency measures in its maintenance plan:

- i. Implementation of an enhanced motor vehicle inspection and maintenance (I/M) program in Butler, Clermont, Hamilton and Warren Counties;
  - ii. Tighten or adopt VOC Reasonably Available Control Technology (RACT) on existing sources covered by EPA Control Technique Guidelines issued after the 1990 CAA;
  - iii. Apply VOC RACT to smaller existing sources;
  - iv. One or more transportation control measures sufficient to achieve at least half a percent reduction in actual area wide VOC emissions;
  - v. Alternative fuel and diesel retrofit programs for fleet vehicle operations;
  - vi. Require VOC or NO<sub>x</sub> emission offsets for new and modified major sources;
  - vii. Increase the ratio of emission offsets required for new sources;
  - viii. Require VOC or NO<sub>x</sub> emission offsets for new and modified minor sources; and,
  - ix. Adopt NO<sub>x</sub> RACT for existing combustion sources.
- IDEM included the following list of potential contingency measures in its maintenance plan:
- i. Installation of an I/M program;
  - ii. Lower VOC formulation for asphalt paving;
  - iii. Diesel exhaust retrofits;
  - iv. Traffic flow improvements;
  - v. Idle reduction programs;
  - vi. Portable fuel container regulation statewide;
  - vii. Park and ride facilities;
  - viii. Rideshare/carpool program;
  - ix. VOC cap and trade program for major stationary sources;
  - x. Commercial/consumer solvent regulations statewide; and,
  - xi. NO<sub>x</sub> RACT.

#### g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, Ohio EPA and IDEM commit to submit to the EPA updated ozone maintenance plans eight years after redesignation of the Cincinnati-Hamilton area to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175A of the CAA, Ohio and Indiana have committed to retain the VOC and NO<sub>x</sub> control measures contained in the SIP prior to redesignation.

EPA has concluded that the maintenance plans adequately address the five basic components of a maintenance plan: attainment

inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Thus EPA proposes to find that the maintenance plan SIP revisions submitted by Ohio and Indiana for the Cincinnati-Hamilton area meet the requirements of section 175A of the CAA.

#### B. Adequacy of the MVEBs

##### 1. How Are MVEBs Developed and What Are the MVEBs for the Cincinnati-Hamilton Area?

Under the CAA, States are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard. These emission control strategy SIP revisions (e.g., RFP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. 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).

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 SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation 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 SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively approve or find that the MVEBs are "adequate" for use in determining transportation conformity. Once EPA affirmatively approves or



finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs 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 the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA's finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs is codified at 40 CFR 93.118.

The maintenance plans submitted by Ohio and Indiana for the Cincinnati-Hamilton area contain new VOC and NO<sub>x</sub> MVEBs for the Ohio and Indiana portion of the area for the years 2015 and 2020. The availability of the SIP submission with these 2015 and 2020 MVEBs was announced for public comment on EPA's Adequacy Web site on December 10, 2009, at: <http://www.epa.gov/otaq/stateresources/transconf/cursips.htm>. The EPA public comment period on adequacy of the 2015 and 2020 MVEBs for the Ohio and Indiana portion of the Cincinnati-Hamilton area closed on January 11, 2010. No adverse comments on the submittal were received during the adequacy comment period.

EPA, through this rulemaking, has found adequate and is proposing to approve the MVEBs for use to determine transportation conformity in the Ohio and Indiana portion of the Cincinnati-Hamilton area because EPA has determined that the area can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. Ohio EPA and IDEM have determined the 2015 MVEBs for the Ohio and Indiana portion of the Cincinnati-Hamilton area to be 31.73 tpd for VOC and 49.00 tpd for NO<sub>x</sub>. Ohio EPA and IDEM have determined the 2020 MVEBs for the Ohio and Indiana portion of the Cincinnati-Hamilton area to be 28.82 tpd for VOC and 34.39 tpd for NO<sub>x</sub>. These MVEBs are consistent with the onroad mobile source VOC and NO<sub>x</sub> emissions projected by OKI for 2015 and 2020, as summarized in Table 8 above. Ohio and Indiana have demonstrated that the Cincinnati-Hamilton area can maintain the 8-hour ozone NAAQS with mobile source emissions in Ohio and Indiana portion of the area of 31.73 tpd and 28.82 tpd of VOC and 49.00 tpd and

34.39 tpd of NO<sub>x</sub> in 2015 and 2020, respectively, since emissions will remain under attainment year emission levels.

## 2. What Is a Safety Margin?

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. As noted in Table 8, the emissions in the Ohio and Indiana portion of the Cincinnati-Hamilton area are projected to have safety margins of 23.40 tpd for VOC and 17.50 tpd for NO<sub>x</sub> in 2015 (the difference between the attainment year, 2008, emissions and the projected 2015 emissions for all sources in the Ohio and Indiana portion of the Cincinnati-Hamilton area). For 2020, the emissions in the Ohio and Indiana portion of the Cincinnati-Hamilton area are projected to have safety margins of 26.52 tpd for VOC and 32.53 tpd for NO<sub>x</sub>. Even if emissions reached the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

The MVEBs requested by Ohio EPA and IDEM contain safety margins for mobile sources smaller than the allowable safety margins reflected in the total emissions for the Ohio and Indiana portion of the Cincinnati-Hamilton area. The States are not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the States are requesting MVEBs that exceed the projected onroad mobile source emissions for 2015 and 2020 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

## C. 2005 Base Year Emissions Inventory for the Ohio Portion of the Cincinnati-Hamilton Area

As discussed above, section 172(c)(3) of the CAA requires areas to submit a base year emissions inventory. As part of Ohio's request to redesignate the Ohio portion of the Cincinnati-Hamilton area, the State submitted a 2005 base year emissions inventory to meet this requirement. Emissions contained in the submittal cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. All emission summaries

were accompanied by source-specific descriptions of emission calculation procedures and sources of input data.

To determine non-EGU point source emissions, the State relied on data reported in Ohio EPA's STARShip emissions database. These data are reported by Title V facilities annually and include emissions, process rates, operating schedules, emissions control data, and other relevant information. The data entered by the sources are reviewed by local air agencies and Ohio EPA district and central office staff. After review, the data are processed into the Federally approved National Emissions Inventory (NEI) database format. The files are quality assured again using EPA's QA/QC software for format and content. The data is then submitted to LADCO for emissions processing through the Emissions Modeling System. Ohio used EPA's EGU inventory, which is based on facility reported emissions as measured by continuous emissions monitors.

Area source emissions were estimated by Ohio EPA using published Emission Inventory Improvement Program methodologies or methodologies shared by other States. The documentation supplied in the submittal shows how the county-specific emissions were calculated for each area source category.

Non-road mobile source emissions were generated using the NMIM application. However, prior to running NMIM, LADCO contracted to make the following modifications and additions to the NMIM input data: emission factors were added for diesel tampers/rammers, PM<sub>2.5</sub> ratios were revised to correct an error that was introduced with NMIM2005 and didn't exist in NMIM2004, and gasoline parameters (Reid Vapor Pressure, oxygenate content and sulfur content) were revised using updates provided by the States and the contractor. In addition, recreational motorboat populations and spatial surrogates were updated and emissions estimates were developed for commercial marine vessels, aircraft, and railroads, three nonroad categories not included in NMIM.

Onroad mobile emissions were prepared by the OKI using the MOBILE6.2 emissions model.

Ohio EPA's submittal documents 2005 emissions in the Ohio portion of the Cincinnati-Hamilton area in units of tons per summer day. The 2005 summer day emissions of VOC and NO<sub>x</sub> are summarized in Table 2, above. EPA is proposing to approve this 2005 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

*D. 2002 Base Year Emissions Inventory for the Indiana Portion of the Cincinnati-Hamilton Area*

IDEM submitted a 2002 base year emissions inventory to meet the requirement of section 172(c)(3) of the CAA for Dearborn County on June 13, 2007, as part of Indiana's attainment demonstration for the area. Emissions contained in the June 13, 2007, submittal cover the general source categories of point sources, area sources, on-road mobile sources, non-road mobile sources, and biogenic sources. All emission summaries were accompanied by source-specific descriptions of emission calculation procedures and sources of input data along with sample calculations for various counties in the State.

To determine point source emissions, the State relied on data collected from source facilities complying with the State's annual emissions reporting requirements, 326 IAC 2–6. Major sources are required to annually submit to the State data specifying their annual emissions of criteria pollutants along with seasonal source activity information to allow the calculation of

seasonal emissions. After completing data quality assurance, IDEM submits the point source data to EPA for incorporation into the NEL, as required by the Consolidated Emissions Reporting Rule. The June 13, 2007, submittal includes VOC, NO<sub>x</sub>, and CO emissions for each reporting facility statewide.

Area source emissions were calculated using a variety of information sources and guidance from the EPA. A primary source of calculation procedures and applied guidance was EPA's Emission Inventory Improvement Program. Where appropriate, point source emissions were subtracted from the calculated area source emissions to account for source coverage overlap with the reported point source emissions and to avoid double counting of emissions in the emissions totals. The documentation supplied in the June 13, 2007, submittal shows how the county-specific emissions were calculated for each area source category. Samples of area source emission calculations were provided.

The base year emission inventory documentation included a detailed description of the procedures and input

data used to determine the mobile source for 2002. The mobile source emissions for Dearborn County were obtained from EPA's NEL.

Non-road mobile source VOC, NO<sub>x</sub>, and CO emissions for 2002 were generated by NMIM. To update and quality assure the emissions for locomotives, commercial and recreational marine sources, and off-road mobile equipment sources, LADCO contracted with several consultants to update source population and distribution levels. Summaries of the consultants' results and recommended emissions changes were included in the June 13, 2007, submittal.

Biogenic VOC, NO<sub>x</sub>, and CO emissions for 2002 were taken directly from the NEL.

The June 13, 2007 submittal documents 2002 emissions in Dearborn County in units of tons per summer day. The 2002 summer day emissions of VOC, NO<sub>x</sub>, and CO for Dearborn County are summarized in Table 12, below. EPA is proposing to approve this 2002 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

TABLE 12—DEARBORN COUNTY 2002 BASE YEAR EMISSIONS FOR CO, VOC, AND NO<sub>x</sub> (TPD)

Sector	CO	NO <sub>x</sub>	VOC
Area .....	0.57	0.31	2.02
Biogenic .....	1.40	0.32	9.60
Nonroad .....	11.70	1.95	.96
Onroad .....	36.79	5.60	2.97
Point .....	2.27	50.63	2.77
Total .....	52.73	58.81	18.32

## VII. What Actions Is EPA Taking?

EPA is proposing to make a determination that the Cincinnati-Hamilton area has attained the 1997 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revisions for the Ohio and Indiana portions of the Cincinnati-Hamilton area. EPA's proposed approval of the maintenance plans is based on the States' demonstrations that the plans meet the requirements of section 175A of the CAA, as described more fully above. After evaluating the redesignation requests submitted by Ohio and Indiana, EPA believes that the requests meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve the redesignation of the Ohio and Indiana portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. The final approval of these

redesignation requests would change the official designation for the Ohio and Indiana portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 1997 8-hour ozone standard. EPA is proposing to approve Ohio EPA's 2005 base year emissions inventory for the Ohio portion of the Cincinnati-Hamilton area as meeting the requirements of section 172(c)(3) of the CAA. EPA is proposing to approve IDEM's 2002 base year emissions inventory for Dearborn County as meeting the requirements of section 172(c)(3) of the CAA for the Indiana portion of the Cincinnati-Hamilton area. Finally, EPA finds adequate and is proposing to approve the States' 2015 and 2020 MVEBs for Ohio and Indiana portions of the Cincinnati-Hamilton area.

## VIII. Statutory and Executive Order Reviews

### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

### *Paperwork Reduction Act*

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.*).

### *Regulatory Flexibility Act*

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 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.*).

#### *Unfunded Mandates Reform Act*

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).

#### *Executive Order 13132: Federalism*

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). Redesignation is an action that merely affects the status of a geographical area, does not impose any new requirements on sources, or allows 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 CAA.

#### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

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).

#### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

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.

#### *Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," 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).

#### *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Absent a prior existing requirement for the State to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the CAA. 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.

#### **List of Subjects**

##### *40 CFR Part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

##### *40 CFR Part 81*

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

Dated: February 10, 2010.

**Walter W. Kovalick Jr.,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 2010-3680 Filed 2-25-10; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 63**

[EPA-R09-OAR-2010-0044; FRL-9111-1]

#### **Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona, Maricopa County Air Quality Department; State of Nevada, Nevada Division of Environmental Protection, Washoe County District Health Department**

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to section 112(l) of the 1990 Clean Air Act, EPA granted delegation of specific national emission standards for hazardous air pollutants (NESHAP) to the Maricopa County Air Quality Department on April 28, 2009, to the Nevada Division of Environmental Protection on December 1, 2008, and to the Washoe County District Health Department, Air Quality Management Division on February 26, 2009. EPA is proposing to revise the Code of Federal Regulations to reflect the current delegation status of NESHAP in Arizona and Nevada.

**DATES:** Any comments on this proposal must arrive by March 29, 2010.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2010-0044, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (AIR-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured