

### III. What Is EPA's Analysis of Indiana's Automobile Refinishing Rule?

#### *Background of Rule and Its Revisions*

EPA issued National VOC Emission Standards for Automobile Refinishing Coatings at 40 CFR part 59, subpart B, on September 11, 1998 (64 FR 48815, as amended at 69 FR 18803, April 9, 2004), promulgated under the Consumer and Commercial Products provisions of section 183(e) of the Act. The VOC emission limits in this rule apply nationwide to manufacturers and importers of automobile refinishing coatings or coating components that sell or distribute these coatings in the United States.

On December 20, 1999, EPA approved 326 IAC 8–10, in which Indiana adopted the requirements in EPA's national rule, but applied its requirements to the sale of automobile refinishing coatings and the owners and operators of automobile refinishing facilities. Indiana's SIP rule also contains additional work practice standards that reduce VOC emissions by specifying acceptable methods of spray gun cleaning, the type of application equipment that can be used (which reduces the amount of overspray) and housekeeping practices (such as storing VOC-containing materials in closed containers) that reduce VOC emissions.

The revised rules submitted by Indiana expand the applicability of the previously approved rules from Clark, Floyd, Lake, Porter and Vanderburgh Counties to all of Indiana.

#### *Analysis of Rule and Its Revisions*

The revisions to Indiana's automobile refinishing rule, 326 IAC 8–10, are approvable because they are consistent with the Act and applicable EPA regulations, and should result in additional VOC emission reductions. A description of the rule revisions follows:

**326 IAC 8–10–1 Applicability**—This section has been revised so that after June 1, 2009, it applies to any person who sells automobile refinishing coatings or refinishes motor vehicles in all Indiana counties.

**326 IAC 8–10–2 Definitions**—The definitions of “control device,” “control device efficiency” and “control system” have been deleted from this section because those terms are no longer used in this rule. A few other minor editorial and clarifying revisions have also been made.

**326 IAC 8–10–3 Requirements**—This section expands the applicability of the control requirements to all of Indiana and eliminates requirements that had specifically applied to only Vanderburgh County.

**326 IAC 8–10–4** Means to limit VOC emissions—This section specifies the VOC limits that must be met by the owners or operators of a refinishing facility. It has been revised to eliminate the use of add-on control systems as a compliance option. This compliance option is not necessary because VOC content limits are more appropriate for automobile refinishing facilities than add-on control devices.

**326 IAC 8–10–5 Work Practice Standards and 326 IAC 8–10–6 Compliance procedures** have not been substantively revised.

**326 IAC 8–10–7 Test procedures and 326 IAC 8–10–9 Recordkeeping and reporting**—These sections have been revised primarily by removing the testing, recordkeeping and reporting requirements applicable to control devices. A new section, 326 IAC 8–10–9(e), has been added which requires the owners or operators of refinishing facilities subject to this rule to report any incidence in which a noncompliant coating was used within thirty days.

#### IV. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

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

Dated: December 30, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 2010–619 Filed 1–13–10; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA–R06–OAR–2009–0202; FRL–9103–2]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Arkansas; Redesignation of the Crittenden County, Arkansas Portion of the Memphis, Tennessee-Arkansas 1997 8-Hour Ozone Nonattainment Area to Attainment

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

**ACTION:** Proposed rule.

**SUMMARY:** On February 24, 2009, the State of Arkansas, through the Arkansas Department of Environmental Quality (ADEQ), submitted a request to redesignate the Arkansas portion of the bi-state Memphis, Tennessee-Arkansas (Memphis TN-AR) 1997 8-hour ozone nonattainment area to attainment for the

8-hour ozone National Ambient Air Quality Standard (NAAQS); and to approve the State Implementation Plan (SIP) revision containing a maintenance plan for the Arkansas portion of the bi-state Memphis TN-AR Area. The bi-state Memphis TN-AR 1997 8-hour ozone nonattainment area is composed of Memphis, Shelby County, Tennessee (Shelby County) and Crittenden County, Arkansas. In this action, EPA proposes to approve the 1997 8-hour ozone redesignation request for Crittenden County, Arkansas. Additionally, EPA proposes to approve the 1997 8-hour ozone maintenance plan for Crittenden County, including the state motor vehicle emissions budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) for the years 2006 and 2021. This proposed approval of Arkansas' redesignation request is based on EPA's determination that Arkansas has demonstrated that Crittenden County has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire Memphis TN-AR ozone nonattainment area has attained the 1997 8-hour ozone standard.

**DATES:** Comments must be received on or before February 16, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2009-0202, by one of the following methods:

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

2. *E-mail:* [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov).

3. *Fax:* (214) 665-7263.

4. *Mail:* EPA-R06-OAR-2009-0202 Air Planning Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

5. *Hand Delivery or Courier:* Mr. Guy Donaldson, Chief, Air Planning Section, Air Planning Branch, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2009-0202. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any

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

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section, Air Branch, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey Riley, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733,

telephone (214) 665-8542; fax number 214-665-7263; e-mail address [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov).

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

EPA proposes several related actions, which are summarized below and described in greater detail throughout this notice of rulemaking:

(1) To redesignate Crittenden County, Arkansas to attainment for the 1997 8-hour ozone NAAQS. EPA proposes to determine that the bi-state Memphis, TN-AR Area has attained the 1997 8-hour ozone standard, and that the Crittenden County, Arkansas portion has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The bi-state Memphis, TN-AR 1997 8-hour ozone area comprises Shelby County in Tennessee and Crittenden County in Arkansas. Today's proposal addresses only the Arkansas portion of the bi-state Memphis, TN-AR 1997 8-hour ozone area. EPA is now proposing to approve a request to change the legal designation of Crittenden County, Arkansas from nonattainment to attainment for the 1997 8-hour ozone NAAQS.

(2) To approve Arkansas' 1997 8-hour ozone maintenance plan into the Arkansas SIP, including the 2006 and 2021 motor vehicle emissions budgets (MVEB's) that are part of the maintenance plan. EPA has already made a finding of adequacy for the MVEBs (74 FR 21356). These MVEBs apply only to Crittenden County, Arkansas. MVEB's contained in the Tennessee submittal for Shelby County will be addressed in a separate action. EPA proposes to approve Arkansas' 1997 8-hour ozone maintenance plan for Crittenden County (such approval being

one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Memphis TN-AR area (of which Crittenden County is a part) in attainment of the 1997 8-hour ozone NAAQS through 2021.

## II. What Is the Background for EPA's Proposed Actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO<sub>x</sub> and VOC react in the presence of sunlight to form ground-level ozone. NO<sub>x</sub> and VOC are precursors of ozone. The CAA establishes a process for air quality management through the NAAQS. EPA establishes NAAQS for criteria pollutants as the maximum level of air pollution allowed to protect public health and welfare.

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

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

*smallest value that is greater than 0.08 ppm.;*

The CAA requires EPA to designate as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as "basic" nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as "classified" nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 1997 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other 1997 8-hour ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA's Phase 1 1997 8-hour ozone implementation rule (69 FR 23857) (Phase 1 Rule), signed on April 15, 2004, and published April 30, 2004, an area was classified under subpart 2 based on its 1997 8-hour ozone design value (i.e., the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour ambient air quality design value.

Shelby County, Tennessee was originally designated as a marginal nonattainment area for the 1-hour ozone standard on November 6, 1991 (56 FR 56694). Crittenden County, Arkansas was not part of the nonattainment area during the 1991 1-hour designations. On February 16, 1995 (60 FR 3352) Shelby County was redesignated as attainment for the 1-hour ozone standard and is considered to be a 1-hour maintenance area subject to a CAA section 175A maintenance plan for the 1-hour standard.

On April 30, 2004, EPA designated the Memphis, TN-AR Area (which then included Crittenden County, Arkansas) as a "moderate" 1997 8-hour ozone nonattainment area (see, 69 FR 23857, April 30, 2004). On July 15, 2004, pursuant to section 181(a)(4) of the CAA, the States of Tennessee and Arkansas submitted a petition to EPA Regions 4 and 6, requesting a downward reclassification of the Memphis TN-AR nonattainment area from "moderate" to "marginal" for the 1997 8-hour ozone standard. The petition was based on the area's "moderate" design value of .092

ppm being within five percent of the maximum "marginal" design value of 0.091 ppm. Pursuant to Section 181(a)(4), areas with design values within five percent of the standard may request a reclassification under specific circumstances. Factors for EPA to consider as part of such a request are described in section 181(a)(4) of the CAA. The petition for reclassification to "marginal" was approved by EPA, and became effective on November 22, 2004 (see, 69 FR 56697, September 22, 2004). As a result of the downward classification, the new attainment date for the Memphis TN-AR "marginal" nonattainment area was set at June 15, 2007, consistent with the CAA, with an attainment determination to be based on 2004–2006 air quality data.

Air quality data monitored for the Memphis TN-AR nonattainment area subsequently showed that the area did not attain the 1997 8-hour ozone NAAQS by the June 15, 2007, deadline. Section 181(b)(2)(A) of the CAA provides that, when EPA finds that an area failed to attain by the applicable date, the area is reclassified by operation of law to the higher of: The next higher classification or the classification applicable to the area's ozone design value at the time of the required notice under section 181(b)(2)(B). The next higher classification for the Memphis TN-AR Nonattainment Area was "moderate." On March 28, 2008, the Memphis TN-AR nonattainment area was reclassified as "moderate" (73 FR 16547). EPA set a deadline of March 1, 2009 for the State to submit the moderate area SIP provisions required under the area's new classification (73 FR 16550).

In 2008, the ambient ozone data for the Memphis TN-AR Area showed attainment of the 1997 8-hour ozone NAAQS, using data from the 3-year period of 2006–2008. On February 24, 2009, Arkansas requested redesignation of Crittenden County, Arkansas to attainment for the 1997 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (*March 1st thru November 30th*) of 2006–2008, indicating that the 1997 8-hour ozone NAAQS has been achieved for the entire Memphis TN-AR Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

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

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

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

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "Calcagni Memorandum");
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. "Technical Support Documents (TSD's) for Redesignation of Ozone and

Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

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

On February 24, 2009, Arkansas requested redesignation of the Arkansas portion (Crittenden County) of the bi-state Memphis TN-AR 1997 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone standard. EPA's evaluation indicates that the bi-state Memphis Area has attained the standard and that Crittenden County has met the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. EPA is also announcing the status of its adequacy determination and proposing approval of the 2006 and 2021 NO<sub>x</sub> and VOC MVEBs which are relevant to the requested redesignation.

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

Approval of Arkansas' redesignation request would change the legal designation of Crittenden County for the 1997 8-hour ozone NAAQS found at 40 CFR part 81. Approval of Arkansas' request would also incorporate into the Arkansas SIP, a plan for Crittenden County for maintaining the 1997 8-hour ozone NAAQS in the area through 2021.

This maintenance plan includes contingency measures to remedy future violations of the 1997 8-hour ozone NAAQS. The maintenance plan also establishes state NO<sub>x</sub> and VOC MVEBs for Crittenden County. Table 1 identifies the state NO<sub>x</sub> and VOC MVEBs for the year 2006 and 2021 for Crittenden County.

TABLE 1—CRITTENDEN COUNTY NO<sub>x</sub> AND VOC MVEBS  
[Summer season tons per day]

	2006	2021
NO <sub>x</sub> .....	6.27	1.84
VOC .....	2.95	1.39

Approval of Arkansas' maintenance plan would also result in approval of the NO<sub>x</sub> and VOC state MVEBs. Additionally, EPA is notifying the public of the status of its adequacy determination for the 2006 and 2021 NO<sub>x</sub> and VOC state MVEBs pursuant to 40 CFR 93.118(f)(1).

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

EPA proposes to determine that the Crittenden County portion of the Memphis TN-AR 1997 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard, and that all other redesignation criteria have been met for that portion of the Memphis TN-AR area. The basis for EPA's determination for the area is discussed in greater detail below.

*Criteria (1)—Crittenden County, Arkansas has attained the 1997 8-hour ozone NAAQS.*

EPA proposes to determine that the Crittenden County portion of the Memphis TN-AR area has attained the 1997 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 1997 8-hour ozone NAAQS if the air quality in the nonattainment area meets the standard, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 1997 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should

have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed ozone monitoring data from ambient ozone monitoring stations

in the Memphis TN-AR area for the ozone season from 2006–2008. This data has been quality assured and is recorded in AQS. The fourth high averages for 2006, 2007 and 2008, and the 3-year

average of these values (*i.e.*, design values), are summarized in Table 2:

TABLE 2—ANNUAL 4TH MAX HIGH AND DESIGN VALUE CONCENTRATION FOR 1997 8-HOUR OZONE FOR THE MEMPHIS, TN-AR AREA  
[In parts per million]

County  Monitor (AQS ID)	Shelby County, Tennessee		Crittenden County, Arkansas
	Memphis-Frayser Boulevard (#47–157–0021)	Edmond Orgill Park (#47–157–1004)	Marion (#05–035–0005)
2006 .....	0.083	0.084	0.089
2007 .....	0.081	0.080	0.084
2008 .....	0.084	0.077	0.074
Design Value .....	0.082	0.080	0.082

As discussed above, the design value for an area is the highest design value recorded at any monitor in the area. Therefore, the design value for the Memphis TN-AR Area is 0.082 ppm, which meets the standard as described above. Preliminary data from 2009 also indicate the area continues to attain the standard. The data from 2009 is considered preliminary because it has not yet completed full data certification. As discussed in more detail below, Arkansas has committed to continue monitoring in this area in accordance with 40 CFR part 58. The data submitted by Arkansas provides an adequate demonstration that Crittenden County (as part of the Memphis TN-AR area) has attained the 1997 8-hour ozone NAAQS.

*Criteria (2)—Arkansas has a fully approved SIP under section 110(k) for Crittenden County and Criteria (5)—Arkansas has met all Applicable Requirements Under Section 110 and part D of the CAA.*

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

EPA has determined that Arkansas has met all applicable SIP requirements for Crittenden County under section 110 of the CAA (general SIP requirements). EPA has also determined that the Arkansas SIP satisfies the criterion that it meet applicable SIP requirements under part D of title I of the CAA (including requirements specific to subpart 2 marginal 1997 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area

and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. Crittenden County, Arkansas Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992, Calcagni Memorandum (see “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA’s interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also, Michael Shapiro Memorandum, (“SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992,” September 17, 1993), and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). Applicable requirements of the CAA that come due subsequent to the area’s submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See, section 175A(c) of the CAA; *Sierra Club*, 375 F.3d 537 (7th Cir. 2004); see also, 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

*General SIP requirements.* Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures,

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

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (NO<sub>x</sub> SIP Call, Clean Air Interstate Rule (CAIR)). The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area’s designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area’s designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of

the designation of any one particular area in the state. Thus, we do not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

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

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Therefore, as discussed above, for purposes of redesignation, they are not considered applicable requirements. We have reviewed the Arkansas SIP and have concluded it meets the general requirements of section 110, to the extent that these are applicable for redesignation. EPA has previously approved provisions in the Arkansas SIP addressing section 110 elements under the 1-hour ozone NAAQS (See, 40 CFR 52.172).

In a letter to EPA dated March 28, 2008, the State set forth its belief that the existing SIP is also sufficient to meet the CAA 110(a)(2) requirements for the 1997 8-hour ozone NAAQS. EPA has not yet approved this submission, but such approval is not necessary for purposes of redesignation.

**Part D requirements.** EPA has also determined that the Arkansas SIP meets applicable SIP requirements under part D of the CAA. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all

nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification and applies to the Memphis TN–AR area. As discussed in Section II, Crittenden County was classified as marginal, and then reclassified to moderate. In the reclassification, EPA required that the necessary SIP revisions for the new moderate area requirements be submitted by both Tennessee and Arkansas as expeditiously as practicable, but no later than March 1, 2009. The request for redesignation was submitted by Arkansas on February 24, 2009, prior to the date that the moderate area requirements came due. Thus, for purposes of redesignation, only the marginal area requirements under Part D, subpart 2 are applicable to Crittenden County.

A SIP revision submitted to EPA by the State of Arkansas on November 19, 2007 satisfied the marginal area requirements set forth in section 182(a)(1). This submittal consisted of an emissions inventory for the year 2002 containing NO<sub>x</sub>, VOC and carbon monoxide (CO) emissions as precursors to ozone formation, as well as a revision to State Regulation 19, Chapter 7 (Sampling, Monitoring, and Reporting Requirements), to require emissions statements. EPA approved this SIP revision on January 15, 2009 (74 FR 2383). Requirements set forth in sections 182(a)(2)(A) (Reasonably Available Control Technology Corrections) and 182(a)(2)(B) (Savings Clause for Vehicle Inspection and Maintenance) are not applicable to Crittenden County due to its status of attainment of the 1-hour ozone standard. Requirements set forth in section 182(a)(2)(C) (Permit Programs) are discussed in the *NSR Requirements* section of this notice.

In addition to the fact that only the marginal classification part D requirements became due prior to submission of the redesignation request and therefore are applicable for purposes of redesignation, EPA believes it is reasonable to interpret the conformity requirements as not requiring approval prior to redesignation.

**Section 176 Conformity Requirements.** Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved

under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See, *Wall v. EPA*, 265 F.3d 426, 438–40 (6th Cir. 2001) (upholding this interpretation). See also, 60 FR 62748 (December 7, 1995, Tampa, Florida). Although Crittenden County does not currently have fully approved conformity rules, a Memorandum of Agreement outlining interagency consultation procedures is in place for transportation conformity purposes.

**NSR Requirements.** Arkansas' permitting requirements for major sources in or impacting upon nonattainment areas are set forth in "Regulation No. 31—Nonattainment New Source Review Requirements." On July 3, 2006, Arkansas submitted Regulation No. 31 to address the marginal Nonattainment New Source Review (NNSR) permitting requirements in Crittenden County, and EPA approved the submittal on April 12, 2007 (72 FR 18394). This regulation applies to the construction and modification of any major stationary source of air pollution in a nonattainment area, as required by part D of Title I of the Act. Regulation No. 31 also includes provisions that implement EPA's designation of Crittenden County as an Economic Development Zone (EDZ) subject to the requirements of Section 173(a)(1)(B) of the Act. These provisions establish VOC and NO<sub>x</sub> emissions caps and provide for the Director of ADEQ to grant growth allowances to affected sources in lieu of meeting the NNSR offset requirement. Arkansas has maintained that sources locating to the Memphis area will continue to undergo new source review requirements and existing source control will continue under the NNSR/EDZ program until Crittenden County is redesignated to attainment.

Upon redesignation, however, the identification of Crittenden County as a section 173 EDZ expires under federal law. The rules that apply for the 1997 8-hour ozone standard after

redesignation would be those contained in the Prevention of Significant Deterioration (PSD) SIP program. The State must reapply for EDZ status should Crittenden County be designated nonattainment under a revised 8-hour primary ozone standard. In any event, EPA notes that fully approved NSR is not required for redesignation to attainment as long as PSD applies after redesignation, and the area has shown it can attain and maintain without nonattainment NSR.

EPA has also determined that areas being redesignated need not comply with the requirement that a nonattainment NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment."

Arkansas in its submittal for Crittenden County showed that sources locating to the Crittenden area will be subject to PSD requirements and has demonstrated that Crittenden County will be able to maintain the standard without a part D nonattainment NSR program in effect. Therefore, Arkansas need not have a fully approved part D NSR program prior to approval of the redesignation request. Arkansas's PSD program will become effective in Crittenden County upon redesignation to attainment. See, rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, EPA believes that Crittenden County, Arkansas has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. Crittenden County, Arkansas Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Arkansas SIP for Crittenden County, 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 Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir.

1998); *Wall*, 265 F.3d 426, at 438) plus any additional measures it may approve in conjunction with a redesignation action. See, 68 FR 25426 (May 12, 2003) and citations therein.

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the moderate area part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are not applicable requirements for purposes of redesignation. As set forth above, the area has met all other applicable requirements for purposes of redesignation under its prior marginal classification.

*Criteria (3)—The air quality improvement in the Memphis TN-AR 1997 8-hour Ozone Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable reductions.*

EPA believes that Arkansas has demonstrated that the observed air quality improvement in the Memphis-Crittenden County Nonattainment Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state adopted measures. Additionally, new emissions control programs for fuels and motor vehicles will help ensure a continued decrease in emissions throughout the region.

Because Crittenden County is itself largely rural in nature, measured reductions in ozone concentrations in and around Crittenden County are largely attributable to permanent and enforceable reductions from emission sources of VOCs and NO<sub>x</sub> in the Memphis area. There were reductions in Crittenden County. Table 3 summarizes several of the measures adopted that resulted in emissions reductions in Crittenden County.

TABLE 3—CRITTENDEN COUNTY EMISSION REDUCTIONS PROGRAMS

Mobile Sources
○ Tier 2 Fuel and Vehicle Emission Standards.
○ Federal Motor Vehicle Control Program.
○ Heavy Duty Diesel Rule (2007 Highway Rule).

TABLE 3—CRITTENDEN COUNTY EMISSION REDUCTIONS PROGRAMS—Continued

State and Local Measures
○ Stage I Vapor Recovery.
○ Proform Company, LLC closure, air permit voided.
○ CIBA Corporation reclassified to minor source, MACT standard modifications.
Additional Voluntary Reductions
○ Diesel Emissions Reduction Act—ADEQ received State Clean Diesel Grant in October 2008.
○ Retrofit of city and county (21 on-road, 12 non-road trucks) w/diesel oxidation catalyst.
○ Retrofit of 50 school buses w/diesel oxidation catalyst.
○ Retrofit of 12 refuse trucks w/diesel oxidation catalyst.
○ 196 California Air Resources Board certified gas cans exchanged in Crittenden County.
○ Truck stop electrification (equipped 65 parking spaces in Crittenden County).

Emission reductions in Shelby County as a result of federal motor vehicle controls from 2002 to 2006 are estimated to be 7 tons per day of VOCs and 28 tons per day of NO<sub>x</sub>. Additionally, continuing new emissions control programs will help to ensure a further decrease in emissions throughout the area in the future. Crittenden County is expected to receive upwind benefits in emission reductions.

Regarding point source emissions, the Tennessee Valley Authority's (TVA) Allen Steam Plant located in Shelby County operates three coal-fired boilers. As a result of EPA's "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Region Transport of Ozone" (NO<sub>x</sub> SIP Call), TVA began operation of two selective catalytic reduction (SCR) control units during the 2002 ozone control season, May 1st through September 30th. The third SCR began operating in 2003. Ozone season daily NO<sub>x</sub> reductions in the area as a result of these controls equal approximately 45 tons per day.

These are substantial reductions when compared to the remaining total NO<sub>x</sub> inventory from all sources in Shelby and Crittenden Counties in 2006 of 116.81 tons per day (99.09 tons per day in Shelby County and 17.72 tons per day in Crittenden County) and a VOC inventory of 128.67 tons per day (99.11 tons per day in Shelby County and 29.56 tons per day in Crittenden County).



Because of the uncertainty introduced by the recent court actions affecting the CAIR Rule and NO<sub>x</sub> SIP Call, EPA

undertook an analysis of the changes in NO<sub>x</sub> expected across a broader region. In particular, EPA reviewed available

projections of NO<sub>x</sub> emissions from nearby states from 2002 to 2018. These values are presented in Tables 4 and 5:

TABLE 4—2002 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO<sub>x</sub>\*

States	EGU point	Non-EGU point	Non-road	area	Mobile	Fires	Total
AR .....	24,722	47,698	62,472	21,700	141,894	5,492	303,978
KY .....	201,928	38,434	104,571	39,507	156,417	534	541,391
LA .....	111,703	199,218	114,711	93,069	180,664	6,942	706,307
MS .....	40,433	61,533	88,787	4,200	111,914	308	307,175
MO .....	145,438	36,144	99,306	32,435	189,852	2,442	505,617
TN .....	152,137	64,344	96,827	17,844	238,577	217	569,946
Total .....	676,361	447,371	566,674	208,755	1,019,318	15,935	2,934,414

\*From Tennessee Regional Haze SIP, Appendix D, page D.3–5 and support table for Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans, page 2–40, figure 2–4.

TABLE 5—2018 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO<sub>x</sub>\*

States	EGU point	Non-EGU point	Non-road	Area	Mobile	Fires	Total
AR .....	34,938	36,169	34,305	25,672	33,640	5,600	170,324
KY .....	64,378	41,034	79,392	44,346	52,263	714	282,127
LA .....	44,485	225,748	106,685	114,374	44,806	6,969	543,067
MS .....	21,535	61,252	68,252	4,483	30,619	1,073	187,214
MO .....	83,181	51,489	59,625	35,213	50,861	2,442	282,811
TN .....	31,715	62,519	70,226	19,597	69,385	405	253,847
Total .....	280,232	478,211	418,485	243,685	281,574	17,203	1,708,390

\*From Tennessee Regional Haze SIP, Appendix D, page D.3–5 and support table for Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans, page 2–40, figure 2–4.

From 2002 to 2018 NO<sub>x</sub> emissions are projected to decrease in the region by 1,215,024 tons/year or 41.4 percent in all. EGU NO<sub>x</sub> anticipated decreases due to CAIR and the NO<sub>x</sub> SIP Call were projected to be 198,150 tons per year. However, the largest source in this region remains the motor vehicle sector, which is projected to decrease 737,744 tons per year. Hence even without EGU controls on NO<sub>x</sub> emissions, total NO<sub>x</sub> emissions are projected to continually decrease throughout the maintenance period. As is noted in the following paragraph, the NO<sub>x</sub> SIP Call will remain in effect.

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 (*North Carolina v. EPA*, 550 F.3d 1176 (DC Cir. Dec. 23, 2008)), 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-hr standard.

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. Thus, the NO<sub>x</sub> SIP Call adds to assurances that the area will remain in attainment.

These regional projections of emissions data have been prepared only through 2018. However, since motor vehicle and off road emissions continue to decrease long after a rule is adopted as the engine population is gradually replaced by newer engines, it is reasonable to assume that this projected decrease in regional NO<sub>x</sub> emissions from mobile and non-road sources should continue through 2020 and assure that ozone in the Memphis region will continue to decline throughout the 10 year maintenance period. Hence we believe the projected regional NO<sub>x</sub> reductions are adequate to assure that the Memphis region will continue demonstrating maintenance throughout the 10 year maintenance period.

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

In conjunction with its request to redesignate Crittenden County, Arkansas (as part of the Memphis TN-AR 1997 8-hour ozone nonattainment area) to attainment, Arkansas submitted a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS for at least 10 years after the



effective date of redesignation to attainment.

a. What is required in a maintenance plan?

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

Arkansas' maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

In coordination with Shelby County, Tennessee, Arkansas selected 2006 "the attainment year" for the purposes of demonstrating attainment of the 1997 8-hour ozone NAAQS. This attainment inventory identifies the level of emissions in the area, which is sufficient to attain the 1997 8-hour ozone standard. Arkansas began development of this attainment inventory by first developing a baseline emissions inventory for the Memphis area. The year 2006 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2009, 2012, 2015, 2017, 2018 and 2021. The projected inventory estimates emissions forward to 2021, which is beyond the 10-year interval required in Section 175(A) of the CAA. Non-road mobile emissions estimates were based on the EPA's NONROAD2005 model. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2006 VOC and NO<sub>x</sub> emissions, as well as the emissions for other years, for Crittenden County were developed consistent with EPA guidance, and are summarized in Tables 6 and 7 in the following subsection.

c. Maintenance Demonstration

The February 24, 2009 final submittal includes a maintenance plan for Crittenden County. This demonstration:

(i) Shows compliance and maintenance of the 1997 8-hour ozone standard by providing information to support the demonstration that current and future emissions of VOC and NO<sub>x</sub> remain at or below attainment year 2006 emissions levels. The year 2006 was chosen as the attainment year because it is one of the most recent three years (*i.e.*, 2006, 2007, and 2008) for which Crittenden County has clean air quality data for the 1997 8-hour ozone standard.

(ii) Uses 2006 as the attainment year and includes future emission inventory projections for 2009, 2012, 2015, 2017, 2018, and 2021.

(iii) Identifies an "out year," at least 10 years (and beyond) after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, state NO<sub>x</sub> and VOC MVEBs were established for the last year (2021) of the maintenance plan. Additionally, Arkansas chose, through interagency consultation, to establish MVEBs for the year 2006 for NO<sub>x</sub> and VOC. EPA has already notified the public of its adequacy determination for these 2006 and 2021 MVEBs pursuant to 40 CFR 93.118(f)(1) (74 FR 21356).

(iv) Provides the following actual and projected emissions inventories, in tons per day (tpd) for Crittenden County, Arkansas. See, Tables 6 and 7.

TABLE 6—CRITTENDEN COUNTY VOC EMISSIONS  
[Summer season tons per day]

Source category	2006	2009	2012	2015	2017	2018	2021
Point .....	2.13	2.17	2.27	2.36	2.43	2.47	2.62
Area .....	21.32	21.30	21.49	21.68	21.80	21.89	22.14
On-road * .....	3.12	2.63	2.30	1.97	1.75	1.68	1.50
Non-road ** .....	2.99	2.85	2.60	2.36	2.19	2.14	1.97
Total .....	29.56	28.94	28.65	28.36	28.17	28.18	28.23

\* Calculated using MOBILE 6.2.

\*\* Calculated using NONROAD2005c.

TABLE 7—CRITTENDEN COUNTY AREA NO<sub>x</sub> EMISSIONS  
[Summer season tons per day]

Source category	2006	2009	2012	2015	2017	2018	2021
Point .....	1.09	1.15	1.22	1.29	1.34	1.37	1.45
Area .....	0.90	0.90	0.91	0.91	0.92	0.92	0.93
On-road * .....	6.27	5.13	4.12	3.12	2.45	2.30	1.84
Non-road ** .....	9.46	9.38	9.10	8.82	8.63	8.39	7.66
Total .....	17.72	16.56	15.35	14.14	13.34	12.97	11.88

\* Calculated using MOBILE 6.2.

\*\* Calculated using NONROAD2005c.

Although the Arkansas SIP submission provided NO<sub>x</sub> and VOC emissions for the attainment and future years for Crittenden County, EPA has considered emissions for the entire Memphis TN-AR area for demonstration of maintenance. Maintenance is demonstrated if the future year NO<sub>x</sub> and VOC emission for the entire area remains at or below the level of the attainment year emissions. Both Tennessee and Arkansas chose 2006 for their "attainment year" for this area. It is important to note that this area is composed of two counties (Shelby County, Tennessee and Crittenden County, Arkansas) for which emissions should be considered. The area and point sources for both counties indicate a steady NO<sub>x</sub> and VOC emission increase. However, large projected reductions in mobile source emissions more than compensate for this relatively small increase. Moreover, EPA's review of the entire area's total inventory for NO<sub>x</sub> and VOCs indicate that future total area emissions are below the level of the total area attainment year emissions. Therefore, EPA believes that the 1997 8-hour ozone standard will be maintained in the future for the Memphis TN-AR area.

#### d. Monitoring Network

There are currently three monitors measuring ozone in the Memphis TN-AR Area (two in Shelby County, Tennessee and one in Crittenden County, Arkansas). ADEQ has committed, in the maintenance plan, to continue operation of the monitor in Crittenden County in compliance with 40 CFR part 58, and has addressed the requirement for monitoring.

#### e. Verification of Continued Attainment

Arkansas has the legal authority to enforce and implement the requirements of the ozone maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control

contingency measures determined to be necessary to correct future ozone attainment problems.

Arkansas will track the progress of the maintenance plan by performing future reviews of triennial emissions inventory for Crittenden County using the latest emissions factors, models and methodologies. For these periodic inventories, Crittenden County will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, Arkansas will re-project emissions.

#### f. Contingency Plan

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

In the February 24, 2009, submittal, Arkansas affirms that all programs instituted by the State and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the area. The contingency plan included

in the submittal provides a two-phase approach to tracking and triggering mechanisms to determine when contingency measures are needed and a process of developing and adopting appropriate control measures.

*Phase I—Potential increases in local emissions specifically, when the certified triennial emissions inventory for VOCs or NO<sub>x</sub> exceed the 2006 base year attainment inventory by ten percent or more and at least one documentation of an exceedance of the 1997 ozone NAAQS at any nonattainment monitor in the area based on certified data during the most recent monitoring season.*

In the event this occurs, ADEQ will conduct an investigation into the cause to determine if the data are due to reporting errors or a non-recurring variance in the local emission profile. The investigation will be coordinated with the Memphis/Shelby County Health Department and the State of Tennessee as appropriate. If the investigation reveals the data are valid, ADEQ will expand voluntary programs and develop regulations to address the concerns. All regulatory programs will be implemented within 24 months and include a selection of measures shown in Table 8.

*Phase II—Addresses a monitored violation of the 1997 ozone NAAQS in the nonattainment area according to certified data during the most recent monitoring season.*

In the event this occurs, ADEQ will conduct an investigation to determine if the cause of the violation can be attributed to errors or clearly identifiable exceptional events outside of local control. ADEQ will solicit the involvement of all State agencies having jurisdiction in the surrounding area. If the investigation reveals the data are valid, provisions will be adopted and implemented within 24 months of the monitored violation and include a selection of measures shown in Table 8.

TABLE 8—CRITTENDEN COUNTY CONTINGENCY MEASURE OPTIONS

- Reasonable Available Control Technology (RACT) for VOC and NO<sub>x</sub> sources.
- Anti-idling ordinances.
- Open burning restrictions during peak ozone season (May–September).
- Diesel retrofit/replacement initiatives.
- Programs or incentives to decrease motor vehicle use.
- Trip reduction ordinances.
- Implementation of a program to require additional emissions reductions from stationary sources.
- Implementation of a program to enhance inspection of stationary sources to ensure emissions control equipment is functioning properly.
- Implementation of fuel programs, including incentives for alternative fuels.
- Employer-based transportation management plans, including incentives.
- Programs to limit or restrict vehicle use in downtown areas, or other areas of high emissions concentration, particularly during periods of peak use.
- Programs for new construction and major reconstruction of paths for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.
- Other currently unspecified control measures that might prove to be advantageous.

EPA believes that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Arkansas meets the requirements of section 175A of the CAA and is approvable.

**VII. What Is EPA’s Analysis of Arkansas’ Proposed State NO<sub>x</sub> and VOC MVEBs for Crittenden County, Arkansas?**

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (reasonable further progress and attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB is established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area’s planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for Crittenden County, Arkansas has elected to develop state MVEBs for VOC and NO<sub>x</sub>. Arkansas has developed these MVEBs, as required, for the last year of the Crittenden County maintenance plan, 2021, and a base year of 2006. The NO<sub>x</sub> and VOC state MVEBs for Crittenden County are defined in Table 9 below.

**TABLE 9—CRITTENDEN COUNTY NO<sub>x</sub> AND VOC MVEBs**

[Summer season tons per day]

	2006	2021
NO <sub>x</sub> .....	6.27	1.84
VOC .....	2.95	1.39

Through this rulemaking, EPA is proposing to fully approve the 2006 and 2021 MVEBs for VOC and NO<sub>x</sub> for Crittenden County into the SIP because EPA has determined that the area

maintains the 1997 8-hour ozone standard with the emissions at the levels of the budgets. EPA has already made a finding of adequacy for these MVEBs (74 FR 21356), and they must be used for future conformity determinations.

**VIII. What Is the Status of EPA’s Adequacy Determination for the Proposed State NO<sub>x</sub> and VOC MVEBs for the Years 2006 and 2021 for Crittenden County, Arkansas?**

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must “conform” to (*i.e.*, be consistent with) the part of the state’s air quality plan that addresses pollution from cars and trucks. “Conformity” to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not “conform,” most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

When reviewing submitted “control strategy” SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein “adequate” for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and Federal agencies in determining whether proposed transportation projects “conform” to the SIP as required by section 176(c) of the CAA.

EPA’s substantive criteria for determining “adequacy” of an MVEB are set out in 40 CFR 93.118(e)(4). The process for determining “adequacy” consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA’s adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA’s May 14, 1999, guidance, “Conformity Guidance on

Implementation of March 2, 1999, Conformity Court Decision.” This guidance was finalized in the Transportation Conformity Rule Amendments for the “New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,” on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for MVEBs is available in the proposed rule entitled, “Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,” 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Arkansas’ maintenance plan submission includes VOC and NO<sub>x</sub> state MVEBs for Crittenden County for the years 2006 and 2021. EPA reviewed both the VOCs and NO<sub>x</sub> state MVEBs through the adequacy process. The Arkansas SIP submission, including the Crittenden County VOC and NO<sub>x</sub> MVEBs, was open for public comment on EPA’s adequacy Web site on March 11, 2009, found at: <http://www.epa.gov/otaq/stateresources/transconf/cursrips.htm>. The EPA public comment period on adequacy of the 2006 and 2021 VOC and NO<sub>x</sub> state MVEBs for Crittenden County, Arkansas closed on April 10, 2009. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal. On May 7, 2009, EPA made a finding of adequacy for the MVEBs included in this 8-hour ozone maintenance plan. EPA provided a separate adequacy posting for the MVEBs in association with Shelby County, Tennessee. The status of the adequacy process for the Shelby County MVEBs is discussed in EPA’s separate action related to Shelby County (74 FR 58277).

The new MVEBs for VOC and NO<sub>x</sub> must be used for future transportation conformity determinations. For required regional emissions analysis years that involve the years 2006 through 2020, the applicable budgets for the purposes of conducting transportation conformity will be the new 2006 MVEBs; for required regional emissions analysis years that involve 2021 or beyond, the applicable budgets will be the new 2021 MVEBs. The 2006 and 2021 MVEBs are defined in section VII of this proposed rulemaking.

**IX. Proposed Action on the Redesignation Request and Maintenance Plan SIP Revision Including Proposed Approval of the 2006 and 2021 State NO<sub>x</sub> and VOC MVEBs for Crittenden County, Arkansas**

EPA is proposing to make the determination that Crittenden County, Arkansas has met the criteria for redesignation from nonattainment to attainment for the 1997 8-hour ozone NAAQS. Further, EPA is proposing to approve Arkansas' February 24, 2009, SIP submittal including the redesignation request for Crittenden County, Arkansas (as part of the Memphis TN-AR 1997 8-hour ozone area). EPA's action with respect to the redesignation request for the Shelby County portion of the 1997 8-hour ozone area was proposed in a separate rulemaking (74 FR 59943). EPA believes that the redesignation request and complete quality-assured monitoring data demonstrate that the Memphis TN-AR area has attained, and will continue to maintain, the 1997 8-hour ozone standard, and that the Crittenden County portion of the area has met the other requirements for redesignation to attainment under CAA sections 107(d)(3)(E) and 175A.

EPA is also proposing to approve the maintenance plan for Crittenden County included as part of the February 24, 2009, SIP revision, including state NO<sub>x</sub> and VOC MVEBs for 2006 and 2021. EPA has already made a finding of adequacy for the MVEBs included in this 8-hour ozone maintenance plan (74 FR 21356). EPA believes that the redesignation request and maintenance plan meet the requirements of CAA sections 107(d)(3)(E) and 175A.

**X. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a

geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997); because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

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

**List of Subjects**

**40 CFR Part 52**

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

**40 CFR Part 81**

Environmental protection, Air pollution control.

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

Dated: January 5, 2010.

**Al Armendariz,**

*Regional Administrator, Region 6.*

[FR Doc. 2010-586 Filed 1-13-10; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS-R6-ES-2009-0027; 92220-1113-0000; ABC Code: C3]

RIN 1018-AW27

**Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Shovelnose Sturgeon as Threatened Due to Similarity of Appearance**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period and notice of public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service or USFWS), announce the reopening of the comment period for our September 22, 2009, proposed rule to treat the shovelnose sturgeon (*Scaphirhynchus platyrhynchus*) as threatened under the "Similarity of Appearance" provisions of the Endangered Species Act of 1973, as amended (Act). We also announce the location and time of a public hearing to receive public comments on the proposal. If you have previously submitted comments, please do not resubmit them because we have already