

electronic submission would cause an undue burden or expense.

(6) *Deadline for submissions by owners or operators of CAFOs in focus watersheds.* The owner or operator of a CAFO located in a focus watershed and so notified must submit the information required by paragraph(k)(4) of this section in accordance with paragraph (k)(5) of this section [within 90 days] after EPA notifies CAFOs of such obligation in accordance with paragraph (k)(3).

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R04-OAR-2010-0937-201118; FRL-9480-2]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Kentucky Portion of the Cincinnati-Hamilton 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

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

**ACTION:** Proposed rule.

**SUMMARY:** On January 27, 2011, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division of Air Quality (DAQ), submitted a request to redesignate the Kentucky portion of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana (hereafter referred to the "Tri-state Cincinnati-Hamilton Area") fine particulate matter (PM<sub>2.5</sub>) nonattainment area to attainment for the 1997 Annual PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Kentucky portion of the Tri-state Cincinnati-Hamilton Area. The Tri-state Cincinnati-Hamilton Area is comprised of Boone, Campbell, and Kenton Counties in Kentucky (hereafter referred to as the "Northern Kentucky Area" or "Area"); Butler, Clermont, Hamilton, and Warren Counties in Ohio; and a portion of Dearborn County in Indiana. EPA is proposing to approve the redesignation request for Boone, Campbell, and Kenton Counties, along with the related SIP revision, including the Commonwealth's plan for maintaining attainment of the PM<sub>2.5</sub> standard in the Northern Kentucky Area. EPA is also proposing to approve

Kentucky's nitrogen oxides (NO<sub>x</sub>) and PM<sub>2.5</sub> Motor Vehicle Emission Budgets (MVEBs) for 2015 and 2021 for the Northern Kentucky Area. On December 9, 2010, and January 25, 2011, respectively, Ohio and Indiana submitted requests to redesignate their portion of the Tri-state Cincinnati-Hamilton Area to attainment for the 1997 PM<sub>2.5</sub> NAAQS. EPA is taking action on the requests from Ohio and Indiana in an action separate from these proposed actions.

**DATES:** Comments must be received on or before November 21, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2010-0937, by one of the following methods:

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

2. *E-mail:* [benjamin.lynora@epa.gov](mailto:benjamin.lynora@epa.gov).

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

4. *Mail:* EPA-R04-OAR-2010-0937, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Ms. Lynora Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2010-0937. 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://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

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

**FOR FURTHER INFORMATION CONTACT:** Joel Huey of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Joel Huey may be reached by phone at (404) 562-9104, or via electronic mail at [huey.joel@epa.gov](mailto:huey.joel@epa.gov).

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### I. What are the actions EPA is proposing to take?

In this action, EPA is proposing to make a determination that this Area is continuing to attain the 1997 Annual PM<sub>2.5</sub> NAAQS<sup>1</sup> and to take several additional actions related to Kentucky's request to redesignate the Northern Kentucky Area which are summarized as follows and described in greater detail throughout this notice of proposed rulemaking: (1) To redesignate the Northern Kentucky Area portion of the Tri-state Cincinnati-Hamilton Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS; (2) to approve, under CAA section 172(c)(3), the emissions inventory submitted with the maintenance plan for Northern Kentucky; and (3) to approve, under section 175A of the CAA, the Northern Kentucky Area's 1997 Annual PM<sub>2.5</sub> NAAQS maintenance plan into the Kentucky SIP, including the associated MVEBs. In addition, and related to today's actions, EPA is also notifying the public of the status of EPA's adequacy determination for the Northern Kentucky Area MVEBs for the PM<sub>2.5</sub> NAAQS.

First, EPA proposes to determine that, if EPA's proposed approval of the 2008 baseline emissions inventory for the Northern Kentucky Area is finalized, the Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. In this action, EPA is proposing to approve a request to change the legal designation of Boone, Campbell, and Kenton Counties from nonattainment to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS. The emissions inventory for the Northern Kentucky Area is being proposed for approval today.

<sup>1</sup> On September 29, 2011, at 76 FR 60373, EPA determined that the Tri-state Cincinnati-Hamilton Area attained the 1997 PM<sub>2.5</sub> NAAQS by its applicable attainment date of April 5, 2010, and that the Area was continuing to attain the PM<sub>2.5</sub> standard with monitoring data that was currently available.

Second, EPA is proposing to approve under the CAA, Kentucky's 2008 emissions inventory for the Northern Kentucky Area (under CAA section 172(c)(3)). Kentucky selected 2008 as the attainment emissions inventory year for the Northern Kentucky Area. This attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 1997 Annual PM<sub>2.5</sub> NAAQS.

Third, EPA is proposing to approve Kentucky's 1997 Annual PM<sub>2.5</sub> NAAQS maintenance plan for the Northern Kentucky Area (such approval being one of the CAA criteria for redesignation to attainment status). Since maintenance of the standard in the Northern Kentucky Area is based in large part on maintaining control of power plant emissions, promulgation of the Transport Rule, also known as the Cross State Air Pollution Rule (CSAPR),<sup>2</sup> was necessary to make recent reductions in power plant emissions (or equivalent reductions at other power plants) permanent and enforceable. The maintenance plan is designed to help keep the Northern Kentucky Area in attainment of the 1997 Annual PM<sub>2.5</sub> NAAQS through 2021. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the years 2015 and 2021 for the Northern Kentucky Area. EPA is proposing to approve (into the Kentucky SIP) the 2015 and 2021 MVEBs that are included as part of Kentucky's maintenance plan for the 1997 Annual PM<sub>2.5</sub> NAAQS.

Further, EPA proposes to make the determination that the Tri-state Cincinnati-Hamilton Area is continuing to attain the 1997 Annual PM<sub>2.5</sub> NAAQS and that all other redesignation criteria have been met for the Northern Kentucky Area. The bases for EPA's determination for the Area are discussed in greater detail below.

EPA is also notifying the public of the status of EPA's adequacy process for the newly-established NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2015 and 2021 for the Northern Kentucky Area. The adequacy comment period for the Northern Kentucky Area MVEBs began on February 14, 2011, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (<http://www.epa.gov/otaq/stateresources/transconf/currrips.htm>). The Adequacy comment period for these MVEBs closed on March 16, 2011. No adverse comments were received during the

<sup>2</sup> See "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States" (76 FR 48208, August 8, 2011).

Adequacy public comment period. Please see section VIII of this proposed rulemaking for further explanation of this process and for more details on the MVEBs.

Today's notice of proposed rulemaking is in response to Kentucky's January 27, 2011, SIP submittal, which requests redesignation of the Northern Kentucky Area portion of the Tri-state Cincinnati-Hamilton Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS and addresses the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

### II. What is the background for EPA's proposed actions?

Fine particle pollution can be emitted directly or formed secondarily in the atmosphere. The main precursors of PM<sub>2.5</sub> are sulfur dioxide (SO<sub>2</sub>), NO<sub>x</sub>, ammonia and volatile organic compounds (VOCs). Unless otherwise noted by the State or EPA, ammonia and VOCs are presumed to be insignificant contributors to PM<sub>2.5</sub> formation, whereas SO<sub>2</sub> and NO<sub>x</sub> are presumed to be significant contributors to PM<sub>2.5</sub> formation. Sulfates are a type of secondary particle formed from SO<sub>2</sub> emissions of power plants and industrial facilities. Nitrates, another common type of secondary particle, are formed from NO<sub>x</sub> emissions of power plants, automobiles, and other combustion sources.

On July 18, 1997, EPA promulgated the first air quality standards for PM<sub>2.5</sub>. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>), based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 µg/m<sup>3</sup>, based on a 3-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual average NAAQS at 15 µg/m<sup>3</sup> but revised the 24-hour NAAQS to 35 µg/m<sup>3</sup>, based again on the 3-year average of the 98th percentile of 24-hour concentrations.<sup>3</sup> Under EPA regulations at 40 CFR part 50, the primary and secondary 1997 Annual PM<sub>2.5</sub> NAAQS are attained when the annual arithmetic mean concentration, as determined in accordance with 40

<sup>3</sup> In response to legal challenges of the annual standard promulgated in 2006, the United States Court of Appeals for the District of Columbia circuit (DC Cir.) remanded this NAAQS to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3D 512 (DC Cir. 2009). However, given that the 1997 and 2006 Annual NAAQS are essentially identical, attainment of the 1997 Annual NAAQS would also indicate attainment of the remanded 2006 Annual NAAQS.

CFR part 50, Appendix N, is less than or equal to 15.0  $\mu\text{g}/\text{m}^3$  at all relevant monitoring sites in the subject area over a 3-year period.

On January 5, 2005, at 70 FR 944, and supplemented on April 14, 2005, at 70 FR 19844, EPA designated the Tri-state Cincinnati-Hamilton Area as nonattainment for the 1997  $\text{PM}_{2.5}$  NAAQS. In that action, EPA defined the 1997  $\text{PM}_{2.5}$  Cincinnati-Hamilton Area to include Boone, Campbell, and Kenton Counties in Kentucky, Butler, Clermont, Hamilton, and Warren Counties in Ohio, and a portion of Dearborn Country containing the Lawrenceburg Township in Indiana. On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 24-hour standard established in 2006, designating the Tri-state Cincinnati-Hamilton Area as attainment for this NAAQS. That action clarified that the Tri-state Cincinnati-Hamilton Area was classified unclassifiable/attainment for the 24-hour NAAQS promulgated in 1997. EPA did not promulgate designations for the annual average NAAQS promulgated in 2006, since the NAAQS was essentially identical to the annual NAAQS promulgated in 1997. Therefore, the Tri-state Cincinnati-Hamilton Area is designated nonattainment for the annual NAAQS promulgated in 1997, and today's action only addresses this designation.

All 1997  $\text{PM}_{2.5}$  NAAQS areas were designated under subpart 1 of title I, part D, of the CAA. Subpart 1 contains the general requirements for nonattainment areas for any pollutant governed by a NAAQS and is less prescriptive than the other subparts of title I, part D. On April 25, 2007, at 72 FR 20664, EPA promulgated its  $\text{PM}_{2.5}$  Implementation Rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and Tribal plans to implement the 1997  $\text{PM}_{2.5}$  NAAQS. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the NAAQS, as discussed below.

On May 12, 2005, EPA published the Clean Air Interstate Rule (CAIR), which addressed the interstate transport requirements of the CAA and required states to significantly reduce  $\text{SO}_2$  and  $\text{NO}_x$  emissions from power plants (70 FR 25162). The associated Federal Implementation Plans (FIPs) were published on April 28, 2006 (71 FR 25328). However, on July 11, 2008, the DC Circuit Court issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety (*North Carolina v. EPA*, 531 F.3d 836 (DC Cir., 2008)). EPA petitioned for rehearing, and the Court issued an order

remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs (*North Carolina v. EPA*, 550 F.3d 1176 (DC Cir., 2008)). The Court left CAIR in place to “temporarily preserve the environmental values covered by CAIR” until EPA replaces it with a rule consistent with the Court’s opinion (*id.* at 1178). The Court directed EPA to “remedy CAIR’s flaws” consistent with its July 11, 2008, opinion but declined to impose a schedule on EPA for completing that action (*id.*). As a result of these court rulings, the power plant emission reductions that resulted solely from the development, promulgation, and implementation of CAIR, and the associated contribution to air quality improvement that occurred solely as a result of CAIR in the Northern Kentucky Area could not be considered to be permanent.

On August 8, 2011, EPA published the Cross State Air Pollution Rule (CSAPR) in the **Federal Register** under the title, “Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States” (76 FR 48208, August 8, 2011) to address interstate transport of emissions and resulting secondary air pollutants and to replace CAIR. The CAIR emission reduction requirements limit emissions in Kentucky and states upwind of Kentucky through 2011, and the CSAPR requires similar or greater reductions in the relevant areas in 2012 and beyond. The emission reductions that the CSAPR mandates may be considered to be permanent and enforceable. In turn, the air quality improvement in the Northern Kentucky Area that has resulted from electric generating units emission reductions associated with CAIR (as well as the additional air quality improvement that would be expected to result from full implementation of the CSAPR) may also be considered to be permanent and enforceable. EPA proposes that the requirement in section 107(d)(3)(E)(iii) has now been met because the emission reduction requirements of CAIR address emissions through 2011 and EPA has now promulgated CSAPR which requires similar or greater reductions in the relevant areas in 2012 and beyond. Because the emission reduction requirements of CAIR are enforceable through the 2011 control period, and because CSAPR has now been promulgated to address the requirements previously addressed by CAIR and gets similar or greater reductions in the relevant areas in 2012 and beyond, EPA is proposing to determine that the emission reductions

that led to attainment in the Northern Kentucky Area can now be considered permanent and enforceable. Therefore, EPA proposes to find that the transport requirement of CAA section 107(d)(3)(E)(iii) has been met for the Northern Kentucky Area.

The 3-year ambient air quality data for 2007–2009 indicated no violations of the 1997  $\text{PM}_{2.5}$  NAAQS for the Tri-state Cincinnati-Hamilton Area. As a result, on January 27, 2011, Kentucky requested redesignation of the Northern Kentucky Area to attainment for the 1997 Annual  $\text{PM}_{2.5}$  NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the 1997 Annual  $\text{PM}_{2.5}$  NAAQS for 2007–2009, indicating that the 1997  $\text{PM}_{2.5}$  NAAQS had been achieved for the entire Tri-state Cincinnati-Hamilton 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). From 2007 through the present, the annual  $\text{PM}_{2.5}$  design values for the Tri-state Cincinnati-Hamilton Area have declined. While annual  $\text{PM}_{2.5}$  concentrations are dependent on a variety of conditions, the overall downtrend in annual  $\text{PM}_{2.5}$  concentrations in the Tri-state Cincinnati-Hamilton Area can be attributed to the reduction of emissions, as will be discussed in more detail in section V of this proposed rulemaking.

### 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 provided the following criteria are met: (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 title I of the CAA.

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

1. "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");

2. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and

3. "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.

**IV. Why is EPA proposing these actions?**

On January 27, 2011, the Commonwealth of Kentucky, through DAQ, requested the redesignation of the Northern Kentucky Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS. EPA's preliminary evaluation indicates that the Tri-state Cincinnati-Hamilton Area has attained the 1997 Annual PM<sub>2.5</sub> NAAQS and 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. Additionally, EPA is proposing to approve the 2008 baseline emission inventory under section 172(c)(3) because Kentucky has used methodology consistent with EPA guidance and implementing regulations to develop this inventory. EPA is also announcing the status of its adequacy determination for both the NO<sub>x</sub> and

PM<sub>2.5</sub> MVEBs for 2015 and 2021, which are relevant to the requested redesignation.

**V. What is EPA's analysis of the request?**

As stated above, in accordance with the CAA, EPA proposes in today's action to: (1) Redesignate the Northern Kentucky Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS; (2) approve the Northern Kentucky Area emissions inventory submitted with the maintenance plan; and (3) approve into the Kentucky SIP, the Northern Kentucky's 1997 Annual PM<sub>2.5</sub> NAAQS maintenance plan, including the associated MVEBs. These actions are based upon EPA's determination that the Tri-state Cincinnati-Hamilton Area continues to attain the 1997 Annual PM<sub>2.5</sub> NAAQS and that all other redesignation criteria have been met for the Northern Kentucky Area, provided EPA approves the emissions inventory submitted with the maintenance plan. The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section.

As stated above, in accordance with the CAA, EPA proposes to make the determination that the Tri-state Cincinnati-Hamilton Area is continuing to attain the 1997 Annual PM<sub>2.5</sub> NAAQS and that all other redesignation criteria have been met for the Northern Kentucky Area. The bases for EPA's determination for the Area are discussed in greater detail below.

*Criteria (1)—The Tri-state Cincinnati-Hamilton Area Has Attained the 1997 Annual PM<sub>2.5</sub> NAAQS*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). EPA is proposing to determine that the Tri-state Cincinnati-Hamilton Area continues to attain the 1997 Annual PM<sub>2.5</sub> NAAQS. For PM<sub>2.5</sub>, an area may be considered to

be attaining the 1997 Annual PM<sub>2.5</sub> NAAQS if it meets the 1997 Annual PM<sub>2.5</sub> NAAQS, as determined in accordance with 40 CFR 50.13 and Appendix N of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain these NAAQS, the 3-year average of the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 µg/m<sup>3</sup> at all relevant monitoring sites in the subject area over a 3-year period. The relevant 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.

On September 29, 2011, at 76 FR 60373, EPA finalized a determination that the Tri-state Cincinnati-Hamilton Area was attaining the 1997 PM<sub>2.5</sub> NAAQS, and that this Area attained the 1997 PM<sub>2.5</sub> NAAQS by its applicable attainment date of April 5, 2011. For that action EPA reviewed PM<sub>2.5</sub> monitoring data from monitoring stations in the Tri-state Cincinnati-Hamilton Area for the 1997 Annual PM<sub>2.5</sub> NAAQS for 2007–2009. The public was provided a 30-day comment period to review and provide comment to EPA on the analysis of this data. EPA did not receive any comments, adverse or otherwise, on the Agency's determination that the Area had attaining data for the period of 2007–2009, and continued to have attaining data through the finalization of EPA's proposal in September 2011. As such, EPA is not seeking additional comment in today's action regarding this data. As noted in EPA's September 29, 2011, action these data were quality-assured and recorded in AQS. The annual mean of the PM<sub>2.5</sub> concentrations for 2007–2010 and the 3-year average of these values (*i.e.*, design values) are summarized in Table 1.

**TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE TRI-STATE CINCINNATI-HAMILTON AREA FOR THE 1997 ANNUAL PM<sub>2.5</sub> NAAQS (µG/M<sup>3</sup>)**

Location	County	Monitor ID	Annual mean concentrations				3-Year design values	
			2007	2008	2009	2010 <sup>2</sup>	2007–2009	2008–2010 <sup>4</sup>
John Hill .....	Campbell, KY .....	21–037–3002	14.36	11.83	11.34	11.8	12.3	11.6
Dixie .....	Kenton, KY .....	21–117–0007	14.20	11.99	11.04	* 12.1	12.4	11.5
Bonita & St John	Butler, OH .....	39–017–0003	15.40	13.80	12.83	13.6	13.9	13.4
Nilles .....	Butler, OH .....	39–017–0016	14.94	13.75	13.08	13.5	13.8	13.4
Hook Field .....	Butler, OH .....	39–017–1004	14.62	n/a	n/a	n/a	14.6	n/a
Clermont Center	Clermont, OH .....	39–025–0022	14.01	11.75	11.01	12.0	12.2	11.6
Grooms .....	Hamilton, OH .....	39–061–0006	14.63	12.48	12.11	* 12.7	13.1	12.4
Seymour & Vine ..	Hamilton, OH .....	39–061–0014	16.59	15.06	13.38	14.8	15.0	14.4

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE TRI-STATE CINCINNATI-HAMILTON AREA FOR THE 1997 ANNUAL PM<sub>2.5</sub> NAAQS (µg/M<sup>3</sup>)—Continued

Location	County	Monitor ID	Annual mean concentrations				3-Year design values	
			2007	2008	2009	2010 <sup>2</sup>	2007–2009	2008–2010 <sup>4</sup>
WM. Howard Taft	Hamilton, OH .....	39–061–0040	15.09	12.62	12.73	13.3	13.4	12.9
W. 8th .....	Hamilton, OH .....	36–061–0042	15.90	14.40	13.71	14.5	14.6	14.2
E. Kemper .....	Hamilton, OH .....	36–061–0043	14.85	13.32	n/a	n/a	14.1	n/a
Sherman .....	Hamilton, OH .....	39–061–7001	15.09	13.74	12.97	14.1	14.0	13.6
Murray .....	Hamilton, OH .....	39–016–8001	16.07	14.40	13.40	* 17.6	14.6	n/a
Southeast .....	Warren, OH .....	39–165–0007	13.98	11.92	11.70	11.9	12.4	11.8

\* Design value does not meet data completeness requirements due to closure or start-up of the monitoring stations.

<sup>4</sup> The preliminary PM<sub>2.5</sub> ambient air quality data for 2010 for the Tri-state Cincinnati-Hamilton Area indicates that the Area is attaining the NAAQS with all 2008–2010 design values below the NAAQS of 15.0 µg/m<sup>3</sup>.

As discussed above, the design value for an area is the highest annual mean concentration recorded at any monitor in the area for a 3-year period. Therefore, the 3-year design value (2007–2009) submitted by Kentucky for redesignation of the Tri-state Cincinnati-Hamilton Area is 15.0 µg/m<sup>3</sup>, which meets the NAAQS as described above. Several of the above monitoring sites do not meet the 75 percent completeness criteria. In these cases, operation of the monitoring sites were started or shut-down during the 2007–2010 timeframe. Additional details can be found in EPA's final clean data determination for the Tri-state Cincinnati-Hamilton Area (76 FR 60373). EPA has reviewed more recent preliminary data which indicates that the Tri-state Cincinnati-Hamilton Area continues to attain the 1997 PM<sub>2.5</sub> NAAQS beyond the submitted 3-year attainment period of 2007–2009. The design value for the most recent 3-year period of 2008–2010 will be certified by the time EPA takes final action on this proposed rule.<sup>2</sup> At that time, EPA will again ensure that current air quality data demonstrates that the Tri-state Cincinnati-Hamilton Area is continuing to meet the 1997 Annual PM<sub>2.5</sub> NAAQS. If the Area does not continue to attain before EPA finalizes the redesignation, EPA will not go forward with the redesignation. As discussed in more detail below, the Commonwealth of Kentucky has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

*Criteria (5)—Kentucky has met all Applicable Requirements under Section 110 and part D of the CAA; and Criteria (2)—Kentucky has a fully approved SIP under section 110(k) for the Northern Kentucky Area*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and

that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Kentucky has met all applicable SIP requirements for the Northern Kentucky Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the Kentucky SIP satisfies the criterion that it meet applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to 1997 Annual PM<sub>2.5</sub> nonattainment areas) in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine 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, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. The Northern Kentucky Area Has Met all Applicable Requirements Under Section 110 and Part D of the CAA

*General SIP requirements.* Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment

and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants (e.g., NO<sub>x</sub> SIP Call,<sup>5</sup> CAIR,<sup>6</sup> and the CSAPR). The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that

<sup>5</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, Kentucky developed rules governing the control of NO<sub>x</sub> emissions from EGUs, major non-electric generating units (EGU) industrial boilers, major cement kilns, and internal combustion engines. EPA approved Kentucky's rules as fulfilling Phase I and Phase II of the NO<sub>x</sub> SIP Call on October 23, 2009 (74 FR 54755).

<sup>6</sup> On May 12, 2005 (70 FR 25162), EPA promulgated CAIR which required 28 upwind States and the District of Columbia to revise their SIPs to include control measures that would reduce emissions of SO<sub>2</sub> and NO<sub>x</sub>. Various aspects of CAIR rule were petitioned in court and on December 23, 2008, the U.S. Court of Appeals for the District of Columbia Circuit remanded CAIR to EPA (see *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir., December 2008)) which left CAIR in place to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's ruling. The Court directed EPA to remedy various areas of the rule that were petitioned consistent with its July 11, 2008 (see *North Carolina v. EPA*, 531 F.3d 836 (DC Cir., July 11, 2008)), opinion, but declined to impose a schedule on EPA for completing that action. *Id.* Therefore, CAIR is currently in effect in Kentucky.

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, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation. However, as discussed later in this notice, addressing pollutant transport from other states is an important part of an area's maintenance demonstration.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are 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 which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*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-Loraine, 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 has not yet completed rulemaking on a submittal from Kentucky dated August 26, 2008, addressing "infrastructure SIP" elements required under the Clean Air Act (CAA or "the Act") section 110(a)(2) for the 1997 PM<sub>2.5</sub> NAAQS. However, these are statewide requirements that are not a consequence of the nonattainment status of the Northern Kentucky Area. EPA believes that section 110 elements not linked to an area's nonattainment status are not applicable for purposes of redesignation. See the Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996 and 62 FR 24826, May

7, 1997), the Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996), and the Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). Therefore, notwithstanding the fact that EPA has not yet completed rulemaking on Kentucky's submittal for the PM<sub>2.5</sub> infrastructure SIP elements of section 110(a)(2), EPA believes it has approved all SIP elements that must be approved as a prerequisite for the redesignation to attainment of the Northern Kentucky Area.

*Title I, Part D requirements.* EPA proposes that with approval of Kentucky's base year emissions inventory, which is part of the maintenance plan submittal, the Kentucky SIP will meet applicable SIP requirements under part D of title I of the CAA. As discussed in greater detail below, EPA believes the emissions inventory is approvable because the 2008 direct PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> emissions for Kentucky were developed consistent with EPA guidance for emissions inventories and represent a comprehensive, accurate and current inventory as required by section 172(c)(3).

*Part D, subpart 1 applicable SIP requirements.* EPA has determined that if the approval of the base year emissions inventories, discussed in section IX of this rulemaking, is finalized, the Kentucky SIP will meet the applicable SIP requirements for the Northern Kentucky Area for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets for the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 1997 Annual PM<sub>2.5</sub> NAAQS were designated under subpart 1 of the CAA. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176.

For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and in section 176. 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).

*Subpart 1 Section 172 Requirements.* Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. 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. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. However, pursuant to 40 CFR 51.1004(c), EPA's final determination that the Tri-state Cincinnati-Hamilton Area was attaining the PM<sub>2.5</sub> standard suspended Kentucky's obligation to submit most of the attainment planning requirements that would otherwise apply. Specifically, the determination of attainment suspended Kentucky's obligation to submit an attainment demonstration and planning SIPs to provide for reasonable further progress (RFP), RACM, and contingency measures under section 172(c)(9).

The General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992) also discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard (General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992)).

Because attainment has been reached in the Tri-state Cincinnati Area, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the Area continues to attain the standard until redesignation. See also 40 CFR 51.1004(c).

The RFP plan 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 EPA has determined that the Tri-state Cincinnati-Hamilton Area, which includes the Northern Kentucky Area, has monitored attainment of the 1997 Annual PM<sub>2.5</sub> NAAQS. See General Preamble, 57 FR 13564. See also 40 CFR 51.1004(c). In addition, because the Tri-state Cincinnati-Hamilton Area has attained the 1997 Annual PM<sub>2.5</sub> NAAQS and is no longer subject to a 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 Kentucky's redesignation request for the Northern Kentucky Area, Kentucky submitted a 2008 base year emissions inventory. As discussed below in section VIII, EPA is proposing to approve the 2008 base year inventory submitted with the redesignation request 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." Kentucky has demonstrated that the Northern Kentucky Area will be able to maintain the NAAQS without part D NSR in effect, and therefore Kentucky need not have fully approved part D NSR programs prior to approval of the redesignation request. Nonetheless, Kentucky currently has a fully-approved part D NSR program in place. Kentucky's PSD program will become effective in the Northern Kentucky Area upon redesignation to attainment. Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. 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, EPA believes the Kentucky SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

**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 that are 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 transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA believes it is reasonable to interpret the conformity SIP requirements<sup>7</sup> 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 (upholding this interpretation)(6th Cir. 2001); see also 60 FR 62748 (December 7, 1995, Tampa, Florida). Thus, the Northern Kentucky Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. The Northern Kentucky Area Has a Fully Approved Applicable SIP 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 applicable Kentucky SIP for the Northern Kentucky Area for the 1997 Annual PM<sub>2.5</sub> nonattainment 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 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) plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein). Following passage of the CAA of 1970, Kentucky has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various SIP elements applicable for the 1997 Annual PM<sub>2.5</sub> NAAQS in the Northern Kentucky Area (65 FR 37879, June 19, 2000).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions

<sup>7</sup> CAA Section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emission budgets that are established in control strategy SIPs and maintenance plans.

and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. In addition, EPA believes that since the part D subpart 1 requirements did not become due prior to submission of the redesignation request, they are also not applicable requirements for purposes of redesignation. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004); 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis-East St. Louis Area to attainment of the 1-hour ozone NAAQS). With the approval of the emissions inventory, EPA will have approved all Part D subpart 1 requirements applicable for purposes of this redesignation.

*Criteria (3)—The Air Quality Improvement in the Kentucky Portion of the Tri-State Cincinnati-Hamilton Area 1997 Annual PM<sub>2.5</sub> NAAQS Nonattainment 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*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the 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 (CAA section 107(d)(3)(E)(iii)). EPA believes that Kentucky has demonstrated that the observed air quality improvement in the Northern Kentucky Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state adopted measures.

Fine particulate matter, or PM<sub>2.5</sub>, refers to airborne particles less than or equal to 2.5 micrometers in diameter. Although treated as a single pollutant, fine particles come from many different sources and are composed of many different compounds. One of the largest components of PM<sub>2.5</sub> is sulfate, which is formed through various chemical reactions from the precursor SO<sub>2</sub>. The other major component of PM<sub>2.5</sub> is organic carbon, which originates predominantly from biogenic emission sources. Nitrate, which is formed from the precursor NO<sub>x</sub>, is also a component of PM<sub>2.5</sub>. Crustal materials from windblown dust and elemental carbon from combustion sources are less significant contributors to total PM<sub>2.5</sub>.

State and federal measures enacted in recent years have resulted in permanent emission reductions. Most of these emission reductions are enforceable through regulations. A few non-regulatory measures also result in emission reductions. The federal measures that have been implemented include:

*Tier 2 vehicle standards.* In addition to requiring NO<sub>x</sub> controls, the Tier 2 rule reduced the allowable sulfur content of gasoline to 30 parts per million (ppm) starting in January of 2006. Most gasoline sold prior to this had a sulfur content of approximately 300 ppm.

*Heavy-duty gasoline and diesel highway vehicle standards.* The second phase of the standards and testing procedures, which began in 2007, reduces particulate matter (PM) and NO<sub>x</sub> from heavy-duty highway engines and also reduces highway diesel fuel sulfur content to 15 ppm. The total program is expected to achieve a 90 and 95 percent reduction in PM and NO<sub>x</sub> emissions from heavy-duty highway engines, respectively.

*Nonroad spark-ignition engines and recreational engines standards.* Tier 1 of this standard, implemented in 2004, and Tier 2, implemented in 2007, have reduced and will continue to reduce PM emissions.

*Large nonroad diesel engine standards.* Promulgated in 2004, this rule is being phased in between 2008

and 2014. This rule will reduce sulfur content in nonroad diesel fuel and, when fully implemented, will reduce NO<sub>x</sub> and direct PM<sub>2.5</sub> emissions by over 90 percent from these engines.

*NO<sub>x</sub> SIP Call.* 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. Emission reductions resulting from regulations developed in response to the NO<sub>x</sub> SIP Call are permanent and enforceable.

*CAIR and the Cross-State Air Pollution Rule (CSAPR).* As previously discussed, the remanded CAIR, originally promulgated to reduce transported pollution, was left in place to “temporarily preserve the environmental values covered by CAIR” until EPA replaced it with a rule consistent with the Court’s opinion. To remedy CAIR’s flaws, EPA promulgated the final CSAPR on August 8, 2011. CSAPR addresses the interstate transport requirements of the CAA with respect to the 1997 ozone, 1997 PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> NAAQS. As noted previously, the requirements of CAIR address emissions thru the 2011 control period and CSAPR requires similar or greater emission reductions in the relevant areas in 2012 and beyond.

The state measures that have been implemented to date and relied upon by

Kentucky to demonstrate attainment and/or maintenance include NO<sub>x</sub> SIP Call regulations, open burning bans, and fugitive emissions standards.

EPA believes that PM<sub>2.5</sub> and PM<sub>2.5</sub> precursor reductions in and around the Tri-state Cincinnati-Hamilton Area have contributed to improved air quality. The majority of the improvement in ambient PM<sub>2.5</sub> concentrations has resulted from reductions in emissions from coal fired power plants. In addition, local controls of NO<sub>x</sub> and SO<sub>2</sub> installed on Unit 2 of the Duke Energy East Bend coal fired utility plant in the Boone County have decreased emissions by approximately 38 and 53 percent, for NO<sub>x</sub> and SO<sub>2</sub> respectively, between 2005 and 2009. These reductions, prompted by the NO<sub>x</sub> SIP Call and CAIR, included upgrades to flue gas desulfurization system in response to CAIR and selective catalytic reduction (SCR) system installation as a result of the NO<sub>x</sub> SIP Call. A summary of the emissions reductions from 2005 to 2009 is for the entire Tri-state Cincinnati Hamilton Area is provided in Table 2. EPA’s analysis shows that reductions of SO<sub>2</sub> and NO<sub>x</sub> emissions, in tons per year (tpy) are greater than decreases in emissions that could be attributed to any decreases in electrical demand in the Tri-state Cincinnati-Hamilton Area. These reductions are permanent and enforceable through the NO<sub>x</sub> SIP Call and CSAPR.

TABLE 2—SUMMARY OF EMISSIONS REDUCTIONS FROM COAL FIRED UTILITIES IN THE TRI-STATE CINCINNATI-HAMILTON AREA<sup>8</sup>

Facility—county	SO <sub>2</sub>	Percent reduction	Emissions difference from 2005–2009 (tpy)	
			NO <sub>x</sub>	Percent reduction
Kentucky				
East Bend—Boone Co .....	1,942	53	1,516	38
Indiana				
Tanners Creek—Dearborn Co .....	30,091	65	4,432	56
Ohio				
Miami Fort—Hamilton Co .....	52,243	67	10,927	72
W.H. Zimmer—Clermont Co .....	8,095	36	11,507	76
Walter C. Beckjord—Clermont Co .....	24,982	37	2,065	16

Because PM<sub>2.5</sub> concentrations in the Cincinnati-Hamilton area are impacted by the transport of sulfates and nitrates, the area’s air quality is affected by

regulation of SO<sub>2</sub> and NO<sub>x</sub> emissions from power plants. Table 3, below, presents statewide EGU emissions data compiled by EPA’s Clean Air Markets

Division for the years 2002 and 2008. Emissions for 2008 reflect implementation of CAIR.

<sup>8</sup>Data reflects reported actual emissions from the Clean Air Markets Division Database <http://>

[camdataandmaps.epa.gov/gdm/](http://camdataandmaps.epa.gov/gdm/)

[index.cfm?fuseaction=emissions.wizard](#). Data is not normalized for output.



TABLE 3—COMPARISON OF 2002 AND 2008 STATEWIDE EGU NO<sub>x</sub> AND SO<sub>2</sub> EMISSIONS (TPY) FOR STATES IMPACTING THE CINCINNATI-HAMILTON AREA

State	NO <sub>x</sub>			SO <sub>2</sub>		
	2002	2008	Net change 2002–2008	2002	2008	Net change 2002–2008
Alabama .....	161,559	112,625	– 48,934	448,248	357,546	– 90,702
Illinois .....	174,247	119,930	– 54,317	353,699	257,357	– 96,342
Indiana .....	281,146	190,092	– 91,054	778,868	565,459	– 213,409
Kentucky .....	198,599	157,903	– 40,696	482,653	344,356	– 138,297
Michigan .....	132,623	107,624	– 25,000	342,999	326,501	– 16,498
Missouri .....	139,799	88,742	– 51,057	235,532	258,269	22,737
Ohio .....	370,497	235,049	– 135,448	1,132,069	709,444	– 422,625
Pennsylvania .....	200,909	183,658	– 17,251	889,766	831,915	– 57,851
Tennessee .....	155,996	85,641	– 70,356	336,995	208,069	– 128,926
West Virginia .....	225,371	99,484	– 125,887	507,110	301,574	– 205,536
Wisconsin .....	88,970	47,794	– 41,175	191,257	129,694	– 61,563
Total .....	2,129,716	1,428,541	– 701,175	5,699,195	4,290,184	– 1,409,011

Table 3 shows that states impacting the Cincinnati-Hamilton area reduced NO<sub>x</sub> and SO<sub>2</sub> emissions from EGUs by 701,175 tons per year (tpy) and 1,409,011 tpy, respectively, between 2002 and 2008. In summary, reductions of EGU emissions of SO<sub>2</sub> and NO<sub>x</sub> contributed to the air quality improvement in the Tri-state Cincinnati-Hamilton Area. Given the remanded status of CAIR, this air quality improvement could not be considered permanent at the time DAQ submitted its request for redesignation of the Northern Kentucky Area. However, since that time the CSAPR has been finalized, which mandates even greater reductions than have already occurred under CAIR and, more importantly, more reductions than are needed to maintain the standard in the Area. Therefore, the final promulgation of the CSAPR in combination with the other measures cited by Kentucky and described above, ensure that the emission reductions that led the Area to attain the 1997 Annual PM<sub>2.5</sub> NAAQS can be considered permanent and enforceable for purposes of section 107(d)(3)(E)(iii).

*Criteria (4)—The Northern Kentucky Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Northern Kentucky Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS, DAQ submitted a SIP revision to provide for the maintenance of the 1997 Annual PM<sub>2.5</sub> NAAQS for at least

10 years after the effective date of redesignation to attainment. EPA believes this maintenance plan meets the requirements for approval under section 175A of the CAA.

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 Commonwealth of Kentucky 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, as EPA deems necessary, to assure prompt correction of any future 1997 Annual PM<sub>2.5</sub> violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a 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, EPA finds that the Commonwealth's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Kentucky SIP.

b. Attainment Emissions Inventory

The Tri-state Cincinnati-Hamilton Area attained the 1997 Annual PM<sub>2.5</sub> NAAQS based on monitoring data for the 3-year period from 2007–2009. The Commonwealth selected 2008 as the attainment emission inventory year. The attainment inventory identifies the level of emissions in the Area, which is sufficient to attain the 1997 Annual PM<sub>2.5</sub> NAAQS. The Commonwealth began development of the attainment inventory by first generating a baseline emissions inventory for the Tri-state Cincinnati-Hamilton Area. As noted above, the year 2008 was chosen as the base year for developing a comprehensive emissions inventory for the primary PM<sub>2.5</sub> precursors, SO<sub>2</sub> and NO<sub>x</sub>, for which projected emissions could be developed for 2011, 2015, 2018, and 2021. The projected inventory included with the maintenance plan estimates emissions forward to 2021, which is at the 10-year interval required in section 175(A) of the CAA. In addition to comparing the final year of the plan, Kentucky compared interim years to the 2008 baseline to demonstrate that these years are also expected to show continued maintenance of the annual fine particulate matter standard.

The emissions inventories are composed of four major types of sources: point, area, on-road mobile and non-road mobile. The attainment and future year emissions inventories were projected by Lake Michigan Air Directors Consortium using the 2005 base year inventory methodology as provided in the Appendix D of Kentucky's Submittal. The future year emissions inventories have been estimated using projected rates of growth in population, traffic, economic activity, expected control programs, and

other parameters. Non-road mobile emissions estimates were based on the EPA's non-road mobile model, with the exception of the railroad locomotives, commercial marine, and aircraft engine. These emissions are estimated by taking activity data, such as landings and takeoffs, and multiplying by an Economic Growth Analysis System emission factor. On-road mobile source emissions were calculated using EPA's MOVES2010 mobile emission factors model. The 2008 SO<sub>2</sub>, NO<sub>x</sub> and PM<sub>2.5</sub> emissions for the Tri-state Cincinnati-Hamilton Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Table 5 of the following

subsection discussing the maintenance demonstration.

c. Maintenance Demonstration

The January 27, 2011, final submittal includes a maintenance plan for the Northern Kentucky Area. This demonstration:

(i) Shows compliance with and maintenance of the annual PM<sub>2.5</sub> standard by providing information to support the demonstration that current and future emissions of SO<sub>2</sub>, NO<sub>x</sub> and PM<sub>2.5</sub> remain at or below 2008 emissions levels.

(ii) Uses 2008 as the attainment year and includes future emission inventory

projections for 2011, 2015, 2018, and 2021.

(iii) Identifies an "out year" at least 10 years after EPA review and potential approval of the maintenance plan. per 40 CFR part 93, NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs were established for the last year (2021) of the maintenance plan. Additionally, Kentucky also opted to establish MVEBs for the interim year of 2015. See section VI below.

(iv) Provides, as shown in Tables 4, 5, and 6 below, the actual and projected emissions inventories, in tpy, for the Northern Kentucky Area, and Table 7 below shows the actual and emissions inventories for the entire Tri-state Cincinnati-Hamilton Area.

TABLE 4—ANNUAL PM<sub>2.5</sub> FOR THE NORTHERN KENTUCKY AREA

PM <sub>2.5</sub> Sector	Actual and projected estimated emissions (tpy)				
	2008	2011	2015	2018	2021
Point .....	246.14	260.41	280.39	295.19	310.51
Area .....	921.66	922.39	923.39	924.46	925.55
Nonroad .....	497.22	457.58	408.89	372.32	338.50
Mobile .....	645.62	513.85	371.11	320.84	275.38
Total .....	2,310.64	2,154.23	1,983.78	1,912.82	1,849.94

TABLE 5—ANNUAL NO<sub>x</sub> FOR THE NORTHERN KENTUCKY AREA

NO <sub>x</sub> Sector	Actual and projected estimated emissions (tpy)				
	2008	2011	2015	2018	2021
Point .....	2,094.21	1,891.67	1,646.47	1,549.91	1,457.54
Area .....	4,015.59	4,095.47	4,203.83	4,286.15	4,369.53
Nonroad .....	8,168.48	7,219.36	6,086.95	5,202.60	4,410.56
Mobile .....	13,114.20	10,135.95	6,996.22	5,618.08	4,435.96
Total .....	27,392.48	23,342.46	18,933.47	16,656.74	14,673.59

TABLE 6—ANNUAL SO<sub>2</sub> FOR THE NORTHERN KENTUCKY AREA

SO <sub>2</sub> Sector	Actual and projected estimated emissions (tpy)				
	2008	2011	2015	2018	2021
Point .....	2,844.98	2,761.67	2,653.54	2,613.08	2,573.07
Area .....	2,756.35	2,785.21	2,824.05	2,853.38	2,882.91
Nonroad .....	832.54	728.03	604.74	513.85	433.13
Mobile .....	42.74	45.94	50.50	54.46	58.62
Total .....	7,422.44	6,476.61	6,132.83	6,034.77	5,947.73

TABLE 7—EMISSION ESTIMATES FOR THE TRI-STATE CINCINNATI-HAMILTON AREA

Year	NO <sub>x</sub> (tpy)	SO <sub>2</sub> (tpy)	PM <sub>2.5</sub> (tpy)
2008 .....	148,706.15	117,016.14	8,904.64
2015 .....	105,712.02	112,250.26	8,634.55
2021 .....	78,819.13	88,510.27	8,202.63
Difference from 2008 to 2021 .....	-69,887.02	-28,505.87	-702.01

Tables 4 through 7 summarize the 2008 and future projected emissions of direct PM<sub>2.5</sub> and precursors from the

counties in the Northern Kentucky Area, and Tri-state Cincinnati-Hamilton Area. As reflected in these tables, future

emissions for the relevant pollutants and precursors are expected to be below the "attainment level" emissions in

2008, and thus illustrates that the Northern Kentucky and Tri-state Cincinnati-Hamilton Area as a whole are expected to continue to attain the 1997 PM<sub>2.5</sub> NAAQS through 2021. In situations where local emissions are the primary contributor to nonattainment, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the ambient air quality standard should not be violated in the future. EPA and the Commonwealth believe that a significant portion of the nonattainment problem in the Northern Kentucky Area is due to transport of power plant emissions from power plants outside the nonattainment area. EPA recently finalized the CSAPR, which mandates substantial regional reductions of SO<sub>2</sub> and NO<sub>x</sub> emissions in the Eastern United States.

In CSAPR, EPA quantifies the reductions needed in specific states to address each covered state's significant contribution to nonattainment and interference with maintenance of specific NAAQS. In that action, EPA also established FIPs to ensure that the significant contribution to nonattainment and interference with maintenance identified by EPA is prohibited.

The modeling for the final CSAPR identified nine states, including Kentucky, Indiana, and Ohio, that have emissions that affect the Tri-state Cincinnati-Hamilton Area's air quality. Table 8, below, shows state-wide emission estimates for SO<sub>2</sub> and NO<sub>x</sub> for 2005, 2012, and 2014, for the nine eastern states that were determined to have a significant effect on the Tri-state Cincinnati-Hamilton Area's air quality in relation to the 1997 Annual NAAQS.

The values for 2005 reflect base year emissions estimates. The values for 2012 reflect estimates for a scenario in which neither the CAIR nor a replacement for the CAIR is in effect, reflecting a baseline that EPA used in developing its proposed rule. The values for 2014 reflect estimates of the mandated CSAPR reductions. These estimates are taken from Tables 6–1 (NO<sub>x</sub>) and 6–2 (SO<sub>2</sub>) of the emissions technical support document for the Transport Rule, available at [http://www.epa.gov/airquality/transport/pdfs/TR\\_Proposal\\_Emissions\\_TSD.pdf](http://www.epa.gov/airquality/transport/pdfs/TR_Proposal_Emissions_TSD.pdf). These estimates exclude emissions from fires, which are a small fraction of the inventory (well under 0.1 percent) that is projected to remain constant and does not materially affect the comparison here.

TABLE 8—SO<sub>2</sub> AND NO<sub>x</sub> EMISSIONS FOR STATES SIGNIFICANTLY CONTRIBUTING TO THE TRI-STATE CINCINNATI-HAMILTON AREA 1997 ANNUAL PM<sub>2.5</sub> NONATTAINMENT AREA (TPY)

State	SO <sub>2</sub> emissions			NO <sub>x</sub> emissions		
	2005 base	2012 (w/o transport rule)	2014 (with transport rule)	2005 base	2012 (w/o transport rule)	2014 (with transport rule)
Kentucky .....	572,424	780,885	182,630	435,837	345,073	247,270
Ohio .....	1,276,270	1,076,470	361,138	816,239	552,864	453,167
Indiana .....	1,047,371	986,601	396,403	614,861	505,039	386,251
Illinois .....	516,950	866,376	304,834	773,276	542,886	480,743
Michigan .....	490,190	415,042	300,560	638,546	478,625	410,319
Missouri .....	421,979	570,575	315,283	505,195	353,407	317,092
Pennsylvania .....	1,173,296	1,119,680	303,071	704,936	566,301	454,248
Tennessee .....	388,191	708,905	218,065	471,705	338,154	270,171
West Virginia .....	535,586	645,431	184,341	294,016	206,630	144,970
Total .....	6,422,257	7,169,965	2,566,325	5,254,611	3,888,979	3,164,231

While EPA has not made emission estimates for 2021 that are premised on the implementation of the CSAPR, Table 8 above shows emission estimates that EPA has made for 2014 that include reductions from the implementation of the CSAPR. These emission estimates show a substantial decline in SO<sub>2</sub> and NO<sub>x</sub> emissions comparable to that shown in Kentucky's maintenance plan. Given the substantial degree of control of the various electric EGUs in the Tri-state Cincinnati-Hamilton Area, EPA finds Kentucky's projection of such emission declines through 2021 to be appropriate forecasts of future emissions. The promulgation of the CSAPR requires additional control beyond those projected by Kentucky will result in emission reductions in excess of those needed for continued maintenance of the PM<sub>2.5</sub> Annual NAAQS in the Northern Kentucky Area.

A maintenance plan requires the state to show that projected future year

emissions will not exceed the level of emissions which led the Area to attain the NAAQS. Kentucky has projected emissions as described previously and determined that emissions in the Northern Kentucky Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

As discussed further in section VII of this proposed rulemaking, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Kentucky has decided to allocate a portion of the available safety margins to the Area's NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for both 2015 and 2021 for the Northern Kentucky Area and has calculated the safety margin in its submittal. Specifically,

18.56 tpy and 27.54 tpy of the available PM<sub>2.5</sub> safety margin for the Kentucky portion of the Tri-state Cincinnati-Hamilton Area will be allocated to the 2015 and 2021 Northern Kentucky Area MVEBs, respectively. In addition, 1,049.43 tpy and 963.17 tpy of the available NO<sub>x</sub> safety margins will be allocated to the 2015 and 2021 MVEBs, respectively. This allocation and the resulting available safety margin for the Northern Kentucky Area are discussed further in section VI of this proposed rulemaking.

d. Monitoring Network

There are currently two monitors measuring PM<sub>2.5</sub> in the Tri-state Cincinnati-Hamilton Area (two in the Northern Kentucky Area and twelve in the remainder in the Ohio portion of this Area). The Commonwealth of Kentucky, through DAQ, has committed to continue operation of the monitors in the Northern Kentucky Area in

compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved Kentucky's 2010 monitoring plan on October 8, 2010. Ohio has made a similar commitment in their redesignation and maintenance plan submission to EPA for this Area. There is no monitor in the Indiana portion of this Area.

#### e. Verification of Continued Attainment

The Commonwealth of Kentucky, through DAQ, has the legal authority to enforce and implement the requirements of the Northern Kentucky Area 1997 Annual PM<sub>2.5</sub> maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future PM<sub>2.5</sub> attainment problems.

DAQ will track the progress of the maintenance plan by performing future reviews of triennial emission inventories for the Northern Kentucky Area as required in the Air Emissions Reporting Rule (AERR) and Consolidated Emissions Reporting Rule (CERR). For these periodic inventories, DAQ 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, then DAQ will re-project emissions for the Northern Kentucky Area.

#### f. Contingency Measures in the Maintenance Plan

The contingency measures 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 Commonwealth. 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 January 27, 2011, submittal, Kentucky affirms that all programs instituted by the Commonwealth 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 includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The Commonwealth of Kentucky will use actual ambient monitoring data as the triggering event to determine when contingency measures should be implemented.

Kentucky has identified a primary trigger as occurring when the 3-year average of annual mean PM<sub>2.5</sub> concentration is greater than the 1997 Annual PM<sub>2.5</sub> NAAQS of 15.0 µg/m<sup>3</sup>, as described in the Tri-state Cincinnati-Hamilton Area. In the event of a monitored violation of the 1997 Annual NAAQS, the Commonwealth commits to adopt one or more of the following control measures within nine months in order to bring the Area into compliance. All regulatory programs will be implemented within 18 months of the triggering monitored violation:

- Implementation of a program to require additional emissions reductions on stationary sources;
- Implementation of fuel programs, including incentives for alternative fuels;
- Restriction of certain roads or lanes, or construction of such lanes for use by passenger buses or high-occupancy vehicles;
- Trip-reduction ordinances;
- Employer-based transportation management plans, including incentives;
- Programs to limit or restrict vehicle use in downtown areas, or other areas of emission concentration, particularly during periods of peak use;
- Programs for new construction and major reconstruction of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest;
- Diesel reduction emissions strategies, including diesel retrofit programs;
- Any other control program that is developed and deemed to be more advantageous for the area.

A secondary trigger will occur in the event that a measured value of the weighted annual mean is 15.5 µg/m<sup>3</sup> or greater in a single calendar year in any portion of the maintenance area. In such a case, the Commonwealth will evaluate existing controls measures and determine whether any further emission reduction measures should be implemented. In addition to the triggers

indicated above, Kentucky will monitor regional emissions through the CERR and AERR, and compare them to the projected inventories and the attainment year inventory.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, monitoring network, verification of continued attainment, and a contingency plan. Therefore, the maintenance plan SIP revision submitted by the Commonwealth of Kentucky for the Northern Kentucky Area meets the requirements of section 175A of the CAA and is approvable.

#### VI. What is EPA's analysis of Kentucky's proposed NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the Northern Kentucky Area?

Under section 176(c) of the CAA, new transportation plans, programs, and 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 or any interim milestones. 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 an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP 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, a MVEB must be 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 the Tri-state Cincinnati-Hamilton Area, Kentucky has elected to develop MVEBs for NO<sub>x</sub> and PM<sub>2.5</sub> for the Northern Kentucky Area (*i.e.*, Boone, Campbell and Kenton Counties).<sup>9</sup> Kentucky is developing these MVEBs, as required, for the last year of its maintenance plan, 2021. Kentucky also established MVEBs for the interim year of 2015. The MVEBs reflect the total on-road emissions for 2015 and 2021, plus an allocation from the available NO<sub>x</sub> and PM<sub>2.5</sub> safety margin. Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. The NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled and new emission factor models. The NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the Northern Kentucky Area are defined in Table 9 below.

TABLE 9—NORTHERN KENTUCKY AREA MVEBS [tpy]

	PM <sub>2.5</sub>	NO <sub>x</sub>
2015 Mobile Emissions	371.11	6,996.22
2015 Safety Margin Allocation	18.56	1,049.43
2015 Total Mobile Budget	389.67	8,045.65
2021 Mobile Emissions	275.38	6,421.15
2021 Safety Margin Allocation	27.54	963.17
2021 Total Mobile Budget	302.92	7,384.32

As mentioned above, Kentucky has chosen to allocate a portion of the

<sup>9</sup> MVEBs for the remaining portion of the Tri-state Cincinnati-Hamilton Area is addressed in the Ohio and Indiana submissions for this Area, and will be addressed through a separate EPA action.

available safety margin for the Northern Kentucky Area to the NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2015 and 2021. The NO<sub>x</sub> safety margin allocation is 1,049.43 tpy and 963.17 tpy for 2015 and 2021, respectively. Likewise, the PM<sub>2.5</sub> safety margin allocation is 18.56 tpy and 27.54 tpy for 2015 and 2021, respectively.

Through this rulemaking, EPA is proposing to approve the MVEBs for PM<sub>2.5</sub> and NO<sub>x</sub> for 2015 and 2021, including the allocation from the PM<sub>2.5</sub> and NO<sub>x</sub> safety margins, for the Northern Kentucky Area because EPA has made the preliminary determination that the Area maintains the 1997 Annual PM<sub>2.5</sub> NAAQS with the emissions at the levels of the budgets. Once the MVEBs for the Northern Kentucky Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations and the metropolitan planning organizations must use the MOVES model in future PM<sub>2.5</sub> conformity determinations for their long-range transportation plans and transportation improvement plans. After thorough review, EPA has preliminarily determined that the budgets meet the adequacy criteria, as outlined in 40 CFR 93.118(e)(4), and is proposing to approve the budgets because they are consistent with maintenance of the Annual PM<sub>2.5</sub> NAAQS through 2021.

**VII. What is the status of EPA's adequacy determination for the proposed NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2015 and 2021 for the Northern Kentucky Area?**

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 MVEBs 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 determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes 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 transportation conformity purposes 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, Kentucky's maintenance plan submission includes NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the Northern Kentucky Area for 2015 and 2021, the last year of the maintenance plan. EPA reviewed the NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs through the adequacy process. The Kentucky SIP submission, including the Northern Kentucky Area NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs, was open for public comment on EPA's adequacy Web site on February 14, 2011, found at: <http://www.epa.gov/otaq/stateresources/transconf/cursips.htm>. The EPA public comment period on adequacy for the MVEBs for 2015 and 2021 for Northern Kentucky Area closed on March 16, 2011. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal.

EPA intends to make its determination on the adequacy of the 2015 and 2021 MVEBs for the Northern Kentucky Area for transportation conformity purposes in the near future by completing the adequacy process that was started on February 14, 2011. After EPA finds the 2015 and 2021 MVEBs adequate or approves them, the new MVEBs for NO<sub>x</sub> and PM<sub>2.5</sub> must be used for future transportation conformity determinations. For required regional emissions analysis years between 2015 and 2021, the applicable budgets will be the new 2015 MVEBs established in the maintenance plan. Starting in 2021, the applicable budgets will be the new 2021 MVEBs. Both the 2015 and 2021 MVEBs are defined in section VII of this proposed rulemaking.

**VIII. What is EPA's analysis of the proposed 2008 base year emissions inventory for the Northern Kentucky Area?**

As discussed in section V above, section 172(c)(3) of the CAA requires areas to submit a base year emissions inventory. As part of Kentucky's request to redesignate the Northern Kentucky

Area, the Commonwealth submitted a 2008 attainment 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. Kentucky's submittal documents 2008

emissions in the Northern Kentucky Area in units of tpy. Table 10 below provides a summary of the 2008 emissions of direct PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub> for the Northern Kentucky Area.

TABLE 10—NORTHERN KENTUCKY AREA 2008 EMISSIONS FOR PM<sub>2.5</sub>, NO<sub>x</sub>, BY SOURCE CATEGORY  
(tpy (percent total))

	PM <sub>2.5</sub>	NO <sub>x</sub>	SO <sub>2</sub>
Point Source Total .....	246.14 [10.7]	2094.21 [7.6]	2,844.98 [43.9]
Area Source Total .....	921.66 [39.9]	4,015.59 [14.7]	2,756.35 [42.6]
On-Road Mobile Source Total .....	645.62 [27.9]	13,114.20	42.74 [0.7]
Non-Road Mobile Source Total .....	497.22 [21.5]	8,168.48 [29.8]	832.54 [12.9]
<b>Total for all Sources .....</b>	<b>2,310.64</b>	<b>27,392.48</b>	<b>6,476.61</b>

In today's notice, EPA is proposing to approve this 2008 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

**IX. Proposed Actions on the Redesignation Request and Maintenance Plan SIP Revisions Including Approval of the NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2015 and 2021 for the Northern Kentucky Area**

EPA previously proposed to determine that the Tri-state Cincinnati-Hamilton Area was attaining the 1997 PM<sub>2.5</sub> NAAQS on June 3, 2011, at 76 FR 32110. EPA did not receive any comments, adverse or otherwise, on its June 3, 2011, and will take final action on this determination through an action separate from today's action. Further, EPA is now taking three separate but related actions regarding the Area's redesignation and maintenance of the 1997 Annual PM<sub>2.5</sub> NAAQS.

First, EPA is proposing to determine, based on complete, quality-assured and certified monitoring data for the 2007–2009 monitoring period, and after review of preliminary data in AQS for 2008–2010, that the Tri-state Cincinnati-Hamilton Area continues to attain the 1997 Annual PM<sub>2.5</sub> NAAQS. Provided that EPA takes final action to approve the 2008 base emissions inventory, EPA is proposing to determine that the Northern Kentucky Area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS. On this basis, EPA is proposing to approve Kentucky's redesignation request for the Northern Kentucky Area.

Second, EPA is proposing to approve Kentucky's 2008 emissions inventory for the Northern Kentucky Area (under CAA section 172(c)(3)). Kentucky selected 2008 as the attainment emissions inventory year for the

Northern Kentucky Area. This attainment inventory identifies a level of emissions in the Area (as a part of the Tri-state Cincinnati-Hamilton Area) that is sufficient to attain the 1997 Annual PM<sub>2.5</sub> NAAQS and also is a current, comprehensive inventory that meets the requirements of section 172(c)(3).

Third, EPA is proposing to approve the maintenance plan for the Northern Kentucky Area, including the PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs for 2015 and 2021 submitted by Kentucky for the Northern Kentucky Area, as meeting the requirements of section 175A of the CAA. The maintenance plan demonstrates that the Area will continue to maintain the 1997 Annual PM<sub>2.5</sub> NAAQS, and the MVEBs meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5). Further, as part of today's action, EPA is describing the status of its adequacy determination for the PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs for 2015 and 2021 in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy determination or EPA's final action to approve the MVEBs (whichever comes first), the transportation partners will need to demonstrate conformity to the new PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs pursuant to 40 CFR 93.104(e).

If finalized, approval of the redesignation request would change the official designations of Boone, Campbell, and Kenton in the Northern Kentucky Area for the 1997 Annual PM<sub>2.5</sub> NAAQS, found at 40 CFR part 81, from nonattainment to attainment. EPA is also proposing to approve, into the Kentucky SIP, the maintenance plan for the Northern Kentucky Area, the emissions inventory submitted with the maintenance plan, and the 2015 and 2021 MVEBs.

**X. What is the effect of EPA's proposed actions?**

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Kentucky's redesignation request would change the legal designation of Boone, Campbell, and Kenton Counties in Kentucky for the 1997 Annual PM<sub>2.5</sub> NAAQS, found at 40 CFR part 81, from nonattainment to attainment. Approval of the Commonwealth's request would also incorporate a plan for maintaining the 1997 Annual PM<sub>2.5</sub> NAAQS in the Northern Kentucky Area through 2021 into the Kentucky SIP. This maintenance plan includes contingency measures to remedy any future violations of the 1997 Annual PM<sub>2.5</sub> NAAQS and procedures for evaluation of potential violations. The maintenance plan also establishes NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the Northern Kentucky Area portion of the Tri-state Cincinnati-Hamilton Area. The proposed NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2021 for the Northern Kentucky Area are 7,384.32 tpy and 302.92 tpy, respectively. Kentucky also chose to establish interim year MVEBs for 2015 of 8,045.65 tpy and 389.67 tpy for NO<sub>x</sub> and PM<sub>2.5</sub>, respectively. Final action would also approve the Northern Kentucky Area's emissions inventory under CAA section 172(c)(3). Additionally, EPA is notifying the public of the status of its adequacy determination for the NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2015 and 2021 pursuant to 40 CFR 93.118(f)(1).

**XI. Statutory and Executive Order Reviews**

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not

impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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 CAA. Accordingly, these proposed actions merely approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not "significant regulatory action[s]" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed 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 Commonwealth, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: October 6, 2011.

#### A. Stanley Meiburg,

*Acting Regional Administrator, Region 4.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 25

[IB Docket No. 11-133; FCC 11-121]

#### Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission is initiating a review of its policies and procedures that apply to foreign ownership of common carrier, aeronautical en route and aeronautical fixed radio station licensees. The Commission seeks to reduce to the extent possible the regulatory costs and burdens imposed on common carrier, aeronautical en route and aeronautical fixed radio station applicants, licensees, and spectrum lessees; provide greater transparency and more predictability with respect to the Commission's foreign ownership filing requirements and review process; and facilitate investment from new sources of capital, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

**DATES:** Submit comments on or before December 5, 2011, and replies on or before January 4, 2012. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the public, Office of

Management and Budget (OMB) and other interested parties on or before December 20, 2011.

**ADDRESSES:** You may submit comments, identified by Docket No. 11-133, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's ECFS Web site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov), phone: 202-418-0530 (voice), tty: 202-418-0432.

In addition to filing comments as described above, a copy of any comments on the PRA information collection requirements contained herein should be submitted to the FCC via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicholas A. Fraser, OMB, via e-mail to [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) or via fax at 202-395-5167.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Susan O'Connell or James Ball, Policy Division, International Bureau, FCC, (202) 418-1460 or via e-mail to [Susan.OConnell@fcc.gov](mailto:Susan.OConnell@fcc.gov), [James.Ball@fcc.gov](mailto:James.Ball@fcc.gov). On PRA matters, contact Cathy Williams, Office of the Managing Director, FCC, (202) 418-2918 or via e-mail to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 11-133, FCC 11-121, adopted and released on August 9, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The document also is available for download over the Internet at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0809/FCC-11-121A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0809/FCC-11-121A1.pdf). The complete text also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), located in Room CY-B402, 445 12th Street, SW., Washington, DC 20554. Customers may contact BCPI at its Web site, <http://www.bcpweb.com>, or call 1-800-378-3160.

#### Comment Filing Procedures

Pursuant to §§ 1.415, 1.419, interested parties may file comments and reply