

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the Delaware 1997 annual PM<sub>2.5</sub> attainment plan for the Philadelphia Area, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

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

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

Dated: October 31, 2012.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2012-28091 Filed 11-16-12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R04-OAR-2012-0751; FRL-9751-8]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** On February 12, 2012, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), submitted a request to redesignate the Kentucky portion of the tri-state Huntington-Ashland, West Virginia-Kentucky-Ohio fine particulate matter (PM<sub>2.5</sub>) nonattainment area (hereafter referred to as the “Huntington-Ashland Area” or “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 Huntington-Ashland Area. The Huntington-Ashland Area is comprised of Boyd County and a portion of Lawrence County in Kentucky; Lawrence and Scioto Counties and portions of Adams and Gallia Counties in Ohio; and Cabell and Wayne Counties and a portion of Mason County in West Virginia. EPA is proposing to approve the redesignation request and the related SIP revision for Boyd and Lawrence Counties in Kentucky, including the Commonwealth’s plan for maintaining attainment of the PM<sub>2.5</sub> standard in the Kentucky portion of the Huntington-Ashland Area. EPA is also proposing to approve the on-road motor vehicle insignificance finding for direct PM<sub>2.5</sub> and nitrogen oxides (NO<sub>x</sub>) for the Kentucky portion of the Huntington-Ashland Area. On May 4, 2011, and June 30, 2011, respectively, Ohio and West Virginia submitted requests to redesignate their portions of the Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS. EPA is taking action on the requests from Ohio and West Virginia separately from these proposed actions.

**DATES:** Comments must be received on or before December 10, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2012-0751, by one of the following methods:

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

2. *Email:* R4-RDS@epa.gov.

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

4. *Mail:* EPA-R04-OAR-2012-0751, 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. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office’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-2012-0751. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at

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

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* 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 *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 Huntington-Ashland Area is continuing to attain the 1997 Annual PM<sub>2.5</sub> NAAQS<sup>1</sup> and to take additional actions related to Kentucky's request to redesignate the Kentucky portion of the Area, which are summarized as follows and described in greater detail throughout this notice of proposed rulemaking: (1) to redesignate the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS; and (2) to approve, under section 175A of the CAA, Kentucky's 1997 Annual PM<sub>2.5</sub> NAAQS maintenance plan for the Commonwealth's portion of the Huntington-Ashland Area into the Kentucky SIP.

First, EPA proposes to determine that the Kentucky portion of the Huntington-Ashland 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 Boyd County and a portion of Lawrence County from nonattainment to

attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS.

Second, EPA is proposing to approve Kentucky's 1997 Annual PM<sub>2.5</sub> NAAQS maintenance plan for the Kentucky portion of the Huntington-Ashland Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Kentucky portion of the Huntington-Ashland Area in attainment of the 1997 Annual PM<sub>2.5</sub> NAAQS through 2022. As explained in Section V, EPA is also proposing to approve that attainment can be maintained through 2023. The maintenance plan that EPA is proposing to approve today includes an insignificance determination for the on-road motor vehicle contribution of direct PM<sub>2.5</sub> and NO<sub>x</sub> to ambient PM<sub>2.5</sub> levels in the Kentucky portion of Huntington-Ashland Area for transportation conformity purposes. EPA is proposing to approve (into the Kentucky SIP) the on-road motor vehicle insignificance finding that is 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 Huntington-Ashland 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 Kentucky portion of the Huntington-Ashland Area. The bases for EPA's determination for the Area are discussed in greater detail below.

EPA is also providing the public with an update on the status of EPA's adequacy process for the on-road motor vehicle insignificance determination for the Kentucky portion of the Huntington-Ashland Area. Please see section VII of this proposed rulemaking for further explanation of this process and for details.

Today's notice of proposed rulemaking is in response to Kentucky's February 12, 2012, SIP revision, which requests redesignation of the Kentucky portion of the Huntington-Ashland 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 secondary PM<sub>2.5</sub> are sulfur dioxide (SO<sub>2</sub>), NO<sub>x</sub>, ammonia and volatile organic compounds (VOC). Unless otherwise noted by the state or EPA,

ammonia and VOC 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>2</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 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.

On January 5, 2005, at 70 FR 944, and supplemented on April 14, 2005, at 70 FR 19844, EPA designated the Huntington-Ashland Area as nonattainment for the 1997 PM<sub>2.5</sub> NAAQS. In that action, EPA defined the 1997 PM<sub>2.5</sub> Huntington-Ashland Area to include Boyd County and a portion of Lawrence County in Kentucky; Lawrence and Scioto Counties and portions of Adams and Gallia Counties in Ohio; and Cabell and Wayne Counties and a portion of Mason County in West Virginia. On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 24-hour standard established in 2006, designating the Huntington-Ashland Area as attainment for this NAAQS. That action clarified that the Huntington-Ashland Area was classified unclassifiable/attainment for the 24-hour NAAQS promulgated in

<sup>1</sup> On September 7, 2011, at 76 FR 55542, EPA determined that the Huntington-Ashland 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.

<sup>2</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 (D.C. 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 (D.C. Cir. 2009). However, given that the 1997 and 2006 Annual NAAQS are essentially identical, attainment of the 1997 Annual NAAQS would also indicate attainment of the remanded 2006 Annual NAAQS.

1997. EPA did not promulgate designations for the annual PM<sub>2.5</sub> NAAQS promulgated in 2006 since that NAAQS was essentially identical to the annual PM<sub>2.5</sub> NAAQS promulgated in 1997. Therefore, the Huntington-Ashland Area is designated nonattainment for the annual PM<sub>2.5</sub> NAAQS promulgated in 1997, and today's action only addresses this designation.

All 1997 PM<sub>2.5</sub> 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 PM<sub>2.5</sub> Implementation Rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 PM<sub>2.5</sub> NAAQS. That rule, at 40 CFR 51.1004(c), specifies some of the regulatory results of attaining the NAAQS, as discussed below.

The 3-year ambient air quality data for 2008–2010 indicated no violations of the 1997 Annual PM<sub>2.5</sub> NAAQS for the Huntington-Ashland Area. As a result, on February 12, 2012, Kentucky requested redesignation of the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS. The redesignation request includes three years of complete, quality-assured ambient air quality data for the 1997 Annual PM<sub>2.5</sub> NAAQS for 2008–2010, indicating that this NAAQS had been achieved for the entire Huntington-Ashland 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 PM<sub>2.5</sub> design values for the Huntington-Ashland Area have declined. While annual PM<sub>2.5</sub> concentrations are dependent on a variety of conditions, the overall downtrend in annual PM<sub>2.5</sub> concentrations in the Huntington-Ashland Area can be attributed to the reduction of pollutant 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 February 12, 2012, the Commonwealth of Kentucky, through DAQ, requested the redesignation of the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS. The Huntington-Ashland Area has attained the 1997 Annual PM<sub>2.5</sub> NAAQS, and EPA's preliminary evaluation indicates that the Area has met the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. EPA is also announcing the status of its adequacy determination for both the NO<sub>x</sub> and direct PM<sub>2.5</sub>.

### 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 Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual PM<sub>2.5</sub> NAAQS; and (2) approve into the Kentucky SIP the 1997 Annual PM<sub>2.5</sub> NAAQS maintenance plan for the Kentucky portion of the Huntington-Ashland Area. These actions are based upon EPA's determination that the Huntington-Ashland Area continues to attain the 1997 Annual PM<sub>2.5</sub> NAAQS and that all other redesignation criteria have been met for the Kentucky portion of the Huntington-Ashland Area. 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.

#### *Criteria (1)—The Huntington-Ashland 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 Huntington-Ashland 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 7, 2011, at 76 FR 55542, EPA finalized a determination that the Huntington-Ashland 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 Huntington-Ashland 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. As such, EPA is not seeking additional comment in today’s action regarding this data. As noted in EPA’s September 7, 2011, action these data were quality-assured and recorded in AQS. As summarized in Table 1

below, the 3-year averages (i.e., design values) of the PM<sub>2.5</sub> concentrations for the years 2009, 2010, and 2011 show steady declines in ambient PM<sub>2.5</sub> concentrations in the Huntington-Ashland Area.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE HUNTINGTON-ASHLAND AREA FOR THE 1997 ANNUAL PM<sub>2.5</sub> NAAQS (µG/M<sup>3</sup>)

Location	County, state	Monitor ID	3-Year design values		
			2007–2009	2008–2010	2009–2011
Huntington .....	Cabell, WV .....	54–011–0006	14.3	13.1	12.1
Ashland Primary (FIVCO) .....	Boyd, KY .....	21–019–0017	12.4	11.4	10.8
Lawrence County Hospital (LCH) <sup>3</sup> .....	Lawrence, OH .....	39–087–0010	13.3	NA	NA
Ironton Department of Transportation (DOT) <sup>4</sup> .....	Lawrence, OH .....	39–087–0012	12.2	12.2	11.4
Portsmouth .....	Scioto, OH .....	39–145–0013	12.3	11.6	10.9

As discussed above, the design value for an area is the highest average annual mean concentration recorded at any monitor in the area for a 3-year period. Therefore, the 3-year annual design value submitted by Kentucky for redesignation of the Huntington-Ashland Area, for the period 2008–2010, is 13.1 µg/m<sup>3</sup>, which meets the NAAQS as described above. Additional details can be found in EPA’s final clean data determination for the Huntington-Ashland Area (76 FR 55542, September 7, 2011). The most recent complete, quality-assured and certified ambient monitoring data result in an annual design value for the Huntington-Ashland Area of 12.1 µg/m<sup>3</sup>, which also meets the NAAQS, for the period 2009–2011. In addition, EPA has reviewed more recent preliminary data that are available in AQS for the year 2012, although not yet complete and certified, and notes that this data also indicates the Huntington-Ashland Area continues to attain the 1997 PM<sub>2.5</sub> NAAQS beyond the submitted 3-year attainment period of 2008–2010. 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 Kentucky Portion of the Huntington-Ashland 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 Kentucky portion of the Huntington-Ashland 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 Kentucky Portion of the Huntington-Ashland 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. The section 110(a)(2)(D) requirements for a state are not linked with a

<sup>3</sup> The Lawrence County Hospital Site was shut down in February 2008. The Ironton DOT site began operation on the same day the Lawrence County Hospital Site ceased monitoring.

<sup>4</sup> The Ironton DOT site did not begin operation until February 2008.

particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, 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 the Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (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 at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37879, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

EPA 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 on October 3, 2012. See 77 FR 60307. However, these are statewide requirements that are not a consequence of the nonattainment status of the Huntington-Ashland Area. As stated above, EPA believes that section 110 elements not linked to an area's nonattainment status are not applicable for purposes of redesignation. Therefore, EPA believes it has approved all SIP

elements under section 110 that must be approved as a prerequisite for redesignating the Huntington-Ashland Area to attainment.

*Title I, Part D, subpart 1 applicable SIP requirements.* EPA proposes to determine that the Kentucky SIP meets the applicable SIP requirements for the Kentucky portion of the Huntington-Ashland 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 forth 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 Huntington-Ashland 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 Huntington-Ashland Area, no additional measures are needed to provide for attainment, and the 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. 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 Huntington-Ashland Area, which includes the Kentucky portion of the Huntington-Ashland 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 Huntington-Ashland 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. On April 11, 2012, EPA approved Kentucky's 2002 base-year emissions inventory for the Huntington-Ashland Area as part of the SIP revision submitted by the Commonwealth to provide for attainment of the 1997 PM<sub>2.5</sub> NAAQS in the Area. See 77 FR 21663.

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 Kentucky portion of the Huntington-Ashland Area will be able to maintain the NAAQS without part D NSR in effect; therefore, Kentucky need not have fully approved part D NSR programs prior to approval of the redesignation request. Kentucky’s PSD program will become effective in the Kentucky portion of the Huntington-Ashland 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.

*Section 176 Conformity Requirements.* Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally-supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects 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>5</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 Kentucky portion of the Huntington-Ashland Area has satisfied all applicable requirements for

purposes of redesignation under section 110 and part D of the CAA. Nonetheless, EPA approved the Kentucky Conformity SIP on April 21, 2010. See 75 FR 20780.

b. The Kentucky Portion of the Huntington-Ashland Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Kentucky SIP for the Kentucky portion of the Huntington-Ashland 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 Kentucky portion of the Huntington-Ashland Area (77 FR 60307, October 3, 2012).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area’s nonattainment status are not applicable requirements for purposes of redesignation. 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). EPA has 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 Huntington-Ashland 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 Kentucky portion of the Huntington-Ashland 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.

<sup>5</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.

*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.

*Reciprocating Internal Combustion Engine Standard.* Promulgated in 2010, this rule regulates emissions of air toxics from existing diesel powered stationary reciprocating internal combustion engines that meet specific site rating, age, and size criteria. When all of the reciprocating internal combustion engine standards are fully implemented in 2013, EPA estimates that annual PM<sub>2.5</sub> emissions from these engines will be reduced by approximately 2,800 tons.

*Category 3 Marine Diesel Engine Standards.* Promulgated in 2010, this rule establishes more stringent exhaust emission standards for new large marine diesel engines with per cylinder displacement at or above 30 liters (commonly referred to as Category 3 compression-ignition marine engines) as part of a coordinated strategy to address emissions from all ships that effect U.S. air quality. Near-term standards for newly built engines will apply beginning in 2011, and long-term standards requiring an 80 percent reduction in NO<sub>x</sub> emissions will begin in 2016.

*NO<sub>x</sub> SIP Call.* On October 27, 1998 (63 FR 57356), EPA issued the 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 Transport Rule.* On May 12, 2005, EPA published the Clean Air Interstate Rule (CAIR), which requires significant reductions in emissions of SO<sub>2</sub> and NO<sub>x</sub> from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. See 76 FR 25162. The D.C. Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the Court's decision, EPA issued the Transport Rule, also known as the Cross-State Air Pollution Rule, to address interstate transport of SO<sub>2</sub> and NO<sub>x</sub> in the eastern United States. See 76

FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate the Transport Rule. In that decision, the Court also ordered EPA to continue administering CAIR "pending the promulgation of a valid replacement." *EME Homer Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir., August 21, 2012).<sup>6</sup>

In light of the these unique circumstances and for the reasons explained below, EPA proposes to approve the redesignation request and the related SIP revision for Boyd County and a portion of Lawrence County in Kentucky, including Kentucky's plan for maintaining attainment of the standard in the Kentucky portion of the Huntington-Ashland Area. The air quality modeling analysis conducted for the Transport Rule demonstrates that the Huntington-Ashland Area would be able to attain the 1997 Annual PM<sub>2.5</sub> NAAQS even in the absence of either CAIR or the Transport Rule. See "Air Quality Modeling Final Rule Technical Support Document," App. B, B-44, B-55-56, and B-62. This modeling is available in the docket for this proposed redesignation action. Nothing in the D.C. Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based.

In addition, CAIR remains in place and enforceable until substituted by a "valid" replacement rule. Kentucky's SIP revision lists CAIR as a control measure that became state-effective February 2, 2007, and was approved by EPA on October 4, 2007, for the purpose of reducing SO<sub>2</sub> and NO<sub>x</sub> emissions. The monitoring data used to demonstrate the area's attainment of the 1997 Annual PM<sub>2.5</sub> NAAQS by the April 2010 attainment deadline was also impacted by CAIR. To the extent that Kentucky is relying on CAIR in its maintenance plan, the recent directive from the D.C. Circuit in *EME Homer* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule, and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine whether

they can be approved, and EPA has taken action on the SIPs, including promulgation of a federal implementation plan, if appropriate. These steps alone will take many years, even with EPA and the states acting expeditiously. The Court's clear instruction to EPA that it must continue to administer CAIR until a "valid replacement" exists provides an additional backstop; by definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to eliminate significant downwind contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating the Transport Rule and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR "might be more severe now in light of the reliance interests accumulated over the intervening four years." *EME Homer*, slip op. at 60. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR, which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation action, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emission reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

*Other measures.* There are also other actions, independent of CAIR, which have led to permanent and enforceable emission reductions at EGUs located within the Huntington-Ashland Area. For example, in the Kentucky portion of the Huntington-Ashland Area, the Big Sandy Power Station was required by a federally enforceable consent decree<sup>7</sup> and 2007 settlement agreement to install and continuously operate selective catalytic reduction (SCR) to reduce NO<sub>x</sub> emissions from Unit 2 beginning January 1, 2009. The plant is also

<sup>6</sup> The Court's judgment is not final, as of November 7, 2012, as the mandate has not yet been issued.

<sup>7</sup> Entered with the United States District Court for the Southern District of Ohio Eastern Division (*United States of America and State of New York, et al., v. American Electric Power Service Corp., et al.*, No. C2-99-1250 and 1182 (consolidated)).



required to install and continuously operate flue gas desulfurization (FGD) to reduce SO<sub>2</sub> emissions from Unit 2 beginning December 31, 2015. Operation of FGD controls has a co-benefit of reducing direct PM<sub>2.5</sub> emissions as well. In the Ohio and West Virginia portions of the Area, a federally enforceable consent decree<sup>8</sup> and 2007 settlement agreement require the General James M. Gavin Power Plant (Ohio) and Mountaineer Power Plant (West Virginia) to install and continuously operate SCR and FGD on specified units and the Philip Sporn Plant (West Virginia) to retire, retrofit, or re-power one unit. Another consent decree,<sup>9</sup> to which EPA was not a party, requires the J.M. Stuart Power Plant (Ohio) to install and continuously operate SCR on all of its units. To the extent that power plant emission reductions contributed to attainment in the Huntington-Ashland Area, these reductions are permanent and enforceable.

In addition to the consent decrees for power plants, Kentucky provided information in its submittal regarding other consent decrees in and near the Huntington-Ashland Area. In Greenup

County, which is adjacent to the Huntington-Ashland PM<sub>2.5</sub> nonattainment area, E.I. Dupont will reduce SO<sub>2</sub> emissions at four sulfuric acid units with measures equivalent to best available control technology (BACT)<sup>10</sup> and will continue to implement best work practices. AK Steel—Ashland Works, located in Boyd County, ceased all coke plant operations by June 23, 2011, as confirmed through a shutdown notification letter to DAQ. EPA notes that although Kentucky did not take credit for these consent decrees and shutdowns in their projection inventories, they are permanent and enforceable reductions that will contribute to further SO<sub>2</sub> and NO<sub>x</sub> emission reductions in the Huntington-Ashland Area.

The state measures that have been implemented to date and relied upon by Kentucky to demonstrate attainment and/or maintenance include the Commonwealth of Kentucky NO<sub>x</sub> SIP Call regulations, open burning bans, and fugitive emission standards.

EPA believes that reductions in emissions of direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors in and around the Huntington-Ashland 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 that were prompted by the NO<sub>x</sub> SIP Call and CAIR. A summary of the emission reductions from 2005 to 2009 for the entire Huntington-Ashland Area is provided in Table 2 below. EPA's analysis shows that the reductions of SO<sub>2</sub> and NO<sub>x</sub> emissions, in tons per year (tpy), were greater than decreases in emissions that could be attributed to any decrease in electrical demand in the Huntington-Ashland Area. While the average SO<sub>2</sub> and NO<sub>x</sub> emission reductions from coal fired utilities in the Huntington-Ashland Area for the period 2005–2009 were 47 percent and 68 percent, respectively, the average facility power production in terms of heat input decreased by only about 5 percent during the same period. Furthermore, as discussed below, Kentucky's maintenance plan provides for verification of continued attainment by performing future reviews of triennial emissions inventories and also for contingency measures to ensure that the NAAQS is maintained into the future if monitored increases in ambient PM<sub>2.5</sub> concentrations occur.

TABLE 2—ACTUAL EMISSION REDUCTIONS FROM COAL FIRED UTILITIES IN THE HUNTINGTON-ASHLAND AREA FOR THE PERIOD 2005–2009<sup>11</sup>

Facility—County	Emission differences from 2005 to 2009 (tpy)			
	SO <sub>2</sub>	Percent reduction	NO <sub>x</sub>	Percent reduction
Kentucky:				
Big Sandy—Lawrence County .....	9,873	20	7,621	61
West Virginia:				
Mountaineer—Mason County .....	40,214	94	10,073	79
Philip Sporn—Mason County .....	22,433	57	5,020	56
Ohio:				
J.M. Stuart—Adams County .....	42,224	40	16,124	66
Killen Station—Adams County .....	17,592	90	3,083	52
Gen J.M. Gavin—Gallia County .....	1,701	6	31,800	82
Kyger Creek—Gallia County .....	16,032	22	15,209	82

*Criteria (4)—The Kentucky Portion of the Huntington-Ashland 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 Kentucky portion of the Huntington-Ashland 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

<sup>8</sup> *Id.*  
<sup>9</sup> Entered with the United States District Court for the Southern District of Ohio, Eastern Division (*Sierra Club and Marilyn Wall v. The Dayton Power and Light Company, Duke Energy Ohio, Inc., and*

*Columbus Southern Power Co.*, Civil Action No. 2: 04–cv–905).

<sup>10</sup> BACT is a source emissions limitation that is based on the maximum degree of control that can be achieved and is generally implemented through

the prevention of significant deterioration (PSD) permitting program.

<sup>11</sup> Data reflects reported actual emissions from the Clean Air Markets Division Database at <http://ampd.epa.gov/ampd/>.



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 Huntington-Ashland 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 a level of emissions in the Area that 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 Huntington-Ashland 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 2015 and 2022. The projected inventory included with the maintenance plan estimates emissions forward to 2022, which is at the 10-year interval required in section 175A of the CAA. In addition to comparing the final year of the plan, Kentucky compared an interim year 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 the Visibility Improvement State and Tribal Association of the Southeast and the 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 NONROAD 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 Huntington-Ashland Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Table 6 of the following subsection discussing the maintenance demonstration.

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the Area "for at least 10 years after the redesignation." EPA has interpreted this as a showing of maintenance "for a period of ten years following redesignation." Calcagni Memorandum, p. 9. Where the emissions inventory method of showing maintenance is used, the purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni Memorandum, pp. 9–10.

As discussed in detail in the subsection below, Kentucky's maintenance plan submission expressly documents that the Area's emissions inventories will remain below the attainment year inventories through 2022. Projected emissions inventory levels in 2022 are well below the

attainment year inventory levels, and it is highly improbable that they will suddenly increase and exceed attainment year inventory levels in 2023. In addition, for the reasons set forth below, EPA believes that the Commonwealth's submission, in conjunction with additional supporting information, further demonstrates that the Area will continue to maintain the 1997 Annual PM<sub>2.5</sub> NAAQS at least through 2023. Thus, if EPA finalizes its proposed approval of the redesignation request and maintenance plans in 2013, the approval will be based upon this showing, in accordance with section 175A, and EPA's analysis described herein, that the Commonwealth's maintenance plan provides for maintenance for at least ten years after redesignation.

#### c. Maintenance Demonstration

The February 12, 2012, final submittal includes a maintenance plan for the Kentucky portion of the Huntington-Ashland 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 2015 and 2022.

(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> MVEB were considered for the last year (2022) of the maintenance plan.<sup>12</sup>

(iv) Provides, as shown in Tables 3, 4, and 5 below, the actual and projected emissions inventories, in tpy, for the Kentucky portion of the Huntington-Ashland Area. Kentucky incorporated the expected CAIR reductions into the projected SO<sub>2</sub> and NO<sub>x</sub> inventories. The projected direct PM<sub>2.5</sub> inventories do not include any reductions achieved as a co-benefit of CAIR implementation. Table 6 shows the 2008 actual and 2015 and 2022 projected emissions inventories for the entire Huntington-Ashland Area.

<sup>12</sup> PM<sub>2.5</sub> and NO<sub>x</sub> MVEB are not required for the Kentucky portion of the Huntington-Ashland Area due to the insignificance finding for the mobile sources.

TABLE 3—ACTUAL (2008) AND PROJECTED DIRECT PM<sub>2.5</sub> EMISSIONS FOR THE KENTUCKY PORTION OF THE HUNTINGTON-ASHLAND AREA (tpy)

Sector	2008	2015	2022
Point .....	12,329.81	7,374.04	4,191.06
Area .....	124.25	120.60	117.98
Non-road .....	756.77	798.60	841.16
On-road .....	104.18	54.28	30.77
Total .....	13,315.01	8,347.52	5,180.97

TABLE 4—ACTUAL (2008) AND PROJECTED NO<sub>x</sub> EMISSIONS FOR THE KENTUCKY PORTION OF THE HUNTINGTON-ASHLAND AREA (tpy)

Sector	2008	2015	2022
Point .....	17,952.52	19,919.31	21,886.10
Area .....	3,182.45	2,963.14	2,743.37
Non-road .....	50.84	58.01	63.68
On-road .....	2,311.75	1,225.13	685.60
Total .....	23,497.56	24,165.59	25,378.75

TABLE 5—ACTUAL (2008) AND PROJECTED SO<sub>2</sub> EMISSIONS FOR THE KENTUCKY PORTION OF THE HUNTINGTON-ASHLAND AREA (tpy)

Sector	2008	2015	2022
Point .....	46,835.66	17,880.04	23,873.83
Area .....	398.09	378.52	373.13
Non-road .....	579.92	606.63	626.51
On-road .....	12.36	12.62	12.83
Total .....	47,826.03	18,877.81	24,886.30

TABLE 6—ACTUAL (2008) AND PROJECTED TOTAL EMISSION ESTIMATES FOR THE ENTIRE HUNTINGTON-ASHLAND AREA (tpy)

Year	PM <sub>2.5</sub> (tpy)	NO <sub>x</sub> (tpy)	SO <sub>2</sub> (tpy)
2008 .....	20,990.20	152,377.14	230,690.12
2015 .....	15,907.51	104,680.23	135,946.22
2022 .....	12,601.44	83,700.01	113,779.08
Decrease from 2008 to 2022 .....	8,388.76	68,677.13	116,911.04

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. As reflected in Table 6, future emissions of all the relevant pollutants in the Huntington-Ashland Area are expected to be well below the 2008 “attainment level” emissions, thus illustrating that the Huntington-Ashland Area is expected to continue to attain the 1997 Annual PM<sub>2.5</sub> NAAQS through 2022. Further, as reflected in Tables 3 through 5, future emissions direct PM<sub>2.5</sub> and SO<sub>2</sub> in the Kentucky portion of the Huntington-Ashland Area are expected to be well below the 2008 “attainment level” emissions, while future emissions

NO<sub>x</sub> are expected to be slightly above the 2008 “attainment level” emissions. Because the SO<sub>2</sub> and direct PM components are more significant to ambient PM<sub>2.5</sub> levels than the nitrate contribution,<sup>13</sup> the significant projected reductions in these pollutants indicate that future emissions in the Kentucky portion of the Huntington-Ashland Area are expected to support continued

<sup>13</sup> In Kentucky, speciation data shows that the sulfate (SO<sub>4</sub>) component accounts for approximately one-third of the total ambient PM<sub>2.5</sub> mass; the direct PM (organic carbon) component accounts for approximately one-fourth of the total ambient PM<sub>2.5</sub> mass; and the nitrate (NH<sub>4</sub> and NO<sub>3</sub>) component accounts for approximately one-tenth of the total ambient PM<sub>2.5</sub> mass. See Figure 1.3–4 of “The Kentucky Fine Particulate Matter (PM<sub>2.5</sub>) Attainment Demonstration for the Louisville, KY-IN, Cincinnati-Middletown, OH-KY-IN, and Huntington-Ashland, WV-KY-OH PM<sub>2.5</sub> Nonattainment Areas,” November 2008.

maintenance of the 1997 Annual PM<sub>2.5</sub> NAAQS through 2022.

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 demonstrated maintenance by projecting emissions in 2022, as described previously, that will remain below those in the 2008 attainment year.

As noted above, EPA believes that several pertinent factors demonstrate that the Huntington-Ashland Area will continue to maintain the 1997 Annual PM<sub>2.5</sub> NAAQS at least through the year 2023. These include the circumstances that (1) all of the state and federal regulatory requirements that enabled the Area to attain the NAAQS will continue to be in effect and enforceable after the 10-year maintenance period; (2) the

most recent complete, quality-assured and certified annual PM<sub>2.5</sub> design value (for the period 2009 to 2011) for the Area of 12.1 µg/m<sup>3</sup> is well below the standard of 15.0 µg/m<sup>3</sup>; (3) as discussed in detail below, EPA is proposing in this action to approve Kentucky's determination that the direct PM<sub>2.5</sub> and NO<sub>x</sub> contribution from motor vehicle emissions is insignificant for the Area and thus does not expect such emissions to contribute significantly to future ambient PM<sub>2.5</sub> levels; and (4) as noted above, several of the largest sources in the Area have been required by permanent and enforceable consent decrees to install controls that achieve reductions in SO<sub>2</sub> and NO<sub>x</sub> emissions as well as reductions in direct PM<sub>2.5</sub> emissions. Therefore, EPA expects the projected downward trend in pollutant emissions in the Huntington-Ashland Area from the 2008 attainment year through the 2022 maintenance year, as shown in Table 6 above, to continue for at least the one additional year past 2022.

#### d. Monitoring Network

There are currently four monitors measuring PM<sub>2.5</sub> in the Huntington-Ashland Area (one in the Kentucky portion of the Area, one in the West Virginia portion of the Area, and two in the Ohio portion of the Area). The Commonwealth of Kentucky, through DAQ, has committed to continue operation of the monitors in the Kentucky portion of the Huntington-Ashland Area in compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved Kentucky's 2011 monitoring plan on October 20, 2011. Ohio and West Virginia have made similar commitments in their redesignation and maintenance plan submissions to EPA for 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 Kentucky portion of the Huntington-Ashland 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 Kentucky portion of the Huntington-Ashland 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 Kentucky portion of the Huntington-Ashland 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 state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the February 12, 2012, revision, 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 2-step triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The Commonwealth will use actual ambient monitoring data as the triggering event to determine when contingency measures should be implemented. The secondary trigger is a pre-violation trigger, and thus activation does not necessarily mean a violation of the annual PM<sub>2.5</sub> NAAQS has occurred or will occur. This pre-violation trigger allows the Commonwealth to begin evaluating the causes of increased ambient PM<sub>2.5</sub> concentrations and take corrective action to prevent a future violation. In the contingency plan, Kentucky has committed to taking action on the activation of a primary or secondary trigger. These triggers and the actions resulting from them are discussed more fully below.

Kentucky has identified a primary trigger as occurring when the 3-year average of annual mean PM<sub>2.5</sub> concentrations in the Huntington-Ashland Area is greater than the 1997 Annual PM<sub>2.5</sub> NAAQS of 15.0 µg/m<sup>3</sup>. In the event of a monitored violation of the 1997 Annual NAAQS, the Commonwealth commits to adopting 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 control 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 Kentucky portion of

the Huntington-Ashland Area meets the requirements of section 175A of the CAA and is approvable.

**VI. What is EPA's analysis of Kentucky's proposed regional on-road motor vehicle insignificance determination for the Kentucky portion of the Huntington-Ashland 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 in 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.

Today's action addresses the element regarding on-road motor vehicle

emissions and the requirement to establish MVEB. EPA is proposing to find that the direct PM<sub>2.5</sub> and NO<sub>x</sub> emission contribution from motor vehicles to the air pollution in the Kentucky portion of the Huntington-Ashland Area are insignificant. The result of this determination, if finalized, is that Kentucky will not need to develop MVEB for direct PM<sub>2.5</sub> and NO<sub>x</sub> for the Kentucky portion of the Area and the MPO will not need to perform a regional emissions analysis for either pollutant when it demonstrates conformity. See below for further information on the insignificance determination.

*Regional on-road motor vehicle insignificance.* For motor vehicle emissions budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria (40 CFR 93.118(e)(4)). In certain instances, the Transportation Conformity Rule allows areas to forgo establishment of a MVEB where it is demonstrated that the regional motor vehicle emissions for a particular pollutant or precursor are an insignificant contributor to the air quality problem in an area. The general criteria for insignificance determinations can be found in 40 CFR 93.109(f). Insignificance determinations are based on a number of factors, including (1) the percentage of motor vehicle emissions in context of the total SIP inventory; (2) the current state of air quality as determined by monitoring data for that NAAQS; (3) the absence of SIP motor vehicle control measures; and (4) historical trends and future projections of the growth of motor vehicle emissions. EPA's rationale for providing for insignificance determinations is described in the July 1, 2004, revision to the Transportation Conformity Rule at 69 FR 40004.<sup>14</sup> Specifically, the rationale is explained on page 40061 under the subsection entitled "XXIII.B. Areas With Insignificant Motor Vehicle Emissions." Any insignificance determination under review by EPA is subject to the adequacy and approval process for EPA's action on the SIP.

Through the adequacy and SIP approval process, EPA may find that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for the pollutant or precursor at issue. Upon the effective date of EPA's adequacy determination, federal

regulations no longer require a regional emissions analysis (for the purpose of transportation conformity implementation) for the relevant pollutant or precursor. Areas with insignificant regional motor vehicle emissions for a pollutant or precursor are still required to make a conformity determination that satisfies other relevant conformity requirements. Additionally, such areas are required to satisfy the regional emissions analysis requirements for pollutants or precursors for which EPA has not made a determination of insignificance.

The maintenance plan for the Kentucky portion of the Huntington-Ashland Area, included as part of the SIP revision, contains a regional on-road motor vehicle insignificance determination for the direct PM<sub>2.5</sub> and NO<sub>x</sub> contribution of motor vehicles to the air quality problem in the Kentucky portion of the Huntington-Ashland Area. As part of the preparation for its redesignation request, Kentucky consulted with the interagency consultation group for the Huntington-Ashland Area regarding the insignificance determination. The information provided by Kentucky supports EPA's proposal to determine that the direct PM<sub>2.5</sub> and NO<sub>x</sub> contribution from on-road vehicles to PM<sub>2.5</sub> air pollution in the Kentucky portion of the Huntington-Ashland Area are insignificant. The information provided by Kentucky to EPA, as part of the SIP revision, addresses each of the factors listed in 40 CFR 93.109(f) and is summarized below. The 2008 on-road PM<sub>2.5</sub> emissions and NO<sub>x</sub> emissions account for less than one percent of the total direct PM<sub>2.5</sub> emissions and less than three percent of total NO<sub>x</sub> emissions from all sources in the SIP inventory for the Kentucky portion of the Huntington-Ashland Area. As shown in Tables 3 and 4 above, Kentucky's maintenance plan demonstrates that on-road direct PM<sub>2.5</sub> emissions and NO<sub>x</sub> emissions will continue to decrease through 2022, the end of the maintenance plan for the Huntington-Ashland Area. In addition, since 2007, the PM<sub>2.5</sub> design value concentration has decreased by 27 percent such that the Area is now attaining the Annual PM<sub>2.5</sub> NAAQS with a 2009–2011 design value of 12.1 µg/m<sup>3</sup>, well below the standard of 15.0 µg/m<sup>3</sup>. According to information provided by Kentucky, point sources contributed nearly 98 percent of the emissions in future years in the Huntington-Ashland Area. The maintenance plan does not contain any control measures that apply to on-road motor vehicles.

<sup>14</sup>In the March 24, 2010, final rule (75 FR 14260), provisions for insignificance determinations were outlined in 40 CFR 93.109(m). EPA revised 40 CFR 93.109 in its March 14, 2012, final rule (77 FR 14979), and the provisions for insignificance determinations are now located at 40 CFR 93.109(f).

After evaluating the information provided by Kentucky and weighing the factors for the insignificance determination outlined in 40 CFR 93.109(f), EPA is now proposing to approve Kentucky's determination that the direct PM<sub>2.5</sub> and NO<sub>x</sub> contribution from motor vehicle emissions to the pollution problem in the Kentucky portion of the Huntington-Ashland Area is insignificant. EPA's insignificance determination should be considered and specifically noted in the transportation conformity documentation that is prepared for the Area. In addition, as discussed in Section V above, EPA is proposing that if this approval is finalized in 2013 the Area will continue to maintain the 1997 Annual PM<sub>2.5</sub> NAAQS through at least 2023. EPA is also proposing that the submitted insignificance finding is consistent with maintenance of the 1997 Annual PM<sub>2.5</sub> NAAQS through 2023.

#### **VII. What is the status of EPA's adequacy determination for the on-road motor vehicle insignificance determination for the Kentucky portion of the Huntington-Ashland area?**

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEB and/or insignificance determinations, EPA may affirmatively find the MVEB and/or insignificance determination 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. Further, once EPA affirmatively finds the submitted insignificance determination is adequate for transportation conformity purposes, the transportation partners are relieved of performing a regional emissions analysis of that pollutant or precursor but must document the insignificance determination in its conformity determination.

EPA's substantive criteria for determining adequacy of an MVEB and/or insignificance determination 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 MVEB 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." EPA adopted regulations to codify the adequacy process 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 an insignificance determination that direct PM<sub>2.5</sub> and NO<sub>x</sub> emissions from on-road motor vehicles are an insignificant contributor to the air quality problem in the Kentucky portion of the Huntington-Ashland area. On January 3, 2012, the Kentucky SIP submission, including the on-road motor vehicle insignificance finding, was open for public comment on EPA's adequacy Web site found at: <http://www.epa.gov/otaq/stateresources/transconf/currsubs.htm>. The EPA public comment period closed on February 2, 2012. EPA did not receive any comments on the adequacy of the insignificance determination, nor did EPA receive any requests for the SIP revision.

EPA intends to make its determination on the adequacy of the insignificance finding for the Kentucky portion of the Huntington-Ashland Area for transportation conformity purposes in the near future by completing the adequacy process that was started on January 3, 2012. Section 93.109(f) states that a regional emissions analysis is no longer necessary if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor. A finding of insignificance does not change the requirement for a regional analysis for other pollutants and precursors and does not change the requirement for hot-spot analysis. After EPA finds the insignificance determination adequate or approves it, this on-road motor vehicle insignificance finding for direct PM<sub>2.5</sub> and NO<sub>x</sub> applies to future

transportation conformity determinations.<sup>15</sup>

#### **VIII. Proposed Actions on the Redesignation Request and Maintenance Plan SIP Revision for the Kentucky Portion of the Huntington-Ashland Area**

EPA determined that the Huntington-Ashland Area was attaining the 1997 Annual PM<sub>2.5</sub> NAAQS on September 7, 2011. See 76 FR 55542. EPA is now taking two 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 2008–2010 monitoring period and review of data in AQS for 2011 and 2012, that the Huntington-Ashland Area continues to attain the 1997 Annual PM<sub>2.5</sub> NAAQS. EPA is also proposing to determine that the Kentucky portion of the Huntington-Ashland 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 Kentucky portion of the Huntington-Ashland Area.

Second, EPA is proposing to approve the maintenance plan for the Kentucky portion of the Huntington-Ashland 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.

If finalized, approval of the redesignation request would change the official designation of Boyd County and a portion of Lawrence County in the Kentucky portion of the Huntington-Ashland 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 Kentucky portion of the Huntington-Ashland Area.

#### **IX. 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 Boyd County and a portion of Lawrence County in Kentucky for the 1997 Annual PM<sub>2.5</sub>

<sup>15</sup> The Huntington-Ashland Area already has an adequate insignificance finding for its submitted attainment demonstration.

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 Kentucky portion of the Huntington-Ashland 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. 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> pursuant to 40 CFR 93.118(f)(1).

#### X. 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, Incorporation by reference, 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: November 6, 2012.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2012-28090 Filed 11-16-12; 8:45 am]

**BILLING CODE 6560-50-P**

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

#### 48 CFR Part 9903

#### Cost Accounting Standards: Revision of the Exemption From Cost Accounting Standards for Contracts and Subcontracts for the Acquisition of Commercial Items

**AGENCY:** Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board.

**ACTION:** Proposed rule.

**SUMMARY:** The OFPP and CAS Board invite public comments concerning this proposed rule to clarify the exemption for contracts or subcontracts for the acquisition of commercial items (hereafter referred to as the "(b)(6) commercial item exemption") so that the regulatory text is more consistent with the statutory text. Specifically, the proposed rule clarification will eliminate the detailed listing of permissible contract and subcontract types, and instead the revised provision will contain more generalized language that reads "contracts and subcontracts for the acquisition of commercial items," which reflects the statutory text.

**DATES:** *Comment Date:* Comments must be in writing and must be received by January 18, 2013.

**ADDRESSES:** All comments to this proposed rule must be in writing. Electronic comments may be submitted in any one of three ways:

1. *Federal eRulemaking Portal:* Comments may be directly sent via <http://www.regulations.gov>—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type "(b)(6) commercial item exemption" (without quotation marks) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments;
2. *Email:* Comments may be included in an email message sent to [casb2@omb.eop.gov](mailto:casb2@omb.eop.gov). The comments may be submitted in the text of the email message or as an attachment;
3. *Facsimile:* Comments may also be submitted via facsimile to (202) 395-5105; or
4. *Mail:* If you choose to submit your responses via regular mail, please mail them to: Office of Federal Procurement Policy, 725 17th Street NW., Room 9013, Washington, DC 20503, ATTN: Raymond J. M. Wong. Due to delays caused by the screening and processing of mail, respondents are strongly encouraged to submit responses electronically.

Be sure to include your name, title, organization, postal address, telephone number, and email address in the text of your public comment and reference "(b)(6) commercial item exemption" in the subject line irrespective of how you submit your comments. Comments received by the date specified above will be included as part of the official record. Comments delayed due to use of regular mail may not be considered.