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.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 19, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action to approve the Virginia Transportation Conformity Regulation may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: October 3, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Sections 5–151–40 and 5–151–70 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
9 VAC 5, Chapter 151			**Transportation Conformity**	
*	*	*	*	*
Part III			**Criteria and Procedures for Making Conformity Determinations**	
5–151–40	General	3/2/11	10/19/11 [Insert page number where the document begins].	
*	*	*	*	*
5–151–70	Consultation	3/2/11	10/19/11 [Insert page number where the document begins].	Section D.1.f. is amended.
*	*	*	*	*

* * * * *

[FR Doc. 2011–26905 Filed 10–18–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2011–0017; EPA–R05–OAR–2011–0106; FRL–9480–6]

Approval and Promulgation of Air Quality Implementation Plans, Ohio and Indiana; Redesignation of the Ohio and Indiana Portions Cincinnati-Hamilton Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving, under the Clean Air Act (CAA), Ohio's and Indiana's requests to redesignate their respective portions of the Cincinnati-Hamilton nonattainment area (for Ohio: Butler, Clermont, Hamilton, and Warren Counties, Ohio; for IN: a portion of Dearborn County) to attainment for the 1997 annual National Ambient Air Quality Standard (NAAQS or standard) for fine particulate matter ($PM_{2.5}$). The Ohio Environmental Protection Agency (Ohio EPA) submitted its request on December 9, 2010, and the Indiana

Department of Environmental Management (IDEM) submitted its request on January 25, 2011. Kentucky's request to redesignate its portion of the Cincinnati-Hamilton area, submitted to EPA on January 27, 2011, will be addressed in a separate rulemaking action. EPA's approvals here involve several additional related actions. EPA has determined that the entire Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ standard. EPA is approving, as revisions to the Ohio and Indiana State Implementation Plans (SIPs), the states' plans for maintaining the 1997 annual $PM_{2.5}$ NAAQS through 2021 in the area. EPA is approving the 2005 emissions inventories for the Ohio and Indiana portions of the Cincinnati-Hamilton area as meeting the comprehensive emissions inventory requirement of the CAA. Finally, EPA finds adequate and is approving Ohio and Indiana's Nitrogen Oxides (NO_X) and $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for 2015 and 2021 for the Cincinnati-Hamilton area.

DATES: This direct final rule will be effective December 19, 2011, unless EPA receives adverse comments by November 18, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0106 (Indiana) or EPA–R05–OAR–2011–0017 (Ohio) by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Aburano.Douglas@epa.gov.*
- *Fax:* (312) 408–2279.
- *Mail:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Doug Aburano, Control Strategies Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2011–0106, EPA–R05–OAR–2011–0017. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects and viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon at (312) 353–8290 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What actions is EPA taking?
II. What is the background for these actions?
III. What are the criteria for redesignation to attainment?
IV. What is EPA's analysis of the States' requests?
A. Attainment Determination and Redesignation
B. Adequacy of Ohio and Indiana's MVEBs
C. 2005 Comprehensive Emissions Inventory
V. Summary of Actions
VI. Statutory and Executive Order Reviews

I. What actions is EPA taking?

EPA has previously determined that the entire Cincinnati-Hamilton area is attaining the 1997 annual $PM_{2.5}$ standard and that the Ohio and Indiana portions of the area have met the requirements for redesignation under section 107(d)(3)(E) of the CAA through a final determination made on September 29, 2011. EPA is thus approving the requests from the states of Ohio and Indiana to change the legal designation of their portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. This action does not address the Kentucky portion of the Cincinnati-Hamilton area. EPA is also taking several additional actions related to Ohio and Indiana's $PM_{2.5}$ redesignation requests, as discussed below.

EPA is approving Indiana's and Ohio's $PM_{2.5}$ maintenance plans for the Cincinnati-Hamilton area as revisions to the Ohio and Indiana SIP (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plans are designed to keep the Cincinnati-Hamilton area in attainment of the 1997 annual $PM_{2.5}$ NAAQS through 2021.

EPA is approving 2005 emissions inventories for primary $PM_{2.5}$,[1] NO_X, and sulfur dioxide (SO_2),[2] documented in Ohio and Indiana's $PM_{2.5}$ redesignation request supplemental submittal. These emissions inventories satisfy the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory.

Finally, EPA finds adequate and is approving Ohio's and Indiana's 2015

[1] Fine particulates directly emitted by sources and not formed in a secondary manner through chemical reactions or other processes in the atmosphere.

[2] NO_X and SO_2 are precursors for fine particulates through chemical reactions and other related processes in the atmosphere.

and 2021 primary $PM_{2.5}$ and NO_X MVEBs for the Cincinnati-Hamilton area. These MVEBs will be used in future transportation conformity analyses for the area. Further discussion of the basis for these actions is provided below.

II. What is the background for these actions?

The first air quality standards for $PM_{2.5}$ were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (μg/m³) of ambient air, based on a three-year average of the annual mean $PM_{2.5}$ concentrations at each monitoring site. In the same rulemaking, EPA promulgated a 24-hour $PM_{2.5}$ standard at 65 μg/m³, based on a three-year average of the annual 98th percentile of 24-hour $PM_{2.5}$ concentrations at each monitoring site.

On January 5, 2005, at 70 FR 944, EPA published air quality area designations for the 1997 annual $PM_{2.5}$ standard based on air quality data for calendar years 2001–2003. In that rulemaking, EPA designated the Cincinnati-Hamilton, area as nonattainment (for Ohio: Butler, Clermont, Hamilton, and Warren Counties, Ohio; for IN: a portion of Dearborn County, and for Kentucky: Boone, Campbell, and Kenton Counties) for the 1997 annual $PM_{2.5}$ standard.

On October 17, 2006, at 71 FR 61144, EPA retained the annual $PM_{2.5}$ standard at 15 μg/m³ (2006 annual $PM_{2.5}$ standard), but revised the 24-hour standard to 35 μg/m³, based again on the three-year average of the annual 98th percentile of the 24-hour $PM_{2.5}$ concentrations. In response to legal challenges to the 2006 annual $PM_{2.5}$ standard, the U.S. Court of Appeals for District of Columbia Circuit (DC Circuit) remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (DC Cir. 2009). However, given that the 1997 and 2006 annual $PM_{2.5}$ standards are essentially identical, attainment of the 1997 annual $PM_{2.5}$ standard would also indicate attainment of the remanded 2006 annual standard. Since the Cincinnati-Hamilton area is designated as nonattainment for the 1997 annual $PM_{2.5}$ standard, today's proposed action addresses redesignation to attainment only for this standard.

Fine particulate pollution can be emitted directly from a source (primary $PM_{2.5}$) or formed secondarily through chemical reactions in the atmosphere involving precursor pollutants emitted from a variety of sources. Sulfates are a type of secondary particulate formed from SO_2 emissions from power plants and industrial facilities. Nitrates, another common type of secondary particulate, are formed from combustion emissions of NO_X from power plants, mobile sources, and other combustion sources.

III. What are the criteria for redesignation to attainment?

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

IV. What is EPA's analysis of the States' requests?

A. Attainment Determination and Redesignation

EPA has determined that the entire Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ standard and that the Ohio and Indiana portions of the area have met all other applicable redesignation criteria under CAA section 107(d)(3)(E). The basis for EPA's approvals of the redesignation requests is as follows:

1. The Area Has Attained the 1997 Annual $PM_{2.5}$ NAAQS (Section 107(d)(3)(E)(i))

On June 3, 2011, EPA proposed to determine that the entire Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ NAAQS (76 FR 32110). No adverse comments were received and EPA's Region 4 and Region 5 Regional Administrators signed the final determination of attainment for the Cincinnati-Hamilton area on August 18, 2011 and September 12, 2011, respectively and published in the **Federal Register** on September 29, 2011. Relevant discussion of the monitored concentrations and sites can be found in the notices for the proposed and final determinations that are referenced above. EPA's September 29, 2011 final determination that the Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ standard fulfills the requirement set forth in CAA section 107(d)(3)(E)(i).

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

We have determined that Ohio and Indiana have met all currently applicable SIP requirements for purposes of redesignation of the Ohio and Indiana portions of the Cincinnati-Hamilton area under section 110 of the CAA (general SIP requirements). We are also finding that the Ohio and Indiana SIPs meet all SIP requirements currently applicable for purposes of redesignation under part D of title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, with the exception of the emissions inventory under section 172(c)(3), we have approved all applicable requirements of the Ohio and Indiana SIPs for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is approving Ohio and Indiana's 2005 emissions inventories as meeting the section 172(c)(3) comprehensive emissions inventory requirement.

In making these determinations, we have ascertained which SIP requirements are applicable for purposes of redesignation, and have determined that there are SIP measures meeting those requirements and that they are fully approved under section 110(k) of the CAA.

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

i. Section 110 General SIP Requirements

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and, among other things, must: include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor

ambient air quality; provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; include criteria for stationary source emission control measures, monitoring, and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. EPA believes that the requirements linked with a particular nonattainment area's designation are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with a particular area's designation are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996, and 62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Ohio and Indiana's SIPs and have concluded that they meet the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of Ohio and Indiana's SIPs addressing section 110 requirements (including provisions addressing particulate matter, at 40 CFR 52.770 and 40 CFR 52.1870, respectively).

On December 7, 2007, September 9, 2008, March 23, 2011, and April 7, 2011, Indiana made submittals addressing ''infrastructure SIP'' elements required by section 110(a)(2) of the CAA. EPA approved elements of Indiana's submittals on July 13, 2011, at 76 FR 41075.

On December 5, 2007, and September 4, 2009, Ohio made submittals addressing ''infrastructure SIP'' elements required under CAA section 110(a)(2). EPA proposed approval of the December 5, 2007, submittal on April 28, 2011, at 76 FR 23757 and published final approval on July 13, 2011, at 76 FR 41075. EPA disapproved the element of the September 4, 2009, submittal that addresses section 110(a)(2)(D)(i) on July 20, 2011, at 76 FR 43175, but has not taken rulemaking action on the remainder of the submittal.

The remaining parts of the infrastructure SIPs required by section 110(a)(2) are not relevant to this redesignation, and are statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the Cincinnati-Hamilton area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the state's $PM_{2.5}$ redesignation request.

ii. Part D Requirements

EPA has determined that, upon approval of the base year emissions inventories discussed in section IV.C. of this rulemaking, the Ohio and Indiana SIPs will meet the SIP requirements for the Cincinnati-Hamilton area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas.

Subpart 1—Section 172 Requirements.

For purposes of evaluating these redesignation requests, the applicable section 172 SIP requirements for the Ohio and Indiana portions of the Cincinnati-Hamilton area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

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 primary 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. Because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. (40 CFR 51.1004(c)).

The Reasonable Further Progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Cincinnati-Hamilton area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918. In addition, because the Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ NAAQS and is no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. Ohio and Indiana submitted 2005 base year emissions inventories along with their redesignation requests. As discussed below in section IV.C., EPA is approving the 2005 base year inventories as meeting the section 172(c)(3) emissions inventory requirement for the Cincinnati-Hamilton area.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources 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 approved Ohio's current NSR program on January 10, 2003 (68 FR 1366). EPA approved Indiana's current NSR program on October 7, 1994 (59 FR 51108). Nonetheless, since PSD requirements will apply after redesignation, the area need not have a fully-approved NSR

program for purposes of redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A 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.'' Indiana has demonstrated that the Indianapolis area will be able to maintain the standard without part D NSR in effect; therefore, the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state's PSD program will become effective in the Indianapolis area upon redesignation to attainment. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

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

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

Subpart 1—Section 176(c)(4)(D) Conformity SIP Requirements.

The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity).

Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which was signed into law on August 10, 2005 (Public Law 109–59). Among the changes Congress made to this section of the CAA were streamlined requirements for state transportation conformity SIPs. State transportation conformity regulations must be consistent with Federal conformity regulations and address three specific requirements related to consultation, enforcement, and enforceability.

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

Ohio and Indiana both have approved transportation conformity SIPs (72 FR 20945 (Ohio) and 75 FR 50708 (Indiana)). Ohio and Indiana are in the process of updating their approved transportation conformity SIPs, and EPA will review these when they are submitted.

b. The Cincinnati-Hamilton Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of Ohio and Indiana's comprehensive 2005 emissions inventories, EPA will have fully approved the Ohio and Indiana SIP for the Cincinnati-Hamilton area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*See* page 3 of the September 4, 1992, memorandum from John Calcagni, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,''; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio and Indiana have adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under particulate matter standards. In this action, EPA is approving Ohio and Indiana's 2005 base year emissions inventory for the Cincinnati-Hamilton area as meeting the requirement of section 172(c)(3) of the CAA.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIPs and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

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

In making this demonstration, Ohio and Indiana have calculated the change in emissions between 2005, one of the years used to designate the Cincinnati-Hamilton area as nonattainment, and 2008, one of the years the Cincinnati-Hamilton area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Cincinnati-Hamilton area and upwind areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

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

i. Federal Emission Control Measures

Reductions in fine particle precursor emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control and fuel requirements result in lower NO_X emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, NO_X emissions will be reduced by 77 percent from new passenger cars (light-duty vehicles), 86 percent from new light duty trucks, minivans, and sports utility vehicles and, 69 to 95 percent from new larger sports utility vehicles, vans, and heavier trucks. EPA expects fleet wide average NO_X emissions to decline as new vehicles replace older vehicles each year. The Tier 2 standards included the

requirement to reduce the sulfur content of gasoline to 30 parts per million (ppm) by January 2006 primarily to improve the durability and effectiveness of vehicle emission control technology so that new vehicles could comply with these more stringent NO_X emissions standards.

The 2007 *Heavy-Duty Highway Rule.* EPA issued this rule in December 2000. This rule took effect in 2007. It reduced fine particle and NO_X emissions from heavy-duty highway engines and included requirements to reduce the sulfur content of diesel fuel used by highway vehicles to 15 ppm beginning in mid-2006 in order to avoid damage to the advanced PM and NO_X controls that are necessary to comply with stringent emissions standards. The total program is estimated to achieve a 90 percent reduction in direct $PM_{2.5}$ emissions and a 95 percent reduction in NO_X emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur content diesel.

Nonroad Diesel Rule. In May 2004 EPA promulgated a new rule for large nonroad diesel engines, such as those used construction, agriculture, and mining equipment, to be phased in between 2008 and 2014. The rule establishes stringent emissions standards for NO_X and PM for these types of equipment and establishes limits for the sulfur content of the diesel fuel that they use. The requirement to reduce sulfur levels in the nonroad diesel fuel by as much 99 percent allows advanced emission-control systems to be used for the first time on the engines used in these types of equipment. The combined engine and fuel rules will reduce NO_X and PM emissions from large nonroad diesel engines by over 90 percent, compared to current nonroad engines using higher sulfur content diesel. This rule achieved some emission reductions by 2008 and was fully implemented by 2010.

Control Measures in Upwind Areas

Given the significance of sulfates and nitrates in the Cincinnati-Hamilton area, the area's air quality is strongly affected by regulation of SO_2 and NO_X emissions from power plants.

NO_X SIP Call. On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X. 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_X SIP Call are permanent and enforceable.

Clean Air Interstate Rule (CAIR). EPA proposed CAIR on January 30, 2004, at 69 FR 4566, promulgated CAIR on May 12, 2005, at 70 FR 25162, and promulgated associated Federal Implementation Plans (FIPs) on April 28, 2006, at 71 FR 25328, in order to reduce SO_2 and NO_X emissions and improve air quality in many areas across the Eastern United States. However, on July 11, 2008, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit or Court) issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety (*North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. 2008)). EPA petitioned for a rehearing, and the Court issued an order remanding CAIR and the CAIR FIPs to EPA without vacatur (*North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008)). The Court, thereby, left CAIR in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaced it with a rule consistent with the Court's opinion (*id.* at 1178). The Court directed EPA to ''remedy CAIR's flaws'' consistent with the July 11, 2008, opinion, but declined to impose a schedule on EPA for completing this action (*id*).

On August 8, 2011, at 76 FR 48208, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to address interstate transport of emissions and resulting secondary air pollutants and to replace CAIR. CAIR, among other things, required NO_X and SO_2 emission reductions that contributed to the air quality improvement in the Cincinnati-Hamilton nonattainment area. CAIR emission reduction requirements limit emissions through 2011; CSAPR requires similar or greater emission reductions in the relevant areas in 2012 and beyond. CSAPR requires substantial reductions of SO_2 and NO_X emissions from Electric Generating Units (EGUs or power plants) across most of Eastern United States, with implementation beginning on January 1, 2012. In particular, this rule requires reduction of these emissions to levels well below the levels that led to attainment of the 1997 annual $PM_{2.5}$ standard in the Cincinnati-Hamilton nonattainment area. Because the emission reduction requirements of CAIR are enforceable through the 2011 control period, and because CSAPR has now been promulgated to address the requirements previously addressed by CAIR and gets similar or greater reductions in the relevant areas in 2012 and beyond, EPA has determined that the EGU emission reductions that helped lead to attainment in the Cincinnati-Hamilton area can now be considered permanent and enforceable and that the requirement of CAA section 107(d)(3)(E)(iii) has now been met.

b. Emission Reductions

Ohio and Indiana developed emissions inventories for NO_X, direct $PM_{2.5}$, and SO_2 for 2005, one of the years used to designate the areas as nonattainment, and 2008, one of the years the Cincinnati-Hamilton area monitored attainment of the standard.

EGU SO_2 and NO_X emissions were derived from EPA's Clean Air Market's acid rain database. These emissions reflect Ohio and Indiana's NO_X emission budgets resulting from EPA's NO_X SIP call. The 2008 emissions from EGUs reflect Ohio and Indiana's emission caps under CAIR. All other point source emissions were obtained from Ohio and Indiana's source facility emissions reporting.

Area source emissions for the Cincinnati-Hamilton area for 2005 were taken from Ohio and Indiana's 2005 periodic emissions inventories.[3] These 2005 area source emission estimates were extrapolated to 2008. Source growth factors were supplied by the Lake Michigan Air Directors Consortium (LADCO).

Nonroad mobile source emissions were extrapolated from nonroad mobile source emissions reported in EPA's 2005 National Emissions Inventory (NEI). Contractors were employed by LADCO to estimate emissions for commercial marine vessels and railroads.

On-road mobile source emissions were calculated using EPA's mobile source emission factor model, MOVES2010a, in conjunction with transportation model results developed by the Ohio-Kentucky-Indiana Regional Council of Governments (OKI).

All emissions estimates discussed below were documented in the submittals and Appendices of Ohio and Indiana's redesignation request submittal from January 25, 2011, and December 9, 2010, respectively. For these data and additional emissions inventory data, the reader is referred to EPA's digital docket for this rule, *http://www.regulations.gov*, for docket numbers EPA–R05–OAR–2011–0106 (Indiana) or EPA–R05–OAR–2011–0017 (Ohio), which include digital copies of Ohio and Indiana's submittals.

[3] Periodic emission inventories are derived by States every three years and reported to the EPA. These periodic emission inventories are required by the Federal Consolidated Emissions Reporting Rule, codified at 40 CFR Subpart A. EPA revised these and other emission reporting requirements in a final rule published on December 17, 2008, at 73 FR 76539.

Emissions data for the entire Cincinnati-Hamilton area (OH-IN-KY) are shown in Tables 1 through 4 below.

TABLE 1—COMPARISON OF 2005 AND 2008 NO_X EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE CINCINNATI-HAMILTON AREA (OH-IN-KY)

Sector	NO_X		
	2005	2008	Net change 2005–2008
Point (Non-EGU)	10,371.70	9,790.50	−581.20
EGU	55,930.44	46,853.89	−9,076.55
Area	7,810.74	7,966.67	155.93
Nonroad	12,480.57	10,561.92	−1,918.65
On-road	71,919.89	64,471.22	−7,448.67
Total	158,513.34	139,644.20	−18,869.14

TABLE 2—COMPARISON OF 2005 AND 2008 DIRECT $PM_{2.5}$ EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE CINCINNATI-HAMILTON AREA (OH-IN-KY)

Sector	Direct $PM_{2.5}$		
	2005	2008	Net change 2005–2008
Point (Non-EGU)	1,352.79	1,458.52	105.73
EGU	2,062.91	1,633.15	−429.76
Area	1,828.55	1,864.80	36.25
Nonroad	4,469.27	3,807.04	−662.23
On-road	2,810.30	2,679.85	−130.45
Total	12,523.79	11,443.36	−1080.46

TABLE 3—COMPARISON OF 2005 AND 2008 SO_2 EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE CINCINNATI-HAMILTON AREA (OH-IN-KY)

Sector	SO_2		
	2005	2008	Net change 2005–2008
Point (Non-EGU)	15,532.09	13,483.92	−2,048.17
EGU	218,395.56	98,334.17	−150,061.39
Area	3494.39	3520.77	26.38
Nonroad	1,057.16	416.87	−640.29
On-road	392.00	277.59	−114.41
Total	238,871.20	116,033.32	−152,837.88

Table 1 shows that the entire Cincinnati-Hamilton area reduced NO_X emissions by 18,869.14 tpy between 2005 and 2008. Table 2 shows that the Cincinnati-Hamilton area reduced direct $PM_{2.5}$ emissions by 1,080.46 tpy between 2005 and 2008. Table 3 shows that the Cincinnati-Hamilton area reduced SO_2 emissions by 152,837.88 tpy between 2005 and 2008.

Because $PM_{2.5}$ concentrations in the Cincinnati-Hamilton area are significantly impacted by the transport of sulfates and nitrates, the area's air quality is strongly affected by regulation of SO_2 and NO_X emissions from power plants. Table 4, below, presents statewide EGU emissions data compiled by EPA's Clean Air Markets Division for the years 2002 and 2008. Emissions for 2008 reflect implementation of CAIR.

TABLE 4—COMPARISON OF 2002 AND 2008 STATEWIDE EGU NO_X AND SO_2 EMISSIONS (TPY) FOR STATES IMPACTING THE CINCINNATI-HAMILTON AREA

State	NO_X			SO_2		
	2002	2008	Net change 2002–2008	2002	2008	Net change 2002–2008
Alabama	161,559	112,625	−48,934	448,248	357,546	−90,702
Illinois	174,247	119,930	−54,317	353,699	257,357	−96,342
Indiana	281,146	190,092	−91,054	778,868	565,459	−213,409

TABLE 4—COMPARISON OF 2002 AND 2008 STATEWIDE EGU NO_X AND SO_2 EMISSIONS (TPY) FOR STATES IMPACTING THE CINCINNATI-HAMILTON AREA—Continued

State	NO_X			SO_2		
	2002	2008	Net change 2002–2008	2002	2008	Net change 2002–2008
Kentucky	198,599	157,903	−40,696	482,653	344,356	−138,297
Michigan	132,623	107,624	−25,000	342,999	326,501	−16,498
Missouri	139,799	88,742	−51,057	235,532	258,269	22,737
Ohio	370,497	235,049	−135,448	1,132,069	709,444	−422,625
Pennsylvania	200,909	183,658	−17,251	889,766	831,915	−57,851
Tennessee	155,996	85,641	−70,356	336,995	208,069	−128,926
West Virginia	225,371	99,484	−125,887	507,110	301,574	−205,536
Wisconsin	88,970	47,794	−41,175	191,257	129,694	−61,563
Total	2,129,716	1,428,541	−701,175	5,699,195	4,290,184	−1,409,011

Table 4 shows that states impacting the Cincinnati-Hamilton area reduced NO_X and SO_2 emissions from EGUs by 701,175 tons per year (tpy) and 1,409,011 tpy, respectively, between 2002 and 2008.

Based on the information summarized above, Ohio and Indiana have adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. Ohio and Indiana Have Fully Approved Maintenance Plans Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with Ohio and Indiana's requests to redesignate the Cincinnati-Hamilton nonattainment area to attainment status, Ohio and Indiana have submitted SIP revisions to provide for maintenance of the 1997 annual $PM_{2.5}$ NAAQS in the area through 2021.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future annual $PM_{2.5}$ violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following items: The attainment emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The states developed emissions inventories for NO_X, direct $PM_{2.5}$, and SO_2 for 2008, one of the years used to demonstrate monitored attainment of the 1997 annual $PM_{2.5}$ standard, as described in section IV.A.3.b., above. The attainment level of emissions is summarized in Tables 1 through 4, above.

c. Demonstration of Maintenance

Along with the redesignation request, the two states submitted revisions to their $PM_{2.5}$ SIPs to include maintenance plans for the Cincinnati-Hamilton area, as required by section 175A of the CAA. These demonstrations show maintenance of the annual $PM_{2.5}$ standard through 2021 by showing that current and future emissions of NO_X, directly emitted $PM_{2.5}$ and SO_2 for the area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Ohio and Indiana are using emissions inventory projections for the years 2015, and 2021 to demonstrate maintenance. The projected emissions were estimated by Ohio and Indiana, with assistance from LADCO, and the local Metropolitan Planning Organization (MPO), OKI using the MOVES2010a model. Emissions data are shown in Table 5, below.

TABLE 5—COMPARISON OF 2008, 2015, AND 2021 NO_X, DIRECT $PM_{2.5}$, AND SO_2 EMISSION TOTALS (TPY) FOR THE CINCINNATI-HAMILTON AREA

	2008	2015	2021	Net change (2008–2021)
$PM_{2.5}$	8,904.64	8,634.55	8,202.63	−702.01
NO_X	148,706.15	105,712.02	78,819.13	−69,887.02
SO_2	117,016.14	112,250.26	88,510.27	−28,505.87

Table 5 shows that the NO_X emissions in the Cincinnati-Hamilton area are 69.887.02 tpy less in 2021, the outermost year of the maintenance plan, than in attainment year 2008. Direct $PM_{2.5}$ emissions are 702.01 tpy lower in

2021 than in 2008, and SO_2 emissions are 28,505.87 tpy lower in 2021 than in 2008.

Because the $PM_{2.5}$ concentrations in the Cincinnati-Hamilton area are significantly impacted by the transport of sulfates and nitrates, the area's air quality is strongly affected by regulation of SO_2 and NO_X emissions from power plants. Table 6, below, presents statewide EGU emissions data compiled for 2008 and 2014 and beyond. Emissions for 2008 reflect implementation of CAIR and an attainment year, while 2014 emissions reflect budgets established in the CSAPR.

TABLE 6—COMPARISON OF 2008 AND 2014 AND BEYOND STATEWIDE EGU NO_X AND SO_2 EMISSIONS (TPY) FOR STATES IMPACTING THE CINCINNATI-HAMILTON AREA

State	NO_X			SO_2		
	2008	2014 and beyond	Net change 2008–2014	2008	2014 and beyond	Net change 2008–2014
Alabama	112,625	69,192	−43,433	357,547	173,566	−183,981
Illinois	119,930	49,162	−70,767	257,357	132,647	−124,710
Indiana	190,092	110,740	−79,352	565,459	195,046	−370,413
Kentucky	157,903	76,088	−81,815	344,356	116,927	−227,429
Michigan	107,624	60,907	−46,717	326,501	162,632	−163,869
Missouri	88,742	52,103	−36,639	258,269	186,899	−71,370
Ohio	235,049	89,753	−145,296	709,444	178,975	−530,469
Pennsylvania	183,658	118,981	−64,676	831,915	125,545	−706,370
Tennessee	85,641	20,512	−65,129	208,069	64,721	−143,348
West Virginia	99,484	53,975	−45,509	301,574	84,344	−217,230
Wisconsin	47,794	33,537	−14,257	129,694	50,137	−79,557
Total	1,428,541	734,951	−693,590	4,290,185	1,471,439	−2,818,746

Table 6 shows that NO_X emissions from EGUs are projected to decrease by 693,590 tpy from 2008 to 2014 and beyond in states impacting the Cincinnati-Hamilton area. Over that same time period, SO_2 emissions from EGUs are projected to decrease by 2,818,746 in states impacting the Cincinnati-Hamilton area.

Based on the information summarized above, Ohio and Indiana have adequately demonstrated maintenance of the $PM_{2.5}$ standard in this area for a period extending in excess of ten years from the date that EPA is completing rulemaking on the state's redesignation request.

d. Monitoring Network

Ohio currently operates nine monitors for purposes of determining attainment with the annual $PM_{2.5}$ standard in the Cincinnati-Hamilton area. Kentucky currently operates one monitor for the area. Currently, Indiana operates no monitors for the Cincinnati-Hamilton area since the state makes up only a small portion of the non-attainment area, and EPA has determined that the monitors maintained by both Ohio and Kentucky constitute an adequate monitoring network. Ohio has committed to continue to operate and maintain its monitors and will consult with EPA prior to making any changes to the existing monitoring network. Ohio remains obligated to continue to quality-assure monitoring data in accordance with 40 CFR part 58 and enter all data into EPA's Air Quality System (AQS) database in accordance with Federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the annual $PM_{2.5}$ NAAQS in the Cincinnati-Hamilton area depends, in part, on the state's efforts toward tracking indicators of continued attainment during the maintenance period. Ohio and Indiana's plan for verifying continued attainment of the annual $PM_{2.5}$ standard in the Cincinnati-Hamilton area consists of continued ambient $PM_{2.5}$ monitoring in accordance with the requirements of 40 CFR part 58. The two states will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (codified at 40 CFR 51 Subpart A) to track future levels of emissions.

f. Contingency Plan

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

As required by section 175A of the CAA, Ohio and Indiana have adopted contingency plans for the Cincinnati-Hamilton area to address possible future annual $PM_{2.5}$ air quality problems.

Under Indiana's plan, if a violation of the 1997 annual $PM_{2.5}$ standard occurs, Indiana will implement an ''Action Level Response''. Unless the violation is due to an atypical unfavorable meteorological condition, exceptional event, malfunction or noncompliance with a permit condition or rule requirement, Indiana will adopt and implement one or more of its contingency measures. Indiana has provided clarification that the state considers the term ''an atypical unfavorable meteorological condition'' to mean an exceptional event as determined by EPA. EPA agrees with and relies upon this clarification in approving Indiana's contingency measures provisions. (See docket EPA–R05–OAR–2011–0106 for clarification communications).

If a violation occurs, it will trigger an Action Level Response; that is, Indiana will adopt and implement one or more

control measures from its list of candidate measures within 18 months from the end of the year in which monitored air quality triggering the response occurs. Indiana's candidate contingency measures include the following:

i. Alternative fuel and diesel retrofit programs for fleet vehicle operations;

ii. NO_X or SO_2 controls on new minor sources;

iii. Wood stove change out program;

iv. Idle restrictions; and

v. Broader geographic applicability of existing measures.

Ohio's contingency measures include a Warning Level Response and an Action Level Response. An initial Warning Level Response is triggered when the average weighted annual mean for one year exceeds 15.5 $\mu g/m^3$. In that case, a study will be conducted to determine if the emissions trends show increases; if action is necessary to reverse emissions increases, Ohio will follow the same procedures for control selection and implementation as for an Action Level Response.

The Action Level Response will be prompted by any one of the following: A Warning Level Response study that shows emissions increases, a weighted annual mean over a two-year average that exceeds the standard, or a violation of the standard. If an Action Level Response is triggered, Ohio will adopt and implement appropriate control measures within 18 months from the end of the year in which monitored air quality triggering a response occurs.

Ohio's candidate contingency measures include the following:

i. ICI Boilers—SO_2 and NO_X controls;

ii. Process heaters;

iii. EGUS;

iv. Internal combustion engines;

v. Combustion turbines;

vi. Other sources > 100 TPY;

vii. Fleet vehicles;

viii. Concrete manufacturers and;

ix. Aggregate processing plants.

Ohio and Indiana further commit to conduct ongoing review of their data, and if monitored concentrations or emissions are trending upward, Ohio and Indiana commit to take appropriate steps to avoid a violation if possible. Ohio and Indiana commit to continue implementing SIP requirements upon and after redesignation.

EPA believes that both Ohio and Indiana's contingency plans, as well as the commitment to continue implementing any SIP requirements, satisfy the pertinent requirements of section 175A(d).

g. Provisions for Future Updates of the Annual $PM_{2.5}$ Maintenance Plan

As required by section 175A(b) of the CAA, Ohio and Indiana have each committed to submit to the EPA an updated maintenance plan eight years after redesignation of the Cincinnati-Hamilton area to attainment of the 1997 annual $PM_{2.5}$ standard to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175A of the CAA, Ohio and Indiana have committed to retain the control measures contained in the SIP prior to redesignation, or submit to EPA, as a SIP revision, any changes to its rules or emission limits applicable to SO_2, NO_X or direct $PM_{2.5}$ sources as required for maintenance of the annual $PM_{2.5}$ standard in the Cincinnati-Hamilton area.

EPA has concluded that the maintenance plans adequately address the requisite five basic components: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Thus EPA is fully approving the maintenance plan SIP revisions submitted by Ohio and Indiana for the Cincinnati-Hamilton area as meeting the requirements of section 175A of the CAA.

B. Adequacy of Ohio and Indiana's MVEBs

1. How are MVEBs developed and what are the MVEBs for the Cincinnati-Hamilton area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for $PM_{2.5}$ nonattainment areas and for areas seeking redesignations to attainment of the $PM_{2.5}$ standard. These emission control strategy SIP revisions (*e.g.,* RFP and attainment demonstration SIP revisions) and maintenance plans create MVEBs based on on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from on-road transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment, RFP or maintenance, as applicable.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan and could also be established for an interim year or years. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, new transportation plans and transportation improvement programs (TIPs) must be evaluated to determine if they conform to the purpose of the area's SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or any required interim milestone. If a transportation plan or TIP does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find adequate and/or approve the MVEBs for use in determining transportation conformity before the MVEBs can be used. Once EPA affirmatively approves and/or finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation plans and TIPs conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve a motor vehicle emissions budget EPA must complete a thorough review of the SIP, in this case the $PM_{2.5}$ maintenance plans, and conclude that the SIP will achieve its overall purpose, in this case providing for maintenance of the 1997 annual $PM_{2.5}$ standard in the Indiana and Ohio portions of the Cincinnati area.

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

The maintenance plans submitted by Ohio and Indiana for the Cincinnati-Hamilton area contain new primary $PM_{2.5}$ and NO_X MVEBs for the area for the years 2015 and 2021. The motor vehicle emissions budgets were calculated using MOVES2010(a). After the adequacy finding and approval of the budgets become effective, the

budgets will have to be used in future conformity determinations and regional emissions analyses prepared by the OKI, will have to be based on the use of MOVES2010a or the most recent version of MOVES required to be used in transportation conformity determinations.[4] The states have determined the 2015 MVEBs for the combined Ohio and Indiana portions of Cincinnati-Hamilton area to be 1,678.60 tpy for primary $PM_{2.5}$ and 35,723.83 tpy for NO_X. Ohio and Indiana have determined the 2021 MVEBs for their combined portions of the Cincinnati-Hamilton area to be 1,241.19 tpy for primary $PM_{2.5}$ and 21,747.71 tpy for NO_X. These MVEBs exceed the on-road mobile source primary $PM_{2.5}$ and NO_X emissions projected by the states for 2015 and 2021. Ohio and Indiana have decided to include ''safety margins'' as provided for in 40 CFR 93.124(a) (described below) of 79.93 tpy and 112.84 tpy for primary $PM_{2.5}$ and 4,659.63 tpy and 2,836.65 tpy for NO_X in the 2015 and 2021 MVEBs, respectively, to provide for on-road mobile source growth. Ohio and Indiana did not provide emission budgets for SO_2, VOCs, and ammonia because it concluded, consistent with EPA's presumptions regarding these precursors, that emissions of these precursors from on-road motor vehicles are not significant contributors to the area's $PM_{2.5}$ air quality problem.

In the Ohio and Indiana portions of the Cincinnati-Hamilton area, the motor vehicle budgets including the safety margins and motor vehicle emission projections for both NO_X and $PM_{2.5}$ are lower than the levels in the attainment year.

EPA has reviewed the submitted budgets for 2015 and 2021 including the added safety margins using the conformity rule's adequacy criteria found at 40 CFR 93.118(e)(4) and the conformity rule's requirements for safety margins found at 40 CFR 93.124(a). EPA has also completed a thorough review of the maintenance plan for the Ohio and Indiana portions of the Cincinnati-Hamilton area. Based on the results of this review of the budgets and the maintenance plans EPA is approving the 2015 and 2021 direct $PM_{2.5}$ and NO_X budgets including the requested safety margins for the Ohio and Indiana portions of the Cincinnati-Hamilton area. Additionally, EPA, through this rulemaking, has found the submitted budgets to be adequate for use to determine transportation conformity in the Indiana and Ohio portions of the area, because EPA has determined that the area can maintain the 1997 annual $PM_{2.5}$ NAAQS for the relevant maintenance period with on-road mobile source emissions at the levels of the MVEBs including the requested safety margins. These budgets must be used in conformity determinations made on or after the effective date of this direct final rulemaking (40 CFR 93.118(f)(iii)). Additionally, transportation conformity determinations made after the effective date of this notice must be based on regional emissions analyses using MOVES2010a or a more recent version of MOVES that has been approved for use in conformity determinations.[5]

2. What is a safety margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As shown in Table 5, the combination of the Ohio and Indiana portions of the Cincinnati-Hamilton area is projected to have safety margins for NO_X and direct $PM_{2.5}$ of 42,994.13 tpy and 270.09 tpy in 2015, and 69,887.02 tpy and 702.01 tpy for NO_X and $PM_{2.5}$ in 2021 (the difference between the attainment year, 2008, emissions and the projected years of 2015 and 2021 emissions for all sources in the Cincinnati-Hamilton area). Even if emissions exceeded expectations by the full level of the safety margin, the area would still demonstrate maintenance since emission levels would equal those in the attainment year.

The transportation conformity rule allows areas to allocate all or a portion of a ''safety margin'' to the area's motor vehicle emissions budgets (40 CFR 92.124(a)). The MVEBs requested by Ohio and Indiana contain NO_X safety margins for mobile sources in 2015 and 2021 and $PM_{2.5}$ safety margins for mobile sources in 2015 and 2021 are much smaller than the allowable safety margins reflected in the total emissions for the Cincinnati-Hamilton area. The state is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the state is requesting MVEBs that exceed the projected on-road mobile source emissions for 2015 and 2021 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the overall $PM_{2.5}$ maintenance demonstration.

Therefore, EPA believes that the requested budgets, including the requested portion of the safety margins, provide for a quantity of mobile source emissions that would be expected to maintain the $PM_{2.5}$ standard. Once allocated to mobile sources, these portions of the safety margins will not be available for use by other sources.

3. What action is EPA taking on the submitted motor vehicle emissions budgets?

EPA, through this rulemaking, has found adequate and is approving the MVEBs for use to determine transportation conformity in the Ohio and Indiana portions of the Cincinnati-Hamilton area, because EPA has determined that the area can maintain attainment of the 1997 annual $PM_{2.5}$ NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs including the requested safety margins. These budgets must be used in conformity determinations made on or after the effective date of this direct final rulemaking, December 19, 2011. (40 CFR 93.118(f)(iii)) Additionally, the determinations made after the effective date of this notice must be based on regional emissions analyses using MOVES2010a or a more recent version of MOVES that has been approved for use in conformity determinations.[6]

C. 2005 Comprehensive Emissions Inventory

As discussed above in section IV.A.2.a.ii., section 172(c)(3) of the CAA requires areas to submit a comprehensive emissions inventory. Ohio and Indiana submitted 2005 base year emissions inventories that meet this requirement. Emissions contained in the submittals cover the general source categories of point sources, area sources, on-road mobile sources, and nonroad mobile sources.

For the point source sector, EGU SO_2 and NO_X emissions were derived from

[4] EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010, **Federal Register** notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

[5] EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010 **Federal Register** notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

[6] EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010, **Federal Register** notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

EPA's Clean Air Market's database. All other point source emissions were obtained from Ohio and Indiana's source facility emissions reporting.

Area source emissions were extrapolated from Ohio and Indiana's 2005 periodic emissions inventories. Source growth factors were supplied by LADCO.

Nonroad mobile source emissions were extrapolated from nonroad mobile source emissions reported in EPA's 2005 NEI. LADCO estimated emissions for commercial marine vessels and railroads.

On-road mobile source emissions were calculated using EPA's mobile source emission factor model, MOVES2010a, in conjunction with roadway network traffic information prepared by OKI.

All emissions discussed in Table 1 were documented in the submittal and the Appendices of Ohio and Indiana's redesignation request submittals. EPA has reviewed Ohio and Indiana's documentation of the emissions inventory techniques and data sources used for the derivation of the 2005 emissions estimates and has found that Ohio and Indiana have thoroughly documented the derivation of these emissions inventories. The submittals for both the Ohio and Indiana state that the 2005 emissions inventories are currently the most complete emissions inventories for $PM_{2.5}$ and $PM_{2.5}$ precursors in the Cincinnati-Hamilton area. Based upon EPA's review, we conclude that the 2005 emissions inventories areas complete and accurate as possible given the input data available to the states.

V. Summary of Actions

EPA has previously made the determination that the Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ standard. EPA is determining that the area continues to attain the standard and that the Ohio and Indiana portions of the area meet the requirements for redesignation to attainment of that standard under section 107(d)(3)(E) of the CAA. EPA is thus approving the requests from Ohio and Indiana to change the legal designation of their portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA is approving Ohio and Indiana's 1997 annual $PM_{2.5}$ maintenance plans for the Cincinnati-Hamilton area as revisions to the respective SIPs because the plans meet the requirements of section 175A of the CAA. EPA is approving the 2005 emissions inventories for primary $PM_{2.5}$, NO_X, and SO_2, documented in Indiana's and Ohio's December 9, 2010, and January 25, 2011, submittals as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA finds adequate and is approving 2015 and 2021 primary $PM_{2.5}$ and NO_X MVEBs submitted from each state for the Ohio and Indiana portions of the Cincinnati-Hamilton area. These MVEBs will be used in future transportation conformity analyses for the area after the effective date for the adequacy finding and approval.

VI. 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 CAA 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, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 Clean Air Act; 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 rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These actions are not ''major rules'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 19, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than

file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw these direct final rules and address the comment in the proposed rulemaking. These actions may not be challenged later in proceedings to enforce their requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 7, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR Parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart P—Indiana

■ 2. Section 52.776 is amended by adding paragraphs (v)(3) and (w)(3) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(v) * * *

(3) The Cincinnati-Hamilton nonattainment area (Dearborn County), as submitted on December 9, 2010. The maintenance plan establishes 2015 motor vehicle emissions budgets for the Cincinnati-Hamilton area of 1,678.60 tpy for primary $PM_{2.5}$ and 35,723.83 tpy for NO_X and 2021 motor vehicle emissions budgets of 1,241.19 tpy for primary $PM_{2.5}$ and 21,747.71 tpy for NO_X.

(w) * * *

(3) Indiana's 2005 NOx, directly emitted $PM_{2.5}$, and SO_2 emissions inventory satisfies the emission inventory requirements of section 172(c)(3) of the Clean Air Act for the Cincinnati-Hamilton area.

Subpart KK—Ohio

■ 3. Section 52.1880 is amended by adding paragraphs (p) and (q) to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(p) Approval—The 1997 annual $PM_{2.5}$ maintenance plans for the following areas have been approved:

(1) The Cincinnati-Hamilton nonattainment area (Butler, Clermont, Hamilton, and Warren Counties), as submitted on January 25, 2011. The maintenance plan establishes 2015 motor vehicle emissions budgets for the Cincinnati-Hamilton area of 1,678.60 tpy for primary $PM_{2.5}$ and 35,723.83 tpy for NO_X and 2021 motor vehicle emissions budgets of 1,241.19 tpy for primary $PM_{2.5}$ and 21,747.71 tpy for NO_X.

(2) [Reserved]

(q) Approval—The 1997 annual $PM_{2.5}$ comprehensive emissions inventories for the following areas have been approved:

(1) Ohio's 2005 NOx, directly emitted $PM_{2.5}$, and SO_2 emissions inventory satisfies the emission inventory requirements of section 172(c)(3) for the Cincinnati-Hamilton area.

(2) [Reserved]

PART 81—[AMENDED]

■ 4. The authority citation for part 81 continues to read as follows:

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

■ 5. Section 81.315 is amended by revising the entry for Cincinnati-Hamilton, IN in the table entitled ''Indiana PM2.5 (Annual NAAQS)'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA $PM_{2.5}$

[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
* * * * *	*	*
Cincinnati-Hamilton, IN: Dearborn County	December 19, 2011	Attainment.
* * * * *	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

■ 6. Section 81.336 is amended by revising the entry for Cincinnati-Hamilton, OH in the table entitled ''Ohio $PM_{2.5}$ (Annual NAAQS)'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO $PM_{2.5}$

[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
* * * * *	*	*
Cincinnati-Hamilton, Ohio:		
Butler County.		
Clermont County.		
Hamilton County.		

OHIO $PM_{2.5}$—Continued

[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
Warren County	December 19, 2011	Attainment.
* * * *	* *	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

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