

abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: May 6, 2010.

**Robert C. McFetridge,**

*Director, Regulation Policy and Management, Office of the General Counsel.*

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 17 as follows:

#### **PART 17—MEDICAL**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, and as noted in specific sections.

2. Amend § 17.38 by revising paragraph (c)(5) to read as follows:

#### **§ 17.38 Medical benefits package.**

\* \* \* \* \*

(c) \* \* \*

(5) Hospital and outpatient care for a veteran who is either a patient or inmate in an institution of another government agency if that agency has a duty to give the care or services. This exclusion does not apply to veterans who are released from incarceration in a prison or jail into a temporary housing program (such as a community residential re-entry center or halfway house).

\* \* \* \* \*

[FR Doc. 2010-11177 Filed 5-11-10; 8:45 am]

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#### **ENVIRONMENTAL PROTECTION AGENCY**

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

[EPA-R04-OAR-2010-0134-201007; FRL-9150-1]

#### **Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Kentucky Portion of the Cincinnati-Hamilton 1997 8-Hour Ozone Nonattainment Area to Attainment**

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

**ACTION:** Proposed rule.

**SUMMARY:** On January 29, 2010, 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 Cincinnati-Hamilton 8-hour ozone nonattainment area (the “tri-state Cincinnati-Hamilton Area”) to attainment for the 1997 8-hour ozone national ambient air quality standards (NAAQS); and to approve the state implementation plan (SIP) revision containing a maintenance plan for the Kentucky portion of the tri-state Cincinnati-Hamilton Area. The tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment area is composed of Boone, Campbell and Kenton Counties in Kentucky (hereafter also referred to as “Northern Kentucky”); Butler, Clermont, Clinton, Hamilton and Warren Counties in Ohio; and a portion of Dearborn County in Indiana. In this action, EPA is proposing to: Determine that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS; approve Kentucky’s redesignation request for Boone, Campbell and Kenton Counties in Kentucky as part of the tri-state Cincinnati Area; approve the 1997 8-hour ozone maintenance plan for Northern Kentucky, including the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) for the years 2015 and 2020; and approve the 2008 emissions inventory for Northern Kentucky as meeting the requirements of the Clean Air Act (CAA). EPA’s proposed approval of Kentucky’s redesignation request is based on the belief that Kentucky’s request meets the criteria for redesignation to attainment specified in the CAA, including the determination that the entire tri-state Cincinnati-Hamilton ozone nonattainment area has attained the 1997 8-hour ozone NAAQS. In a separate rulemaking action, EPA has proposed to approve redesignation requests and maintenance plans submitted by Ohio and Indiana for their respective portions of this 1997 8-hour ozone area.

In this action, EPA is also notifying the public of the status of EPA’s adequacy determination for the new 2015 and 2020 MVEBs that are contained in the 1997–8-hour ozone maintenance plan for Northern Kentucky. MVEBs for the Ohio and Indiana portions of this Area are included in the Ohio and Indiana submittals, and are being addressed through EPA’s separate action for those submissions. EPA is also in the process of rulemaking on a new 8-hour ozone NAAQS. Today’s actions, however,

relate only to the 1997 8-hour ozone NAAQS.

**DATES:** Comments must be received on or before June 11, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2010-0134, by one of the following methods:

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

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

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

4. *Mail*: EPA-R04-OAR-2010-0134, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

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

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2010-0134. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to

technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the 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:** Ms. Jane Spann or Mr. Zuri Farngalo 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. Jane Spann may be reached by phone at (404) 562-9029, or via electronic mail at [spann.jane@epa.gov](mailto:spann.jane@epa.gov). The telephone number for Mr. Farngalo is (404) 562-9152, and the electronic mail is [farngalo.zuri@epa.gov](mailto:farngalo.zuri@epa.gov).

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#### I. What proposed actions is EPA taking?

EPA is proposing several related actions, which are summarized below and described in greater detail throughout this notice of rulemaking: (1) To determine that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS; (2) to approve the Commonwealth of Kentucky's request to redesignate the Kentucky portion of the tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment area (Boone, Campbell and Kenton Counties in Kentucky) to attainment for the 1997 8-hour ozone NAAQS under section 107(d)(3)(E) of the CAA; (3) to approve under section 172(c)(3) the emissions inventory submitted with the maintenance plan; and (4) to approve under section 175A Kentucky's 1997 8-hour ozone NAAQS maintenance plan into the Kentucky SIP, including the associated MVEBs. These proposed actions will be revisions to the Kentucky SIP pursuant to section 110 of the CAA. In addition, and related to today's actions, EPA is also notifying the public of the status of EPA's adequacy determination for the Northern Kentucky MVEBs.

First, EPA is proposing to determine that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS, based on the most recent three years of complete, quality assured monitoring data. EPA further proposes to determine that the Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA if EPA's proposed approval of the emissions inventory for Northern Kentucky is finalized. In a separate action, EPA has proposed approval of the redesignation requests and maintenance plans for the Ohio and Indiana portions of the tri-state Cincinnati-Hamilton Area (75 FR 8871, February 26, 2010). In this action, EPA is now proposing to approve a request to redesignate the Kentucky portion of the Area and to change the legal designation of Boone, Campbell and Kenton Counties in Kentucky from nonattainment to attainment for the 1997 8-hour ozone NAAQS.

Second, EPA is proposing to approve under section 172(c)(3) Kentucky's 2008 emissions inventory included in the maintenance plan for Northern Kentucky as meeting the requirements of that section. In coordination with Ohio and Indiana, Kentucky selected 2008 as "the attainment year" for the tri-state Cincinnati-Hamilton Area for the

purpose of demonstrating attainment of the 1997 8-hour ozone NAAQS. This emissions inventory identifies the level of emissions in the Area, which is sufficient to attain the 1997 8-hour ozone NAAQS. Please see section IX of this rulemaking for more detail on Kentucky's 2008 emission inventory.

Third, EPA is proposing to approve Kentucky's 1997 8-hour ozone NAAQS maintenance plan for Northern Kentucky as meeting the requirements of section 175A of the CAA, such approval being one of the CAA criteria for redesignation to attainment. The maintenance plan is designed to help keep the tri-state Cincinnati-Hamilton Area in attainment of the 1997 8-hour ozone NAAQS through 2020. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2015 and 2020 NO<sub>x</sub> and VOC MVEBs. EPA is proposing to approve (into the Kentucky's SIP) the 2015 and 2020 MVEBs that are included as part of Kentucky's maintenance plan for the 1997 8-hour ozone NAAQS. The adequacy comment period for these MVEBs closed on March 5, 2010, and EPA did not receive any comments. (See section VIII of this proposed rulemaking.) Notably, these MVEBs apply only to Northern Kentucky. MVEBs contained in the Ohio's and Indiana's submittals for the remainder of the tri-state Cincinnati Area were addressed in a separate action (75 FR 8871, February 26, 2010).

EPA is also notifying the public of the status of EPA's adequacy process for the newly-established 2015 and 2020 NO<sub>x</sub> and VOC MVEBs for Northern Kentucky. The MVEBs for the Ohio and Indiana portions of this 1997 8-hour ozone area are being addressed in a separate action. The Adequacy comment period for the Northern Kentucky 2015 and 2020 MVEBs began on February 3, 2010, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (<http://www.epa.gov/otaq/stateresources/transconf/currrips.htm>). The adequacy comment period for these MVEBs closed on March 5, 2010. EPA did not receive any adverse comments or requests for Kentucky's submission. Please see section VIII of this proposed rulemaking for further explanation of this process, and for more details on the MVEBs determination.

Today's notice of proposed rulemaking is in response to Kentucky's January 29, 2010, SIP submittal requesting the redesignation of Boone, Campbell and Kenton Counties in Kentucky as part of the tri-state Cincinnati-Hamilton 1997 8-hour ozone area, and includes SIP revisions

addressing the specific issues summarized above and the necessary elements for redesignation described in sections 107(d)(3)(E) and 175A of the CAA.

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

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

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

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

The CAA required EPA to designate as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The tri-state

Cincinnati-Hamilton 1997 8-hour ozone nonattainment area was initially designated nonattainment for the 1997 8-hour ozone standard using 2001–2003 ambient air quality data. EPA published a final designations rulemaking for the NAAQS on April 30, 2004 (69 FR 23857).

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

Northern Kentucky (as part of the bi-state Cincinnati-Hamilton Area) was originally designated as a moderate nonattainment area for the 1-hour ozone NAAQS on November 6, 1991 (56 FR 56694). On June 19, 2000 (65 FR 37879), the Kentucky portion of the Cincinnati-Hamilton 1-hour nonattainment area was redesignated as attainment for the 1-hour ozone NAAQS, and was considered to be a maintenance area subject to a CAA section 175A maintenance plan for the 1-hour NAAQS. On April 30, 2004, EPA designated the tri-state Cincinnati-Hamilton Area (which then included Boone, Campbell and Kenton Counties in Kentucky; Butler, Clermont, Clinton, Hamilton and Warren Counties in Ohio; and a portion of Dearborn County in Indiana) under subpart 1 as a "basic" 1997 8-hour ozone NAAQS nonattainment area (69 FR 23857, April 30, 2004).

As part of the 2004 designations, EPA also promulgated an implementation rule—the Phase I Rule. Various aspects

of EPA's Phase I Rule were challenged in court. On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit Court) vacated EPA's Phase I Rule (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD) v. EPA*, 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase I Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. The Phase I Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 1997 8-hour ozone NAAQS nonattainment areas, the 1997 8-hour ozone NAAQS attainment dates and the timing for emissions reductions needed for attainment of the 1997 8-hour ozone NAAQS remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 1997 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase I Rule that had not been successfully challenged. The June 8th decision affirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 1997 8-hour ozone NAAQS budgets were available for 8-hour ozone conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour ozone conformity determinations are not required for anti-backsliding purposes.

For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, nor does EPA believe the

Court's ruling prevents EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of Northern Kentucky to attainment, because even in light of the Court's decision, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

With respect to the 1997 8-hour ozone NAAQS, the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 1997 8-hour ozone NAAQS, and remanded that matter back to the Agency. In its January 16, 2009, proposed rulemaking in response to the *SCAQMD* decision, EPA has proposed to classify the tri-state Cincinnati-Hamilton Area (of which Northern Kentucky is a part) under subpart 2 as a moderate area (74 FR 2936). If EPA finalizes this rulemaking, the requirements under subpart 2 will become applicable when they are due. EPA proposed a deadline for submission of these requirements of one year after the effective date of the final rulemaking classifying this and other areas (74 FR 2940–2941). Although a future final decision by EPA to classify this Area under subpart 2 would trigger additional future requirements for the Area, EPA believes that this does not preclude this redesignation from being approved. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time redesignation request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the tri-state Cincinnati-Hamilton Area was not classified under subpart 2, nor were subpart 2 requirements yet due for this Area. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992, Calcagni Memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division). See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan); *Sierra Club v EPA*, 375 F.3d

537 (7th Cir. 2004) (upholding this interpretation); 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

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

With respect to the requirements under the 1-hour ozone NAAQS, Northern Kentucky had been redesignated attainment subject to a maintenance plan under section 175A. The DC Circuit Court's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court, in its June 8th decision, clarified that for those areas with 1-hour MVEBs in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until they are replaced by 1997 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

With regard to the anti-backsliding provisions for the 1-hour NAAQS that the DC Circuit Court found were not properly retained, Northern Kentucky is an attainment area subject to a maintenance plan for the 1-hour NAAQS, and 1-hour anti-backsliding requirements no longer apply to an area that is redesignated to attainment of the 1-hour ozone NAAQS. As a result, the decisions in *SCAQMD* should not alter any requirements that would preclude

EPA from finalizing the redesignation of Northern Kentucky to attainment for the 1997 8-hour ozone NAAQS.

On January 29, 2010, Kentucky requested that EPA redesignate the Kentucky portion of the tri-state Cincinnati-Hamilton Area to attainment for the 1997 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (March 1st through October 31st) of 2007–2009, demonstrating that the 1997 8-hour ozone NAAQS has been achieved for the entire tri-state Cincinnati-Hamilton Area. Under the CAA, nonattainment areas may be redesignated to attainment if EPA determines that the most recent three years of complete, quality-assured data show that the Area has attained the standard, and the Area meets the other redesignation requirements set forth in CAA section 107(d)(3)(E).

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

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

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

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon

Monoxide Nonattainment Areas,” Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

3. “Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

4. “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the “Calcagni Memorandum”);

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

6. “Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

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

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

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

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

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

On January 29, 2010, Kentucky requested redesignation of Northern Kentucky (as part of the tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment area) to attainment for the 1997 8-hour ozone NAAQS. EPA’s preliminary evaluation indicates that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS and that Northern Kentucky, upon final approval of its 2008 emissions inventory, meets 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 proposing to approve the 2008 baseline emission inventory because EPA believes that it satisfies the requirements of section 172(c)(3). EPA is finding that the 2015 and 2020 NO<sub>x</sub> and VOC MVEBs which are included in the maintenance plan are adequate, and EPA is proposing to approve them along with the requested redesignation.

**V. 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 the Kentucky portion of the tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment area (Boone, Campbell and Kenton Counties) from nonattainment to attainment for the 1997 8-hour ozone NAAQS. 40 CFR part 81. It would also incorporate into the Kentucky SIP a plan for Northern Kentucky to maintain the 1997 8-hour ozone NAAQS in the Area through 2020. This maintenance plan includes contingency measures to remedy future violations of the 1997 8-hour ozone NAAQS. The maintenance plan also includes NO<sub>x</sub> and VOC MVEBs for Northern Kentucky, and final approval of the MVEB’s would establish them in the approved SIP. Table 1 identifies the state NO<sub>x</sub> and VOC MVEBs for the years 2015 and 2020 for Northern Kentucky.

TABLE 1—NORTHERN KENTUCKY 1997 8-HOUR OZONE NO<sub>x</sub> AND VOC MVEBS [Summer season tons per day]

	2015	2020
NO <sub>x</sub> .....	14.40	13.27
VOC .....	9.76	10.07

Approval of Kentucky’s maintenance plan would also result in approval of the NO<sub>x</sub> and VOC MVEBs. Additionally, EPA is notifying the public of the status of its adequacy determination for the 2015 and 2020 NO<sub>x</sub> and VOC state MVEBs pursuant to 40 CFR 93.118(f)(1). A final approval of EPA’s proposed action with respect to the 2008 emissions inventory would also result in approval of that inventory under section 172(c)(3).

**VI. What is EPA’s analysis of the request?**

EPA is proposing to make the determination that the tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment area has attained the

1997 8-hour ozone standard, and that all other redesignation criteria have been met for the Kentucky portion of the tri-state Cincinnati-Hamilton Area. The basis for EPA’s determination for the Area is discussed in greater detail below.

Criteria (1)—*The Area has attained the 1997 8-hour ozone NAAQS.*

EPA is proposing to determine that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS. An area may be considered to be attaining the 1997 8-hour ozone NAAQS if as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, it meets the NAAQS based on three complete, consecutive calendar years of quality-assured air quality

monitoring data. To attain the standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed data from the ambient ozone monitoring stations in the tri-state

Cincinnati-Hamilton Area for the ozone seasons from 2007–2009. These data have been quality-assured and certified,

and are recorded in AQS. The fourth-highest 8-hour ozone average for 2007, 2008 and 2009, and the 3-year average

of these values (*i.e.*, design values), are summarized in the following table:

TABLE 2—ANNUAL 4TH MAX HIGH AND DESIGN VALUE CONCENTRATION FOR 8-HOUR OZONE FOR THE CINCINNATI-HAMILTON OH-KY-IN AREA  
[Parts per million]

State*	County	Monitor	2007 4th high (ppm)	2008 4th high (ppm)	2009 4th high (ppm)	2007–2009 average (ppm)
Ohio	Butler	Hamilton, 39–017–0004	0.091	0.071	0.073	0.078
		Middletown, 39–017–1004	0.091	0.079	0.076	0.082
	Clermont	Batavia, 39–025–0022	0.086	0.071	0.069	0.075
		Wilmington, 39–027–1022	0.082	0.076	0.070	0.076
	Hamilton	Grooms Rd., Cincinnati, 39–061–0006	0.089	0.086	0.072	0.082
		Cleves, 39–061–0010	0.086	0.077	0.065	0.076
Kentucky	Warren	250 Wm. Howard Taft, Cincinnati, 39–061–0040	0.086	0.080	0.074	0.080
		Lebanon, 39–165–0007	0.088	0.082	0.077	0.082
	Boone	KY 338 & Lower River Road, 21–037–3002	0.078	0.064	0.064	0.068
		Highland Heights, 21–117–0007	0.086	0.075	0.068	0.076
	Kenton	Covington, 21–117–0007	0.085	0.073	0.074	0.077

\* There is no monitor in the Indiana portion of this Area.

As discussed above, the design value for an area is the highest 3-year average of the annual fourth-highest 8-hour ozone value recorded at any monitor in the Area. Therefore, the most recent 3-year design value (2007–2009) for the tri-state Cincinnati-Hamilton Area is 0.082 ppm, which meets the standard as described above. Currently available data show that the Area continues to attain the NAAQS. If the Area does not continue to attain until EPA finalizes the redesignation, EPA will not go forward with the redesignation. As discussed in more detail below, Kentucky has committed to continue monitoring in this Area in accordance with 40 CFR part 58. EPA proposes to find that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS.

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

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

EPA proposes to find that Kentucky has met all applicable SIP requirements for Northern Kentucky under section 110 of the CAA (general SIP requirements) for purposes of redesignation. EPA also proposes to find that, if EPA finalizes approval of the 2008 emissions inventory submitted with the redesignation request, 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 subpart 1 nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA proposes to determine that, upon final approval of the emissions inventory, the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the Area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements. As discussed more fully below, SIPs must be fully approved only with respect to requirements that became due prior to the submission of the redesignation request.

*a. Northern Kentucky has met all Applicable Requirements under section 110 and part D of the CAA.*

The September 4, 1992, Calcagni Memorandum describes EPA’s interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro Memorandum, (“SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992,” September 17, 1993); 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). Applicable requirements of the CAA that come due

subsequent to the area’s submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA; *Sierra Club*, 375 F.3d 537; see also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

If EPA’s proposed determination of attainment for the tri-state Cincinnati-Hamilton Area is finalized, under 40 CFR 51.918, if that determination is finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (c)(6) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) would not be applicable to the Area so long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignations. For example, in the General Preamble, EPA stated that:

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

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

See also Calcagni Memorandum at page 6 ("The requirements for reasonable further progress and other measures for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard").

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

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (NO<sub>x</sub> SIP Call<sup>1</sup> and Clean Air Interstate Rule (CAIR) (70 FR 25162, May 12, 2005)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the

requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

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

EPA believes that section 110 elements not linked to the Area's nonattainment status are not applicable for purposes of redesignation. Therefore, as was discussed above, for purposes of redesignation, they are not considered applicable requirements. Nonetheless, EPA notes it has previously approved provisions in the Kentucky SIP addressing section 110 elements under the 1-hour ozone NAAQS (65 FR 37879, June 19, 2000) The Commonwealth believes that the section 110 SIP approved for the 1-hour ozone NAAQS are sufficient to meet the requirements under the 1997 8-hour ozone NAAQS. The Commonwealth has submitted a letter dated December 10, 2007, setting forth its belief that the section 110 SIP approved for the 1-hour ozone NAAQS is also sufficient to meet the requirements under the 1997 8-hour ozone NAAQS. EPA has not yet

approved this submission, but such approval is not necessary for purposes of redesignation.

*Part D requirements.* EPA proposes that if EPA approves the Commonwealth's base year emissions inventory, which is part of the maintenance plan submittal, the Kentucky SIP will meet applicable SIP requirements under part D of the CAA. We believe the emissions inventory is approvable because the 2008 VOC and NO<sub>x</sub> emissions for Northern Kentucky were developed consistent with EPA guidance for emission inventories and the choice of the 2008 base year is appropriate because it represents the 2007–2009 period when the 1997 8 hour ozone NAAQS was not violated.

*Part D, subpart 1 applicable SIP requirements.* EPA has determined that, if EPA finalizes the approval of the base year emissions inventories discussed in section IX. of this rulemaking, the Kentucky SIP will meet the applicable SIP requirements for their portions of the tri-state 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 for the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification. Since the tri-state Cincinnati-Hamilton Area (of which Northern Kentucky is a part) was not classified under subpart 2 at the time the redesignation request was submitted, the subpart 2 requirements do not apply for purposes of evaluating the Commonwealth's redesignation request. 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 172–176. 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).

*Subpart 1 Section 172 Requirements.* For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the tri-state 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

<sup>1</sup> On October 27, 1998 (63 FR 57356), EPA issued a NO<sub>x</sub> SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO<sub>x</sub> in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO<sub>x</sub> SIP Call, Kentucky has developed rules governing the control of NO<sub>x</sub> emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, major cement kilns, and internal combustion engines. EPA approved Kentucky's rules as fulfilling Phase I and Phase II of the NO<sub>x</sub> SIP Call on October 23, 2009 (74 FR 54755).

for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the national primary ambient air quality standards. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. On December 7, 2007, the Commonwealth submitted an attainment demonstration and identified the control measures necessary to attain the NAAQS in the tri-state Cincinnati-Hamilton Area. Similar attainment demonstrations were submitted by Ohio and Indiana as part of the tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment Area. However, because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. 40 CFR 51.918. If EPA finalizes approval of the redesignation of the Kentucky portion of the tri-state Cincinnati-Hamilton Area, EPA will take no further action on the attainment demonstration submitted by the Commonwealth of Kentucky for this Area.

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

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. As part of Kentucky's redesignation request for the tri-state Cincinnati-Hamilton Area, the Commonwealth submitted a 2008 base year emissions inventory. As discussed below in section IX., EPA is proposing to approve the 2008 base year inventory that Kentucky submitted with the redesignation request as meeting the section 172(c)(3) emissions inventory requirement.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and

modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the Area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Kentucky has demonstrated that the tri-state Cincinnati-Hamilton Area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the Commonwealth need not have fully approved part D NSR programs prior to approval of the redesignation request. The Commonwealth's PSD programs will become effective in the tri-state Cincinnati-Hamilton Area upon redesignation to attainment. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

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

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the 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 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>2</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*, 265 F.3d 426 (upholding this interpretation); *See also* 60 FR 62748 (December 7, 1995, Tampa, Florida). Kentucky submitted its transportation conformity SIP for 1997 8-hour ozone and particulate matter NAAQS on December 31, 2008. EPA proposed approval on December 4, 2009 (74 FR 63697) for Kentucky's transportation conformity SIP. EPA did not receive any comments for its proposed approval of Kentucky's transportation conformity SIP and is in the process of finalizing its action for this submission. Kentucky did not have a Federally-approved transportation conformity SIP for the 1-hour NAAQS, and thus approval of Kentucky's December 31, 2008, submittal will establish Kentucky's first Federally-approved transportation conformity SIP. However, conformity analyses are performed pursuant to EPA's Federal conformity rules.

**NSR Requirements.** EPA has also determined that 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 standard without a part D NSR program in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment." Kentucky has demonstrated that Northern Kentucky (as part of the tri-state Cincinnati-Hamilton Area) will be able to maintain the standard without a part D NSR program in effect, and therefore, Kentucky need not have a fully-approved part D NSR program prior to approval of the redesignation request.

<sup>2</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.

However, Kentucky currently has a fully-approved part D NSR program in place. Kentucky has a fully-approved part D NSR program. Kentucky's PSD program will become effective in Northern Kentucky upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, Northern Kentucky has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

*b. Northern Kentucky has a fully approved applicable SIP under section 110(k) of the CAA.*

If EPA issues a final approval of the base year emissions inventories, EPA will have fully approved the applicable Kentucky SIP for the Kentucky portion of the tri-state Cincinnati-Hamilton 8-hour ozone 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 1-hour ozone NAAQS SIP elements applicable in the Cincinnati-Hamilton Area (65 FR 37879, June 19, 2000).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D subpart 2 requirements did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004); 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis-East St. Louis Area to attainment of the 1-hour ozone NAAQS). With the approval of the emissions inventory, EPA will have approved all Part D subpart 1 requirements applicable for purposes of redesignation.

Criteria (3)—*The air quality improvement in the tri-state Cincinnati-Hamilton 1997 8-hour Ozone 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.*

Measured reductions in ozone concentrations in and around Northern Kentucky are largely attributable to reductions from emission sources—in Kentucky as well as Ohio and Indiana—of VOC and NO<sub>x</sub>, which are precursors in the formation of ozone. See 75 FR 8879. EPA believes that Kentucky has demonstrated that the observed air quality improvement in the tri-state Cincinnati-Hamilton Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state adopted measures. Additionally, new emissions control programs for fuels and motor vehicles will help ensure a continued decrease in emissions throughout the region. The following is a discussion of permanent and enforceable measures that have been implemented in the Northern Kentucky Area.

*i. Stationary Source NO<sub>x</sub> Rules.* Kentucky has developed rules governing the control of NO<sub>x</sub> emissions from EGUs, major non-EGU industrial boilers, major cement kilns, and internal combustion engines. EPA approved Kentucky's rules as fulfilling Phase I and Phase II of the NO<sub>x</sub> SIP Call on October 23, 2009 (74 FR 54755). Kentucky began complying with Phase I of this rule in 2004. Compliance with Phase II of the SIP Call, which requires the control NO<sub>x</sub> emissions from large internal combustion engines, began in Kentucky in 2007, and resulted in a 41 percent NO<sub>x</sub> reduction from 1995 to 2008 levels.

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

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

passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent); and, larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Some of these emission reductions occurred by the attainment years (2007–2009) and additional emission reductions will occur during the maintenance period.

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

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

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

Additional measures implemented by the Commonwealth of Kentucky which are providing emission reduction benefits for the Northern Kentucky Area:

- All new major VOC sources locating in Kentucky are subject to RACT;
- All major modifications to existing major VOC sources are subject to RACT requirements;
- Implementation of a program to enhance inspection of stationary sources to ensure emission control equipment is functioning properly;
- Requirements for Stage II vapor recovery;
- Federal Motor Vehicle Control Standards apply in Kentucky;
- Reformulated gasoline;

- Federal controls on VOC content for Architectural and Maintenance Paints, Auto Body Shops, and Consumer Products;
- Open burning ban during summer ozone season for Northern Kentucky; and
- PSD requirements.

In addition to the measures listed above, further reductions will be achieved throughout the implementation of new federal regulations to further control the emission of Hazardous Air Pollutants that are VOC and the emission control programs being imposed as a result of enforcement agreements with some sources in the area. The reductions cannot be quantified at this time, but will be reflected in future triennial assessments.

Regarding point source emissions for the Kentucky portion of the tri-state Cincinnati-Hamilton Area, Duke Power's East Bend plant located in Boone County operates a wet lime scrubber, which controls sulfur dioxide emissions; and a modified furnace designed with low NO<sub>x</sub> burners and selective catalytic reduction to reduce NO<sub>x</sub> emissions.

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

In conjunction with its request to redesignate Northern Kentucky (as part of the tri-state Cincinnati-Hamilton 1997 8-hour ozone nonattainment area) to attainment, Kentucky submitted a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment and commits to submitting a revised 10 year maintenance plan eight years after the redesignation is approved if they are still required to do so at that time.

*a. What is required in a maintenance plan?*

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10

years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State of 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, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 1997 8-hour ozone violations. Section 175A of the CAA sets forth the requirements for maintenance plans for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five elements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA proposes to find that Kentucky's maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

*b. Attainment Emissions Inventory*

In coordination with Ohio and Indiana, Kentucky selected 2008 as "the attainment year" for the purposes of demonstrating maintenance of the 1997 8-hour ozone NAAQS. The attainment inventory identifies the level of emissions in the area, which is sufficient to attain the 1997 8-hour ozone standard. Kentucky began development of the attainment inventory by first developing a baseline emissions inventory for Northern Kentucky. The year 2008 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2011, 2015, 2018 and 2020. The projected inventory estimates emissions forward to 2020, which meets the 10-year interval required in Section 175A of the

CAA. Nonroad mobile emissions were generated using EPA's National Mobile Inventory Model (NMIM), with the following exceptions: recreational motorboat populations and spatial surrogates were updated; emissions estimates were developed for commercial marine vessels, aircraft, and railroads as these three nonroad categories are not included in NMIM. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2008 VOC and NO<sub>x</sub> emissions, as well as the emissions for other years, for Northern Kentucky were developed consistent with EPA guidance, and are summarized in Tables 3 and 4 in the following subsection.

*c. Maintenance Demonstration*

The January 29, 2010, redesignation request includes a maintenance plan for Northern Kentucky. The maintenance plan:

- (i) Shows maintenance of the 1997 8-hour ozone standard by providing information to support the demonstration that current and future emissions of VOC and NO<sub>x</sub> remain at or below attainment year 2008 emissions levels. The year 2008 was chosen as the attainment year because it is one of the years in the most recent three-year period (2007-2009) during which the tri-state Cincinnati-Hamilton Area attained the 1997 8-hour ozone standard. 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)).
- (ii) Uses 2008 as the attainment year and includes future emission inventory projections for 2011, 2015, 2018, and 2020.
- (iii) Identifies an "out year," at least 10 years (and beyond) after the time necessary for EPA to review and approve the redesignation request. Per 40 CFR part 93, NO<sub>x</sub> and VOC MVEBs were established for the last year (2020) of the maintenance plan. Additionally, Kentucky chose, through interagency consultation, to establish MVEBs for 2015 for NO<sub>x</sub> and VOC. See section VII below.
- (iv) Provides the following actual and projected emissions inventories, in tons per day (tpd) for Northern Kentucky. See Tables 3 and 4.

TABLE 3—NORTHERN KENTUCKY VOC EMISSIONS  
[tpd]

	2008	2011	2015	2018	2020
<b>Point</b>					
Boone .....	2.81	2.90	3.04	3.14	3.20
Campbell .....	0.28	0.29	0.30	0.31	0.31
Kenton .....	1.17	1.23	1.31	1.38	1.42

TABLE 3—NORTHERN KENTUCKY VOC EMISSIONS—Continued  
[tpd]

	2008	2011	2015	2018	2020
Point Total .....	4.79	4.42	4.65	4.62	4.93
<b>Area</b>					
Boone .....	8.41	8.45	8.50	8.50	8.50
Campbell .....	4.34	4.28	4.20	4.20	4.20
Kenton .....	7.88	7.79	7.66	7.66	7.66
Area Total .....	20.63	20.52	20.36	20.36	20.36
<b>Nonroad</b>					
Boone .....	5.07	4.84	4.55	4.44	4.36
Campbell .....	1.51	1.41	1.29	1.25	1.22
Kenton .....	1.95	1.87	1.76	1.74	1.73
Nonroad Total .....	8.53	8.12	7.60	7.68	7.31
<b>Mobile*</b>					
Boone .....	4.00	3.63	3.17	3.04	2.96
Campbell .....	2.29	2.04	1.74	1.62	1.55
Kenton .....	3.85	3.39	2.85	2.67	2.56
Mobile Total .....	10.14	9.06	8.29	7.69	7.07
Northern Kentucky Total .....	44.09	42.12	40.90	40.35	39.67

\* Calculated using MOBILE6.2.

TABLE 4—NORTHERN KENTUCKY NO<sub>x</sub> EMISSIONS  
[tons per day]

	2008	2011	2015	2018	2020
<b>Point</b>					
Boone .....	23.27	24.04	25.08	25.91	26.47
Campbell .....	0.02	0.02	0.02	0.03	0.03
Kenton .....	0.04	0.03	0.03	0.03	0.03
Point Total .....	23.33	24.09	25.13	25.97	26.53
<b>Area</b>					
Boone .....	5.02	5.02	5.03	5.03	5.03
Campbell .....	1.32	1.31	1.30	1.30	1.30
Kenton .....	4.06	4.04	4.02	4.02	4.02
Area Total .....	10.40	10.37	10.35	10.35	10.35
<b>Nonroad</b>					
Boone .....	11.02	10.47	9.77	9.60	9.48
Campbell .....	5.34	5.00	4.57	4.43	4.34
Kenton .....	7.33	6.81	6.15	5.91	5.75
Nonroad Total .....	23.69	22.28	20.49	19.94	19.57
<b>Mobile*</b>					
Boone .....	8.53	6.64	4.63	3.90	3.45
Campbell .....	4.88	3.74	2.54	2.09	1.81
Kenton .....	8.37	6.33	4.23	3.47	3.01
Mobile Total .....	21.78	16.71	11.40	9.46	8.27
Northern Kentucky Total .....	79.20	73.45	67.37	65.72	54.72

\* Calculated using MOBILE6.2.

Kentucky is using emissions inventory projections for the years 2011, 2015, 2018 and 2020 to demonstrate maintenance. The Ohio-Kentucky-Indiana (OKI) Regional Council of Governments calculated onroad emissions for 2011, 2015, 2018 and 2020 using the MOBILE6.2 emissions model in addition to using this model to calculate the 2008 base year emissions. Emissions estimates for the remaining source categories were based on future year inventories developed by Kentucky and the Lake Michigan Air Directors Consortium (LADCO). Specifically, for Kentucky's submission, LADCO developed the emissions and projections for area and nonhighway

mobile sources. Kentucky used information in the National Emissions Inventory (NEI) database and Kentucky's Emissions Inventory Systems database to determine the point source emissions. A comparison was made between employment projections and earnings projections using the U.S. Department of Commerce's Bureau of Economic Analysis data. Kentucky's submission provides detailed documentation for how the emissions were developed for this submission. EPA has reviewed this information and has determined that the emissions were developed using methodology that is consistent with EPA policy and guidance.

*Consideration of CAIR for Maintenance Demonstration.* The emission projections show that Ohio, Indiana (75 FR 8882–8884), and Kentucky do not expect emissions in the tri-state Cincinnati-Hamilton Area to exceed the level of the 2008 attainment year inventory during the maintenance period, even without implementation of CAIR (see also discussion below). As shown in Table 5, VOC and NO<sub>x</sub> emissions in the entire tri-state Cincinnati-Hamilton Area are projected to decrease by 30.41 tpd and 47.00 tpd, respectively, between 2008 and 2020.

**Table 5. Comparison of 2008, 2015 and 2020 VOC and NO<sub>x</sub> Emissions for the Entire Tri-State Cincinnati-Hamilton Area (tpd)**

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

To further support the maintenance plan demonstrations for the tri-state Cincinnati-Hamilton Area, LADCO performed a regional modeling analysis to address the effect of the recent court decision vacating CAIR. This analysis is documented in LADCO's "Regional Air Quality Analyses for Ozone, PM<sub>2.5</sub>, and Regional Haze: Final Technical Support Document (Supplement), September 12, 2008;" see the discussion in EPA's proposed approval of the Ohio and Indiana maintenance plans for the tri-state Cincinnati-Hamilton Area. See 75 FR 8883–8884.

LADCO produced a base year inventory for 2005 and future year inventories for 2009, 2012, and 2018. To estimate future electric generating units (EGU) NO<sub>x</sub> emissions without implementation of CAIR, LADCO projected 2007 EGU NO<sub>x</sub> emissions for all states in the modeling domain based on Energy Information Administration growth rates by state (North American Electric Reliability Corporation region) and fuel type for the years 2009, 2012 and 2018. The assumed 2007–2018 growth rates were 8.8 percent for Illinois, Iowa, Missouri and Wisconsin; 13.5 percent for Indiana, Kentucky,

Michigan and Ohio; and 15.1 percent for Minnesota. Emissions were adjusted by applying legally enforceable controls, e.g., consent decree or rule.

Ozone modeling performed by LADCO supports the conclusion that the tri-state Cincinnati-Hamilton Area will maintain the standard throughout the maintenance period. Peak modeled ozone levels in the area for 2009, 2012 and 2018 are 0.082 ppm, 0.081 ppm, and 0.078 ppm, respectively. These projected ozone levels were modeled applying only legally enforceable controls; e.g., consent decrees, rules, the NO<sub>x</sub> SIP Call, Federal motor vehicle control programs (FMVCP), etc. Because these programs will remain in place, emission levels, and therefore ozone levels, would not be expected to increase significantly between 2018 and 2020.

EPA has considered the relationship of the maintenance plans to the reductions required pursuant to CAIR. CAIR was remanded to EPA, and the process of developing a replacement rule is ongoing. However, the remand of CAIR does not alter the requirements of the NO<sub>x</sub> SIP Call, and Kentucky has demonstrated maintenance without any

additional CAIR requirements (beyond those required by the NO<sub>x</sub> SIP Call). Therefore, EPA believes that Kentucky's demonstration of maintenance under sections 175A and 107(d)(3)(E) is valid.

The NO<sub>x</sub> SIP Call requires states to make significant, specific emissions reductions. It also provided a mechanism, the NO<sub>x</sub> Budget Trading Program, which states could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO<sub>x</sub> Budget Trading Program, 40 CFR 51.121(r), but created another mechanism, the CAIR ozone season trading program, which states could use to meet their SIP Call obligations, 70 FR 25289–90. EPA notes that a number of states, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program, removed the SIP provisions that required sources to participate in the NO<sub>x</sub> Budget Trading Program. In addition, because the provisions of CAIR, including the ozone season NO<sub>x</sub> trading program, remain in place during the remand, EPA is not currently administering the NO<sub>x</sub> Budget Trading Program. Nonetheless, all states, regardless of the current status of

their regulations that previously required participation in the NO<sub>x</sub> Budget Trading Program, will remain subject to all of the requirements in the NO<sub>x</sub> SIP Call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO<sub>x</sub> SIP Call, including the statewide NO<sub>x</sub> emission budgets, continue to apply after revocation of the 1-hour standard.

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

#### *d. Monitoring Network*

There are currently eleven monitors measuring ozone in the tri-state Cincinnati-Hamilton Area (three in Northern Kentucky and one in the remainder in the Ohio portion of this Area). Kentucky has committed, in the maintenance plan, to continue operation of the three monitors in Northern Kentucky in compliance with 40 CFR part 58, and has addressed the requirement for monitoring. Ohio has made a similar commitment in their redesignation and maintenance plan submission to EPA for this Area. There is no monitor in the Indiana portion of this Area.

#### *e. Verification of Continued Attainment*

The Commonwealth of Kentucky has the legal authority to enforce and implement the requirements of the ozone maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Kentucky will track the progress of the maintenance plan by performing future reviews of emissions inventory for Northern Kentucky using the latest emissions factors, models and methodologies. For these periodic inventories, Kentucky 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,

Kentucky commits to re-project emissions.

#### *f. Contingency Plan*

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

In the January 29, 2010, submittal, Kentucky affirms that all programs instituted by the Commonwealth and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the area. Kentucky commits in their submission to provide an update for the maintenance plan 8 years after formal redesignation in accordance with section 175A(b) of the CAA should this requirement remain applicable for this Area.

As required by section 175A of the CAA, Kentucky has adopted a contingency plan to address possible future 8-hour ozone air quality problems. In the event that a measured value of the fourth highest maximum is 0.085 ppm or greater in any portion of the maintenance area in a single ozone season, or if periodic emissions inventory updates reveal excessive or unanticipated growth greater than ten percent in ozone precursor emissions, the Commonwealth will evaluate existing control measures to see if any further emission reductions should be implemented at that time.

In the event of a monitored violation of the 1997 8-hour ozone NAAQS in the tri-state Cincinnati-Hamilton Area, Kentucky commits to adopt, within nine months, one or more of the following contingency measures to re-attain the standard. A violation of the standard occurs when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is equal to or greater than 0.085 ppm. All

regulatory programs will be adopted and implemented within 18 months after 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 to, or construction of such roads or lands 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 emissions concentration, particularly during periods of peak use;
- Programs for new construction and major reconstructions of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

Kentucky also reserves the right in its submission to implement other contingency measures if new control programs should be developed and advantageous for the Area.

EPA believes that that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Thus EPA proposes to find that the maintenance plan SIP revision submitted by the Commonwealth of Kentucky for Northern Kentucky meets the requirements of section 175A of the CAA and is approvable.

#### **VII. What is EPA's analysis of Kentucky's proposed state NO<sub>x</sub> and VOC MVEBs for Northern Kentucky?**

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

explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the tri-state Cincinnati-Hamilton Area, Kentucky has elected to develop MVEBs for VOC and NO<sub>x</sub> for Northern Kentucky separate from the remainder of the tri-state Cincinnati-Hamilton Area. MVEBs for the remainder of the tri-state Cincinnati-Hamilton Area is addressed in the Ohio and Indiana submittals. Kentucky is developing

these MVEBs for Northern Kentucky, as required, for the last year of its maintenance plan, 2020, an interim year, 2015. The MVEBs for 2015 and 2020 reflect the total on-road emissions for those individual years, plus an allocation from the available NO<sub>x</sub> and VOC safety margin for each year. Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. These MVEBs and

allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model VMT and new emission factor models. For 2015, the safety margin added to the mobile VOC emissions 2 tpd, and the safety margin added to the mobile NO<sub>x</sub> emissions is 3 tpd. For 2020, the safety margin added to the mobile VOC emissions is 3 tpd, and the safety margin added to the mobile NO<sub>x</sub> emissions is 5 tpd. The resulting NO<sub>x</sub> and VOC MVEBs for Northern Kentucky are defined in Table 6 below.

TABLE 6—NORTHERN KENTUCKY 1997 8-HOUR OZONE NO<sub>x</sub> AND VOC MVEBS  
[Summer season tons per day]

	2015	2020
NO <sub>x</sub> .....	14.40	13.27
VOC .....	9.76	10.07

As mentioned above, Kentucky has chosen to allocate a portion of the available safety margin to the 2015 and 2020 NO<sub>x</sub> and VOC MVEBs. The following tables identify the original NO<sub>x</sub> and VOC safety margins that were available in the tri-state Cincinnati Area for the applicable years. It should be noted that the safety margin allocation from above is not reflected in the

following table so any further allocation of the available safety margin in the Kentucky portion of this area will be quantified at the time of the allocation should the Commonwealth elect to allocate additional safety margin to the MVEBs in the Northern Kentucky Area. Table 7 and Table 8 below detail the available safety margin for the tri-state Cincinnati-Hamilton Area prior to

allocations provided for MVEBs for Northern Kentucky and the remainder of the tri-state Area. Kentucky's has remaining safety margin to allocate. Should Kentucky decide to allocate further safety margin to the MVEB, the Commonwealth will do so through a subsequent SIP revision which will identify the available safety margin for allocation and any additional allocation.

TABLE 7—SAFETY MARGIN FOR VOC FOR TRI-STATE CINCINNATI-HAMILTON AREA  
[tons per day]

VOC	2008	2015	2020	Safety margin	Safety margin
				2015	2020
Butler, OH .....	26.66	23.85	23.64	2.80	3.01
Clermont, OH .....	15.51	12.94	12.54	2.39	2.77
Clinton, OH .....	6.83	5.45	5.02	1.38	1.81
Hamilton, OH .....	69.25	56.80	55.00	12.41	14.21
Warren, OH .....	18.48	14.92	14.54	3.56	3.94
Dearborn, IN .....	7.49	6.86	6.96	12.18	12.08
Boone, KY .....	20.29	19.26	19.02	1.03	1.27
Campbell, KY .....	8.42	7.53	7.28	0.89	1.14
Kenton, KY .....	14.85	13.58	13.37	1.27	1.48
Combined Total .....	187.78	161.19	157.37	37.91	41.71

TABLE 8—SAFETY MARGIN FOR VOC FOR TRI-STATE CINCINNATI-HAMILTON AREA  
[tons per day]

NO <sub>x</sub>	2008	2015	2020	Safety margin	Safety margin
				2015	2020
Butler, OH .....	40.52	30.49	27.06	8.50	11.93
Clermont, OH .....	39.73	59.76	59.12	-31.80	-32.13
Clinton, OH .....	6.31	3.84	2.97	2.47	3.34
Hamilton, OH .....	88.37	73.30	65.16	29.41	37.55
Warren, OH .....	22.26	13.32	10.88	8.94	11.38

TABLE 8—SAFETY MARGIN FOR VOC FOR TRI-STATE CINCINNATI-HAMILTON AREA—Continued  
[tons per day]

NO <sub>x</sub>	2008	2015	2020	Safety margin	Safety margin
				2015	2020
Dearborn, IN .....	33.09	32.07	32.56	0.90	0.41
Boone, KY .....	47.84	44.51	44.43	3.33	3.41
Campbell, KY .....	11.56	8.43	7.48	3.13	4.08
Kenton, KY .....	19.79	14.43	12.81	5.36	6.98
Combined Total .....	309.47	280.15	262.47	30.24	46.95

Through this rulemaking, EPA is proposing to approve the 2015 and 2020 MVEBs for VOC and NO<sub>x</sub> for Northern Kentucky because EPA has determined that the Area maintains the 1997 8-hour ozone NAAQS with the emissions at the levels of the budgets. Once the MVEBs for Northern Kentucky (the subject of this rulemaking) are approved or found adequate (whichever is done first), they must be used for future conformity determinations. See section VIII for more information on the status of EPA's adequacy determination for the proposed NO<sub>x</sub> and VOC MVEBs for the years 2015 and 2020 for Northern Kentucky.

#### VIII. What is the status of EPA's adequacy determination for the proposed NO<sub>x</sub> and VOC MVEBs for the years 2015 and 2020 for Northern Kentucky?

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

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

EPA's substantive criteria for determining "adequacy" of an MVEB are set out in 40 CFR 93.118(e)(4). The process for determining "adequacy" consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance was finalized in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; transportation conformity rule amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for MVEBs is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Kentucky's maintenance plan submission includes VOC and NO<sub>x</sub> state MVEBs for Northern Kentucky for the years 2015 and 2020. EPA reviewed both the VOCs and NO<sub>x</sub> state MVEBs through the adequacy process. The Kentucky SIP submission, including the Northern Kentucky VOC

and NO<sub>x</sub> MVEBs was open for public comment on EPA's adequacy website on February 3, 2010, found at: <http://www.epa.gov/otaq/stateresources/transconf/currstips.htm>. The EPA public comment period on adequacy of the 2015 and 2020 VOC and NO<sub>x</sub> state MVEBs for Northern Kentucky closed on March 5, 2010. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal. EPA provided a separate adequacy posting for the MVEBs in association with the Ohio and Indiana portions of this Area. The status of the adequacy process for the Ohio and Indiana MVEBs is discussed in EPA's separate action related to those areas (*see* 75 FR 8871, 8886; February 26, 2010).

EPA intends to make its determination on the adequacy of the 2015 and 2020 MVEBs for Northern Kentucky for transportation conformity purposes by completing the adequacy process that was started on February 3, 2010, in coordination with the final rule for this redesignation request and maintenance plan. After EPA finds the 2015 and 2020 MVEBs, adequate or approves them, the new MVEBs for VOC and NO<sub>x</sub> must be used, for future transportation conformity determinations. For required regional emissions analysis years that involve the years 2015 through 2019, the applicable budgets for the purposes of conducting transportation conformity will be the new 2015 MVEBs. For required regional emissions analysis years that involve 2020 or beyond, the applicable budgets will be the new 2020 MVEBs for Northern Kentucky. The 2015 and 2020 MVEBs are defined in section VII of this proposed rulemaking.

#### IX. What is EPA's analysis of the proposed 2008 base year emissions inventory for Northern Kentucky?

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

Kentucky portion of the tri-state Cincinnati-Hamilton Area, the Commonwealth submitted 2008 base year emissions inventory to meet this requirement. Emissions contained in the submittal cover the general source categories of point sources, area sources, on-road mobile sources, and non-road

mobile sources. All emission summaries were accompanied by source-specific descriptions of emission calculation procedures and sources of input data. On-road mobile emissions were prepared by the OKI using the MOBILE6.2 emissions model.

Kentucky's submittal documents 2008 emissions in the Kentucky portion of the tri-state Cincinnati-Hamilton Area in units of tons per summer day. Table 9 below provides a summary of the 2008 summer day emissions of VOC and NO<sub>x</sub> for Northern Kentucky.

NORTHERN KENTUCKY 2008 SUMMER DAY EMISSIONS FOR VOC AND NO<sub>x</sub>  
[Tons per day]

	NO <sub>x</sub>	VOC
Boone .....	23.27	2.81
Campbell .....	0.02	0.28
Kenton .....	0.04	1.17
Point Total .....	23.33	4.79
Boone .....	5.02	8.41
Campbell .....	1.32	4.34
Kenton .....	4.06	7.88
Area Total .....	10.40	20.63
Boone .....	11.02	5.07
Campbell .....	5.34	1.51
Kenton .....	7.33	1.95
Nonroad Total .....	23.69	8.53
Boone .....	8.53	4.00
Campbell .....	4.88	2.29
Kenton .....	8.37	3.85
Mobile Total .....	21.78	10.14
Northern Kentucky Total .....	79.20	44.09

EPA is proposing to approve this 2008 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

**X. What are EPA's proposed actions?**

EPA is proposing to: (1) To determine that the tri-state Cincinnati-Hamilton Area has attained the 1997 8-hour ozone NAAQS based on quality assured monitoring data from 2007–2009; (2) approve Kentucky's redesignation request for Boone, Campbell and Kenton Counties in Kentucky as part of the tri-state Cincinnati Area; (3) approve Kentucky's January 29, 2010 SIP revision providing the 1997 8-hour ozone maintenance plan for Northern Kentucky, including the MVEBs for NO<sub>x</sub> and VOC for the years 2015 and 2020; and (4) approve the 2008 emissions inventory for Northern Kentucky as meeting the requirements of the CAA.

EPA's proposed approval is based on the Commonwealth's demonstration that the plan meets the requirements of section 175A of the CAA. After evaluating the Commonwealth's redesignation request, EPA believes that, upon final approval of the emissions inventory that was also submitted, the request meets the

redesignation criteria set forth in CAA sections 107(d)(3)(E) and 175A. Therefore, EPA is proposing to approve the redesignation of the Kentucky portion of the tri-state Cincinnati-Hamilton Area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. The final approval of this redesignation request would change the official designation for the Kentucky portion of the tri-state Cincinnati-Hamilton Area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. Final approval would also establish 2015 and 2020 NO<sub>x</sub> and VOC MVEBs for Northern Kentucky to use for the purposed of implementing transportation conformity. EPA is proposing to approve Kentucky's 2008 base year emissions inventory for the Kentucky portion of the tri-state Cincinnati-Hamilton Area as meeting the requirements of section 172(c)(3) EPA is taking action on the redesignation requests, emission inventories and maintenance plans for the Ohio and Indiana portions (as a part of the tri-state Cincinnati-Hamilton Area) in a separate but coordinated action.

In this action, EPA is also describing the status of EPA's adequacy determination for the new 2015 and

2020 MVEBs that are contained in the 1997 8-hour ozone maintenance plan for Northern Kentucky in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy finding for the MVEBs, or the effective date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO<sub>x</sub> and VOC MVEBs pursuant to 40 CFR 93.104(e). EPA intends to conclude it adequacy process for the Northern Kentucky MVEBs with its final rulemaking for this proposed action. MVEBs for the Ohio and Indiana portions of this Area are included in the Ohio and Indiana submittals, and are being addressed through EPA's separate action for those submissions.

**XI. Statutory and Executive Order Reviews**

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself

create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, under the CAA, 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 these reasons, these proposed 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that

it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 81

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

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

Dated: May 3, 2010.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2010-11145 Filed 5-11-10; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 03-123; DA 10-761]

#### Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission, via the Consumer and Governmental Affairs Bureau (Bureau), seeks comment on the annual payment formulas and funding requirement estimates for the Interstate Telecommunications Relay Services (TRS) Fund (Fund) for the period of July 1, 2010, through June 30, 2011 (2010-2011 Fund year), as proposed by the National Exchange Carrier Association (NECA), the Fund Administrator. The Bureau seeks comment on NECA's proposed compensation rates for Interstate TRS, Speech-to-Speech Services (STS), Captioned Telephone Services (CTS), Internet Protocol (IP) CTS, IP Relay, and Video Relay Services (VRS), for the 2010-2011 Fund year, as well as on NECA's proposals for the carrier contribution factor and funding requirement.

**DATES:** Comments are due on or before May 14, 2010; reply comments are due on or before May 21, 2010.

**ADDRESSES:** You may submit comments, identified by CG Docket No. 03-123, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications*

*Commission's Web Site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the

instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

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

#### FOR FURTHER INFORMATION CONTACT:

Diane Mason, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418-7126 (voice), (202) 418-7828 (TTY), or e-mail at [Diane.Mason@fcc.gov](mailto:Diane.Mason@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's document DA 10-761, adopted and released on April 30, 2010. The complete text of DA 10-761, NECA's submission and any subsequently filed documents in this matter will be available during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, (202) 418-0270. Document DA 10-761, NECA's submission and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at its Web site, <http://www.bcpweb.com>, or call 1-800-378-3160. A copy of the submission may also be found by searching on ECFS (insert CG Docket No. 03-123 into the Proceeding block).

Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments on this document. All filings must reference CG Docket No. 03-123. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and CG Docket No. 03-123.