

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
<b>Article 8. Volatile Organic Compound Rules</b>				
8-1	General Provisions.			
8-1-0.5	Definitions	10/18/1995	11/3/1999, 64 FR 59642.	
8-1-1	Applicability	6/5/1991	3/6/1992, 57 FR 8082.	
8-1-2	Compliance methods	12/15/2002	5/5/2003, 68 FR 23604.	
8-1-3	Compliance schedules	5/15/2010	4/14/2011, [Insert page number where the document begins].	
8-1-4	Testing procedures	7/15/2001	9/11/2002, 67 FR 57515.	
8-1-5	Petition for site-specific reasonably available control technology (RACT) plan.	11/10/1988	9/6/1990, 55 FR 36635.	
8-1-6	New facilities; general reduction requirements	6/24/2006	6/13/2007, 72 FR 32531.	
8-1-7	Military specifications		10/27/1982, 47 FR 20586.	
8-1-9	General record keeping and reporting requirements	5/22/1997	6/29/1998, 63 FR 35141.	
8-1-10	Compliance certification, record keeping, and reporting requirements for certain coating facilities using compliant coatings.	5/22/1997	6/29/1998, 63 FR 35141.	
8-1-11	Compliance certification, record keeping, and reporting requirements for certain coating facilities using daily-weighted averaging.	5/22/1997	6/29/1998, 63 FR 35141.	
8-1-12	Compliance certification, record keeping, and reporting requirements for certain coating facilities using control devices.	5/22/1997	6/29/1998, 63 FR 35141.	
*	*	*	*	*
8-4	Petroleum Sources.			
8-4-1	Applicability	5/15/2010	4/14/2011, [Insert page number where the document begins].	
8-4-2	Petroleum refineries		1/18/1983, 48 FR 2127.	
8-4-3	Petroleum liquid storage facilities		2/10/1986, 51 FR 4912.	
8-4-4	Bulk gasoline terminals		1/18/1983, 48 FR 2127.	
8-4-5	Bulk gasoline plants		1/18/1983, 48 FR 2127.	
8-4-6	Gasoline dispensing facilities	5/15/2010	4/14/2011, [Insert page number where the document begins].	
8-4-7	Gasoline transports	11/5/1999	5/31/2002, 67 FR 38006.	
8-4-8	Leaks from petroleum refineries; monitoring; reports	6/5/1991	3/6/1992, 57 FR 8082.	
8-4-9	Leaks from transports and vapor collection systems; records.	11/5/1999	5/31/2002, 67 FR 38006.	
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 [FR Doc. 2011-8874 Filed 4-13-11; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R04-OAR-2007-1186-201114; FRL-9295-9]

**Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Approval of Section 110(a)(1) Maintenance Plans for the 1997 8-Hour Ozone Standards for the Edmonson County, KY; Greenup County Portion of the Huntington-Ashland, WV-KY; Lexington-Fayette, KY; and Owensboro, KY**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the Kentucky State Implementation Plan (SIP) that include maintenance plans addressing the 1997 8-hour ozone national ambient air quality standards (NAAQS or standards) for the following four Kentucky attainment areas: Edmonson County (hereafter referred to as the “Edmonson County Area”); the portion of Greenup County that was previously a part of the Huntington-Ashland, West Virginia-Kentucky 1-hour ozone maintenance area (hereafter referred to as the “Greenup County Area”); Fayette and Scott Counties (hereafter referred to as the “Lexington Area”); and Hancock County and the portion of Daviess County that was previously a part of the Owensboro 1-hour ozone maintenance area (hereafter referred to as the “Owensboro Area”)—collectively, these

areas will be referred to as the “Four Kentucky Areas.” The Four Kentucky Areas were 1-hour ozone maintenance areas that were designated as attainment areas for the 1997 8-hour ozone NAAQS. As attainment areas that were previously 1-hour maintenance areas, Kentucky was required to submit maintenance plans demonstrating how these areas would maintain the 1997 8-hour ozone NAAQS. These maintenance plans were submitted to EPA on May 27, 2008, as revisions to the Kentucky SIP, by the Commonwealth of Kentucky (Commonwealth), through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), and ensure the continued attainment of the 1997 8-hour ozone NAAQS through the year 2020 for the Four Kentucky Areas. These maintenance plans meet applicable statutory and regulatory requirements and are consistent with EPA’s guidance. EPA is approving the revisions pursuant to the Clean Air Act (CAA or Act). This final rule also responds to adverse comments made on EPA’s previously published proposed approvals of the maintenance plans for the Four Kentucky Areas.

**DATES:** *Effective Date:* This rule will be effective May 16, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2007–1186. All documents in the electronic docket are listed in the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information 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:** Jane Spann, 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. Jane Spann may be reached by phone at (404) 562–9029 or by electronic mail address [spann.jane@epa.gov](mailto:spann.jane@epa.gov).

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#### I. Background

In accordance with the CAA, Edmonson County, Kentucky; Huntington-Ashland, West Virginia-Kentucky; Lexington-Fayette, Kentucky; and Owensboro, Kentucky were designated as nonattainment for the 1-hour ozone NAAQS (effective January 6, 1992, 56 FR 56694).

On November 13, 1992, Kentucky submitted requests to redesignate the Edmonson County, Lexington-Fayette, and Owensboro 1-hour nonattainment Areas to attainment for the 1-hour ozone NAAQS. Subsequently, on November 12, 1993, Kentucky submitted a request to redesignate the Kentucky portion of the Huntington-Ashland Area to attainment for the 1-hour ozone NAAQS. In addition to the redesignation requests, Kentucky submitted the required ozone monitoring data and maintenance plans to ensure that the redesignated Areas would remain in attainment for the 1-hour ozone NAAQS for a period of 10 years after redesignation, consistent with the CAA section 175A(a).

EPA approved Kentucky’s maintenance plans and requests to redesignate the Kentucky portion of the Huntington-Ashland Area (60 FR 33748; June 29, 1995); the Lexington-Fayette Area (60 FR 47089; September 11, 1995); the Edmonson County Area (59 FR 55053; November 3, 1994); and the Owensboro Area (60 FR 7124; February 7, 1995) for the 1-hour ozone NAAQS.

On April 30, 2004, EPA designated areas for the 1997 8-hour ozone NAAQS (69 FR 23858), and published the final Phase I Implementation Rule for the 1997 8-hour ozone NAAQS (69 FR 23951) (Phase I Rule). Daviess, Edmonson, Fayette, Greenup,<sup>1</sup> Hancock

<sup>1</sup> While the portion of Greenup County that was a part of the 1-hour ozone Huntington-Ashland, WV-KY Area was designated attainment, Boyd County which was also a part of the 1-hour ozone Huntington-Ashland, WV-KY Area was designated nonattainment for the 1997 8-hour ozone NAAQS, effective June 15, 2004. Boyd County was subsequently redesignated to attainment for the 1997 8-hour ozone standard and has a CAA section

and Scott Counties (including all portions that were previously designated nonattainment for the 1-hour ozone NAAQS) were designated as attainment for the 1997 8-hour ozone NAAQS, effective June 15, 2004.

#### II. EPA Guidance and CAA Requirements

As a consequence of their designations as attainment for both the 1-hour and 8-hour ozone standards, the Four Kentucky Areas (all 8-hour ozone attainment areas) were required to submit 10-year maintenance plans pursuant to section 110(a)(1) of the CAA and the Phase I Rule, 40 Code Federal Regulations (CFR) 51.905(a)(4). On May 20, 2005, EPA issued guidance as to how a state might fulfill the section 110(a)(1) maintenance plan obligation established by the CAA and the Phase I Rule (Memorandum from Lydia N. Wegman to Air Division Directors, *Maintenance Plan Guidance Document for Certain 8-Hour Ozone Areas Under Section 110(a)(1) of Clean Air Act*, May 20, 2005, hereafter referred to as “Wegman Memorandum”). Neither section 110(a)(1) nor any other provision of the CAA contains detail regarding the specific content of maintenance plans for these types of areas. EPA’s Phase I Rule, in 40 CFR 51.905(a)(4) provides that section 110(a)(1) maintenance plans must include contingency measures.

On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) issued an opinion that vacated portions of EPA’s Phase I Rule. *See South Coast Air Quality Management District (SCAQMD) v. EPA*, 472 F.3d 882 (D.C. 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. Of particular relevance, the Court vacated those portions of the Phase I Rule that provided for regulation of the 1997 8-hour ozone nonattainment areas designated under Subpart 1 (of part D of the CAA) in lieu of Subpart 2, among other portions of the Phase I Rule. The Court’s decisions do not alter any 8-hour ozone attainment area requirements under the Phase I Rule for CAA section 110(a)(1) maintenance plans. EPA is thus finalizing its approvals of Kentucky’s May 27, 2008, proposed SIP revisions as satisfying the section 110(a)(1) CAA requirements for plans that provide for implementation, maintenance, and enforcement of the

175A maintenance plan in effect. (72 FR 43172, August 3, 2007).

1997 8-hour ozone NAAQS in the Four Kentucky Areas.

### III. This Action

EPA is taking final action to approve SIP revisions incorporating the 110(a)(1) maintenance plans for the 1997 8-hour ozone NAAQS for the Four Kentucky Areas—Edmonson County, Greenup County, Lexington, and Owensboro. On May 27, 2008, Kentucky submitted these

maintenance plans to ensure the continued attainment of the 1997 8-hour ozone NAAQS through the year 2020. In addition to reviewing the maintenance plans, EPA has reviewed the updated available air quality monitoring data for the Four Kentucky Areas and has confirmed, that based on the available data that these Areas continue to meet the 1997 8-hour ozone NAAQS. The table below shows the 2007–2009

design values for these attainment areas, based on complete, quality-assured and certified monitoring data. The table below also shows the preliminary data from 2010 which are consistent with continued attainment. The data are listed in EPA's Air Quality System database as the preliminary design value report. EPA does not anticipate any concerns regarding these data.

TABLE 1—1997 8-HOUR OZONE NAAQS DESIGN VALUE

Area	Design value (2007–2009) parts per million (ppm)	Design value (2008–2010) ppm
Edmonson County Area .....	0.072	0.070
Greenup County Area .....	0.072	0.069
Lexington Area .....	0.077	0.069
Owensboro Area .....	0.075	0.071

In this final action, EPA is also responding to adverse comments received, from the Sierra Club and Kentucky Environmental Foundation, regarding EPA's proposed rulemakings to approve these revisions, 74 FR 12567, March 25, 2009 (Greenup County Area, Lexington Area and Edmonson County Area); 75 FR 3183, January 20, 2010 (Owensboro Area); and 75 FR 16387, April 1, 2010 (Owensboro limited reopening of comment period). EPA proposed approval of the maintenance plans for the Four Kentucky Areas in two separate actions. This final rulemaking action is based on EPA's full review of relevant information and consideration of the comments received, and reflects EPA's conclusion, that these maintenance plans comply with section 110 of the CAA and EPA's implementing regulations. See 40 CFR 51.905(a)(4). EPA's analyses of Kentucky's SIP revisions for the Edmonson County, Greenup County, and Lexington Areas are described in detail in proposed and direct final rules published March 25, 2009 (74 FR 12774 and 74 FR 12567, respectively). Although EPA's direct final rulemaking was withdrawn on May 5, 2009 (74 FR 20601), due to the adverse comments received, EPA's proposed rulemaking remained in place. EPA's analysis for Kentucky's SIP revision for the Owensboro Area is described in detail in a proposed rule published on January 20, 2010 (75 FR 3183). Today's action responds to adverse comments received on EPA's March 25, 2009, and January 20, 2010, rulemakings, and finalizes those rulemakings. EPA's action approving the maintenance plan for each area is separate and independent of

its approval of the plans for the other areas.

### IV. Comments and Responses

EPA received one set of adverse comments from the Sierra Club and the Kentucky Environmental Foundation (hereafter referred to as "the Commenters"). These comments address EPA's March 25, 2009, proposed and direct final rules to approve Kentucky's 110(a)(1) maintenance plans for the Edmonson County, Greenup County, and Lexington Areas. This same set of comments was submitted by the Commenters for EPA's January 20, 2010, proposed rule to approve Kentucky's 110(a)(1) maintenance plan for the Owensboro Area. Today's rulemaking takes final action on the maintenance plans for all Four Kentucky Areas. The following section of this notice summarizes the adverse comments received, and sets forth EPA's responses to the comments. (The complete comments are available in the docket for this rulemaking.)

*Comment 1.* The Commenters claim that EPA's proposed and direct final rules to approve Kentucky's 110(a)(1) maintenance plans for the Four Kentucky Areas "run contrary to Administrator's Jackson's promise that the U.S. Environmental Protection Agency decisions would henceforth be based on three guiding principles: transparency; use of sound science; and respect for rule of law." The Commenters state that "[i]ssuing a direct final rule in which the actual rules are not knowable by reading the **Federal Register** notice, or for that matter, the administrative record, is not a transparent process." They further complain that EPA's proposal ignored

the science of climate change and contravened statutory language.

*Response 1.* EPA disagrees with the Commenters' characterization of the content of the **Federal Register** notice. The Commenters' contention that because the complete text of the SIP revisions is not included in the **Federal Register** notice, EPA has failed to adhere to certain principles espoused by EPA Administrator Jackson is simply unsupported. EPA's rulemaking here has fulfilled the goals of transparency, sound science, and respect for the law. With regard to transparency, neither the CAA nor the Administrative Procedure Act mandates that the **Federal Register** notice of proposed rulemaking, or final rulemaking action, include the complete text of the proposed SIP revisions. EPA's notice of proposed rulemaking satisfied the notice requirements by providing citations to the rules at issue, offering the SIP revisions for public review, and describing the subjects and issues involved in the SIP revisions. Because publication in the **Federal Register** is costly and resource intensive, EPA makes every effort to provide key information in proposal notices while at the same time using Agency resources efficiently. EPA drafts rulemaking notices to enable public understanding of the subjects and issues at hand. All documents related to this rulemaking were available at <http://www.regulations.gov> under the docket number EPA-R04-OAR-2007-1186, during the comment period for the proposed rulemaking actions. For a member of the public wishing to review the complete text of the SIP revisions, the notice of proposed rulemaking included instructions for obtaining access to the complete SIP revision. In

addition, the public could also contact the EPA representative designated in the notice to obtain further information or answers to questions. Thus, the Commenters' contention that, because the complete text of the SIP revision was not included in the **Federal Register** notice, EPA failed to adhere to EPA Administrator Jackson's three principles is simply unsupported.

EPA also rejects the Commenters' assertion that the rulemaking violates any of the three principles that have been espoused by EPA Administrator Jackson. EPA's adherence to Administrator Jackson's three principles (transparency, use of sound science, and respect for rule of law) is clearly reflected in the detailed information and explanations set forth in the proposals, direct final actions, and this final action, including the substantive responses to comments. As was discussed earlier in this notice, and is also discussed later in this response to comments section, EPA's approvals of the maintenance plans are supported by the CAA, its implementing regulations, and applicable guidance.

*Comment 2.* The Commenters assert that Kentucky DAQ has indicated that Greenup County, in the Huntington-Ashland Area, Jessamine County in the Lexington Area, and Edmonson County are violating the 2008 8-hour ozone NAAQS. Therefore, the Commenters state, that the public interest mandates that EPA quickly act to ensure that at the very least, the 1997 8-hour ozone NAAQS is maintained.

*Response 2.* The present rulemaking action addresses solely the maintenance of the 1997 8-hour ozone NAAQS for the Edmonson County, Greenup County, Lexington, and Owensboro Areas. EPA is approving, pursuant to CAA section 110(a), Kentucky's plans to assure continued maintenance of the 1997 8-hour ozone NAAQS in the Four Kentucky Areas. Attainment or maintenance of any subsequently adopted ozone NAAQS is not relevant to this rulemaking action, and therefore the issue raised by the Commenters is outside the scope of this rulemaking.

The 2008 8-hour ozone NAAQS, promulgated on March 12, 2008, is irrelevant to this rulemaking. EPA is currently reconsidering the 2008 8-hour ozone NAAQS, and has not yet designated areas for any subsequent NAAQS. Actions that EPA may take with regard to the 2008 (or a reconsidered) ozone NAAQS are separate from and independent of the actions now being taken to approve the 110(a)(1) maintenance plans for the Four Kentucky Areas in this rulemaking.

*Comment 3.* The Commenters assert that the maintenance plans do not ensure maintenance of the 1997 8-hour ozone NAAQS because there is no requirement that major stationary sources demonstrate that they do not cause or contribute to new violations of the 1997 8-hour ozone NAAQS. The basis for this assertion appears to be the Commenters' view that Kentucky's Prevention of Significant Deterioration (PSD) program does not require new or modified sources that trigger major PSD review due to an increase in emissions of nitrogen oxides (NO<sub>x</sub>) to demonstrate that they will not cause or contribute to a violation of the ozone NAAQS. The Commenters point to a specific facility and cite to a portion of the PSD application for that facility where volatile organic compounds (VOCs) are considered for the ozone analysis, but not NO<sub>x</sub>.

*Response 3.* On September 15, 2009, the Kentucky DAQ filed an emergency rule to immediately address the issue of NO<sub>x</sub> as a precursor for ozone for PSD purposes (which EPA required as part of a November 29, 2005, rulemaking for ozone implementation—70 FR 71612). Kentucky's emergency rule provides explicit requirements for major new sources and major modifications of existing sources of NO<sub>x</sub> to demonstrate that they will not cause or contribute to a violation of the ozone NAAQS. The emergency rule became effective immediately in Kentucky and was subsequently submitted to EPA for approval as a SIP revision. On April 1, 2010, EPA proposed approval of Kentucky's rule to address NO<sub>x</sub> as a precursor to ozone for PSD (75 FR 16388, April 1, 2010). EPA received adverse comments from the Sierra Club.<sup>2</sup> On September 15, 2010 (75 FR 55988), EPA issued a final action responding to the adverse comments and approving the Commonwealth's rule to address NO<sub>x</sub> as a precursor to ozone for PSD as a revision to the Kentucky SIP. EPA thus believes that the concerns voiced by the Commenters in this rulemaking about alleged deficiencies in Kentucky's PSD program

<sup>2</sup> The Commenters allege that East Kentucky Power Cooperative (EKPC) is "taking advantage" of the SIP not including NO<sub>x</sub> as a precursor for ozone for a proposed J.K. Smith power plant. Comments at pg. 3. This issue, among others, is part of a lawsuit filed by Sierra Club against EPA which is now pending before the DC Circuit Court of Appeals. Notably, in briefs filed by the United States in that action, it was explained that EKPC announced its intentions to cancel plans for the Smith facility and the permit at issue in the comments was subsequently withdrawn (the withdrawal document is included in the docket for today's rulemaking). Because Kentucky's SIP now includes NO<sub>x</sub> as a precursor for ozone, the Commenters' concern has been addressed.

and the regulation of NO<sub>x</sub> as a precursor to ozone have been satisfactorily addressed and resolved.

*Comment 4.* The Commenters contend that the maintenance plans are inadequate because there is no consideration of the impacts that climate change will have on ozone levels. The comment makes reference to several publications, provides a discussion on the impact of weather on climate change and ozone, and concludes that failure to consider this important aspect of the problem would lead to an arbitrary result. The Commenters request that EPA evaluate the maintenance plans in light of the "increasing danger climate change will cause from ozone."

*Response 4.* With regard to the comment that Kentucky's analysis improperly omits consideration of the affect of climate change on ambient ozone levels, EPA agrees that climate change is a serious environmental issue; however, EPA does not agree that the maintenance plans at issue in today's action cannot be approved without the climate change analysis outlined by the Commenters. One of the reports cited to by the Commenters (April 2009 "Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A synthesis of climate change impacts on ground-level ozone," page xxiv) concludes that, "[t]hese studies suggest that EPA's Office of Air Quality Planning and Standards should begin to consider climate change, for example, in the next update of EPA's ozone modeling guidance, especially for planning horizons in 2020 and beyond." Although the EPA report cited in the comment indicates that climate change increases ozone concentrations in "substantial regions of the country," the report also states that there are "pronounced differences in the broad spatial patterns of change" among the various modeling groups. While ozone concentrations may be affected as early as the 2020s (already after the date—2014—required to be addressed by these section 110(a) maintenance plans), most of the modeling groups did not simulate ozone concentration changes prior to the 2050s. Furthermore, the report itself states that "modeling uncertainties persist, and further research is needed." More specifically, the report further states that "[c]urrent modeling uncertainties lead to disagreements about the spatial patterns of future changes in meteorological variables and, hence, the specific regional distributions of future ozone changes across the United States." Several of the projected models, in fact, provide conflicting projections for the area in

which Kentucky is located (see e.g., Fig. 3–1 of the above mentioned EPA report). The report concludes “[t]hese studies suggest that EPA’s Office of Air Quality Planning and Standards should *begin to consider* climate change, for example, in the next update of EPA’s ozone modeling guidance, especially for planning horizons in 2020 and beyond.” (Emphasis added.) Thus, the report acknowledges that modeling guidance is not yet available for the type of area-specific analysis of effects of climate change on ozone concentrations required for SIP planning. EPA therefore believes it is premature to require a precise mathematical accounting in the SIP process for the effect of higher ambient temperatures due to climate change on ozone concentrations. EPA stands ready to reevaluate this position when the state of science and confidence in projection improve. Given the above, however, at this time, EPA cannot say Kentucky was in error when it did not model the potential impact of climate change on ozone in the Greenup County, Edmonson County, Lexington and Owensboro Areas as it developed maintenance plans for those areas.

*Comment 5.* The Commenters contend that Kentucky’s maintenance plans ignore the possibility of changes in weather and emissions outside the covered counties. The Commenters also contend that the 2002 emissions inventory are not based on any actual emissions data gathered with continuous emissions monitors or verified with actual emissions from 2005 and 2008. Thus, the Commenters conclude that EPA’s approval is arbitrary because the emissions forecasts are flawed. The Commenters claim that there are several reasons for the flaws, including alleged failures to properly consider the role of ozone and ozone precursor transport and of weather.

*Response 5.* Under 40 CFR 51.905(a)(4) section 110(a)(1), maintenance plans, like the one at issue here, must demonstrate maintenance of the 1997 8-hour NAAQS through 2014. Kentucky has voluntarily extended the coverage of its maintenance plans for the Four Kentucky Areas for an additional six years beyond the required maintenance period (through 2020). EPA has reviewed these plans and determined that they satisfy applicable requirements. The demonstrations are based upon actual emissions inventories, and projected emissions through 2020. These projections take into consideration population, state, local and federal emission controls, and other relevant factors. Unlike maintenance plans for nonattainment areas that are redesignated to

attainment, for which section 175A of the CAA specifies express requirements, section 110(a)(1) maintenance plans for areas designated attainment are not subject to specific statutory maintenance plan requirements. In accordance with EPA guidance, however, Kentucky did undertake an analysis, summarized as follows, for certain emissions groups such as stationary sources, area sources and some mobile sources. Response 5, below, contains additional information responsive to Comment 4.

Utilizing Standard Industrial Codes (SIC), all point source emissions were projected based on growth factors calculated using Bureau of Economic Analysis (BEA) projection data for employment, as suggested by EPA and utilized for previous point source projections in similar contexts. The point source data provided SIC codes used to determine a short title description that matched the corresponding description found in the BEA data. The application of growth factors for each projection was then used for point sources. Appendix E to Kentucky’s May 27, 2008, SIP revisions provide information on how point source projections were determined.

Area sources can be defined as those sources that are generally too small and/or too numerous to be handled individually in the point source inventory. Area source emissions were estimated by multiplying an emission factor by a known indicator of collective activity such as number of employees or population. For area source emission projections, population growth factors for each chosen year were calculated using an exponential formula in the EXCEL software. The application of these growth factors for each projection was then used for area sources. Information used to calculate growth factors, including population information used to project area sources, was provided by the University of Louisville Urban Data Center and can be found in Appendix F of Kentucky’s May 27, 2008, SIP revisions.

The non-highway mobile category is broken down into three groups that include two- and four-cycle gasoline engines and diesel engines (other non-highway engines), railroad locomotives, and aircraft. Emissions are estimated by multiplying the base year inventory by a known indicator of collective activity such as fuel consumed or landing/takeoff operations. For locomotive and aircraft emission projections, population growth factors for each chosen year were calculated using the before mentioned formula. The application of these growth factors for each projection

was then used for each of these non-highway categories. For other non-highway categories (e.g., industrial equipment, tractors, leaf blowers), EPA’s nonroad model was used to determine the future year projections. Nonroad model and non-highway projection information can be found in Appendix G of Kentucky’s May 27, 2008, SIP revisions. Updated minimum and maximum summer temperatures and ambient temperatures were utilized for input into the nonroad model. EPA Volume IV mobile source guidance was followed in determining the updated temperature data. Please see Appendix C of Kentucky’s May 27, 2008, SIP revisions for specific temperature documentation.

The use of emissions inventories and emissions forecasts has long been an accepted method for evaluating maintenance of the NAAQS under section 175A for nonattainment areas and EPA’s guidance advises its use for purposes of maintenance plans under CAA section 110(a)(1). The Courts have agreed with EPA’s longstanding view that a maintenance demonstration for a nonattainment area, and a fortiori an attainment area, need not be based on modeling. *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 25430–25431 (May 12, 2003).

In its guidance issued May 20, 2005, EPA explained that, “[t]he typical method that areas have used in the past to demonstrate that an area will maintain the 1-hour standard has been to identify the level of ozone precursor emissions in the area which is sufficient to attain the NAAQS and to show that future emissions of ozone precursors will not exceed the attainment levels.” Wegman Memorandum at pg. 4. The inventory and projections Kentucky provided in the maintenance plans at issue here use this method to demonstrate that the Areas will maintain the 8-hour ozone standards. Complete, quality-assured air quality monitoring data through the year 2009 for all of these Areas showed maintenance of the 1997 8-hour ozone NAAQS, and data available for 2010 indicate continued maintenance. Maintenance is demonstrated by showing that during the maintenance period the level of precursor emissions remains at or below the attainment level. Variations in weather are accounted for by the 3-year averaging required for finding of attainment (see e.g., the 2004 attainment designation). The requirement that there be three years of quality-assured monitoring data to demonstrate attainment is the

established mechanism by which EPA takes meteorological variability into account for purposes of determining attainment and maintenance. These issues have been addressed multiple times in a variety of EPA rulemakings and court decisions. Today's actions are consistent with EPA's longstanding interpretation of the maintenance plan requirements of the CAA. *See e.g.*, 69 FR 21719 (April 22, 2004) (redesignation of the San Francisco area); 66 FR 53094, 53099 (October 19, 2001) (redesignation of the Pittsburgh-Beaver area); 68 FR 25418, 25430 (May 12, 2003) (redesignation of the St. Louis area); 40 CFR 50.9 and Appendix H (method for determining attainment of 1-hour standard; Appendix H states that three years of data is required); Appendix I (method for 8-hour standard); Appendix I contain similar statement); *Sierra Club v. EPA*, 375 F.3d 537, 539–543 (7th Cir. 2004) (discussing the modeling required for maintenance plans). Similarly, the Commenters' concerns about potential modifications of sources or new sources that may affect ambient levels are addressed by the New Source Review (NSR) and PSD programs, as well as by the NOx SIP call requirements and other programs designed to regulate pollutants both inside and outside the covered counties. As a result, and contrary to the Commenters' contention, EPA's review of the maintenance demonstrations considered the role of emissions from outside the area in maintenance of the standard in the Four Kentucky Areas. EPA took into account the relevant federal and state requirements that will help ensure that emissions from outside the area will not interfere with continued maintenance in the area. These include, among others, the NOx SIP Call, NSR/PSD requirements, and other regulations that control emissions from outside the Four Kentucky Areas. (*See also* Response 8, below.)

The inventory and projections Kentucky provided in the maintenance plans use this method to demonstrate the Four Kentucky Areas will continue to maintain the 1997 8-hour ozone NAAQS. The inventory and emissions analyses performed by Kentucky were conservative, and reviewed by EPA, to ensure that they reasonably establish maintenance of the NAAQS pursuant to section 110(a)(1). EPA's review of Kentucky initial attainment inventories and inventory projections of future maintenance inventories confirms that maintenance will continue through the requisite period. Moreover, as is explained further below, the contingency measures portion of the

maintenance plan provides a backstop for maintenance, functioning to correct a violation if, despite the projections, one should occur.

With regard to the analyses performed by Kentucky, the emissions inventory includes four components: Point, area, highway mobile and non-highway mobile sources. The Four Kentucky Areas were designated attainment for the 1997 8-hour ozone NAAQS in 2004 using 2001–2003 data. They had an option to choose one of the three attaining years to use as a base year for emission inventory purposes. For these SIP revisions, Kentucky chose to use 2002, an attainment year (for both the 8-hour and 1-hour ozone NAAQS), as the year for developing a new comprehensive ozone precursor emissions inventory from which projected emissions could be developed for 2005, 2008, 2011, 2014, 2017, and 2020. Maintenance is demonstrated by comparing the attainment year emissions to the emissions in the years listed above. The following is a summary of the emission projection methodology that was used to forecast emissions over the maintenance period; the docket includes a more detailed description of this methodology.

Point sources are defined as stationary sources that emit 10 or more tons per year (tpy) of VOC or 100 tpy or more of NOx or carbon monoxide (CO). Annual point source emissions data were used.<sup>3</sup> Point source information is collected by Kentucky from a number of sources (including permitting information) and point source information was provided for utilizing SIC (Response 4, above, discusses the various sources of emissions information used by Kentucky). *See also* Appendix E of Kentucky SIP Revisions (specifically discussion regarding point source projections). Point source emission projections were based on growth factors calculated using BEA projection data for employment. The point source data provided SIC codes used to determine a title description that matched the corresponding description found in the BEA data. The application of growth factors for each projection was then used for point sources.

As mentioned above, area sources are those that are generally too small and/or too numerous to be handled

<sup>3</sup> Actual emissions were used for base year analyses. Projections were used for future year inventories which, at the time, were for 2005 and 2008. Since then, Kentucky has used the 2005 and 2008 actual inventories that were submitted to EPA per their Consolidated Emissions Reporting Rule (CERR) requirement for the development of the EPA National Emission Inventory (NEI) in order to compare to the previously submitted projected emissions in the maintenance plan submissions.

individually in the point source inventory. The University of Louisville Urban Data Center provided information used to calculate growth factors, including population information used to project emissions from area sources. Two and four-cycle gasoline engines and diesel engines (non-highway engines), railroad locomotives and aircraft make up the non-highway mobile category. Emissions were estimated by multiplying the base year inventory by a known indicator of collective activity such as fuel consumed or landing/takeoff operations. For locomotive aircraft emission projections, population growth factors for each chosen year were calculated. For other non-highway categories such as industrial equipment and tractors, EPA's nonroad model was used to determine future year projections.

Daily Vehicle Miles Traveled (DVMT) and speeds for 2002 and the projection years were obtained from the Kentucky Transportation Cabinet and used to calculate highway mobile source emissions. EPA's MOBILE6.2 model was used to derive appropriate projection year emission factors that were multiplied by the corresponding DVMT to determine the projected highway mobile source emissions. The 1990 mobile emissions were recalculated using the updated MOBILE6.2 emissions model in order to standardize the comparison of the 1990 numbers with the 2002 and 2020 mobile emissions developed using this model. EPA agrees with the methodology used to develop the 2005 and 2008 on-road emissions as projected from the 2002 actual emissions and submitted in the SIP revisions. The projection methodology used to develop future year on-road mobile emissions found in the SIP revisions, combined with the fact that later determined actual emissions were considerably lower than already projected emissions, provides a strong basis for approval of these maintenance plans.

With respect to the Commenters' contention that attainment inventories were not based on actual emissions, in fact the 2002 emission inventories for the Greenup County, Owensboro, and Lexington Areas were based on actual point source emissions. There are no point sources in the Edmonson Area. (*See* page 2.1 of Appendix C of each Area's 110(a)(1) maintenance plan submittal.) At the time of the initial submission of these 110(a)(1) maintenance plans in 2008, the actual emissions for some source categories for 2005 and 2008 were not required to be submitted. The Consolidated Emissions

Reporting Rule (CERR) <sup>4</sup> (40 CFR part 51, subpart A) requires states to submit to EPA an emissions inventory for all source categories every three years and at the time the SIP revisions were due, only the 2002 emissions were available for states to use. See 40 CFR 51.30. Not every source is subject to continuous emissions monitoring, so the information on actual emissions may vary between source categories.

Kentucky has since reviewed the data and compared the actual emissions for 2005 and 2008 with the projected emissions for 2005 and 2008 which were contained in the maintenance plan submittals. This analysis is available in the docket for this final rulemaking. EPA reviewed Kentucky's analysis and found it reliable and compelling. The comparisons revealed that the emissions projected in Kentucky's maintenance plans for the Four Kentucky Areas were higher than the actual emissions by an average of 19 percent for VOC and 11 percent for NO<sub>x</sub> for 2005; they were higher by an average of 26 percent for VOC and 47 percent for NO<sub>x</sub> for 2008. Kentucky's maintenance plans demonstrated that, even using projections of emissions that were greater than those that actually occurred in these years, those projections remained below the attainment base-year inventories. Of course, the fact that the actual emissions that occurred in these Areas were substantially less than those that were projected provides further demonstration of continued maintenance. Thus, actual emissions data during the maintenance period have proven that Kentucky's projected emissions were very conservative, and confirm EPA's view that the plans provide adequate assurance of maintenance during the requisite period. In the future, EPA anticipates even further reductions of these ozone precursors. This information supports the position that Kentucky's emissions projections provided with the 110(a)(1) maintenance plans were conservative.

In addition to the assurance provided by the information above, which demonstrates the conservative nature of the emissions forecasts (which were supported by actual emissions data as explained in the previous paragraph), the contingency measures portion of maintenance plans serves as a backstop in the event that any of these Areas requires supplemental measures to maintain air quality. These contingency measures help to ensure that the Areas continue to maintain the NAAQS of concern and can quickly correct a violation should one occur. Kentucky's maintenance plans contain two types of such contingency measures for each of the Four Kentucky Areas. In the event that exceedances (as contrasted with actual violations) of the 8-hour ozone NAAQS are monitored in any portion of the maintenance area, or if periodic emission inventory updates reveal excessive or unanticipated growth greater than 10 percent in ozone precursor emissions, Kentucky will evaluate existing control measures to see if additional control measures should be implemented at that time. If a monitored violation occurs, Kentucky has committed to a contingency measure schedule where one or more contingency measures will be adopted within nine months and implemented within 18 months to bring the area back into attainment.

For the reasons discussed above, the Commenters have failed to identify a deficiency in the 110(a)(1) maintenance plans that warrants any action other than approval.

*Comment 6.* The Commenters state that the maintenance plans rely both on assuming that measures will be implemented in the future to decrease emissions and assuming that Kentucky will implement contingency measures if the maintenance plans do not achieve their objectives. Specifically, the Commenters argue that Kentucky used a Reid Vapor Pressure (RVP) in gasoline of 8.6 pounds per square inch (psi) in developing future emission levels even

though an RVP of only 9.0 psi is legally required. The Commenters believe that the maintenance demonstration should be based on legal requirements rather than assumptions of over-compliance.

*Response 6.* The forecasting of emissions in a maintenance plan involves the use of reasonable, scientifically-based premises that form the basis for expectations of future emissions, the maintenance projections, and contingency measure requirements. It is not necessary here for EPA to accept or reject the Commenters' contentions regarding historically-based over-compliance with legal requirements. Even if EPA assumes, as the Commenters insist, that EPA evaluates maintenance using the less stringent RVP level of 9.0 psi, the Four Kentucky Areas all demonstrate continued maintenance. First, the Commenters' concern with the stringency of RVP levels does not pertain to the Greenup County Area, since Kentucky modeled only 9.0 psi for RVP for this Area, and did not assume a lower RVP. Thus, the Commenters' assertion regarding RVP levels more stringent than 9.0 psi applies only to the 110(a)(1) maintenance plans for the Edmonson County, Lexington and Owensboro Areas. For these Areas, EPA has received and evaluated additional information that responds to the Commenters' concern. Kentucky has demonstrated that the Edmonson County, Lexington and Owensboro Areas are projected to demonstrate continued maintenance of the 1997 8-hour ozone NAAQS with fuel modeled at either 9.0 psi (the statutory level) or at 8.6 psi (the level indicated by historical surveys that these Areas typically receive). This provides a modeled analysis showing a comparison of VOC and NO<sub>x</sub> emissions using both the 8.6 and 9.0 psi RVP gasoline. Table 2 below shows the difference in emissions for the Edmonson County, Lexington and Owensboro Areas at RVP levels model at both 8.6 psi and 9.0 psi.

TABLE 2—EDMONSON COUNTY, LEXINGTON AND OWENSBORO AREAS HIGHWAY MOBILE SOURCE EMISSIONS  
[Tons per day (tpd)]

County	8.6 psi		9.0 psi		Difference between 8.6 psi & 9.0 psi	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
2002:						
Edmonson .....	0.55	0.96	0.56	0.97	0.01	0.01
Greenup .....	N/A	N/A	1.09	1.56	N/A	N/A
Fayette .....	14.14	23.43	14.66	23.45	0.52	0.02
Scott .....	2.95	5.71	3.05	5.71	0.1	0

<sup>4</sup> The CERR is discussed in greater detail in Response 14.

TABLE 2—EDMONSON COUNTY, LEXINGTON AND OWENSBORO AREAS HIGHWAY MOBILE SOURCE EMISSIONS—Continued  
[Tons per day (tpd)]

County	8.6 psi		9.0 psi		Difference between 8.6 psi & 9.0 psi	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Hancock .....	0.1	0.18	0.11	0.18	0.01	0
Daviess .....	3.98	5.97	4.12	5.97	0.14	0
2005:						
Edmonson .....	0.42	0.79	0.43	0.79	0.01	0
Greenup .....	N/A	N/A	0.87	1.33	N/A	N/A
Fayette .....	10.24	18.14	10.64	18.16	0.4	0.02
Scott .....	2.23	4.58	2.32	4.59	0.09	0.01
Hancock .....	0.07	0.13	0.07	0.13	0	0
Daviess .....	2.9	4.64	3.01	4.64	0.11	0
2008:						
Edmonson .....	0.39	0.72	0.4	0.72	0.01	0
Greenup .....	N/A	N/A	0.75	1.12	N/A	N/A
Fayette .....	9.34	16.27	9.7	16.29	0.36	0.02
Scott .....	2.13	4.26	2.21	4.27	0.08	0.01
Hancock .....	0.07	0.12	0.07	0.12	0	0
Daviess .....	2.6	4.1	2.7	4.1	0.1	0
2011:						
Edmonson .....	0.36	0.6	0.36	0.6	0	0
Greenup .....	N/A	N/A	0.64	0.9	N/A	N/A
Fayette .....	8.39	13.54	8.7	13.56	0.31	0.02
Scott .....	2	3.66	2.07	3.67	0.07	0.01
Hancock .....	0.06	0.1	0.06	0.1	0	0
Daviess .....	2.29	3.37	2.38	3.38	0.09	0.01
2014:						
Edmonson .....	0.3	0.46	0.31	0.46	0.01	0
Greenup .....	N/A	N/A	0.54	0.68	N/A	N/A
Fayette .....	7.3	10.44	7.55	10.45	0.25	0.01
Scott .....	1.84	2.93	1.9	2.93	0.06	0
Hancock .....	0.05	0.07	0.05	0.07	0	0
Daviess .....	1.95	2.56	2.02	2.56	0.07	0
2017:						
Edmonson .....	0.27	0.38	0.28	0.36	0.01	-0.02
Greenup .....	N/A	N/A	0.48	0.53	N/A	N/A
Fayette .....	6.62	8.36	6.84	8.37	0.22	0.01
Scott .....	1.74	2.43	1.8	2.43	0.06	0
Hancock .....	0.04	0.06	0.04	0.06	0	0
Daviess .....	1.74	2.02	1.8	2.02	0.06	0
2020:						
Edmonson .....	0.24	0.3	0.25	0.3	0.01	0
Greenup .....	N/A	N/A	0.42	0.44	N/A	N/A
Fayette .....	6.04	7.03	6.23	7.05	0.19	0.02
Scott .....	1.85	2.1	1.7	2.11	-0.15	0.01
Hancock .....	0.04	0.05	0.04	0.05	0	0
Daviess .....	1.56	1.68	1.61	1.68	0.05	0

The overall effect on VOC emissions of the difference between 8.6 and 9.0 psi RVP gasoline is 0.52 tpd or less for each of the projection years for the Edmonson County, Lexington, and Owensboro Areas. Further, each of the projected VOC emission inventories using 9.0 psi RVP gasoline is less than the baseline VOC emission inventory for the 2002 attainment year. Based upon these data, EPA concludes that the Edmonson County, Lexington, and Owensboro Areas' 1997 8-hour maintenance plans demonstrate continued maintenance with the use of either 8.6 or 9.0 psi RVP gasoline in these Areas. See also Approval Grant Parish 110(a)(1) Maintenance Plan, 72 FR 62579

(November 6, 2007) and 73 FR 8202 (February 13, 2008).

*Comment 7.* The Commenters state that Kentucky's maintenance plans included unidentified maximum achievable control technology (MACT) standards as sources of reductions of VOC. The Commenters assert that this analysis failed to consider that the MACT standards could result in the increase of NO<sub>x</sub>, VOC, and CO emissions due to the "energy penalty" from new emission control devices.

*Response 7.* The Commenters do not identify the specific impact of any "energy penalty" on maintenance of the 1997 8-hour ozone NAAQS in the Four Kentucky Areas. Energy inefficiencies, as explained by the Commenters, may

apply to any number of pollutants and the Commenters did not provide information specifically addressing how an energy penalty would affect emissions reductions relevant to today's action. For purposes of responding to this comment, EPA considered the term "energy penalty" to refer to a reduction in energy output that might result in the increase of emissions.

In the 110(a)(1) maintenance plans at issue, Kentucky stated, "[t]he continued improvement and maintenance of the air quality in the [areas], as verified by the lack of violations of the 8-hour ozone standard, is due to the implementation of permanent and enforceable emission reductions \* \* \*. The following information outlines

emission reduction measures that have occurred from 1990 through 2002, and those implemented after 2002 and projected to 2020.” Kentucky then lists Maximum Achievable Control Technology (MACT)—promulgated national emission standards for hazardous air pollutants (commonly referred to as “MACT standards”)—controls in this list of measures. With specific regard to that issue, Kentucky explained, “\* \* \* (m)any of the [Hazardous Air Pollutants] HAPs under these industrial categories of controls are also VOCs and compliance with these new MACT standards as they are being promulgated will decrease VOC emissions from the affected industries \* \* \*”. Based on discussions with Kentucky, EPA concludes that Kentucky’s maintenance analyses do not rely on quantified reductions from MACT standards. Rather, the analyses simply recognize that implementation of MACT standards may result in collateral reductions of VOCs.<sup>5</sup> For that reason, Kentucky listed “MACT” generally as part of the permanent and enforceable reductions in place in the Areas; however, Kentucky did not quantify those reductions numerically with regard to the maintenance plans at issue today and does not rely on them to demonstrate maintenance. EPA further notes that even if Kentucky had claimed reductions from MACT standards, the Commenters simply claim without any supporting information that an energy penalty will occur and will result in increased VOC emissions. Without additional specific information, EPA cannot conclude that there will be any energy penalty whatsoever.

In terms of the environmental benefit of the MACT standards, Kentucky’s expectation that the implementation of the MACT standards will have an environmental benefit for ozone is reasonable. The Commenters do not provide information supporting the comment that installation of control technology will require more fuel to be burned such that emissions will increase. Additionally, the Commenters provide the example of the installation of carbon injection or a baghouse to control mercury; however, no emissions calculation based on a specific facility is provided. As a result, the Commenters

<sup>5</sup> On September 10, 2010, Jane Spann, Regional Ground-Level Ozone Contact for Region 4, spoke with John Gowins of Kentucky DAQ (Environmental Control Supervisor) regarding this issue. Mr. Gowins confirmed that Kentucky had not numerically quantified any specific MACT reductions, but was simply recognizing that the existence of federal regulations in effect at the time were “permanent and enforceable reductions” with regard to VOCs.

have not demonstrated that a source will necessarily become less efficient because of these control technologies (as was stated in the comment); nor that Kentucky’s maintenance plans are deficient for this reason. EPA believes that Kentucky’s consideration of MACT standards was reasonable.

In the future, any collateral emission increases associated with a specific MACT standard control will be addressed during the actual implementation and permitting of sources. If for some reason the maintenance of the Areas appear compromised by any specific MACT standard in the future, the permitting and implementation process, as well as the triggers and measures in the contingency portion of the maintenance plans, should prevent or resolve any problem as expeditiously as practicable.

*Comment 8.* In further support of the comment regarding use of projected future emissions reductions, the Commenters assert that Kentucky appears to be relying upon reductions in NO<sub>x</sub> emissions from the Clean Air Interstate Rule (CAIR). The Commenters state that because CAIR is a cap and trade program, it is arbitrary to assume that sources will reduce emissions in every year between 2008 and 2020.

*Response 8.* CAIR was remanded to EPA, (*North Carolina v. EPA*, 531 F.3d 896 modified on reh’g, 550 F.3d 1176 (D.C. Cir. 2008)), and the process of developing a replacement rule is ongoing. As a point of clarification, neither CAIR nor the remand of CAIR altered the requirements of the NO<sub>x</sub> SIP Call,<sup>6</sup> which requires states to make significant, specific emissions reductions. See 63 FR 57356 (October 27, 1998).

All four of the Kentucky Areas attained the 1997 8-hour ozone NAAQS by 2002, without any reliance on reductions from CAIR, and before requirements under CAIR were implemented. Kentucky has demonstrated that the Four Kentucky Areas can maintain the 1997 8-hour ozone NAAQS without these requirements. Therefore, EPA believes that the Commenters’ expressed

<sup>6</sup> On October 27, 1998 (63 FR 57356), EPA issued a NO<sub>x</sub> SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO<sub>x</sub> in order to reduce the transport of ozone and ozone precursors. In compliance with EPA’s NO<sub>x</sub> SIP Call, Kentucky developed rules governing the control of NO<sub>x</sub> emissions from 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). Implementation of the NO<sub>x</sub> SIP Call was phased with the Kentucky programs being effective in 2002 and 2006 at the state level. *Id.*; see also 67 FR 17624 (April 11, 2002).

concerns about Kentucky’s reliance on NO<sub>x</sub> reductions from CAIR are misplaced, and Kentucky’s demonstrations of maintenance under section 110(a)(1) do not depend upon them.

Although Kentucky did not rely on the remanded CAIR rule for either attainment or maintenance of the 1997 8-hour ozone NAAQS, the NO<sub>x</sub> SIP Call requirements provide additional assurance of maintenance in the Four Kentucky Areas. 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 ozone NAAQS. For the maintenance plans that are the subject of today’s actions, Kentucky appropriately does not rely on the remanded CAIR requirements.

*Comment 9.* Again, as support for the contention that Kentucky considered over-compliance in its maintenance plans, the Commenters explain that Kentucky included vehicle turnover in its consideration of maintenance, but state that there is no requirement for vehicle turnover in the counties covered by the maintenance plans. Thus, it is the Commenters’ contention that there is no justification for including this factor in the projected future emissions.

*Response 9.* For the reasons described below, EPA disagrees that there is no justification for considering fleet turnover in emissions forecasts. Fleet turnover, the gradual, continuing process of new vehicles certified to tighter emissions standards replacing older vehicles, is a historic fact that has been central to estimating the benefits of federal and state emission control programs in SIPs and maintenance plans since the earliest motor vehicle emission controls were implemented. Fleet turnover will occur in the future as long as people continue to replace older vehicles with newer ones, and there is no reason to expect this historic practice to change.

The emission impacts of fleet turnover have been incorporated in every EPA-approved emission model including MOBILE6.2, the approved model for estimating motor vehicle emissions in SIPs and maintenance plans at the time of this analysis. Generally, the calculation of emissions in MOBILE6.2 is based upon the reasonable expectation that each year, the model year composition of the local motor vehicle fleet changes as new vehicles are purchased and enter the fleet and old vehicles are scrapped. This results in a decrease in fleet average NO<sub>x</sub> and VOC emissions each year

because older model year vehicles certified to less stringent emission standards leave the fleet and are replaced by newer vehicles certified to more stringent standards. The phase-in of new vehicle standards and the change in the average emissions of the vehicle fleet due to the replacement of older vehicles with newer ones are included in MOBILE6.2 for both past and future years.

Specific inputs for MOBILE6.2 can affect the rate of fleet turnover that the model calculates in future years. EPA has included language in the guidance document "Technical Guidance on the Use of MOBILE6.2 for Emission Inventory Preparation" (dated August 2004) to ensure that states make reasonable assumptions about the rate of fleet turnover in the future. As described in this guidance, projected rates of fleet turnover in the future should take into account historic fleet turnover in the area. That guidance states that it would not be reasonable for a state to assume that the rate of new vehicle purchases and fleet turnover in the future is higher than historic rates. However, EPA expects that states will make the reasonable assumption that residents will continue to purchase or lease new vehicles to replace old ones, at rates similar to historic rates, and that the average emissions of the fleet will decline as a result.

*Comment 10.* The Commenters complain that the contingency measures in the Kentucky maintenance plans are not automatically effective upon a triggering event. Specifically, the Commenters contend that in order to comply with the standards set out in the CAA and in the Wegman Memorandum, maintenance plans must require that a violation of the NAAQS, or a 10 percent increase in the emission inventory, or another triggering event that EPA develops, must result in automatically effective contingency measures. The Commenters appear concerned that the contingency measures outlined by Kentucky are "vague" and not automatically effective upon a triggering event. In support of the contention that the CAA requires that the contingency measures be in the SIP and automatically effective upon a trigger event, the Commenters cite two court cases: *Sierra Club v. EPA*, 356 F.3d 296 (D.C. Cir. 2004) and *Natural Resources Defense Council (NRDC) v. EPA*, 22 F.3d 1125, 1134 (D.C. Cir. 1994).

*Response 10.* The CAA sets no specific requirements for section 110(a)(1) maintenance plans, not even that they contain contingency measures. EPA, in its implementing regulation, provides simply that a section 110(a)(1)

maintenance plan "must include contingency measures." EPA guidance in the Wegman memorandum, p. 7, states that contingency provisions should be aimed at promptly correcting violation of the NAAQS, and explains that the SIP should contain an enforceable commitment to adopt and implement contingency measures in a timely fashion once they are triggered. Consistent with this guidance, Kentucky's 110(a)(1) maintenance plans provide that in the event of a monitored violation of the 8-hour ozone NAAQS, Kentucky commits to adopt, within a specific amount of time (i.e., nine months), one or more of the 8 specific contingency measures listed in the plan. Kentucky's maintenance plan commits to implementing the contingency measures within 18 months. The Wegman Memorandum states "[t]he schedule for adoption and implementation should be as expeditious as practicable, but no longer than 24 months." Kentucky's 18-month timeframe is consistent with the Wegman Memorandum.

The Wegman Memorandum goes on to explain that, in addition to the minimum trigger upon violation of the NAAQS, EPA recommends additional triggers could be used such as exceedance of the precursor emission levels upon which maintenance is based. This type of trigger is beneficial because it occurs prior to a violation. Kentucky has also included this type of additional trigger in its 110(a)(1) maintenance plans. If periodic emissions inventory updates reveal excessive or unanticipated growth greater than 10 percent in ozone precursor emissions, Kentucky has committed to evaluating existing control measures to see if any further emission reduction measures should be implemented at that time. By meeting the minimum requirement of adopting and implementing specific contingency measures upon a violation of the NAAQS and including additional triggers, Kentucky has sufficiently provided for contingency measures in its maintenance planning for the 1997 8-hour ozone NAAQS in the Four Kentucky Areas that are the subject of this notice.

The CAA itself does not expressly address contingency measures in section 110(a)(1) maintenance plans, much less require that any contingency measures be automatically effective, and the flexibility afforded to Kentucky ensures that the correct measure can be adopted in order to respond to the particular air quality issues causing the triggering event. While the triggering event directs the state to launch the

process to adopt and implement a contingency measure, the state is also given some flexibility to determine which of the identified measures is best suited to address the particular air quality issue that must be corrected. This is reasonable, desirable, and consistent with how EPA and the states have addressed section 175A contingency measures in nonattainment areas that have been redesignated to attainment.

The Commenters' contention that the CAA requires something more than is being required by EPA in the 110(a)(1) maintenance plans at issue in today's action, finds no support in the statute itself. The maintenance plans at issue in this notice are 110(a)(1) maintenance plans for areas in attainment with the NAAQS at issue. Section 110(a)(1) contains no express requirement for maintenance plans for attainment areas to contain contingency measures, much less detail their content. Even where the CAA does require maintenance plans to have contingency measures—section 175A for nonattainment areas being redesignated to attainment—the CAA and its implementing regulations do not require that these measures be automatically effective upon a triggering event. Thus, neither a section 110 or 175A maintenance plan for an area that is attaining the NAAQS (attainment area or a redesignated maintenance area) is required to have fully adopted contingency measures that will take effect without further action by the state in order for the maintenance plan to be approved.

The Memorandum from John Calcagni to Air Division Directors, Procedures for Processing Requests to Redesignate Areas to Attainment, September 4, 1992—hereafter referred to as "Calcagni Memorandum," and the Wegman Memorandum, are consistent with the applicable statutory and regulatory requirements. The Calcagni Memorandum states "[t]hese contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9) and those specifically required for ozone and CO nonattainment areas under sections 182(c)(9) and 187(a)(3), respectively." While contingency measures that are required for nonattainment areas under sections 172(c)(9) and section 182(c)(9) must be already adopted so that they can be effective upon a triggering event for a nonattainment area that fails to meet its reasonable further progress (RFP) or attainment deadlines, this is not required for section 110(a)(1) or 175A maintenance plans. The Commenters do

not provide any statutory or regulatory citations for their positions.

Even for maintenance plans for nonattainment areas that are being redesignated to attainment, section 175A requires only that the state include contingency measures, as EPA deems necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. 42 U.S.C. 7505a(d) (Emphasis added.) EPA's interpretation that maintenance plan contingency measures need not be fully adopted has been followed since 1992. The Sixth Circuit in *Greenbaum v. EPA*, endorsed the Calcagni Memorandum's statements regarding contingency measures for 175A maintenance plans. Specifically, the Court stated that under 175A, EPA "has been granted broad discretion by Congress in determining what is 'necessary to assure' prompt correction." 370 F.3d at 540. Given the latitude provided maintenance plan contingency measures for nonattainment areas being redesignated, EPA's treatment of section 110(a)(1) maintenance plans for attainment areas is eminently justified and reasonable.

In support of their contention that contingency measures be automatically effective, the Commenters cite to two cases and not any statutory or regulatory provisions. In the first, *Sierra Club v. EPA*, 356 F.3d 296 (D.C. Cir. 2004), the D.C. Circuit evaluated a conditional approval for nonattainment area SIPs—the case did not concern maintenance plans for attainment areas and did not address contingency measures for attainment areas. In the second, *NRDC v. EPA*, 22 F. 3d 1125 (D.C. Cir. 1994), the Court was also evaluating a conditional approval as well as various EPA rules regarding, in part, vehicle inspection and maintenance programs promulgated pursuant to the 1990 amendments to the CAA. The pinpoint citation provided by the Commenters leads to a discussion on interim milestones to satisfy the conditional approval (under CAA section 110(k)(4)). *Id.* at 1134.

With regard to the Commenters' contention that the contingency measures are "vague," below is a summary of the contingency measures included in the maintenance plans. In the event of a monitored violation of the 8-hour ozone NAAQS, Kentucky commits to adopt, within nine months, one or more of the following contingency measures to re-attain the NAAQS.

- Stage I Vapor Recovery;
- Stage II Vapor Recovery;
- Basic Vehicle Emissions Testing Program;

- Open burning ban during summer ozone season;
- Restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles;
- Trip-reduction ordinances;
- Employer based transportation management plans, including incentives;
- Programs to limit or restrict vehicle use in downtown areas, or other areas of emission concentration, particularly during periods of peak use;
- Programs for new construction and major reconstructions of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

Further, all regulatory programs will be implemented within 18 months. While the Commonwealth also reserves the right to implement other contingency measures if new control programs should be developed and deemed more advantageous for the Area, this list provides sufficient information regarding the types of contingency measures that will be considered. As explained above, Kentucky's 110(a)(1) maintenance plans for the Four Kentucky Areas are consistent with applicable requirements.

*Comment 11.* The Commenters assert that EPA has not demonstrated that the Greenup maintenance plan, without contingency measures, "will not interfere with attainment and reasonable further progress in the other portion of Greenup County" or in Boyd County, Kentucky.

*Response 11.* The Commenters provide no explanation of the basis for their concern that Greenup County's maintenance plan might somehow interfere with attainment in the other portion of Greenup County or in Boyd County, and thus EPA is uncertain of the basis for the Commenters' statements. Nonetheless, EPA reviews below the relationship between Greenup County and Boyd County with respect to the 1-hour and 8-hour ozone standards. With regard to the 1-hour ozone NAAQS, in 1992, Boyd County and a portion of Greenup County<sup>7</sup> were

<sup>7</sup> As a point of clarification, Greenup County was included in the 1-hour ozone designations as a partial county, as part of the 1-hour ozone nonattainment area for the Huntington-Ashland Area. This Area was initially designated as nonattainment and later as attainment for the 1-hour NAAQS. Thus, the portion of Greenup County affected was ultimately a 175A maintenance area for the 1-hour ozone NAAQS. When the 8-hour ozone designations were completed, all of Greenup County was designated as attainment, as its own attainment area—just the one county. It was not included in what was later known as the 8-hour ozone nonattainment area for the Huntington-

designated nonattainment as the Kentucky portion of the Huntington-Ashland 1-hour ozone Area. In 1995, the Kentucky portion of the Huntington-Ashland Area was redesignated to attainment for the 1-hour ozone NAAQS, and under CAA section 175A, EPA approved Kentucky's 1-hour ozone maintenance plan for the Area. In 2004, during a national designations process, EPA evaluated the Huntington-Ashland Area for the 1997 8-hour ozone NAAQS. EPA designated Boyd County nonattainment for the 8-hour ozone NAAQS. Further, EPA, and designated attainment the portion of Greenup County that was formerly part of the Huntington-Ashland 1-hour ozone Area.

As part of that designations process, EPA made the determination that the portion of Greenup County that was in the former 1-hour ozone area did not contribute to violations of the 8-hour ozone NAAQS in the Huntington-Ashland 1997 8-hour ozone nonattainment Area (including Boyd County). 69 FR 23858, 23906 (April 30, 2004). The portion of Greenup County that was designated attainment for the 1-hour ozone NAAQS was never subject to the 175A maintenance plan because it was never designated nonattainment. EPA has no information indicating that Greenup County Area's maintenance of both the 1-hour and 8-hour NAAQS will interfere with attainment and RFP of Boyd County.

Moreover, based on monitoring data for 2004–2006, EPA determined that the 1997 8-hour ozone nonattainment area for Huntington-Ashland attained the 1997 8-hour ozone NAAQS, and in 2007, EPA redesignated the Area to attainment. (72 FR 43172, August 3, 2007). EPA is not aware of any subsequent 8-hour ozone violations in Boyd County (as part of the 1997 8-hour ozone maintenance area for Huntington-Ashland) which is subject to an approved section 175A 1997 8-hour ozone maintenance plan. There is no evidence that any portion of Greenup County has interfered with or will interfere with 8-hour ozone attainment in the Huntington-Ashland Area (including Boyd County). Today's final approval of the Greenup County Area's section 110(a)(1) maintenance plan will do nothing to increase emissions or interfere with attainment in other areas. Further, the Greenup County Area's 110(a)(1) maintenance plan projects 2020 out-year emissions for Greenup County are expected to decrease by

Ashland Area. As a result, Greenup County is currently and has always been a 110(a)(1) maintenance area for 1997 8-hour ozone NAAQS purposes.

twenty-six percent for VOCs and by fifty-one percent for NO<sub>x</sub>, compared to the base year 2002. The Greenup County Area was attaining the 1997 8-hour ozone NAAQS in 2002 based on measured ambient air quality monitoring data, and the emissions inventory future years is shown to remain below the 2002 baseline. Boyd County, as part of the Huntington-Ashland Area, has now been redesignated to attainment for the 1997 8-hour ozone NAAQS. There is no indication that Greenup County is interfering or will interfere with continued maintenance in Boyd County. EPA believes that the emissions reductions expected to continue in Greenup County establish that Greenup County will not interfere with attainment throughout the County or in the Huntington-Ashland Area (Boyd County). Thus, EPA disagrees with the Commenters' contentions regarding Greenup County.

*Comment 12.* The Commenters incorporated by reference comments previously submitted to EPA regarding the Edmonson County maintenance plan by the Karst Environmental Education and Protection, Inc. (KEEP). Additionally, the Commenters state that EPA must consider the KEEP comments. The KEEP comments, which are directed specifically to the Edmonson County maintenance plan only, expressed concerns about: whether emissions inventories and projections properly considered Mammoth Cave National Park and the Nolin River Lake area; highway emissions inventories and projections not including unique traffic generators (again identifying specific areas); emissions inventories and projections not including gasoline and other fuel handling activities associated with Nolin Lake and Mammoth Cave National Park; non-highway emissions inventories and projections not considering watercraft at Nolin Lake; points source emission inventories and projections not appearing complete (certain sources identified); and that the contingency measures should be implemented immediately or no later than three months.

*Response 12.* On August 24, 2004, Kentucky submitted an update to its original maintenance plan for the 1-hour ozone NAAQS for the Edmonson County Area as required by section 175A(b) of the CAA. EPA published a proposed and direct final rule on December 17, 2004 (69 FR 75473), to approve Kentucky's updated maintenance plan for the Edmonson County Area. During the public comment period on these rulemakings, EPA received adverse comments from

KEEP. In response to these comments, EPA withdrew its direct final rulemaking and Kentucky subsequently withdrew its submitted update to its 1-hour ozone maintenance plan for Edmonson County.

The KEEP comments related to emissions inventories and projections submitted in 2004 for the 1-hour ozone maintenance plan and are not relevant to the 110(a)(1) maintenance plan that Kentucky submitted for the Edmonson County Area for the 1997 8-hour ozone NAAQS. For the development of the 110(a)(1) maintenance plan, Kentucky was required to use the most up-to-date information. Thus the data used to develop the 110(a)(1) maintenance plan in 2007 are not equivalent to the data used in 2003 to develop the 175A maintenance plan. The KEEP comments, as a result, do not address the data in the current 8-hour maintenance plan, and thus do not apply to today's action. Nor are they "adverse" to the instant action because they are not relevant to this action.

The only issue that might even conceivably be deemed to relate to today's action is KEEP's comment regarding the 18-month period for implementation of the 1-hour contingency measures. KEEP argued that section 175A contingency measures for nonattainment areas being redesignated should be implemented in no less than three months based upon the fragile and unique terrestrial and subterranean resources of Mammoth Cave National Park. Response 10 above discusses implementation timeframes for contingency measures under sections 175A and 110(a)(1). As noted above, the CAA does not prescribe contingency measures for attainment area maintenance plans, and the EPA regulation that requires them does not specify any deadlines, much less a three month deadline. EPA's guidance in the Wegman Memorandum is consistent with longstanding EPA practice with respect to implementation of contingency measures. Moreover, the State and EPA may at any time determine that additional measures are necessary to assure correction of a violation; however, at this time, there is no such violation and the proposed contingency measures timeframe is consistent with the applicable requirements. EPA notes that the Edmonson Area has consistently attained the 1-hour ozone NAAQS since 1994 and has been attaining the 8-hour ozone NAAQS since 2004. Thus, EPA sees no reason to require more stringent contingency measure deadlines than those in the submitted maintenance plan.

*Comment 13.* The Commenters state that EPA must include contingency measures that are triggered based on ambient monitoring and not just emission inventories. The Commenters reference other maintenance plans in Kansas and Missouri; however, no citations were provided. The Commenters also state that the requirements must be written into the CFR at 52.920(e) in order for this to be a clear requirement.

*Response 13.* The Commenters' concerns are misplaced. The Wegman Memorandum states that a section 110(a)(1) maintenance plan should, "include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs (51.905(a)(3)(iii) and (4) (ii))." Wegman Memorandum at pg. 7. In the 110(a)(1) maintenance plans, Kentucky in fact commits to taking action based on both ambient monitoring data and emission inventory data. Thus, the Commenters are incorrect in contending that contingency measures are not triggered by the results of ambient monitoring. In the event that exceedances of the 1997 8-hour ozone NAAQS are measured in any portion of the maintenance areas (ambient monitoring data of greater than 0.084 ppm ozone), or if periodic emission inventory updates reveal excessive or unanticipated growth greater than 10 percent in ozone precursor emissions, Kentucky commits to evaluate existing control measures to see if any further emission reduction measures should be implemented at that time. In the event of a monitored violation of the NAAQS, Kentucky commits to adopting, within nine months, one or more of a number of measures listed in the maintenance plan and states that all regulatory programs will be implemented within 18 months. The measures listed in the maintenance plans include but are not limited to such measures as Stage 1 Vapor Recovery, Stage II Vapor Recovery, open burning bans during ozone season, and road restrictions. Kentucky also states that it reserves the right to implement other contingency measures if new control programs should be developed or deemed more advantageous. The maintenance plans thus require contingency measures to be triggered upon either ambient monitoring or changes in the emissions inventory projections. The maintenance plans being approved today will be referenced in the appropriate provisions of 40 CFR 52.920.<sup>8</sup> These provisions do not

<sup>8</sup> The Commenters state that 40 CFR 52.920(e) is the appropriate provision. This provision is for EPA-approved Kentucky non-regulatory provisions

explicitly state all the requirements of the plan, but rather, cite to the existence of that plan and note, among other information, the date of approval by EPA. Copies of Kentucky's plan can be obtained at the EPA Region 4 Office or at <http://www.regulations.gov> under the docket number: "EPA-R04-OAR-2007-1186."

*Comment 14.* The Commenters argue that Kentucky must be required to update the emission inventories and that the maintenance plans should include mandatory language requiring Kentucky to prepare emission inventories every three years using a defined methodology. The Commenters state that these requirements should appear in 40 CFR 52.920(e).

*Response 14.* Section 110(a)(2)(F) of the CAA provides that SIPs are to require "as may be prescribed by the Administrator \* \* \* (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources." Emission inventories are important for the efforts of state, local, and federal agencies to attain and maintain the NAAQS for criteria pollutants. Pursuant to its authority under section 110 of the CAA, EPA has long required SIPs to provide for the submission, by states to EPA, of emission inventories containing information regarding the emissions of criteria pollutants and their precursors. EPA codified these requirements in 40 CFR part 51, subpart Q in 1979 and amended them in 1987. The 1990 Amendments to the CAA revised many of the provisions of the CAA related to the attainment of the NAAQS and the protection of visibility in mandatory Class I Federal areas (certain national parks and wilderness areas). These revisions established new periodic emission inventory requirements applicable to certain areas that were designated nonattainment for certain pollutants.

The Commonwealth of Kentucky stated that it would use the actual emissions developed through its submittal to EPA per the CERR. The CERR was published in the **Federal Register** on Monday, June 10, 2002 (67 FR 39602) (found in 40 CFR part 51, subpart A). Emissions inventory guidance for the preparation of these inventories is located in the EPA website (<http://www.epa.gov/ttnchie1/publications.html>). The purpose of the CERR is to simplify reporting, offer options for data collection and

exchange, and unify reporting dates for various categories of criteria pollutant emission inventories. The rule applies to state and local agencies and consolidates the emission inventory reporting requirements found in various parts of the CAA. States are required to prepare a comprehensive state-wide inventory every three years. See 40 CFR 51.30. The first three-year inventory was for the year 2002. The latest CERR inventories were developed for 2005 and 2008 (which were used by Kentucky as was discussed previously). Due to the CERR and Kentucky's commitments in the maintenance plans, there is no need for additional mandatory language or commitments requiring the preparation of emission inventories every three years using a defined methodology. Kentucky will be updating its emission inventories every three years, pursuant to the methodology outlined in the CERR.

*Comment 15.* The Commenters assert that the maintenance plans should require a monitor in Scott County, in the Lexington Area. The Commenters contend that a monitor operated in Scott County until 2005, and that in 2005 it monitored violations of the 1997 8-hour ozone NAAQS. The Commenters questioned the rationale for removing the Scott County monitor and stated that 40 CFR 52.920(e) should require that an additional monitor be placed in Scott County.

*Response 15.* EPA addresses this comment in the context of today's approval of the maintenance plan for the Lexington Area. The Commenters' expressed concerns about the Scott County monitor are without foundation. First, contrary to the Commenters' contention, at the time it ceased operation, the Scott County monitor at issue was not violating the 1997 8-hour ozone NAAQS. Moreover, the monitor was shut down because it no longer met siting criteria requirements. Finally, the monitor was an additional special purpose monitor (SPM), that was supplemental to the State's monitoring network, and therefore its continued operation was not required to maintain an adequate monitoring network. These points are discussed in greater detail below.

First, contrary to the Commenters' contention, the Scott County monitoring site was not violating, but in fact had the lowest design value of the four sites in the metropolitan statistical area (MSA) at the time it ceased operation. The 2002–2004 design value for the 8-hour ozone NAAQS was 0.066 parts per million, far below the 1997 8-hour ozone NAAQS. Thus the Commenters are in error when they assert that the

Scott monitor was violating the 8-hour ozone NAAQS prior to the time it ceased monitoring. The last time the Scott Monitor registered a violation of the 8-hour ozone standard was in 1996.

Second, the last siting inspection at the Sadieville site in 2004 revealed that the site no longer met the siting requirements for ozone, as per 40 CFR part 58, Appendices D and E. For example, one applicable siting criteria is that the monitor be set back a certain amount from a tree or tree line to ensure proper air flow. See, e.g., 40 CFR part 58, Appendix E. Monitors that fail to meet applicable siting requirements are not appropriate for use in determining compliance with the NAAQS. Because it was an optional SPM, and not a monitor required for the network to be approved, it was not moved to a new site, but ceased operating at the end of the 2004 ozone season.

Third, for the Lexington-Fayette, Kentucky MSA, the Commonwealth operates two State and Local Air Monitoring Stations (SLAMS) ozone monitors: one in Lexington and one in Nicholasville. From April 1993 until October 2004, Kentucky operated an ozone monitor in Sadieville, Scott County. The Sadieville ozone air monitoring station was located off KY Hwy 32 at the Scott County #2 Fire Station (AQS number 21–209–0001). It was designated as a SPM. A SPM is one that allows the capability of providing monitoring for complaint studies, modeling verification, and compliance status for short-term studies. The monitoring data may be reported to EPA, provided that the monitor(s) and station(s) meet the requirements of the SLAMS network. The Sadieville site represented population exposure on an urban scale; its main objective was to evaluate compliance with and/or progress made towards meeting the ozone NAAQS. Because Kentucky's SLAMS network already met all federal requirements for siting and design, this SPM in Sadieville reflected Kentucky's effort to exceed the EPA's siting requirements for ozone.

EPA has determined that Kentucky currently meets the monitoring requirements for ozone as required in 40 CFR part 58, Appendices A, C, D, E, and G. The Kentucky SLAMS consist of a network of monitoring stations whose size and distribution are largely determined by the monitoring requirements for NAAQS comparison and the needs of monitoring organizations to meet their respective SIP requirements. The SLAMS stations must meet requirements that relate to four major areas: Quality assurance, monitoring methodology, sampling

of the SIP. The Commenter does not explain why reference in 52.920(e) is of particular importance. The legal effect of the requirement is the same so long as it is SIP-approved and referenced in 52.920.

interval, and siting of instruments/instrument probes. The Areas affected by today's action include five monitors in locations consistent with federal requirements. Thus, at this time, there does not appear to be any rationale for placing a new monitor in Scott County. Every year, Kentucky is required to evaluate its current monitoring network consistent with 40 CFR 58.10. This process is subject to public notice and comment. For today's action, the monitoring network meets applicable requirements.

#### V. Final Action

Pursuant to section 110(a)(1) of the CAA, EPA is taking final action to approve as revisions to Kentucky's SIP the maintenance plans for the 1997 8-hour ozone NAAQS for the Edmonson County, Greenup County, Lexington and Owensboro Areas, which were submitted by Kentucky on May 27, 2008. These maintenance plans ensure continued attainment of the 1997 8-hour ozone NAAQS for these Areas through the year 2020. After evaluating the Commonwealth's submittals and the comments received on the proposed rulemaking with respect to these plans, EPA has determined that each of these maintenance plans meets the applicable requirements of the CAA and EPA regulations, and is consistent with EPA policy.

#### VI. Statutory and Executive Order Reviews

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

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: April 6, 2011.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart S—Kentucky

- 2. Section 52.920(e), is amended by adding new entries for the Huntington—Ashland 8-Hour Ozone Section 110(a)(1) Maintenance Plan, Lexington 8-Hour Ozone Section 110(a)(1) Maintenance Plan, Edmonson County 8-Hour Ozone Section 110(a)(1) Maintenance Plan, and Owensboro 8-Hour Ozone Section 110(a)(1) Maintenance Plan to read as follows:

#### § 52.920 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanations
* Huntington—Ashland 8-Hour Ozone Section 110(a)(1) Maintenance Plan.	* A portion of Greenup County.	* May 27, 2008 .....	* 4/14/11 [Insert citation of publication].	* For the 1997 8-hour ozone NAAQS.
Lexington 8-Hour Ozone Section 110(a)(1) Maintenance Plan Section 110(a)(1).	Fayette and Scott Counties.	May 27, 2008 .....	4/14/11 [Insert citation of publication].	For the 1997 8-hour ozone NAAQS.
Edmonson County 8-Hour Ozone Section 110(a)(1) Maintenance Plan.	Edmonson County .....	May 27, 2008 .....	4/14/11 [Insert citation of publication].	For the 1997 8-hour ozone NAAQS.
Owensboro 8-Hour Ozone Section 110(a)(1) Maintenance Plan.	Daviess County and a portion of Hancock County.	May 27, 2008 .....	4/14/11 [Insert citation of publication].	For the 1997 8-hour ozone NAAQS.

[FR Doc. 2011-9092 Filed 4-13-11; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**42 CFR Part 5**

**Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas; Notice of Meeting**

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Negotiated Rulemaking Committee meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the following meeting of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas.

**DATES:** Meetings will be held on May 18, 2011, 9:30 a.m. to 6 p.m.; May 19, 2011, 9 a.m. to 6 p.m.; and May 20, 2011, 9 a.m. to 3 p.m.

**ADDRESSES:** Meetings will be held at the Legacy Hotel and Meeting Centre, 1775 Rockville Pike, Rockville, Maryland 20852, (301) 881-2300.

**FOR FURTHER INFORMATION CONTACT:** For more information, please contact Nicole Patterson, Office of Shortage Designation, Bureau of Health Professions, Health Resources and Services Administration, Room 9A-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-9027, E-mail: [npatterson@hrsa.gov](mailto:npatterson@hrsa.gov) or visit <http://www.hrsa.gov/advisorycommittees/shortage/>.

**SUPPLEMENTARY INFORMATION:**

*Status:* The meeting will be open to the public.

*Purpose:* The purpose of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas (Committee) is to establish criteria and a comprehensive methodology for Designation of Medically Underserved Populations and Primary Care Health Professional Shortage Areas, using a Negotiated Rulemaking (NR) process. It is hoped that use of the NR process will yield a consensus among technical experts and stakeholders on a new rule for designation of medically underserved populations and primary care health professions shortage areas, which would be published as an Interim Final Rule in accordance with Section 5602 of the Affordable Care Act, Public Law 111-148.

*Agenda:* The meeting will be held on Wednesday, May 18; Thursday, May 19; and Friday, May 20. It will include a discussion of various components of a possible methodology for identifying areas of shortage and underservice, based on the recommendations of the Committee in the previous meeting. The Friday meeting will also include development of the agenda for the next meeting. Members of the public will have the opportunity to provide comments during the meeting on Friday afternoon.

Requests from the public to make oral comments or to provide written comments to the Committee should be sent to Nicole Patterson at the contact address above at least 10 days prior to the first day of the meeting, Wednesday, May 18. The meetings will be open to the public as indicated above, with attendance limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed above at least 10 days prior to the meeting.

Dated: April 8, 2011.

**Reva Harris,**

*Acting Director, Division of Policy and Information Coordination.*

[FR Doc. 2011-9081 Filed 4-13-11; 8:45 am]

BILLING CODE 4165-15-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 393**

[Docket No. FMCSA-2010-0177]

**Parts and Accessories Necessary for Safe Operation; Grant of Exemption for Flatbed Carrier Safety Group**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) grants an exemption from certain commodity-specific cargo securement rules applicable to motor carriers transporting metal coils. The Flatbed Carrier Safety Group (FCSG) applied for an exemption to allow motor carriers transporting metal coils to secure them in a manner not provided for in current regulations, specifically to secure coils grouped in rows with eyes crosswise and the coils in contact with each other in the longitudinal direction. FCSG requested the exemption so all commercial motor vehicle (CMV) operators will be able to use FMCSA's pre-January 1, 2004 cargo