

designated nonattainment for the 1997 8-hour ozone NAAQS which include NSR requirements. Specific to this rulemaking, the Phase II Rule made changes to Federal regulations found at 40 CFR 51.165, 51.166 and 52.21, which govern the nonattainment NSR and PSD permitting programs.<sup>1</sup> Specifically, the Phase II Rule requirements include among other changes, a provision stating that NO<sub>x</sub> is an ozone precursor. 70 FR 71612, (page 71679) (November 29, 2005). In the Phase II Rule, EPA stated as follows:

“The EPA has recognized NO<sub>x</sub> as an ozone precursor in several national rules because of its contribution to ozone transport and the ozone nonattainment problem. The EPA’s recognition of NO<sub>x</sub> as an ozone precursor is supported by scientific studies, which have long recognized the role of NO<sub>x</sub> in ozone formation and transport. Such formation and transport is not limited to nonattainment areas. Therefore, we believe NO<sub>x</sub> should be treated consistently as an ozone precursor in both our PSD and nonattainment NSR regulations. For these reasons, we have promulgated final regulations providing that NO<sub>x</sub> is an ozone precursor in attainment areas.”

In the Phase II Rule, EPA established that states must submit SIPs incorporating required changes (including the addition of NO<sub>x</sub> as a precursor for ozone) no later than June 15, 2007. See 70 FR 71612 (page 71683).

### III. What is EPA’s analysis of Mississippi’s SIP revision?

On November 28, 2007, the State of Mississippi, through MDEQ, submitted a revision to EPA for approval, which revised the PSD program. This revision incorporates by reference, EPA’s federal regulations specified in the Ozone Implementation NSR Update relating to NO<sub>x</sub> as an ozone precursor. Specifically, the revision is found in Mississippi’s Air Quality Regulations, APC-S-5 “Regulations for the Prevention of Significant Deterioration.” The submittal revised Mississippi’s PSD program to include NO<sub>x</sub> as a precursor to ozone for PSD permitting, consistent with changes to the Federal regulations set forth in the Ozone Implementation NSR Update. Mississippi’s November 28, 2007 SIP revision incorporates by reference the federal PSD regulations (at 40 CFR 52.21) to include the Ozone Implementation NSR Update rules and additional subsequent revisions to the

federal program made through July 15, 2007. Currently, the State of Mississippi is in attainment for all the NAAQS and all major sources are subject to the PSD permitting program in the Mississippi SIP which incorporates by reference 40 CFR 52.21. Today’s action only relates to the portion of Mississippi’s SIP revision which incorporates by reference the federal provisions related to NO<sub>x</sub> as an ozone precursor.

The Mississippi NO<sub>x</sub> as an ozone precursor PSD language was incorporated by reference and is identical to the Federal PSD requirements. The SIP revision is consistent with the CAA because it adds NO<sub>x</sub> as a precursor to ozone and is consistent with federal requirements. Therefore, EPA has preliminarily determined that the Mississippi PSD provisions to include NO<sub>x</sub> as an ozone precursor are approvable.

### IV. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve the portion of Mississippi’s SIP revision submitted November 28, 2007, which incorporates by reference NO<sub>x</sub> as an ozone precursor for PSD purposes into the Mississippi SIP. EPA is proposing to approve these revisions because they are consistent with the CAA and its implementing regulations.

### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is 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.*);
- Does 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);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is 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
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Ozone.

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

Dated: September 22, 2010.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA–R04–OAR–2010–0666–201031; FRL–9211–3]

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of the Knoxville 8-Hour Ozone Nonattainment Area to Attainment for Ozone

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

**ACTION:** Proposed rule.

**SUMMARY:** On July 14, 2010, the State of Tennessee, through the Tennessee

<sup>1</sup> These changes included amendments to major source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating that NO<sub>x</sub> emissions are ozone precursors.

Department of Environment and Conservation (TDEC), Air Pollution Control Division, submitted a request to redesignate the Knoxville 8-hour ozone nonattainment area to attainment for the 1997 8-hour National Ambient Air Quality Standards (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Knoxville, Tennessee Area. The Knoxville 1997 8-hour ozone nonattainment area is comprised of Anderson, Blount, Jefferson, Knox, Loudon, and Sevier Counties in their entirety, and the portion of Cocke County that falls within the boundary of the Great Smoky Mountains National Park (hereafter referred to as the "Knoxville Area"). In this action, EPA is proposing to approve the July 14, 2010, 8-hour ozone redesignation request for the Knoxville Area. Additionally, EPA is proposing to approve the 1997 8-hour ozone NAAQS maintenance plan for the Knoxville Area, including the 2007 baseline emission inventory, and the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) for 2024 for the Knoxville Area. This proposed approval of Tennessee's redesignation request is based on EPA's determination that the Knoxville Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the Knoxville 8-hour ozone nonattainment area has attained the 1997 8-hour ozone NAAQS. In this action, EPA is also describing the status of its transportation conformity adequacy determination for the new 2024 MVEBs that are contained in the 1997 8-hour ozone NAAQS maintenance plan for the Knoxville Area. This action is being taken pursuant to the CAA and its implementing regulations.

**DATES:** Comments must be received on or before November 8, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2010-0666, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail:* [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).
3. *Fax:* (404) 562-9019.
4. *Mail:* EPA-R04-OAR-2010-0666, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory

Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R04-OAR-2010-0666. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [http://](http://www.regulations.gov)

[www.regulations.gov](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 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jane Spann or Royce Dansby-Sparks of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. Spann may be reached by phone at (404) 562-9029, or via electronic mail at [spann.jane@epa.gov](mailto:spann.jane@epa.gov). Mr. Dansby-Sparks may be reached by phone at (404) 562-9187, or via electronic mail at [dansby-sparks.royce@epa.gov](mailto:dansby-sparks.royce@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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

EPA is proposing several related actions, which are summarized below and described in greater detail throughout this notice of rulemaking: (1) To redesignate the Knoxville Area to attainment for the 1997 8-hour ozone NAAQS; (2) to approve under section 172(c)(3) the emissions inventory submitted with the maintenance plan; and (3) to approve, under section 175A of the CAA, Knoxville's 1997 8-hour ozone NAAQS maintenance plan into the Tennessee SIP, including the associated MVEBs. In addition, and

related to today's actions, EPA is also notifying the public of the status of EPA's adequacy determination for the Knoxville Area MVEBs.

First, EPA is proposing to determine that the Knoxville Area has attained the 1997 8-hour ozone NAAQS. EPA further proposes to determine that, if EPA's proposed approval of the 2007 baseline emissions inventory for the Knoxville Area is finalized, the Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The Knoxville Area 1997 8-hour ozone area is composed of Anderson, Blount, Jefferson, Knox, Loudon, and Sevier Counties in their entirety, and the portion of Cocke County that falls within the boundary of the Great Smoky Mountains National Park. In this action, EPA is now proposing to approve a request to change the legal designation of Anderson, Blount, Jefferson, Knox, Loudon, and Sevier Counties in their entirety, and the portion of Cocke County that falls within the boundary of the Great Smoky Mountains National Park in the Knoxville Area from nonattainment to attainment for the 1997 8-hour ozone NAAQS.

Second, EPA is proposing to approve under the CAA, Tennessee's 2007 inventory for the Knoxville Area (under section 172(c)(3)). Tennessee selected 2007 as the attainment emissions inventory year for the Knoxville Area. This attainment inventory identifies the level of emissions in the Area, which is sufficient to attain the 1997 8-hour ozone NAAQS.

Third, EPA is proposing to approve Tennessee's 1997 8-hour ozone NAAQS maintenance plan for the Knoxville Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Knoxville Area in attainment of the 1997 8-hour ozone NAAQS through 2024. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2024 NO<sub>x</sub> and VOC MVEBs. EPA is proposing to approve (into the Tennessee SIP) the 2024 MVEBs that are included as part of Tennessee's maintenance plan for the 1997 8-hour ozone NAAQS.

EPA is also notifying the public of the status of EPA's adequacy process for the newly-established 2024 NO<sub>x</sub> and VOC MVEBs for the Knoxville Area. The Adequacy comment period for the Knoxville Area 2024 MVEBs began on June 15, 2010, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site. (<http://www.epa.gov/otaq/stateresources/transconf/currsips.htm>). The Adequacy

comment period for these MVEBs closed on July 15, 2010. No adverse comments were received during the Adequacy public comment period. On September 15, 2010, EPA published its adequacy notice for the 2024 MVEB's for the Knoxville Area (75 FR 55977). Please see section VIII of this proposed rulemaking for further explanation of this process, and for more details on the MVEBs determination.

Today's notice of proposed rulemaking is in response to Tennessee's July 14, 2010, SIP submittal requesting the redesignation of the Knoxville 1997 8-hour ozone area, and includes a SIP revision addressing the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

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

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

The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the

level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.

The CAA required EPA to designate as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The Knoxville Area was initially designated nonattainment for the 1997 8-hour ozone NAAQS using 2001–2003 ambient air quality data. The **Federal Register** document making these designations was published on April 30, 2004 (69 FR 23857).

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

Knox County (which is a part of the Knoxville Area) was originally designated as marginal nonattainment for the 1-hour ozone NAAQS on November 6, 1991 (56 FR 56694). Knox County was redesignated as attainment for the 1-hour ozone NAAQS on September 27, 1993 (58 FR 50271). At that same time, Anderson, Blount, Cocke, Jefferson, Loudon and Sevier Counties in their entirety were designated attainment/unclassifiable for the 1-hour ozone NAAQS. On April 30, 2004, EPA designated the Knoxville Area (of which Knox County is a part) as a "basic" (subpart 1) 8-hour ozone nonattainment area (69 FR 23857, April 30, 2004). When Tennessee submitted

<sup>1</sup> Ground-level ozone is not emitted directly by sources. Rather, emissions of NO<sub>x</sub> and VOC react in the presence of sunlight to form ground-level ozone. As a result, NO<sub>x</sub> and VOC are referred to as precursors of ozone.

its final redesignation request on July 14, 2010, the Knoxville Area was classified under subpart 1 of the CAA, and was obligated to meet only the subpart 1 requirements.

EPA promulgated implementation rules for the 1997 8-hour ozone NAAQS. These rules were published in 2 phases. The Phase I Implementation Rule (69 FR 23951, April 30, 2004) was published at the same time as the ozone designations and addresses such topics as classifications, revocation of the 1-hour NAAQS, anti-backsliding principles, and timing for emission reductions. The Phase II Rule was published November 29, 2005, (72 FR 31727) and addressed remaining implementation issues not covered by the Phase I Rule. Various aspects of EPA's Phase I Rule were challenged in court. On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit Court) vacated EPA's Phase I Rule (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD) v. EPA*, 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase I Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. Therefore, the Phase I Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 1997 8-hour ozone NAAQS nonattainment areas, the 1997 8-hour ozone NAAQS attainment dates and the timing for emissions reductions needed for attainment of the 1997 8-hour ozone NAAQS remain effective. The June 8th decision left intact the court's rejection of EPA's reasons for implementing the 1997 8-hour NAAQS in certain nonattainment areas under subpart 1 in lieu of subpart 2, i.e., the court's rejection of the subpart 1 classification. By limiting the vacatur, the court let stand EPA's revocation of the 1-hour NAAQS and those anti-backsliding provisions of the Phase I Rule that had not been successfully challenged. The June 8th decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making

reasonable further progress (RFP) toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour MVEBs until 1997 8-hour ozone NAAQS budgets were available for 8-hour ozone conformity determinations, which is already required under EPA's conformity regulations. The court thus clarified that 1-hour ozone conformity determinations are not required for anti-backsliding purposes.

This section sets forth EPA's views on the potential effect of the court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, nor does EPA believe the court's ruling prevents EPA from proposing or ultimately finalizing this redesignation. EPA believes that the court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of the Knoxville Area to attainment.

With respect to the 1997 8-hour ozone NAAQS, the court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 1997 8-hour ozone NAAQS, and remanded that matter back to the Agency. In its January 16, 2009, proposed rulemaking in response to the *SCAQMD* decision, EPA has proposed to classify the Knoxville Area under subpart 2 as a moderate area (74 FR 2936). If EPA finalizes the reclassification of the Knoxville Area before the July 14, 2010, redesignation request is approved, the requirements under subpart 2 will become applicable when they are due. EPA proposed a deadline for submission of these requirements of one year after the effective date of the final rulemaking classifying this and other areas (74 FR 2940–2941). However, EPA believes that this does not preclude this redesignation from being approved. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time redesignation request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Knoxville Area was not classified under subpart 2, nor were subpart 2 requirements yet due for this Area. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation,

states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992, Calcagni Memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division). See also the September 17, 1993, Michael Shapiro Memorandum ("State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation), and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004) (upholding this interpretation); 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

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

With respect to the requirements under the 1-hour ozone NAAQS, only the Knox County portion of the Knoxville Area was originally designated as a marginal nonattainment for the 1-hour ozone NAAQS in November 6, 1991 (56 FR 56694); the remainder of the Knoxville Area was

designated as attainment. Knox County was redesignated as attainment for the 1-hour ozone NAAQS on September 27, 1993 (58 FR 50271). Therefore, Knox County was redesignated to attainment of the 1-hour ozone NAAQS prior to its nonattainment designation for the 1997 8-hour ozone NAAQS. As a result, Knox County (as part of the Knoxville Area) is considered to be a 1-hour attainment area subject to a CAA section 175A maintenance plan for the 1-hour ozone NAAQS. The DC Circuit Court's decisions do not impact redesignation requests for these types of areas, except to the extent that the court, in its June 8th decision, clarified that for those areas with 1-hour MVEBs in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until they are replaced by 1997 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

First, there are no conformity requirements relevant for evaluating the Knoxville Area redesignation request, such as a transportation conformity SIP.<sup>2</sup> It is EPA's longstanding policy that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See 40 CFR 51.390; see also *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding EPA's interpretation); 60 FR 62748 (Dec. 7, 1995) (redesignation of Tampa, Florida). Tennessee currently has a fully approved 1-hour ozone transportation conformity SIP, which was approved on May 16, 2003 (68 FR 26492).

Second, with regard to the three other anti-backsliding provisions for the 1-hour standard that the DC Circuit Court found were not properly retained, Knox County, Tennessee is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR requirement no longer applies to this area because it was redesignated to attainment of the 1-hour standard. Because Knox County was redesignated as a 1-hour attainment area, the contingency measure (pursuant to section 172(c)(9) or 182(c)(9)) and fee

provision requirements no longer apply to the Knoxville Area. As a result, the decisions in *SCAQMD* should not alter any requirements that would preclude EPA from finalizing the redesignation of the Knoxville Area to attainment for the 1997 8-hour ozone NAAQS.

As was noted earlier, in 2009, the ambient ozone data for the Knoxville Area indicated no further violations of the 1997 8-hour ozone NAAQS, using data from the 3-year period of 2007–2009 to demonstrate attainment. As a result, on July 14, 2010, Tennessee requested redesignation of the Knoxville Area to attainment for the 1997 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (March 1st through October 31st) of 2007–2009, indicating that the 1997 8-hour ozone NAAQS has been achieved for the entire Knoxville Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). The 1997 8-hour ozone design values for the Knoxville Area indicate that between 1999 and 2009, ozone concentrations declined noticeably at both high and low evaluations. While ozone concentrations are dependent on a variety of conditions, the likely reason for the overall downtrend in ozone concentrations in the Knoxville Area is most likely due to the reduction of NOx emissions that have occurred since 2004.

### III. What are the criteria for redesignation?

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

area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

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

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "Calcagni Memorandum");
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. "Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. "Part D New Source Review (Part D NSR) Requirements for Areas

<sup>2</sup> CAA Section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emission budgets that are established in control strategy SIPs and maintenance plans.

Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

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

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

On July 14, 2010, Tennessee, through TDEC, requested redesignation of the Knoxville Area to attainment for the 1997 8-hour ozone NAAQS. EPA’s evaluation indicates that the Knoxville Area has attained the 1997 8-hour ozone NAAQS and has met the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. EPA is also proposing to approve the 2007 baseline emission inventory under section 172(c)(3) because Tennessee has used methodology consistent with EPA guidance and implementing regulations to develop this inventory. EPA is also announcing the status of its adequacy determination of the 2024 NO<sub>x</sub> and VOC MVEBs which are relevant to the requested redesignation.

#### V. What is the effect of EPA’s proposed actions?

EPA’s proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Tennessee’s redesignation request

would change the legal designation of the Anderson, Blount, Jefferson, Knox, Loudon, and Sevier Counties in their entirety, and the portion of Cocke County that falls within the boundary of the Great Smoky Mountains National Park for the 1997 8-hour ozone NAAQS found at 40 CFR part 81 from nonattainment to attainment. Approval of Tennessee’s request would also incorporate into the Tennessee SIP, a plan for maintaining the 1997 8-hour ozone NAAQS in the Knoxville Area through 2024. This maintenance plan includes contingency measures to remedy future violations of the 1997 8-hour ozone NAAQS. The maintenance plan also establishes NO<sub>x</sub> and VOC MVEBs for the Knoxville Area. The NO<sub>x</sub> and VOC MVEBs for 2024 for the Knoxville Area are 36.32 tons per day (tpd) and 25.19 tpd, respectively. Final action would also approve the Area’s emissions inventory under section 172(c)(3). Approval of Tennessee’s maintenance plan would also result in approval of the NO<sub>x</sub> and VOC MVEBs. Additionally, EPA is notifying the public of the status of its adequacy determination for the 2024 NO<sub>x</sub> and VOC MVEBs pursuant to 40 CFR 93.118(f)(1).

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

EPA is proposing to make the determination that the Knoxville 1997 8-hour ozone nonattainment area has attained the 1997 8-hour ozone NAAQS, and that all other redesignation criteria have been met for the Knoxville Area. The basis for EPA’s determination for the Area is discussed in greater detail below.

#### Criteria (1)—The Knoxville Area Has Attained the 1997 8-Hour Ozone NAAQS

EPA is proposing to determine that the Knoxville Area has attained the 1997 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 1997 8-hour ozone NAAQS if it meets the 1997 8-hour ozone standard, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain these NAAQS, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, appendix I, the NAAQS are attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed ozone monitoring data from ambient ozone monitoring stations in the Knoxville Area for the ozone season from 2007–2009. These data have been quality-assured and are recorded in AQS. The fourth-highest 8-hour ozone average for 2007, 2008 and 2009, and the 3-year average of these values (*i.e.*, design values), are summarized in the following Table 1 of this proposed rulemaking.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE KNOXVILLE 8-HOUR OZONE AREA (ppm)

County	Site name	Monitor ID	Eight-hour design values (ppm)		
			2005–2007	2006–2008	2007–2009
Anderson .....	Freels Bend Study Area .....	470010101–1	0.080	0.077	0.072
Blount .....	Look Rock, GSMNP .....	470090101–1	0.086	0.085	0.079
	Cades Cove, GSMNP .....	470090102–1	0.070	0.072	0.069
Jefferson .....	1188 Lost Creek Road .....	470890002–1	0.084	0.081	0.076
Knox .....	9315 Rutledge Pike .....	470930021–1	0.081	0.081	0.077
	4625 Mildred Drive .....	470931020–1	0.088	0.088	0.082
Loudon .....	1703 Roberts Road .....	47105109–1	0.085	0.082	0.077
Sevier .....	Cove Mountain, GSMNP .....	47155101–1	0.082	0.082	0.079

As discussed above, the design value for an area is the highest 3-year average of the annual fourth-highest 8-hour ozone value recorded at any monitor in the area. Therefore, the most recent 3-year design value (2007–2009) for the Knoxville Area is 0.082 ppm, which meets the NAAQS as described above.

Current air quality data show that the Area continues to attain the NAAQS. If the Area does not continue to attain until EPA finalizes the redesignation, EPA will not go forward with the redesignation. As discussed in more detail below, the State of Tennessee has committed to continue monitoring in

this Area in accordance with 40 CFR part 58. EPA proposes to find that the Knoxville Area has attained the 1997 8-hour ozone NAAQS.

*Criteria (2)—Tennessee Has a Fully Approved SIP Under Section 110(k) for the Knoxville Area and Criteria (5)—Tennessee Has Met All Applicable Requirements Under Section 110 and Part D of the CAA*

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

EPA proposes to find that Tennessee has met all applicable SIP requirements for the Knoxville Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. EPA also proposes to find that the Tennessee SIP satisfies the criterion that it meet applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to subpart 1 basic 1997 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the Area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

*a. Knoxville Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA*

The September 4, 1992, Calcagni Memorandum describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro Memorandum, ("SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992," September 17, 1993); 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA; *Sierra Club*, 375 F.3d 537; see also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

*General SIP requirements.* Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP,

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

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (NO<sub>x</sub> SIP Call<sup>3</sup> and Clean Air Interstate Rule (CAIR<sup>4</sup>)). The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular

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

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

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Therefore, as was discussed above, for purposes of redesignation, they are not considered applicable requirements. Nonetheless, EPA notes it has previously approved provisions in the Tennessee SIP addressing section 110 elements under the 1-hour ozone NAAQS (45 FR 53809, August 13, 1980). The State believes that the section 110 SIP approved for the 1-hour ozone NAAQS are sufficient to meet the requirements under the 1997 8-hour ozone NAAQS. Tennessee submitted a letter dated December 14, 2007, setting forth its belief that the section 110 SIP approved for the 1-hour ozone NAAQS is also sufficient to meet the requirements under the 1997 8-hour ozone NAAQS. EPA has not yet approved this submission, but such

<sup>3</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, Tennessee 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. On January 22, 2004, EPA approved Tennessee's rules as fulfilling Phase I (69 FR 3015) and Phase II on December 27, 2005 (70 FR 76408).

<sup>4</sup> On May 12, 2005 (70 FR 25162), EPA promulgated CAIR which required 28 upwind States and the District of Columbia to revise their SIPs to include control measures that would reduce emissions of sulfur dioxide and NO<sub>x</sub>. Various aspects of CAIR rule were petitioned in court and on December 23, 2008, the U.S. Court of Appeals for the District of Columbia Circuit remanded CAIR to EPA (see *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir., 2008)) which left CAIR in place to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the court's decision. The court directed EPA to remedy various areas of the rule that were petitioned consistent with its July 11, 2008, opinion (see, *North Carolina v. EPA*, 531 F.3d 836 (DC Cir., 2008)), but declined to impose a schedule on EPA for completing that action. *Id.* Therefore, CAIR is currently in effect in Tennessee.



approval is not necessary for purposes of redesignation.

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

*Part D, subpart 1 applicable SIP requirements.* EPA has determined that, if EPA finalizes the approval of the base year emissions inventories discussed in section IX of this rulemaking, the Tennessee SIP will meet the applicable SIP requirements for the Knoxville Area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets for the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification. Since the Knoxville Area was not classified under subpart 2 at the time the redesignation request was submitted, the subpart 2 requirements do not apply for purposes of evaluating the Tennessee's redesignation request. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498).

*Subpart 1 Section 172 Requirements.*<sup>5</sup> For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Knoxville Area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General

Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the national primary ambient air quality standards. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration.

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

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. As part of Tennessee's redesignation request for the Knoxville Area, Tennessee submitted a 2007 base year emissions inventory. As discussed below in section IX, EPA is proposing to approve the 2007 base year inventory that Tennessee submitted with the redesignation request as meeting the section 172(c)(3) emissions inventory requirement.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment."

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

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

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

*Section 176 Conformity Requirements.* Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally-supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally-supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA believes it is reasonable to interpret the conformity SIP requirements<sup>6</sup> as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. *See Wall*, 265 F.3d 426 (upholding this interpretation);

<sup>6</sup> CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emission budgets that are established in control strategy SIPs and maintenance plans.

<sup>5</sup> On August 3, 2010, EPA proposed to approve a clean data determination for the Knoxville Area for the 1997 8-hour ozone NAAQS (75 FR 45568). If EPA takes final action on this determination, under the provisions of EPA's ozone implementation rule (see 40 CFR Section 51.918), the requirements for the State of Tennessee to submit an attainment demonstration and associated reasonably available control measures plan, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS for the Knoxville Area, shall be suspended for as long as the Area continues to meet the 1997 8-hour ozone NAAQS.



see also 60 FR 62748 (December 7, 1995, Tampa, Florida). Tennessee submitted its transportation conformity SIP for 1-hour ozone on March 19, 2002. EPA issued a direct final rule approving Tennessee's Transportation Conformity SIP on May 16, 2003 (68 FR 26492).

**NSR Requirements.** EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without a part D NSR program in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment." Tennessee has demonstrated that the Knoxville Area will be able to maintain the NAAQS without a part D NSR program in effect, and therefore, Tennessee need not have a fully-approved part D NSR program prior to approval of the redesignation request. However, Tennessee currently has a fully-approved part D NSR program in place. Tennessee's PSD program will become effective in the Knoxville Area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the Knoxville Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

**b. The Knoxville Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA**

If EPA issues a final approval of the base year emissions inventories, EPA will have fully approved the applicable Tennessee SIP for the Knoxville 8-hour ozone nonattainment area, under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, see *Calcagni Memorandum* at p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426, plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of

the CAA of 1970, Tennessee has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone NAAQS SIP elements applicable in Knox County, Tennessee (58 FR 50271, September 27, 1993; and 69 FR 4852, February 2, 2004).

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

**Criteria (3)—The Air Quality Improvement in the Knoxville Area 1997 8-Hour Ozone NAAQS Nonattainment Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions**

EPA believes that Tennessee has demonstrated that the observed air quality improvement in the Knoxville Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state adopted measures. Additionally, new emissions control programs for fuels and motor vehicles will help ensure a continued decrease in emissions throughout the region.

Measured reductions in ozone concentrations in and around the Knoxville Area are largely attributable to reductions from emission sources of VOC and NO<sub>x</sub>, which are precursors in the formation of ozone. Table 2 summarizes several of the measures adopted that contributed to reductions of emissions. The majority of these reductions have been realized from federal measures related to mobile sources and electrical power generation.

**TABLE 2—FEDERAL AND STATE MEASURES CONTRIBUTING TO EMISSIONS REDUCTIONS**

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Federal Measures:
NO <sub>x</sub> Budget Trading Program.
NO <sub>x</sub> SIP call.
National Low Emission Vehicles.
Tier 2 Vehicle Standards.
Tier 1, Tier 2 and Tier 3 (non-road).
Sources-Spark Ignition Engines (non-road).
State and Local Measures:
Stage I Vapor Recovery.
Motor Vehicle Anti-tampering Rule.
Air Quality Alert Programs.
Smart Trips Program.

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One key program, the NO<sub>x</sub> SIP, required states to make significant, specific emissions reductions (63 FR 57356). It also provided a mechanism, the NO<sub>x</sub> Budget Trading Program, which states could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO<sub>x</sub> Budget Trading Program, 40 CFR 51.121(r), but created another mechanism—the CAIR ozone season trading program—which states could use to meet their SIP Call obligations, 70 FR 25289–90. All NO<sub>x</sub> SIP Call states have SIPs that currently satisfy their obligations under the SIP Call, the SIP Call reduction requirements are being met, and EPA will continue to enforce the requirements of the NO<sub>x</sub> SIP Call even after any response to the CAIR remand. Notably, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO<sub>x</sub> SIP Call, including the statewide NO<sub>x</sub> emission budgets, continue to apply after revocation of the 1-hour standard.

Regarding point source emissions, the Tennessee Valley Authority's (TVA's) Bull Run Steam Plant located in Anderson County and Kingston Steam Plant located in Roane County include a total of 10 coal-fired boilers. As a result of EPA's "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Region Transport of Ozone" (NO<sub>x</sub> SIP Call), TVA began operation of selective catalytic reduction (SCR) systems in 2004 at Bull Run's unit and on eight of the nine units at Kingston. TVA began operation of a SCR for the ninth unit at Kingston in 2006. There was an 85 percent and 90 percent reduction in NO<sub>x</sub> emissions from the Bull Run and Kingston facilities, respectively from 2003 to 2008 as a result of these controls. Furthermore, NO<sub>x</sub> emissions from all categories are projected to decrease in the Knoxville Area by 56.1 tpd between 2007 and

2024 (41.5 percent reduction). Total point source NO<sub>x</sub> emissions are projected to increase slightly (2.42 tpd), while EGU NO<sub>x</sub> emissions are projected to remain unchanged between 2007 and 2024. For these reasons, EPA believes

that regardless of the status of the CAIR program, the NO<sub>x</sub> SIP call requirements can be relied upon in demonstrating maintenance. Here, Tennessee has demonstrated maintenance based in part on those requirements.

In addition, EPA undertook an analysis of the changes in NO<sub>x</sub> expected across a broader region. In particular, EPA reviewed available projections of NO<sub>x</sub> emissions from nearby states from 2002 to 2018.

TABLE 3—2002 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO<sub>x</sub>\*  
[Tons per year]

States	EGU point	Non-EGU point	Non-road	Area	Mobile	Fires	Total
AR .....	24,722	47,698	62,472	21,700	141,894	5,492	303,978
KY .....	201,928	38,434	104,571	39,507	156,417	534	541,391
LA .....	111,703	199,218	114,711	93,069	180,664	6,942	706,307
MS .....	40,433	61,533	88,787	4,200	111,914	308	307,175
MO .....	145,438	36,144	99,306	32,435	189,852	2,442	505,617
TN .....	152,137	64,344	96,827	17,844	238,577	217	569,946
Total .....	676,361	447,371	566,674	208,755	1,019,318	15,935	2,934,414

\* From the Tennessee Regional Haze SIP, Appendix D, page D.3–5 and support table for Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans, page 2–40, figure 2–4.

TABLE 4—2018 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO<sub>x</sub>\*  
[Tons per year]

States	EGU point	Non-EGU point	Non-road	Area	Mobile	Fires	Total
AR .....	34,938	36,169	34,305	25,672	33,640	5,600	170,324
KY .....	64,378	41,034	79,392	44,346	52,263	714	282,127
LA .....	44,485	225,748	106,685	114,374	44,806	6,969	543,067
MS .....	21,535	61,252	68,252	4,483	30,619	1,073	187,214
MO .....	83,181	51,489	59,625	35,213	50,861	2,442	282,811
TN .....	31,715	62,519	70,226	19,597	69,385	405	253,847
Total .....	280,232	478,211	418,485	243,685	281,574	17,203	1,708,390

\* From the Tennessee Regional Haze SIP, Appendix D, page D.3–5 and support table for Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans, page 2–40, figure 2–4.

From 2002 to 2018 NO<sub>x</sub> emissions are projected to decrease in the region by 1,215,024 tpy or 41.4 percent in all. EGU NO<sub>x</sub> anticipated decreases due to CAIR and the NO<sub>x</sub> SIP Call are projected to be 198,150 tpy. However the largest source in this region remains the motor vehicle sector, which is projected to decrease 737,744 tpy. Even without EGU controls on NO<sub>x</sub> emissions, total NO<sub>x</sub> emissions are projected to continually decrease throughout the maintenance period.

On July 6, 2010, EPA proposed the Transport Rule, which will require significant reductions in sulfur dioxide and NO<sub>x</sub> emissions that cross state boundaries. This proposed rule will potentially form the basis for a final rule which replaces EPA's 2005 CAIR (*North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir., 2008)).

These regional projections of emissions data have been prepared through 2018. However, since motor vehicle and non-road emissions continue to decrease long after a rule is adopted as the engine population is

gradually replaced by newer engines, it is reasonable to expect that this projected decrease in regional NO<sub>x</sub> emissions from mobile and non-road sources should continue through 2024 and assure that ozone in the Knoxville Area will continue to decline throughout the 10-year maintenance period. Hence, we believe the projected regional NO<sub>x</sub> reductions are adequate to assure that the Knoxville Area will continue demonstrating maintenance throughout the 10-year maintenance period.

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

In conjunction with its request to redesignate the Knoxville Area to attainment for the 1997 8-hour ozone NAAQS, TDEC submitted a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State of Tennessee must submit a revised maintenance plan, which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 1997 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum

provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, Tennessee's maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

#### b. Attainment Emissions Inventory

The Knoxville Area attained the 1997 8-hour NAAQS with monitoring data from 2007, 2008, and 2009, therefore Tennessee selected 2007 as the attainment emission inventory year. The attainment inventory identifies the level of emissions in the Area, which is sufficient to attain the 1997 8-hour ozone NAAQS. Tennessee began development of the attainment inventory by first developing a baseline emissions inventory for the Knoxville Area. The year 2007 was chosen as the

base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2010, 2013, 2016, 2020, and 2024. The projected inventory estimates emissions forward to 2024, which is beyond the 10-year interval required in section 175(A) of the CAA. Non-road mobile emissions estimates were based on EPA's NONROAD2008 model. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2007 VOC and NO<sub>x</sub> emissions, as well as the emissions for other years, for the Knoxville Area were developed consistent with EPA guidance, and are summarized in Tables 5 and 6 in the following subsection.

#### c. Maintenance Demonstration

The July 14, 2010, final submittal includes a maintenance plan for the Knoxville Area. This demonstration:

(i) Shows compliance and maintenance of the 1997 8-hour ozone NAAQS by providing information to

support the demonstration that current and future emissions of VOC and NO<sub>x</sub> remain at or below attainment inventory year 2007 emissions levels. The year 2007 was chosen as the attainment inventory year because it is one of the most recent three years (i.e., 2007, 2008, and 2009) for which the Knoxville Area has clean air quality data for the 1997 8-hour ozone NAAQS.

(ii) Uses 2007 as the attainment inventory year and includes future emission inventory projections for 2010, 2013, 2016, 2020, and 2024.

(iii) Identifies an "out year," at least 10 years (and beyond) after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, NO<sub>x</sub> and VOC MVEBs were established for the last year (2024) of the maintenance plan.

(iv) Provides the following actual and projected emissions inventories, in tpd for the Knoxville Area. See Tables 5 and 6.

TABLE 5—KNOXVILLE AREA VOC EMISSIONS

[Summer season tpd]

Summary of VOC emissions (tpd)								
Year	Point	Area	Onroad	Nonroad (excluding MLA)	Nonroad (MLA)	Total	Safety margin	Change from 2007 (percent)
2007 .....	7.32	33.25	36.77	34.26	0.68	112.28	.....	.....
2010 .....	7.17	34.21	33.53	31.05	0.62	106.58	5.70	– 5.1
2013 .....	7.37	35.23	30.29	26.47	0.52	99.88	12.40	– 11.0
2016 .....	7.88	36.64	27.05	22.07	0.44	94.08	18.20	– 16.2
2020 .....	8.64	38.40	22.72	18.04	0.35	88.15	24.13	– 21.5
2024 .....	9.53	40.24	18.39	16.62	0.33	85.11	27.17	– 24.2

**Note:** Emissions are for Anderson, Blount, Jefferson, Knox, Loudon, Sevier and onroad emissions for Cocke County. MLA = Commercial Marine Vessels, Locomotives and Aircraft.

TABLE 6—KNOXVILLE AREA NO<sub>x</sub> EMISSIONS

[Summer season tpd]

Summary of NO <sub>x</sub> emissions (tpd)								
Year	Point	Area	Onroad	Nonroad (excluding MLA)	Nonroad (MLA)	Total	Safety margin	Change from 2007 (percent)
2007 .....	42.69	2.07	71.83	13.16	5.44	135.19	.....	.....
2010 .....	42.65	2.15	63.10	12.17	5.03	125.10	10.09	– 7.5
2013 .....	42.94	2.29	54.36	10.51	4.34	114.44	20.75	– 15.3
2016 .....	43.56	2.50	45.62	8.74	3.61	104.03	31.18	– 23.0
2020 .....	44.30	2.60	33.96	7.21	2.98	91.05	44.14	– 32.7
2024 .....	45.11	2.68	22.29	6.37	2.63	79.08	56.11	– 41.5

**Note:** Emissions are for Anderson, Blount, Jefferson, Knox, Loudon, Sevier and onroad emissions for Cocke County. MLA = Commercial Marine Vessels, Locomotives and Aircraft.

A safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The

attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Tennessee has decided to allocate a portion of the available safety margin to

the Area's VOC and NO<sub>x</sub> MVEBs for 2024 for the Knoxville Area and has calculated the safety margin in its submittal. Specifically, 14.03 tpd of the available NO<sub>x</sub> safety margin is allocated

to the 2024 MVEB, the remaining safety margin for NO<sub>x</sub> for 2024 is 42.08 tpd. Also, 6.8 tpd of the available VOC safety margin is allocated to the 2024 MVEB, the remaining safety margin for VOC for 2024 is 20.37 tpd. See Tables 5 and 6, above. This allocation and the resulting available safety margin for the Knoxville Area are discussed further in section VII of this proposed rulemaking.

#### d. Monitoring Network

There are currently nine monitors measuring ozone in the Knoxville Area (see Table 1).<sup>7</sup> TDEC and the Knox County Department of Air Quality Management (DAQM) have committed, in the maintenance plan, to continue operation of monitors in the Knoxville Area in compliance with 40 CFR part 58, and have addressed the requirement for monitoring.

#### e. Verification of Continued Attainment

The State of Tennessee, through TDEC, and the Knox County DAQM have the legal authority to enforce and implement the requirements of the Knoxville Area 1997 8-Hour Ozone Maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Both agencies will track the progress of the maintenance plan by performing future reviews of triennial emission inventories for the Knoxville Area using the latest emissions factors, models and methodologies. For these periodic inventories, TDEC and Knox County DAQM will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, the Knoxville Area will re-project emissions.

#### f. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency

measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the July 14, 2010, submittal, Tennessee affirms that all programs instituted by the State and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the Area. The contingency plan included in the submittal includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The primary trigger will be a quality assured/quality controlled (QA/QC) violating design value of the 1997 8-hour ozone NAAQS. In addition to the primary trigger indicated above, Tennessee and the Knox County DAQM will monitor regional emissions through the Consolidated Emissions Reporting Rule (CERR). If the CERR results indicate that the projected emissions in this maintenance plan are significantly less than the CERR reveals (greater than ten percent), TDEC and Knox County DAQM will investigate the differences and develop an appropriate strategy for addressing the differences. In addition, if ambient monitoring data indicates that a violation of the three-year design value may be imminent, TDEC and Knox County DAQM will evaluate existing control measures to determine whether further emission reduction measures should be implemented. If QA/QC data indicates a violating design value for the 1997 8-hour ozone NAAQS, then the triggering event will be the date of the design value violation, and not the final QA/QC date. However, if initial monitoring data indicates a possible violation but later QA/QC data indicates that the NAAQS was not violated, then a triggering event will not have occurred, and contingency measures will not be required.

The contingency plan states that upon a measured violation of the 1997 8-hour ozone NAAQS in the Knoxville Area, TDEC and the Knox County DAQM will complete sufficient analyses and provide those to the EPA. If deemed necessary, contingency measures would be adopted and implemented as expeditiously as possible, but no later

than eighteen to twenty-four months after a triggering event. The proposed schedule for these actions would be as follows:

- Six months to identify appropriate contingency measures, including identification of emission sources and appropriate control technologies;
- Between three and six months to initiate a stakeholder process; and
- Between nine and twelve months to implement the contingency measures. This step would include the time required to draft rules or SIP amendments, complete the rulemaking process, and submit the final plans to EPA.

Tennessee will consider one or more of the following contingency measures to re-attain the NAAQS:

- Implementation of diesel retrofit programs, including incentives for performing retrofits.
- Reasonable Available Control Technology for NO<sub>x</sub> sources in nonattainment counties.
- Programs or incentives to decrease motor vehicle use, including employer-based programs, additional park and ride services, enhanced transit service and encouragement of flexible work hours/compressed work week/telecommuting.
- Trip reduction ordinances.
- Additional emissions reductions on stationary sources.
- Enhanced stationary source inspection to ensure that emissions control equipment is functioning properly.
- Voluntary fuel programs, including incentives for alternative fuels.
- Construction of high-occupancy vehicle (HOV) lanes, or restriction of certain roads or lanes for HOV.
- Programs for new construction and major reconstruction of bicycle and pedestrian facilities including shared use paths, sidewalks, and bicycle lanes.
- Expand Air Quality Action Day activities/Clean Air Partners public education outreach.
- Expansion of E-government services at State and local levels.
- Additional enforcement or outreach on driver observance of reduced speed limits.
- Land use/transportation policies.
- Promote non-motorized transportation.
- Promote tree-planting standards that favor trees with low VOC biogenic emissions.
- Promote energy savings plans for local government.
- Gas can and lawnmower replacement programs.
- Seasonal open burning ban in nonattainment counties.

<sup>7</sup> Of the nine air quality ozone monitors in the Knoxville Area, the Clingman's Dome ozone monitoring site in Sevier County does not meet siting criteria listing in 40 CFR part 58, and thus is not appropriate to be used for the determination of attainment or nonattainment for the ozone NAAQS.

- Evaluate anti-idling rules and/or policy.
- Additional controls in upwind areas, if necessary.

Other control measures, not included in the above list, will be considered if new control programs are deemed more advantageous for this Area.

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

#### **VII. What is EPA's analysis of Tennessee's proposed NO<sub>x</sub> and VOC MVEBs for the Knoxville area?**

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (reasonable further progress and attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB is established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the Knoxville Area, Tennessee has elected to develop MVEBs for VOC and NO<sub>x</sub> for the entire Area. Tennessee is developing these MVEBs, as required, for the last year of its maintenance plan, 2024. The MVEBs reflect the total on-road emissions for 2024, plus an allocation from the available VOC and NO<sub>x</sub> safety margin. Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below

the attainment level. These MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled and new emission factor models. The NO<sub>x</sub> and VOC MVEBs for the Knoxville Area are defined in Table 7 below.

**TABLE 7—KNOXVILLE AREA VOC AND NO<sub>x</sub> MVEBs**  
[Summer season tpd]

	2024
NO <sub>x</sub> .....	36.32
VOC .....	25.19

As mentioned above, the Knoxville Area has chosen to allocate a portion of the available safety margin to the 2024 NO<sub>x</sub> and VOC MVEBs. This allocation is 14.03 tpd for NO<sub>x</sub> and 6.80 tpd for VOC. Thus, the remaining safety margin in 2024 is 42.08 tpd for NO<sub>x</sub> and 20.37 tpd for VOC.

Through this rulemaking, EPA is proposing to approve the 2024 MVEBs for VOC and NO<sub>x</sub> for the Knoxville Area because EPA has determined that the Area maintains the 1997 8-hour ozone NAAQS with the emissions at the levels of the budgets. Once the MVEBs for the Knoxville Area (the subject of this rulemaking) are approved or found adequate (whichever is done first), they must be used for future conformity determinations.

#### **VIII. What is the status of EPA's adequacy determination for the proposed NO<sub>x</sub> and VOC MVEBs for 2024 for the Knoxville Area?**

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

maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

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

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

As discussed earlier, Tennessee's maintenance plan submission includes VOC and NO<sub>x</sub> MVEBs for the Knoxville Area for 2024. EPA reviewed both the VOCs and NO<sub>x</sub> MVEBs through the adequacy process. The Tennessee SIP submission, including the Knoxville Area VOC and NO<sub>x</sub> MVEBs was open for public comment on EPA's adequacy Web site on June 15, 2010, found at: <http://www.epa.gov/otaq/stateresources/transconf/currsips.htm>. The public comment period on adequacy of the 2024 VOC and NO<sub>x</sub> MVEBs for Knoxville Area closed on July 15, 2010. EPA did not receive any comments on the adequacy of the

MVEBs, nor did EPA receive any requests for the SIP submittal.

EPA intends to make its determination on the adequacy of the 2024 MVEBs for the Knoxville Area for transportation conformity purposes in the near future by completing the adequacy process that was started on June 15, 2010. After EPA finds the 2024 MVEBs adequate or approves them, the new MVEBs for VOC and NO<sub>x</sub> must be used, for future transportation conformity determinations. For required regional emissions analysis years prior to 2024, the conformity test will be the applicable interim emissions test applicable for the Area per 40 CFR Part

93 (the transportation conformity rule). For required regional emissions analysis years that involve 2024 or beyond, the applicable budgets will be the new 2024 MVEBs. The 2024 MVEBs are defined in section VII of this proposed rulemaking.

#### IX. What is EPA's analysis of the proposed 2007 base year emissions inventory for the Knoxville Area?

As discussed above, section 172(c)(3) of the CAA requires areas to submit a base year emissions inventory. As part of Tennessee's request to redesignate the Knoxville Area, the state submitted 2007 base year emissions inventory to meet this requirement. Emissions

contained in the submittal cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. All emission summaries were accompanied by source-specific descriptions of emission calculation procedures and sources of input data. On-road mobile emissions were prepared using the MOBILE6.2 emissions model. Tennessee's submittal documents 2007 emissions in the Knoxville Area in units of tons per summer day. Table 8 below provides a summary of the 2007 summer day emissions of VOC and NO<sub>x</sub> for the Knoxville Area.

TABLE 8—KNOXVILLE AREA 2007 SUMMER DAY EMISSIONS FOR VOC AND NO<sub>x</sub>  
[Summer season tpd]

Source	NO <sub>x</sub>	VOC
Point Source Total .....	42.69	7.32
Area Source Total .....	2.07	33.25
On-Road Mobile Source Total .....	71.83	36.77
Non-Road Mobile Source Total .....	13.16	34.26
Non-Road Mobile Source Total .....	5.44	0.68
Total for all Sources .....	135.19	112.28

EPA is proposing to approve this 2007 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

#### X. Proposed Action on the Redesignation Request and Maintenance Plan SIP Revision Including Approval of the 2024 NO<sub>x</sub> and VOC MVEBs for the Knoxville Area

EPA is proposing to make the determination that the Knoxville Area has met the criteria for redesignation from nonattainment to attainment for the 1997 8-hour ozone NAAQS. Further, EPA is proposing to approve Tennessee's July 14, 2010, SIP submittal including the redesignation request for the Knoxville Area. Additionally, EPA is proposing to approve the baseline emissions inventory for the Knoxville Area for the 1997 8-hour ozone NAAQS. EPA believes that the redesignation request and monitoring data demonstrate that the Knoxville Area has attained the 1997 8-hour ozone NAAQS.

EPA is also proposing to approve the maintenance plan for the Knoxville Area included as part of the July 14, 2010, SIP revision as meeting the requirements of section 175A of the CAA. The maintenance plan includes NO<sub>x</sub> and VOC MVEBs for 2024. EPA is proposing to approve the 2024 NO<sub>x</sub> and VOC MVEBs for the Knoxville Area because the maintenance plan demonstrates that, in light of expected

emissions for all source categories, the Area will continue to maintain the 1997 8-hour ozone NAAQS.

Further as part of today's action, EPA is describing the status of its adequacy determination for the 2024 NO<sub>x</sub> and VOC MVEBs, in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy finding for the MVEBs, or the effective date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO<sub>x</sub> and VOC MVEBs pursuant to 40 CFR 93.104(e).

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is 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.*);

- Does 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);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is 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

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using

practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 81

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

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

**Dated:** September 28, 2010.

**Gwendolyn Keyes Fleming,**  
Regional Administrator, Region 4.

[FR Doc. 2010-25291 Filed 10-6-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[EPA-R03-RCRA-2010-0132; FRL-9211-7]

#### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA, also the Agency or we in this preamble) is proposing to grant a petition submitted by Babcock & Wilcox Nuclear Operations Group, Inc., the current owner, and to BWX Technologies, Inc., as predecessor in interest to the current owner, identified collectively hereafter in this preamble as "B&W NOG," to exclude (or delist) on a one-time basis from the lists of hazardous waste, a certain solid waste generated at its Mt. Athos facility near Lynchburg, Virginia.

The Agency has tentatively decided to grant the petition based on an evaluation of specific information provided by the petitioner. This tentative decision, if finalized, would conditionally exclude the petitioned

waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

The Agency is requesting comments on this proposed decision.

**DATES:** To make sure we consider your comments on this proposed exclusion, they must be received by November 22, 2010. Comments received after the close of the comment period will be designated as late. These late comments may not be considered in formulating a final decision.

Any person may request a hearing on this tentative decision to grant the petition by filing a request by October 22, 2010. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-RCRA-2010-0132 by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
  - **E-mail:** [friedman.davidm@epa.gov](mailto:friedman.davidm@epa.gov).
  - **Mail:** David M. Friedman, Environmental Protection Agency Region III, Land and Chemicals Management Division, Office of Technical and Administrative Support, Mail Code: 3LC10, 1650 Arch Street, Philadelphia, PA 19103-2029.
  - **Hand Delivery or Courier:** Deliver your comments to: David M. Friedman, Environmental Protection Agency Region III, Land and Chemicals Management Division, Office of Technical and Administrative Support, Mail Code: 3LC10, 1650 Arch Street, Philadelphia, PA 19103-2029.
- Comments delivered in this manner are only accepted during normal hours of operation.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-RCRA-2010-0132. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly

to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and that is made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

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**FOR FURTHER INFORMATION CONTACT:** For further technical information concerning this document or for appointments to view the docket or the B&W NOG facility petition, contact David M. Friedman, Environmental Protection Agency Region III, Land and Chemicals Division, Office of Technical and Administrative Support, Mail Code: 3LC10, 1650 Arch Street, Philadelphia, PA 19103-2029, by calling 215-814-3395 or by e-mail at [friedman.davidm@epa.gov](mailto:friedman.davidm@epa.gov).