

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: September 10, 2012.

**James B. Martin,**

*Regional Administrator, Region 8.*

For the reasons discussed in the preamble, 40 CFR chapter I is amended as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

#### Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(108)(i)(C) and adding paragraph (c)(124) to read as follows:

##### § 52.320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(108) \* \* \*

(i) \* \* \*

(C) Colorado Air Quality Control Commission, Regulation Number 3, 5 CCR 1001–5, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements*, Part D, *Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration*, Section XIV.F, *Long Term Strategy*, subsection XIV.F.1. introductory text and XIV.F.1.c; adopted January 7, 2011; effective February 14, 2011.

\* \* \* \* \*

(124) On May 25, 2011 the State of Colorado submitted revisions to its State Implementation Plan to address the requirements of EPA's regional haze rule.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission, Regulation Number 3, 5 CCR 1001–5, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements*, Part F, *Regional Haze Limits—Best Available Retrofit Technology (BART) and Reasonable Progress (RP)*, Section VI, *Regional Haze Determinations*, and Section VII, *Monitoring, Recordkeeping, and Reporting for Regional Haze Limits*; adopted January 7, 2011; effective February 14, 2011.

(B) Colorado Air Quality Control Commission, Regulation Number 7, 5 CCR 1001–9, *Control of Ozone via Ozone Precursors (Emissions of Volatile*

*Organic Compounds and Nitrogen Oxides)*, Section XVII, (*State Only, except Section XVII.E.3.a. which was submitted as part of the Regional Haze SIP*) *Statewide Controls for Oil and Gas Operations and Natural Gas-Fired Reciprocating Internal Combustion Engines*, subsection E.3.a, (*Regional Haze SIP*) *Rich Burn Reciprocating Internal Combustion Engines*; adopted January 7, 2011; effective February 14, 2011.

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[EPA–R05–OAR–2011–0468; FRL–9764–9]

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

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving, under the Clean Air Act (CAA), the state of Ohio's request to redesignate the Ohio portion of the Huntington-Ashland (OH–WV–KY) nonattainment area (Lawrence, Scioto, and portions of Adams and Gallia Counties) to attainment for the 1997 annual National Ambient Air Quality Standard (NAAQS or standard) for fine particulate matter (PM<sub>2.5</sub>). The Ohio Environmental Protection Agency (Ohio EPA) submitted its request on May 4, 2011. EPA determined that the entire Huntington-Ashland area has attained the 1997 annual PM<sub>2.5</sub> standard, and proposed to approve Ohio's request to redesignate the Ohio portion of the area on December 22, 2011. EPA's final rulemaking involves several related actions. EPA has determined that the entire Huntington-Ashland area continues to attain the 1997 annual PM<sub>2.5</sub> standard. EPA is approving, as a revision to the Ohio State Implementation Plan (SIP), the state's plan for maintaining the 1997 annual PM<sub>2.5</sub> NAAQS in the area through 2022. EPA is also approving the 2005 and 2008 emissions inventories for the Ohio portion of the Huntington-Ashland area as meeting the comprehensive emissions inventory requirement of the CAA. EPA finds adequate and is making a finding of

insignificance for Ohio motor vehicle emissions of nitrogen oxides (NO<sub>x</sub>) and direct PM<sub>2.5</sub> for the Huntington-Ashland area. EPA, therefore, grants Ohio's request to redesignate the Ohio portion of the Huntington-Ashland area to attainment for the 1997 PM<sub>2.5</sub> annual standard.

**DATES:** *Effective Date:* This rule will be effective December 31, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification EPA-R05-OAR-2011-0468. All documents in these dockets are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon at (312) 353-8290 before visiting the Region 5 office.

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

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

- I. What is the background for the actions?
- II. What actions is EPA taking?
- III. What is EPA's response to comments?
- IV. Why is EPA taking these actions?
- V. Final action
- VI. Statutory and executive order reviews

### **I. What is the background for the actions?**

On May 4, 2011 the Ohio EPA submitted its request to redesignate the Ohio portion of the Huntington-Ashland nonattainment area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS, and for EPA approval of the state's SIP revision

containing an emissions inventory and a maintenance plan for the area. On December 22, 2011 (76 FR 79593), EPA proposed approval of Ohio's redesignation request, emissions inventories and plan for maintaining the 1997 annual PM<sub>2.5</sub> NAAQS. EPA also proposed approval of Ohio's determination that on-road emissions of PM<sub>2.5</sub> and NO<sub>x</sub> are insignificant contributors to PM<sub>2.5</sub> concentrations in the area. Additional background for today's action is set forth in EPA's December 22, 2011, proposed rulemaking.

In the proposed redesignation of the Huntington-Ashland area, EPA proposed to determine that the emission reduction requirements that contributed to attainment of the 1997 annual PM<sub>2.5</sub> standard in the nonattainment area could be considered permanent and enforceable. At the time of proposal, EPA noted that the Clean Air Interstate Rule (CAIR), which had been in place through 2011, had been replaced by the recently promulgated Cross-State Air Pollution Rule (CSAPR). 76 FR 48208, August 8, 2011. CSAPR included regulatory changes to sunset (i.e., discontinue) CAIR and the CAIR Federal Implementation Plans (FIPs) for control periods in 2012 and beyond. *See* 76 FR 48322. Although Ohio's redesignation request and maintenance plan relied on reductions associated with CAIR, EPA proposed to approve the request based in part on the fact that CSAPR achieved "similar or greater reductions in the relevant areas in 2012 and beyond." 76 FR 79598. On December 30, 2011, eight days after the proposed redesignation, the U.S. Court of Appeals for the D.C. Circuit (referred to as D.C. Circuit or court hereafter) issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer Generation, L.P. v. EPA* (No. 11-1302 and consolidated cases). The court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer Generation, L.P. v. EPA*, to vacate and remand CSAPR and ordered EPA to continue administering CAIR pending

the promulgation of a valid replacement. That judgment is not yet final as the mandate has not been issued by the court and on October 5, 2012, EPA filed a petition for rehearing *en banc* asking the full court to reconsider that decision. EPA has determined that it is appropriate to move forward with final approval of this redesignation action, even though the emission reductions associated with CSAPR that EPA referenced in the proposal notice may not be relied upon at this time given the rule's legal status. As discussed in greater detail in this notice, the submission received from the state relied on reductions achieved from CAIR and demonstrated that the Huntington-Ashland area achieved attainment due in part to emission reductions required by CAIR. The D.C. Circuit's order that EPA continue administering CAIR until a valid replacement rule is developed ensures that the reductions that led to attainment are sufficiently permanent and enforceable to meet the requirements of CAA section 107(d)(3)(E)(iii).

### **II. What actions is EPA taking?**

EPA has determined that the entire Huntington-Ashland area has attained and continues to attain the 1997 annual PM<sub>2.5</sub> standard<sup>1</sup> (76 FR 55542) and that the Ohio portion of the area meets the requirements for redesignation under section 107(d)(3)(E) of the CAA. On September 7, 2011, at 76 FR 55542, EPA finalized its determinations that the Huntington-Ashland area attained the 1997 PM<sub>2.5</sub> NAAQS and that the area attained the 1997 PM<sub>2.5</sub> NAAQS by the applicable attainment date of April 5, 2010. Subsequent to EPA's final determination of attainment and proposed redesignation of the Ohio portion of the Huntington-Ashland area, additional monitoring data have become available, quality-assured, and certified. Table 1 below sets forth design values for 2007-2009, 2008-2010, and 2009-2011, last of which is based on the most current 3-years of data, which shows that the area continues to attain. Preliminary data available for 2012 also are consistent with continued attainment.

<sup>1</sup> On September 7, 2011 EPA published a final determination that the Huntington-Ashland area has attained the 1997 annual PM<sub>2.5</sub> standard. 76 FR 55542, September 7, 2011.

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

Location	County, State	Monitor ID	3-Year Design Values		
			2007–2009	2008–2010	2009–2011
Huntington .....	Cabell, WV .....	54–011–0006	14.3	13.1	12.1
Ashland Primary (FIVCO) .....	Boyd, KY .....	21–019–0017	12.4	11.4	10.8
Lawrence County Hospital (LCH) <sup>2</sup> .....	Lawrence, OH .....	39–087–0010	13.3	NA	NA
Ironton Department of Transportation (DOT) <sup>3</sup> .....	Lawrence, OH .....	39–087–0012	12.2	12.2	11.4
Portsmouth .....	Scioto, OH .....	39–145–0013	12.3	11.6	10.9

<sup>2</sup> The Lawrence County Hospital Site was shut down in February 2008. The Ironton DOT site began operation on the same day the Lawrence County Hospital Site ceased monitoring.

<sup>3</sup> The Ironton DOT site did not begin operation until February 2008; however, an analysis of air quality data at this location, as provided for in 40 CFR part 50 appendix N, was done showing that the area would attain the standard for the 2007–2009 and 2008–2010 monitoring periods.

Because the area continues to attain and meets all other requirements for redesignation under CAA section 107(d)(3)(E), EPA is approving the request from the state of Ohio to change the legal designation of the Ohio portion of the Huntington-Ashland area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS.<sup>4</sup>

EPA is taking several actions related to Ohio's PM<sub>2.5</sub> redesignation request, as discussed below.

EPA is approving, pursuant to CAA section 175A, Ohio's 1997 annual PM<sub>2.5</sub> maintenance plan for the Huntington-Ashland area as a revision to the Ohio SIP (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Huntington-Ashland area in attainment of the 1997 annual PM<sub>2.5</sub> NAAQS through 2022.

EPA is approving, pursuant to CAA section 172(c)(3), both the 2005 and 2008 emission inventories for primary PM<sub>2.5</sub>,<sup>5</sup> NO<sub>x</sub>, and SO<sub>2</sub>,<sup>6</sup> documented in Ohio's PM<sub>2.5</sub> redesignation request submittal. These emission inventories satisfy the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory.

Finally, for transportation conformity purposes EPA is approving Ohio's determination that on-road emissions of PM<sub>2.5</sub> and NO<sub>x</sub> are insignificant contributors to PM<sub>2.5</sub> concentrations in the area. Further discussion of the basis for these actions was provided in the

<sup>4</sup> EPA in this notice is not addressing the requests of Kentucky and West Virginia for redesignation of those states' portions of the Huntington-Ashland area.

<sup>5</sup> Fine particulates directly emitted by sources and not formed in a secondary manner through chemical reactions or other processes in the atmosphere.

<sup>6</sup> NO<sub>x</sub> and SO<sub>2</sub> are precursors for fine particulates through chemical reactions and other related processes in the atmosphere.

proposed rulemaking on December 22, 2011 (76 FR 79593).

### III. What is EPA's Response to Comments?

EPA received two sets of comments on its proposed rulemaking. The Ohio Utilities Group submitted comments in support of the redesignation of the Ohio portion of the Huntington-Ashland area, and on behalf of Sierra Club, Robert Ukeiley submitted adverse comments. A summary of Sierra Club's comments and EPA's responses are provided below.

*Comment 1a:* The Commenter contends that EPA cannot rely on reductions associated with the NO<sub>x</sub> SIP Call,<sup>7</sup> CAIR, and CSAPR in order to redesignate the Huntington-Ashland area because reductions from these programs are not permanent and enforceable. The Commenter points out that EPA noted that the area is impacted by pollution from electric generating units (EGUs) and that the Ohio submittal "credits reductions" to three rules that reduce SO<sub>2</sub> and NO<sub>x</sub> emissions from power plants, the NO<sub>x</sub> SIP Call, CAIR, and CSAPR.

Specifically, the Commenter argues that CAIR reductions are not permanent and enforceable because EPA stated in the proposal that CAIR emission reductions only run through 2011. The Commenter also cites statements by EPA made in the context of other rules indicating that CAIR is legally deficient, remanded, and therefore temporary, in both the regional haze proposed rulemakings (76 FR 78194, 78200, December 16, 2011), as well as a redesignation proposal for Cincinnati (76 FR 65458, 65460, October 21, 2011). The Commenter argues that EPA cannot rely on CAIR because it is a cap-and-trade program. The Commenter cites to *NRDC v. EPA*, 571 F.3d 1245, 1257 (D.C.

<sup>7</sup> The Commenter mentions that EPA may not rely on emission reductions associated with the NO<sub>x</sub> SIP Call but does not provide any specific arguments to support this contention.

Cir. 2009) for support of the proposition that, because EPA cannot predict which sources will reduce emissions, EPA cannot rely on cap-and-trade programs for future reductions. The Commenter states that any source could decide at any time in the future to purchase emissions credits and increase its emissions and impacts to the Huntington-Ashland area. The Commenter adds that emissions banking can also lead to violations of the NAAQS and prevents CAIR emission budgets from being permanent and enforceable emission limits.

*Response 1a:* EPA disagrees with Commenter that it must disapprove Ohio's redesignation request because the submittal relies on CAIR. First, although Ohio's redesignation request references CAIR and includes emission reductions associated with CAIR, EPA's modeling indicates that the area would attain and maintain the 1997 PM<sub>2.5</sub> NAAQS even in the absence of CAIR. Second, the EPA statements cited by the Commenter regarding the status of CAIR were made prior to the D.C. Circuit's decision to vacate CSAPR and to leave CAIR in place. Third, EPA disagrees with the Commenter's assertion that reductions may not be relied upon for redesignation purposes if those reductions stem from an emissions trading program. Finally, EPA believes that the area meets all the requirements for redesignation regardless of the status of CAIR, because the area has other measures, such as consent decrees on EGUs.

As an initial matter, EPA notes that the modeling EPA conducted during the rulemaking for the CSAPR rulemaking demonstrates that the Huntington-Ashland area would attain and maintain the 1997 PM<sub>2.5</sub> NAAQS even without CAIR or a rule to replace CAIR. Nothing in the *EME Homer* decision undermines that conclusion or suggests that the air quality modeling conducted during the rulemaking was flawed. As such, there

is no basis to conclude that it would be improper to redesignate the area even in the absence of CAIR. Moreover, the commenter's assertions regarding the status of CAIR and the extent to which emission reductions associated with CAIR may be relied upon in redesignations are flawed for the reasons described below.

The Commenter points out that EPA made statements that CAIR reductions were expiring in 2011 (76 FR 79593, December 22, 2011) and were temporary (76 FR 78194, 78200, December 16, 2011; 76 FR 65458, 65460, October 21, 2011). However, these statements should be viewed in light of changes in the legal context of CAIR and CSAPR, which occurred subsequent to those statements and had a significant effect on the status of CAIR.

On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of SO<sub>2</sub> and NO<sub>x</sub> from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. See 76 FR 70093. The D.C. Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the court's decision, EPA issued CSAPR, to address interstate transport of NO<sub>x</sub> and SO<sub>2</sub> in the eastern United States. See 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR "pending \* \* \* development of a valid replacement." *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012).<sup>8</sup>

The agency's statements cited by the Commenter must be viewed in context: They were made after CSAPR had been promulgated to sunset and replace CAIR, and before the D.C. Circuit stayed CSAPR and issued its decision in *EME Homer* to vacate the rule. In that decision, the court ordered EPA to continue implementing CAIR until a valid replacement rule is promulgated. The decision thus had a significant impact on the CAIR programs and EPA's evaluation of the status of emission reductions achieved pursuant to those programs. In light of these unique circumstances and for the reasons explained below, EPA is finalizing the

redesignation and the related SIP revision for the Huntington-Ashland area, including Ohio's plan for maintaining attainment of the PM<sub>2.5</sub> standard. The air quality modeling analysis conducted for CSAPR demonstrates that the Huntington-Ashland area would be able to attain the PM<sub>2.5</sub> standard even in the absence of either CAIR or CSAPR. See "Air Quality Modeling Final Rule Technical Support Document," appendix B, B-55 to B-56. This modeling is available in the docket for this proposed redesignation action. Nothing in the D.C. Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based.

In addition, CAIR remains in place and enforceable until substituted by a "valid" replacement rule. Ohio's CAIR provisions can be found in Ohio Administrative Code Chapter 3745-109. On February 1, 2008, at 73 FR 6034, EPA approved an "abbreviated SIP" covering several of Ohio's CAIR provisions, including CAIR NO<sub>x</sub> allocations. On September 25, 2009 (74 FR 48857), EPA approved a full CAIR SIP for Ohio incorporating all of Ohio's CAIR provisions. These SIP provisions remain in place and are federally enforceable. And, because CAIR has been in force since 2005, the monitoring data used to demonstrate the area's attainment of the 1997 annual PM<sub>2.5</sub> NAAQS by the April 2010 attainment deadline were impacted by CAIR. CAIR reductions began as early as 2007, with full program requirements beginning in 2009. However, to the extent that Ohio's redesignation request and maintenance plan rely on CAIR, the recent directive from the D.C. Circuit in *EME Homer* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the court to develop a new rule and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. These steps alone will take many years, even with EPA and the states acting expeditiously. The court's clear instruction to EPA that it must continue to administer CAIR until a "valid

replacement" exists provides an additional backstop; by definition, any rule that replaces CAIR and meets the court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR "might be more severe now in light of the reliance interests accumulated over the intervening four years." *EME Homer*, 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

EPA also disagrees with the Commenter that emission reductions occurring within the relevant nonattainment area cannot be relied upon for the purpose of redesignations if they are associated with the emissions trading programs established in CAIR. The case cited by the Commenter, *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009), does not support the Commenter's position and is entirely consistent with EPA's position here. That case addressed EPA's determination that the nonattainment Reasonably Available Control Technology (RACT) requirement was satisfied by the NO<sub>x</sub> SIP Call trading program. The court emphasized that reductions outside the nonattainment area do not satisfy the RACT requirement and thus held that because EPA had not shown the trading program would result in sufficient reductions in a nonattainment area, its determination that the program satisfied RACT was not supported.<sup>9</sup> *Id.* at 1256-

<sup>8</sup> The court's judgment is not yet final as the mandate has not issued and on October 5, 2012, EPA filed a petition asking for rehearing *en banc*.

<sup>9</sup> The court specifically elected not to vacate the RACT provision and left open the possibility that

58. The court did not hold, as Commenter suggests, that emissions trading programs must be ignored when evaluating redesignation requests.

There is simply no support for the Commenter's argument that, in determining whether to redesignate an area, EPA must ignore all emission reductions achieved by CAIR simply because the mechanism used to achieve the reductions is an emissions trading program. As a general matter, trading programs require total mass emission reductions by establishing mandatory caps on total emissions to permanently reduce the total mass emissions allowed by sources subject to the programs, validated through rigorous continuous emission monitoring and reporting regimens. The emission caps and associated controls are enforced through the associated SIP rules or FIPs. Any purchase of allowances and increase in emissions by one source necessitates a corresponding sale of allowances and reduction in emissions by another covered source. Given the regional nature of PM<sub>2.5</sub>, the corresponding emission reduction will have an air quality benefit that will compensate, at least in part, for the impact of any emission increase. In contrast, emission rate limits serve a different purpose and do not limit total mass emissions. Total mass emissions can vary greatly under emission rate programs as demand and production vary from year to year.

There is no support for the Commenter's contention that the presence of allowance banking in a program somehow renders those programs' emission reduction requirements impermanent or unenforceable, such that EPA must ignore reductions associated with any trading program that allows banking. In general, banking provides economic incentives for early reductions in emissions and encourages sources to install controls earlier than required for compliance with future caps on emissions. As Commenter points out, Ohio's submittal states that "companies installed more controls" during the time period that CAIR was being developed and promulgated. The flexibility under a cap and trade system is not about whether to reduce emissions. Rather, it is about how to reduce them at the lowest possible cost. The fact that companies anticipate the economic benefits of installing controls earlier,

EPA may be able to reinstate the provision for particular nonattainment areas if, upon conducting a technical analysis, it finds the NO<sub>x</sub> SIP Call results in greater emissions reductions in a nonattainment area than would be achieved if RACT-level controls were installed in that area. *Id.* at 1258.

and reductions thus may occur more quickly than required (freeing up allowances that may then be banked and providing earlier health and environmental benefits to the public) does not, in any way, undermine the permanence or enforceability of the requirements in the underlying rule. The bank itself was factored into the CAIR cap levels that were chosen. The bank allows for a "glide path" to final cap levels (70 FR 25194, May 12, 2005). Further, evaluations have been made to see whether banking and trading have created emissions "hot spots." For example, since the beginning of the Acid Rain Program, there have been no emissions hot spots identified or created as a result of the program (see "The Acid Rain Program Experience: Should We Be Concerned About SO<sub>2</sub> Emissions Hotspots?" at <http://epa.gov/airmarkets/resource/acidrain-resource.html>).

Additionally, states and localities may impose stricter limits on sources to address specific local air quality concerns. These limits must be met regardless of a source's accumulated allowances.

In sum, contrary to Commenter's contention, the decision of the D.C. Circuit in *NRDC v. EPA* does not establish that emission reductions from cap-and-trade programs, or emission reductions from cap-and-trade programs that allow banking, may not be relied upon for redesignations. For the reasons explained above, EPA disagrees that the Commenter has identified a basis on which EPA should disapprove Ohio's redesignation request.

EPA also notes that CAIR is not the only permanent and enforceable measure affecting EGU emission reductions in the Huntington-Ashland area. There have been several consent decrees in the area affecting EGUs. First, in the Kentucky portion of the Huntington-Ashland Area, the Big Sandy Power Station was required by a federally enforceable consent decree<sup>10</sup> and 2007 settlement agreement to install and continuously operate selective catalytic reduction (SCR) to reduce NO<sub>x</sub> emissions from Unit 2 beginning January 1, 2009. The plant is also required to install and continuously operate flue gas desulfurization (FGD) to reduce SO<sub>2</sub> emissions from Unit 2 beginning December 31, 2015. Operation of FGD controls has a co-benefit of reducing direct PM<sub>2.5</sub> emissions as well. In the Ohio and West Virginia portions of the Area, a federally

<sup>10</sup> Entered with the United States District Court For The Southern District Of Ohio Eastern Division (United States of America and State Of New York, *et al.*, v. American Electric Power Service Corp., *et al.*, No. C2-99-1250 and 1182 (consolidated)).

enforceable consent decree<sup>11</sup> and 2007 settlement agreement require the General James M. Gavin Power Plant (Ohio) and Mountaineer Power Plant (West Virginia) to install and continuously operate SCR and FGD on specified units and the Philip Sporn Plant (West Virginia) to retire, retrofit, or re-power one unit. Another consent decree,<sup>12</sup> to which EPA was not a party, requires the J.M. Stuart Power Plant (Ohio) to install and continuously operate SCR on all of its units. To the extent that power plant emission reductions contributed to attainment in the Huntington-Ashland Area, these reductions are permanent and enforceable.

*Comment 1b:* The Commenter claims that "EPA's proposal indicates that is relying heavily on CSAPR to justify its redesignation of the Huntington-Ashland area." The Commenter argues that EPA cannot rely on CSAPR, because it has been stayed,<sup>13</sup> thus imposing no emission reductions or emission limits, and therefore cannot be found to impose permanent and enforceable emission reductions. The Commenter also notes that EPA's proposal of revisions to CSAPR undermines EPA's ability to analyze whether reductions required by CSAPR will achieve attainment in the Huntington-Ashland area. Furthermore, Commenter argues that CSAPR cannot be relied upon to redesignate the Huntington-Ashland area into attainment unless the D.C. Circuit affirms the rule. The Commenter also objects to reliance on CSAPR because CSAPR, as a trading program, does not impose emission limits on the sources impacting air quality in the Huntington-Ashland area that are at least as stringent as those sources' actual 2008 emission rates. Specifically, the Commenter argues that CSAPR does not result in permanent and enforceable reductions because individual sources that impact the area can comply with the rule by either meeting their emission budgets or by obtaining emission credits from other sources that do not impact the air quality in the Huntington-Ashland area; and because under CSAPR, sources can bank emissions.

*Response 1b:* Contrary to Commenter's contention, EPA's

<sup>11</sup> *Id.*

<sup>12</sup> Entered with the United States District Court For The Southern District Of Ohio, Eastern Division (*Sierra Club and Marilyn Wall v. The Dayton Power and Light Company, Duke Energy Ohio, Inc., and Columbus Southern Power Co.*, Civil Action No. 2:04-cv-905).

<sup>13</sup> The rule was stayed as of the time of submission of comments; it has since been vacated by the D.C. Circuit and petitions for rehearing *en banc* are pending.

conclusion that the area has met the requirements for redesignation does not rely on and is not dependent on CSAPR being in place. Ohio's maintenance plan does not rely on future emission reductions from CSAPR, and thus EPA's basis for redesignation of the area from nonattainment to attainment is unaffected by the status of CSAPR. Instead, Ohio relied on CAIR in its maintenance plan, and as discussed in EPA's response to comment 1a, such reliance is appropriate in this context. EPA did not rely on CSAPR to provide a basis for redesignating the area from nonattainment to attainment. Rather, EPA's statements about CSAPR in the proposal were made in the context of CAIR's imminent replacement by CSAPR. The Huntington-Ashland area has attained the 1997 annual PM<sub>2.5</sub>, and continues to attain the standard as shown in the monitoring data provided above. The state of Ohio has shown that the emission reductions that led to the monitored attainment were due to many permanent and enforceable measures, including federal mobile vehicle standards, CAIR and consent decrees. At proposal, EPA noted that CSAPR had been promulgated to replace CAIR but that redesignation of Huntington-Ashland was still appropriate, because reductions achieved by CSAPR in this area would be equivalent to or greater than those achieved by CAIR. Since the proposal, the D.C. Circuit has issued a decision to vacate CSAPR; thus in this action EPA is evaluating Ohio's maintenance plan as submitted, including the emission reductions associated with CAIR. The redesignation of the Ohio portion of the Huntington-Ashland area meets the requirements under section 107(d)(3)(iii) without any reductions associated with CSAPR.

*Comment 1c:* The Commenter states that it is arbitrary for EPA to use only one year in determining whether permanent and enforceable emission reductions led to air quality improvements, because cap-and-trade programs allow for varied emissions year to year. Moreover, the Commenter states that analyzing the year 2008 poses further problems, because it marked the beginning of a major economic downturn and EPA provided no analysis of whether the recession was a factor in the improvements in air quality.

*Response 1c:* EPA's conclusion here is fully supported by the facts and applicable legal criteria. EPA's longstanding practice and policy<sup>14</sup>

provides for states to demonstrate permanent and enforceable emissions reductions by comparing nonattainment area emissions occurring during the nonattainment period (represented by emissions during one of the years during the 3-year nonattainment period, in this case 2005) with emissions in the area during the attainment period (represented by emissions during one of the three attainment years, in this case 2008, which is included in the 3-year period, 2007–2009, that the State used to show attainment with the 1997 annual PM<sub>2.5</sub> standard). A determination that an area has attained the 1997 annual PM<sub>2.5</sub> standard is based on an objective review of air quality data in accordance with 40 CFR 50.13 and Appendix N of part 50, based on 3 complete, consecutive calendar years of quality-assured air quality monitoring data. In the State's redesignation request, Ohio considered data for the 2007–2009 time period to demonstrate attainment. In EPA's determination of attainment and proposed approval of the redesignation request, EPA considered data for the 2008–2010 time period, which was the most recent quality-assured, certified data available. See 76 FR 55542 (September 7, 2011), 76 FR 79593 (December 22, 2011). In this final rulemaking, EPA is also considering the area's continued attainment based on complete, quality-assured certified data for 2009–2011. EPA has also considered preliminary data showing the area has continued to monitor attainment through 2012. Therefore, selecting 2008 as a representative attainment year, and comparing emissions for this year to those for a representative year during the nonattainment period, 2005, is an appropriate and long-established approach that demonstrates improvements in air quality as a result of the imposition of emission reductions in the area between the years of nonattainment and attainment. For example, see recent redesignations such as Indianapolis PM<sub>2.5</sub> annual standard (76 FR 59512), Lake and Porter 8-hour ozone standard (75 FR 12090), and Northwest Indiana PM<sub>2.5</sub> annual standard (76 FR 59600).

EPA disagrees with the Commenter's contention that using a single attainment year is arbitrary due to year to year variations in emission levels resulting from cap-and-trade programs, and that 2008 was a "problematic" year to select for analysis. As noted above, data for 2008–2010 and 2009–2011 as well as preliminary data for 2012 show

continued attainment of the standard. Although the Commenter points out one monitor's reading that approached the threshold in 2010, the fact remains that Huntington-Ashland is in attainment and has been in attainment.

With respect to the Commenter's assertion that EPA has conducted no analyses to prove that emission reductions between 2005 and 2008 led to reduced PM<sub>2.5</sub> concentrations, as noted above, comparing emissions for a representative nonattainment year to emissions for a representative attainment year is consistent with longstanding practice and EPA policy for making such a demonstration. The CAA does not specifically require the use of modeling in making any such demonstration and it has not been the general practice to do so. While the Commenter expressed concerns that an economic downturn was responsible for the improvement in air quality, the Commenter has made no demonstration that the reduction in emissions and observed improvement in air quality is due to an economic recession, changes in meteorology, or temporary or voluntary emissions reductions.

In contrast, in EPA's proposed redesignation of the Kentucky portion of the Huntington-Ashland area 77 FR 69409 (November 19, 2012), EPA provided a technical analysis showing that emission reductions from EGUs in the Huntington-Ashland area exceed average emission reductions seen in EGUs subject to decreased electrical demand, i.e., the economic recession. A summary of the emission changes from 2005 to 2011 for the entire Huntington-Ashland Area is provided in Table 2 below. Table 3 summarizes EPA's analysis showing reductions of SO<sub>2</sub> and NO<sub>x</sub> emissions, in tons per year (tpy) across the Huntington-Ashland area for 2005–2011 for all the coal-fired EGUs in the area. There were reductions in SO<sub>2</sub> and NO<sub>x</sub> emissions for all facilities with two exceptions. At the General J.M. Gavin facility, the 2011 SO<sub>2</sub> emission rate was nearly the same as the 2005 rate, but production was higher in 2011 than in 2005. Thus the slight increase in emissions was in no way related to the fact that CAIR is an emissions trading program. As stated earlier, limitations on emission rates do not ensure total mass emissions are limited. And at the Kyger Creek facility, the 2011 emission rate was slightly higher than the 2005 rate; however, the slight increase was directly related to the facility's strategy to reduce emissions. The facility installed a scrubber to control SO<sub>2</sub> in 2012. The company originally planned to install the controls by 2011 and therefore switched to higher sulfur coal

<sup>14</sup> See September 4, 1992 memorandum from John Calcagni entitled "Procedures for Processing

Requests to Redesignate Areas to Attainment," pp. 4 and 8–9.

then. Now that the scrubber is installed, 2012 emission reductions are on track to be as much as 65,000 tons lower than in 2005 putting Ohio reductions for 2012 around 169,000 tons,<sup>15</sup> as compared to 2005 emissions. Emission reductions have been greater than decreases in emissions that could be attributed to

any decrease in electrical demand in the Huntington-Ashland Area. While the average SO<sub>2</sub> and NO<sub>x</sub> emission reductions from coal fired power plants in the Huntington-Ashland Area for the period 2005–2011 were 31 percent and 68 percent, respectively, the average facility power production in terms of

heat input decreased by only about 5 percent during the same period. EPA finds that Ohio's 2008 inventory is a suitable representation of emissions during the period when the Huntington-Ashland area came to attain the standard.

TABLE 2—ACTUAL EMISSION REDUCTIONS FROM COAL FIRED EGUS IN THE HUNTINGTON-ASHLAND AREA FOR THE PERIOD 2005–2011<sup>16</sup>

Facility—county	Emissions differences from 2005 to 2011 (tpy)			
	SO <sub>2</sub>	Percent reduction	NO <sub>x</sub>	Percent reduction
KY: Big Sandy—Lawrence County .....	7,958	16	5,862	47
WV:				
Mountaineer—Mason County .....	40,972	95	10,395	82
Phil Sporn—Mason County .....	28,334	72	6,896	77
OH:				
JM Stuart—Adams County .....	97,784	92	16,662	68
Killen Station—Adams County .....	11,845	61	2,353	39
Gen J M Gavin—Gallia County .....	–5,299	–19	31,720	82
Kyger Creek—Gallia County .....	–70,497	–97	9,144	50

TABLE 3—ACTUAL EMISSION REDUCTIONS FROM COAL FIRED EGUS IN THE HUNTINGTON-ASHLAND AREA FOR THE PERIOD 2005–2011, BY STATE

[Emissions differences from 2005 to 2011 (tpy)]

State	SO <sub>2</sub>	Percent reduction	NO <sub>x</sub>	Percent reduction
KY .....	7,958	16	5,862	47
WV .....	69,306	84	17,291	80
OH .....	33,833	15	59,878	68
Total .....	111,097	31	83,030	68

*Comment 1d:* The Commenter observes that Ohio cites the availability of cheap natural gas as one of the causes of attainment. The Commenter asserts that cheap natural gas is not a permanent and enforceable emissions limit, and states that because EPA has not determined whether the improvement in air quality was dependent on the presence of cheap natural gas, EPA must disapprove the redesignation request.

*Response 1d:* In determining that the improvement in air quality was due to permanent and enforceable emissions reductions, EPA did not cite or rely upon cheap natural gas as a permanent and enforceable limit. In its proposed rulemaking, EPA identified multiple permanent and enforceable measures (76 FR 79593), including, but not limited to Tier 2 vehicle standards, heavy-duty gasoline and diesel highway vehicle standards, nonroad spark-ignition engines and recreational

engines standards, large nonroad diesel engine standards, consent decrees, CAIR, and the NO<sub>x</sub> SIP Call. Permanent and enforceable measures set an enforceable limit, and the emission standard that must be met is independent of the choice of fuel. Further, as mentioned above, the large coal-fired electric generating units continued to run at or near the same amount over the years evaluated.

*Comment 2a:* The Commenter claims that “EPA has failed to conduct an adequate analysis under CAA section 110(l) on what effect redesignation will have on the 2006 24-hour PM<sub>2.5</sub> NAAQS, the 1-hour NO<sub>x</sub> NAAQS, the 1-hour SO<sub>2</sub> NAAQS and the 1997 and 2008 75 parts per billion ozone NAAQS.” In subsequent comments, the Commenter also states, “EPA has not conducted an adequate analysis of the effect redesignation will have on other National Ambient Air Quality Standards”.

*Response 2a:* Section 110(l) provides in part: “the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress \* \* \*, or any other applicable requirement of this chapter.” As a general matter, EPA is obligated under section 110(l) to consider whether a revision would “interfere with” attainment or applicable requirements. For example, 70 FR 53, 57 (January 3, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 28429, 28431 (May 18, 2005); and 70 FR 58119, 58134 (October 5, 2005). In its review, EPA has indeed considered its obligations under section 110(l). In acting on Ohio's redesignation request and maintenance plan for the 1997 annual PM<sub>2.5</sub> NAAQS, Ohio did not revise or remove any existing emissions limit for any NAAQS, nor do they alter any existing control requirements. Thus, EPA concludes that

<sup>15</sup> Final 2012 emission reductions will not be known until early 2013 when fourth quarter emissions data is submitted by the facilities.

<sup>16</sup> Data reflects reported actual emissions from the Clean Air Markets Division Database at <http://ampd.epa.gov/ampd/>.

the redesignation will not interfere with attainment or maintenance of any other air quality standard. The Commenter provides no information in its comment to indicate that redesignation would have any impact on the area's ability to comply with the 2006 24-hour PM<sub>2.5</sub> NAAQS, the 1-hour NO<sub>2</sub> NAAQS, the 1-hour SO<sub>2</sub> NAAQS or the 1997 8-hour ozone NAAQS and 2008 75 parts per billion ozone NAAQS. The redesignation does not relax any existing rules or limits, nor will it adversely alter the status quo air quality.<sup>17</sup> In fact, the maintenance plan submitted by Ohio demonstrates a decline in the direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursor emissions over the timeframe of the maintenance period. EPA therefore concludes that there is no basis for concluding that the redesignation might interfere with attainment of any standard or with satisfaction of any other requirement, and thus EPA finds that section 110(l) does not prohibit EPA from approving the redesignation request and the maintenance SIP revision.

*Comment 2b:* The Commenter states that the Ohio SIP does not currently have RACT standards in place for PM<sub>2.5</sub>, and that implementation of such standards would have reduced NO<sub>x</sub> and SO<sub>2</sub>, and helped with the 2006 24-hour PM<sub>2.5</sub> NAAQS, the 1-hour NO<sub>x</sub> NAAQS, the 1-hour SO<sub>2</sub> NAAQS, and the 1997 and 2008 ozone NAAQS as well as visibility. The Commenter contends that EPA should demonstrate that the absence of this alleged co-benefit will not interfere with attainment, reasonable further progress and any other applicable requirement."

*Response 2b:* EPA disagrees with the Commenter that the Ohio SIP does not comply with the applicable RACT requirements. EPA has previously set forth its interpretation of RACT for PM<sub>2.5</sub> as linked to attainment needs of the area. If an area is attaining the PM<sub>2.5</sub> standard, it clearly does not need further measures to reach attainment. Therefore, under EPA's interpretation of the RACT requirement, as it applies to PM<sub>2.5</sub>, Ohio has satisfied the RACT requirement without need for further measures. EPA's memorandum of May 22, 2008, clarified and fully explained EPA's view of the relationship between PM<sub>2.5</sub> attainment and RACT requirements. Memorandum from

William T. Harnett, Director, Air Quality Policy Division to Regional Air Division Directors, entitled, "PM<sub>2.5</sub> Clean Data Policy Clarification."

This memorandum explained that 40 CFR 51.1004(c) provides that a determination that an area has attained the PM<sub>2.5</sub> standard suspends the requirements to submit RACT and Reasonably Achieved Control Measures (RACM) requirements.

40 CFR 51.1010 provides in part: "For each PM<sub>2.5</sub> nonattainment area, the state shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all reasonably available control measures (including RACT for stationary sources) necessary to demonstrate attainment as expeditiously as practicable and to meet any Reasonable Further Progress (RFP) requirements."

Thus the regulatory text itself defines RACT as included in RACM, and provides that it is required only insofar as it is necessary to advance attainment. See also section 51.1010(b). Thus, EPA is correct in its conclusion here that the RACT requirement has been satisfied, and it does not result in interference with attainment or with other applicable requirements. The mere fact that EPA has correctly determined that the area meets the RACT requirements for the 1997 PM<sub>2.5</sub> standard, and that thus no more is required under that standard, does not result in interference with attainment of other standards.

The Commenter claims that *Wall v. EPA*, 265 F.3d 426, 442 (6th Cir. 2001), establishes that fully adopted RACT is nonetheless required. The *Wall* case, however, is not applicable to RACT requirements for the PM<sub>2.5</sub> standard. The *Wall* decision addressed entirely different statutory provisions for ozone RACT under CAA part D subpart 2, which do not apply or pertain to the subpart 1 RACT requirements for PM<sub>2.5</sub>.

*Comment 2c:* The Commenter contends that it is inappropriate for EPA to redesignate the area to attainment at this time, claiming that EPA is illegally delaying issuing a final rule to revise the annual PM<sub>2.5</sub> NAAQS, and that EPA's Clean Air Science Advisory Committee has recommended adoption of a lower NAAQS. The Commenter alleges that EPA is removing the protection of the 1997 NAAQS, while not adopting a more protective standard.

*Response 2c:* EPA finds that the concerns expressed by the Commenter are unfounded here. First, this redesignation does not remove the protection of the 1997 annual PM<sub>2.5</sub> NAAQS; it does not relax control requirements or implementation for the 1997 NAAQS. Nor does the

redesignation in any way address or affect the area's obligations under the new NAAQS. Its purpose and function is to focus solely on the 1997 annual PM<sub>2.5</sub> NAAQS, and it has no impact on EPA's position with respect to requirements for the area under a revised NAAQS.

Also, on December 14, 2012, EPA finalized a rule revising the PM<sub>2.5</sub> annual standard to 12 µg/m<sup>3</sup> based on current scientific evidence regarding the protection of public health. EPA notes that the newly proposed standard is independent of this action, and the newly proposed standard does not affect the redesignation of the Huntington-Ashland area for the 1997 annual PM<sub>2.5</sub> standard.

*Comment 3:* The Commenter asserts that "Emissions calculations for on-road mobile sources fail to consider 15% ethanol in gasoline (E15)."

*Response 3:* In 2010 and 2011, EPA granted partial waivers for use of E15 in model year (MY) 2001 and newer light-duty motor vehicles (75 FR 68094 and 76 FR 4662). As discussed in the waiver decisions, there may be some small emission impacts from the use of E15. E15 is expected to cause a small immediate emissions increase in NO<sub>x</sub> emissions. However, due to its lower volatility than the 10% ethanol gasoline currently in-use, its use is also expected to result in lower evaporative emissions. Other possible emissions impacts may be from the misfueling of E15 in vehicles or engines for which its use is not approved, i.e., MY2000 and older motor vehicles, heavy-duty engines and vehicles, motorcycles and all nonroad engines, vehicles and equipment. EPA has promulgated a separate rule dealing specifically with the mitigation of misfueling to reduce the potential emissions impacts from misfueling (76 FR 44406).

However, the E15 partial waivers do not require that E15 be made or sold and it is unclear if and to what extent E15 may even be used in Ohio. Even if E15 is introduced into commerce in Ohio, considering the likely small and offsetting direction of the emission impacts, the limited set of motor vehicles approved for its use, and the measures required to mitigate misfueling, EPA believes that any potential emission impacts of E15 will be less than the maintenance plan safety margin by which Ohio shows maintenance.

*Comment 4a:* The Commenter asserts that the Ohio maintenance plan is deficient in part because the contingency measures it includes provide for their implementation within 18 months of a monitored violation, if

<sup>17</sup> EPA notes that the Huntington-Ashland Area does not have violating monitors for the 2006 24-hour PM<sub>2.5</sub> NAAQS, the 1-hour NO<sub>x</sub> NAAQS, or the 1-hour SO<sub>2</sub> NAAQS, the 1-hour and 8-hour ozone NAAQS, and that this Area has never been designated nonattainment for 2006 24-hour PM<sub>2.5</sub> NAAQS, the 1-hour NO<sub>x</sub> NAAQS, or the 1-hour SO<sub>2</sub> NAAQS.

one occurs. The Commenter claims that as a consequence, the “contingency measures do not provide for prompt correction of violations.”

*Response 4a:* The Commenter overlooks the provisions of the CAA applicable to contingency measures. Section 175A(d) provides that “[e]ach plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary to assure that the state will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.” (emphasis added). Thus Congress gave EPA discretion to evaluate and determine the contingency measures EPA “deems necessary” to assure that the state will promptly correct any subsequent violation. EPA has long exercised this discretion in its rulemakings on section 175A contingency measures in redesignation maintenance plans, allowing as contingency measures commitments to adopt and implement in lieu of fully adopted contingency measures, and finding that implementation *within* 18 months of a violation complies with the requirements of section 175A.<sup>18</sup> See recent redesignations, e.g. Lake and Porter 8-hour ozone standard (75 FR 12090), and Northwest Indiana PM<sub>2.5</sub> annual standard (76 FR 59600). Section 175A does not establish any deadlines for implementation of contingency measures after redesignation to attainment. It also provides far more latitude than does section 172(c)(9), which applies to a different set of contingency measures applicable to nonattainment areas. Section 172(c)(9) contingency measures must “take effect \* \* \* without further action by the state or [EPA].” By contrast, section 175A confers upon EPA the discretion to determine what constitutes adequate assurance, and thus permits EPA to take into account the need of a state to assess, adopt implement contingency measures if and when a violation occurs after an area’s redesignation to attainment. Therefore, in accordance with the discretion accorded it by statute, EPA may allow reasonable time for states to analyze data and address the causes and appropriate means of remedying a violation. In assessing what “promptly” means in this context, EPA also may take into account time for adopting and implementation of the appropriate measure. In the case of the

Huntington-Ashland area, EPA reasonably concluded that 18 months constitutes a timeline consistent with prompt correction of a potential monitored violation. This timeframe also conforms with EPA’s many prior rulemakings on acceptable schedules for implementing section 175A contingency measures.

*Comment 4b:* The Commenter asserts the maintenance plan does not demonstrate maintenance because EPA cannot rely on CSAPR to ensure maintenance in the Huntington-Ashland area.

*Response 4b:* EPA disagrees with the Commenter’s assertion that the Huntington-Ashland area relies on CSAPR for maintenance. Ohio has used future emission reduction projects to meet the maintenance plan requirement under section 175A of the CAA, and has submitted a maintenance plan that extends 10 years past the redesignation. The Commenter improperly interprets EPA’s references to CSAPR reductions in the proposal redesignation notice (found in Tables 5 and 6). EPA referred to CSAPR because Ohio had incorporated CAIR reductions in the emissions inventory, and that EPA believed at the time of proposal that CSAPR (which at the time had not yet been stayed) would allow for greater emission reductions both regionally and from local implementation than CAIR had provided. EPA therefore concluded in the proposal that the emission projections cited in Ohio’s submittal were conservative, and still well below attainment year emissions. Since the proposal, CSAPR has been stayed; however, the emission reductions projected by Ohio, which were based on continued implementation of CAIR, in Ohio’s maintenance plan are still valid and are significantly less than attainment year emissions. Ohio has met the requirements of 175A, without CSAPR in place.

EPA also has modeling, included in the docket for this rulemaking, which projects that the Huntington-Ashland area will maintain the 1997 annual PM<sub>2.5</sub> NAAQS without CSAPR or CAIR. See appendix B to the Air Quality Modeling Final Rule Technical Support Document for CSAPR. The modeling analysis was a rigorous analysis using CAMx, a photochemical grid model which models PM<sub>2.5</sub> concentrations arising both from direct PM<sub>2.5</sub> emissions, as well as from formation from precursors (NO<sub>x</sub> and SO<sub>2</sub>) on a regional scale level. Extensive quality assurance and control measures, such as model calibration and sensitivity were taken into account. An in-depth discussion of the modeling is found in

the docket. The analysis projected concentrations at current monitor locations for the Huntington-Ashland area using emissions inventories without CAIR and CSAPR for 2012 and 2014. Modeled results projected maximum concentrations of PM<sub>2.5</sub> at 13.92 µg/m<sup>3</sup> (Lawrence County), and 13.26 µg/m<sup>3</sup> (Scioto County) for 2012. Those sites have current design values 2–3 µg/m<sup>3</sup> lower than the conservative modeled results. For the year 2014, EPA modeled maximum concentrations at these two sites as 13.32 and 12.71 µg/m<sup>3</sup>, respectively, without CAIR or CSAPR emission reductions.

Further, Ohio’s maintenance plan provides for verification of continued attainment by performing future reviews of triennial emissions inventories. It also includes contingency measures to ensure that the NAAQS is maintained into the future if monitored increases in ambient PM<sub>2.5</sub> concentrations occur (76 FR 79593, December 22, 2012). For these reasons, EPA finds that Ohio has submitted a maintenance plan that meets the requirements of 107(d)(3)(E)(iv) and 175A.

*Comment 5:* The Commenter argues that due to certain start-up, shutdown and malfunction (SSM) provisions contained in the Ohio SIP, emission reductions in Ohio cannot be due to “permanent and enforceable reductions in emissions resulting from implementation of applicable implementation plan and Federal air pollutant control regulations and other permanent and enforceable reductions;” and the state cannot have met “all requirements applicable to the area under section 7410 of this title and part D of this subchapter,” citing 42 U.S.C. 7407(d)(3)(E). The Commenter points out that excess emissions from sources during SSM events may be subject to automatic or discretionary ‘exemption’ under the Ohio SIP as currently constituted. The Commenter urges that Ohio’s SSM regulations should be revised to “clearly comply” with the CAA and with EPA guidance (providing citations) such that all excess emissions are violations of the CAA, and to preserve the authority of EPA and citizens to enforce the SIP standards and limitations. The Commenter argues that these existing provisions in the Ohio SIP preclude redesignation of this area to attainment for the 1997 PM<sub>2.5</sub> standards.

*Response 5:* EPA does not agree that the SSM provisions in the Ohio SIP provide a basis for disapproving the redesignation request for this area at this time. The provisions that the Commenter objects to are approved provisions of the Ohio SIP. As such, the

<sup>18</sup> See examples in recent redesignations, e.g. Lake and Porter County portion of Chicago 1997 8-hour ozone nonattainment area 75 FR 12090 May 11, 2010, and Lake and Porter County portion of Chicago 1997 PM<sub>2.5</sub> annual standard 76 FR 59600, September 27, 2011.

emission limits that contain the SSM provisions objected to by the Commenter are “permanent and enforceable” SIP provisions. The Commenter expresses concerns about certain exemptions for excess emissions within those existing provisions, but that does not affect whether the provisions are permanent and enforceable for purposes of redesignations. Similarly, the Commenter expresses concern that these existing provisions are not consistent with other requirements of the CAA, but as of this time those provisions are part of the approved Ohio SIP. EPA is in the process of addressing SSM provisions in the Ohio SIP through an on-going nationwide process, and in the event that EPA determines the provisions to be problematic, EPA can address them in that more appropriate context.

The CAA sets forth the general criteria for redesignation of an area from nonattainment to attainment in section 107(d)(3)(E). These criteria include that the Administrator has fully approved the implementation plan for area for applicable requirements, 42 U.S.C. 7407(d)(3)(E)(ii) and (v). EPA must also determine that the improvement in air quality is due to reductions that are “permanent and enforceable” (iii), and that the area has an approved maintenance plan under section 175A. EPA has fully addressed all these criteria in its proposed and final rulemakings on the redesignation of the Ohio portion of the Huntington-Ashland Area. The SSM-related SIP provisions identified in the Commenter’s letter are already approved, portions of the Ohio SIP, and EPA is not required to re-evaluate or revise them as part of this redesignation. EPA’s review here is limited to whether the already approved SSM provisions impact any redesignation requirement in section 107(d)(3)(E), so as to preclude EPA from approving the redesignation request. There is no basis for EPA to conclude that these provisions have such effect. First, it has long been established that in approving a redesignation request EPA may rely on prior SIP approvals plus any additional measures it may approve in conjunction with a redesignation action. See John Calcagni Memorandum (September 4, 1992 at 3); *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001); 68 FR 25413, 25426 (May 12, 2003).

While the Commenter takes the position that specific SSM provisions in the Ohio rules result in a “regulatory structure that is inconsistent with the fundamental requirement that all excess

emissions be considered violations,” the Commenter does not link this concern with any specific deficiencies in Ohio’s redesignation submittal for the Huntington-Ashland Area.<sup>19</sup>

The Commenter expressed concerns that some specific existing SIP provisions contain exemptions for excess emissions such that the emission limits are not “permanent and enforceable” for purposes of section 107(d)(3)(E)(iii). EPA disagrees with this conclusion because the provisions are contained within the existing approved SIP and thus, in the context of 107(d)(3), are both “permanent and enforceable”. The Commenter may take issue with some features of those provisions, which contain automatic and discretionary exemptions for excess emissions, but these provisions, in the form in which they exist, are currently approved in the SIP and thus considered “permanent and enforceable”.

EPA is in the process of evaluating SSM provisions in a separate context. While EPA understands that the Commenter wishes to raise concerns that about Ohio’s existing SIP provisions with SSM exemptions, in the context of a redesignation action, EPA is not required to re-evaluate the validity of previously approved SIP provisions. In the context of a redesignation action, that generally a state has met the requirements of section 107(d)(3)(E)(ii) and (v), because the provisions have been previously approved into the SIP by EPA. If these provisions are later or separately determined to be deficient, such as compliance with other relevant requirements of the CAA, then EPA will be able to evaluate those concerns in the appropriate context. EPA notes that, in another, separate proceeding, EPA is in the process of evaluating similar comments relating to other SSM provisions.

On June 30, 2011, Sierra Club filed a “Petition to Find Inadequate and Correct Several State Implementation Plans under section 110 of the Clean Air Act Due to Startup, Shutdown, Malfunction, and/or Maintenance Provisions”. As part of settlement of a lawsuit, EPA has agreed to take action in response to this petition. See *Sierra Club et al. v. Jackson*, No. 3:10-cv-04060-CRB (N.D. Cal). The comments

<sup>19</sup>The Commenter also cites the EPA action on a Utah SIP at 75 FR 70888, 70892 (Nov. 19, 2010) as a redesignation that was disapproved due to SSM provisions. However, this action was not a redesignation disapproval. That rulemaking was in fact a “Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision”, otherwise known as a “SIP Call,” and not a redesignation.

regarding Ohio SSM provisions submitted in this redesignation action raise similar concerns to those identified by the petitioner in the Ohio-specific portion of the above-referenced petition. EPA is currently reviewing these Ohio SSM provisions as part of EPA’s evaluation of the petition, and of other SSM provisions across the nation. Thus, EPA will be addressing those concerns in that separate action. EPA’s redesignation of the Ohio portion Huntington-Ashland area to attainment for 1997 annual PM<sub>2.5</sub> does not affect or preclude EPA from taking appropriate action on the from requiring the State of Ohio and other states to address excess emissions during SSM events correctly for purposes of CAA requirements in both nonattainment and attainment areas.

At this time, with regard to the redesignation of the Ohio portion of the Huntington-Ashland area, Ohio has a fully approved SIP. The provisions to which the Commenter objects are permanent and enforceable, as those terms are meant in section 107(d)(3). In addition, the area has attained the annual PM<sub>2.5</sub> standard since 2009, and has demonstrated that it can maintain the standard for at least ten years. EPA notes, moreover, that it is approving contingency measures under section 175A(d), as part of the area’s maintenance plan. These measures provide assurance that the area can promptly correct a violation that might occur after redesignation. Finally, if, in the future, EPA concludes the provisions identified by the Commenter are problematic, EPA will be able to address that concern in a separate action.

*Comment 6a:* The Commenter contends that the Ohio SIP lacks required SIP provisions, asserting that section 172(c) of the CAA requires SIPs to include a RFP plan, a PM<sub>2.5</sub> attainment demonstration, contingency measures, nonattainment New Source Review (NSR) rules, and RACM/RACT rules and that EPA has not approved these items into the Ohio SIP.

*Response 6a:* For a number of reasons, EPA disagrees with the Commenter’s contentions that approvals of the cited measures is required for purposes of redesignation. First, pursuant to 40 CFR 51.1004(c), EPA’s final determination that the Huntington-Ashland area has attained the PM<sub>2.5</sub> standard suspended Ohio’s obligation to submit attainment-related planning requirements that would otherwise apply, including an attainment demonstration, RFP, RACM/RACT, and contingency measures under section 172(c). The substance and legal basis of 40 CFR 51.1004(c), which

embodies EPA's interpretation under its "Clean Data Policy," has been upheld by the D.C. Circuit Court. *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009).<sup>20</sup>

Moreover, prior to the promulgation of 40 CFR 51.1004(c) the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992) addressed the role of attainment-related planning requirements in the specific context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard (General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992)).

In the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation.

The General Preamble explains that, in the context of a redesignation to attainment, when EPA determines that attainment has been reached, no additional measures are needed to provide for attainment. Thus section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the area continues to attain the standard until redesignation. The RFP requirement under section 172(c)(2) and contingency measures requirement under section 172(c)(9) are similarly not relevant for purposes of redesignation. The General Preamble stated:

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans \* \* \* provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. "General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum at 6 ("The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard."). With respect to nonattainment NSR requirements, see EPA's response to Comment 6c, below.

*Comment 6b:* The Commenter contends that the Ohio SIP lacks

approved contingency measures. The Commenter asserts that contingency measures must be in place so that, if an area monitor shows a violation of the NAAQS in the future, that violation of the NAAQS is quickly addressed, minimizing the number of people that will be harmed by air quality levels above the NAAQS.

*Response 6b:* As explained in the response to the previous comment (6a), the nonattainment area contingency measure requirements of section 172(c)(9) are directed at ensuring RFP and attainment by the applicable date. These nonattainment area requirements no longer apply after an area has attained the standard and after the area has been redesignated to attainment. Under section 175A of the CAA, a maintenance plan must contain contingency provisions, "as deemed necessary by the Administrator," and it is these contingency measures that apply to the area after redesignation to attainment. Ohio has included such provisions in its maintenance plan, which EPA is approving in this action.

Ohio has committed to remedy a future violation that may occur after redesignation, and has included measures to address potential violations from a range of sources, as well as a timeline for promptly completing adoption and implementation. The state has identified measures that are sufficiently specific but which allow for latitude in potential scope. EPA believes that the contingency measures set forth in the submittal, combined with the state's commitment to an expeditious timeline and process for implementation, provide assurance that the State will promptly correct a future potential violation. The contingency measures, as part of the maintenance plan, are codified into the state's SIP at the time the area is redesignated to attainment effective upon publication.

*Comment 6c:* The Commenter asserts that the Ohio SIP lacks a PM<sub>2.5</sub> nonattainment NSR program. The Commenter also contends that the prevention of significant deterioration (PSD) program that is part of the SIP that an area being redesignated needs to ensure that the area will stay in attainment. The Commenter takes the position that EPA cannot approve the redesignation request because Ohio does not have an adequate PM<sub>2.5</sub> PSD program. The Commenter bases his conclusion that Ohio's PSD program is inadequate for PM<sub>2.5</sub> on the contention that the programs do not contain significant emission rates for PM<sub>2.5</sub> and its precursors, and that the programs do not include PM<sub>2.5</sub> increments.

*Response 6c:* Ohio has an approved nonattainment NSR program in its SIP. EPA approved Ohio's current NSR program on January 10, 2003 (68 FR 1366). Nonetheless, for purposes of evaluating a request for redesignation to attainment, because PSD requirements will apply after redesignation, EPA's longstanding view is that the area need not have a fully-approved nonattainment NSR program, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." The memo states, "nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully-approved part D NSR program, provided the program is not relied upon for maintenance." In this case, Ohio has not relied upon NSR to maintain the standard.

Congress used the undefined term "measure" differently in various provisions of the CAA, which indicates that the term is susceptible to more than one interpretation and that EPA has the discretion to interpret it in a reasonable manner in the context of section 175A. See *Greenbaum v. United States EPA*, 370 F. 3d 527, 535-38 (6th Cir. 2004). (court "find[s] persuasive the EPA's argument that the very nature of the NSR permit program supports its interpretation that it is not intended to be a contingency measure pursuant to section 175A(d).") It is reasonable to interpret "measure" to exclude part D NSR in this context because PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR upon redesignation. PSD requires that new sources demonstrate that emissions from their construction and operation will not cause or contribute to a violation of any NAAQS or PSD increment. The state has demonstrated that the area will be able to maintain the standard without part D NSR in effect, and the state's PSD program will become effective in the area upon redesignation to attainment. See the rationale set forth at length in the Nichols Memorandum. For other explanations of why full approval and retention of NSR is not required in redesignation actions, see the following redesignation rulemakings: 60 FR 12459, 12467-12468 (March 7, 1995)(Redesignation of Detroit, MI); 61 FR 20458, 20469-20470 (May 7,

<sup>20</sup> See also *Sierra Club v. EPA*, 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004); and *Our Children's Earth Foundation v. EPA*, No. 04-73032 (9th Cir. June 28, 2005) (memorandum opinion).

1996)(Cleveland-Akron-Lorain, OH); 66 FR 53665, 53669 (October 23, 2001) (Louisville, KY); 61 FR 31831, 31836–31837 (June 21, 1996) (Grand Rapids, MI). Contrary to the Commenter's assertion, the *Greenbaum* court declined to reach the issue of whether full approval of a part D NSR program is required prior to redesignation. See *Greenbaum*, 370 F. 3d at 534–35.

Ohio also has an EPA approved PSD program that includes PM<sub>2.5</sub> as a NSR pollutant. While the Commenter is correct in stating that both Ohio approved PSD SIPs do not include specific significant emissions rates for PM<sub>2.5</sub> or its precursors, the Ohio SIP does include a provision that sets “any emission rate” as the significant emission rate for any regulated NSR pollutant that does not have a specific significant emission rate listed in the state rule.

Therefore, any increase in direct PM<sub>2.5</sub> emissions or emissions of its precursors (SO<sub>2</sub> and NO<sub>x</sub>) will trigger the requirements to obtain a PSD permit; to perform an air quality analysis that demonstrates that the proposed source or modification will not cause or contribute to a violation of the PM<sub>2.5</sub> NAAQS; and to apply best available control technology for direct PM<sub>2.5</sub> and/or the pertinent precursor.

In addition, the fact that Ohio's approved PSD SIPs lack PM<sub>2.5</sub> increments does not prevent the program from addressing and helping to assure maintenance of the PM<sub>2.5</sub> standard in accordance with CAA section 175A. A PSD increment is the maximum increase in concentration that is allowed to occur above a baseline concentration for a pollutant. Even in the absence of an approved PSD increment, the approved PSD program prohibits air quality from deteriorating beyond the concentration allowed by the applicable NAAQS. Thus Ohio's approved PSD program is adequate for purposes of assuring maintenance of the 1997 annual PM<sub>2.5</sub> standard as required by section 175A.

*Comment 6d:* The Commenter contends that the Ohio SIP does not have approved RACT rules.

*Response 6d:* This comment has been addressed above, in response 2b.

*Comment 6e:* The Commenter claims that 42 U.S.C. 7502(c)(7) requires that the nonattainment SIP meet all the requirements of 42 U.S.C. 7410(a)(2). EPA interprets this to mean only the Infrastructure elements that are linked to the nonattainment area. EPA's position contradicts the plain language of the statute. The Commenter also states that EPA says that it disapproved the Section 110(a)(2)(D)(i) portion of the

Ohio Infrastructure submittal but did not take action on the rest of the September 4, 2009, submittal. 76 FR 79595. However, EPA did not explain what is included in the September 4, 2009, submittal and did not provide the September 4, 2009, submittal in the docket.

*Response 6e:* For a number of reasons, the concerns expressed by the Commenter are unfounded. First, EPA has issued final approvals of Ohio's infrastructure SIP for 1997 ozone and PM standards for all portions of 110(a) 2 requirements (76 FR 23757, April 28, 2011). EPA also acted on Ohio's submittal of the 2006 PM infrastructure SIP (proposed 76 FR 6376, February 4, 2011, finalized 76 FR 43175, July 20, 2011) where EPA disapproved the state's use of CAIR to fulfill the requirements of 110(a)(2)(D). EPA notes that there was an editorial error in the **Federal Register** citation (but not the date of publication) of the 2006 infrastructure disapproval in the proposed redesignation; however, this has been fixed in the reference above, and a full submittal can be found in that docket. Even with this disapproval on February 4, 2011, the approval of the 1997 PM infrastructure elements on April 28, 2011, fulfills the “fully approved” SIP elements associated with redesignation, with exceptions unrelated to the requirements for redesignation.

The requirements applicable for purposes of redesignation are those which at a minimum are linked to the attainment status of the area being redesignated. As noted in the proposal (76 FR 23757, April 28, 2011), all areas, regardless of their designation as attainment or nonattainment, are subject to section 110(a)(2)(D). The applicability of this provision is not connected with nonattainment plan submissions or with the attainment status of an area. A nonattainment area remains subject to the requirements of section 110(a)(2)(D) after it has been redesignated to attainment. Therefore EPA has long interpreted the 110(a)(2)(D) requirements as a not applicable requirement for purposes of redesignation. EPA has leeway to determine what constitutes an “applicable” requirement under section 107(d)(3)(E), and EPA's interpretation is entitled to deference. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). EPA has consistently interpreted only those section 110 requirements that are linked with a particular area's designation as the requirements to be considered in evaluating a redesignation request. See, e.g., EPA's position on the applicability of conformity, oxygenated fuels

requirements for purposes of redesignations. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996, and 62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

*Comment 7:* The Commenter contends that Ohio must restore an ambient air monitor to Lawrence County, in order to meet the monitoring network requirements.

*Response 7:* EPA disagrees with the Commenter that the monitoring network must restore a monitor in Lawrence County. Currently, Ohio operates a monitor in Lawrence County, the Ironton Department of Transportation (DOT) site monitor, and the monitoring network for the area has met and continues to meet monitoring network requirements. The Ironton DOT site address for the monitor in Lawrence County was moved to a location within 1.5 miles of the former site location (Lawrence County Hospital). The Lawrence County Hospital site was demolished on February 12, 2008, and a new site in the Lawrence County, Ohio portion of the Huntington-Ashland area, known as the Ironton DOT site, began operation on the same day. To date the Ironton DOT site has collected a complete design value for the monitoring period 2009–2011, which shows that the area continues to attain the 1997 annual standard. A full discussion of this aspect of the monitoring history is contained in the proposed determination of attainment for the Huntington-Ashland area (76 FR 27290, May 11, 2011).

*Comment 8:* The Commenter asserts that the 2005 emissions inventory that EPA is proposing to approve as meeting the emission inventory requirement of section 172(c)(3) of the CAA is inadequate and EPA cannot approve this emissions inventory. The Commenter notes that the emissions inventory is 6 years old. In addition, the commentor contends that portions of the emissions inventory were estimated, as opposed to being actual emissions, and claims that EPA has included in the docket only a summary of the emissions inventory. The Commenter asserts that EPA must place in the docket a comprehensive emissions inventory, including information for each point

source, so as to allow the public to review the inventory and comment on it.

*Response 8:* Ohio developed a 2005 comprehensive inventory to meet the requirement of section 172(c)(3) of the CAA in accordance with EPA's November 18, 2002, policy memorandum from Lydia N. Wegman entitled "2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, PM<sub>2.5</sub> and Regional Haze Programs."

The Commenter observes that portions of the emissions inventory were estimated. This method is entirely consistent with accepted EPA procedures for emissions inventory development procedures. It is common practice, and consistent with EPA emissions inventory guidance, for states to estimate emissions for any given year using related activity factors or to project emissions based on information from prior years and associated activity growth factors. See "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations," dated August 2005. For mobile sources, it is standard and accepted practice for states to estimate emissions using an EPA-approved emissions model coupled with the output of a transportation model, which provides traffic levels by roadway and activity type. The Commenter provided no information or specific details that show that the 2005 inventory was inaccurate.

While we believe the 2005 inventory submitted by the state meets the inventory requirements section 172(c)(3) of the CAA, EPA notes that Ohio also submitted a comprehensive 2008 emissions inventory to serve as the attainment year inventory as part of the maintenance plan. EPA's longstanding view, as set forth in the September 4, 1992, Calcagni memorandum is that the "requirements for an emission inventory [under section 172(c)] will be satisfied by the inventory requirements of the maintenance plan." See Calcagni memorandum at 6.

When preparing the comprehensive 2008 emissions inventory, Ohio compiled point source information from the 2008 annual emissions reports submitted to Ohio EPA by sources and EPA's Clean Air Markets Division database for electric utilities. Area source emissions were calculated using the most recently available methodologies and emissions factors from EPA along with activity data (population, employment, fuel use, etc.) specific to 2008. Nonroad mobile source emissions were calculated using EPA's

NONROAD emissions model. In addition, emissions estimates were calculated for commercial marine vessels, aircraft, and railroads, three non-road categories not included in the NONROAD model. On-road mobile source emissions were calculated using EPA's MOVES emissions model with 2008 Vehicle Miles Traveled data provided by the Tri-state planning agency KYOVA.

Therefore, the state has satisfied the CAA inventory requirements by its submittal of two inventories that meet the applicable emissions inventory requirement.

The docket associated with the proposal contained Ohio's submittal including appendix B, which contains the state's method and analysis of sources for the 2005 inventory year. The Clean Air Fine Particle Implementation Rule (72 FR 20586) states that the 3-year emissions inventory that fulfills the SIP requirement under 172(c)(3) must provide documentation on the development of the SIP inventory (appendix B of the proposal docket). The rule also states that all source types must be reported, but does not specify the resolution of the data reporting as a source by source report. Ohio has interpreted the source type reporting requirement as reported by county, which they have provided in their submittal. EPA also believes that its summary provided in the notice of proposed rulemaking, along with appendix B description of development, provides an adequate basis for the public to identify pertinent issues and evaluate EPA's analysis and conclusions regarding satisfaction of section 172(c)(3). Much of the information in Ohio's inventory also was used in EPA's National Emissions Inventory, which can be examined in considerable detail at <http://www.epa.gov/ttn/chief/net/2008inventory.html>. EPA acknowledges that an in-depth inventory was unintentionally omitted from the electronic docket at [www.regulations.gov](http://www.regulations.gov). However, the document was available to the public in hard copy at the EPA Region 5 office, and had the Commenter contacted the Region, the inventory could have been provided. The facility-specific inventory has since been added to the electronic docket.

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

EPA has determined that the Huntington-Ashland area has continued to attain the 1997 annual PM<sub>2.5</sub> NAAQS. EPA has also determined that all other criteria have been met for the redesignation of the Ohio portion of the Huntington-Ashland area from

nonattainment to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS and for approval of Ohio's maintenance plan for the area. See CAA sections 107(d)(3)(E) and 175A. The detailed rationale for EPA's findings and actions is set forth in the proposed rulemaking of December 22, 2011 (76 FR 79593) and in this final rulemaking.

#### V. Final Action

EPA has previously made the determination that the Huntington-Ashland area has attained the 1997 annual PM<sub>2.5</sub> standard (76 FR 55541). EPA is determining that the area continues to attain the standard and that the Ohio portion of the area meets the requirements for redesignation to attainment of that standard under sections 107(d)(3)(E) and 175A of the CAA. Thus, EPA is granting the request from Ohio to change the legal designation of its portion of the Huntington-Ashland area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. EPA is also approving Ohio's 1997 annual PM<sub>2.5</sub> maintenance plan for the Huntington-Ashland area as a revision to the SIP because the plan meets the requirements of section 175A of the CAA. EPA is approving the 2005 and 2008 emissions inventories for primary PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub>, documented in Ohio's May 4, 2011, submittals as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, for transportation conformity purposes, EPA is approving Ohio's determination that on-road emissions of PM<sub>2.5</sub> and NO<sub>x</sub> are insignificant contributors to PM<sub>2.5</sub> concentrations in the area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule—grants or recognizes an exemption or relieves a restriction, and section 553(d)(3), which allows an effective date less than 30 days after publication—as otherwise provided by the agency for good cause found and published with the rule. The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before

the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the Ohio of various requirements for the Ohio portion of the Huntington-Ashland area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

## VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, these actions:

- Are not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2)).

## List of Subjects

### 40 CFR Part 52

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

### 40 CFR Part 81

Environmental protection, Air pollution control, National parks.

Dated: December 18, 2012.

**Susan Hedman,**

*Regional Administrator, Region 5.*

40 CFR parts 52 and 81 are amended as follows:

## PART 52—[AMENDED]

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

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

- 2. Section 52.1880 is amended by adding paragraphs (p)(2) and (q)(2) to read as follows:

### § 52.1880 Control strategy: Particulate matter.

\* \* \* \* \*

(p) \* \* \*

(2) The Ohio portion of the Huntington-Ashland nonattainment area (Lawrence and Scioto Counties and portions of Adams and Gallia Counties). The maintenance plan establishes a determination of insignificance for both NO<sub>x</sub> and primary PM<sub>2.5</sub> for conformity purposes.

(q) \* \* \*

(2) Ohio's 2005 and 2008 NO<sub>x</sub>, directly emitted PM<sub>2.5</sub>, and SO<sub>2</sub> emissions inventory satisfies the emission inventory requirements of section 172(c)(3) for the Huntington-Ashland area.

\* \* \* \* \*

## PART 81—[AMENDED]

- 3. The authority citation for part 81 continues to read as follows:

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

- 4. Section 81.336 is amended by removing the entry for Huntington-Ashland, WV-KY-OH and adding in its place an entry for Huntington-Ashland, OH in the table entitled "Ohio PM<sub>2.5</sub> (Annual NAAQS)" to read as follows:

### § 81.336 Ohio.

\* \* \* \* \*

OHIO PM<sub>2.5</sub> (ANNUAL NAAQS)

Designated area	Designation <sup>a</sup>	
	Date <sup>1</sup>	Type
* * * * * Huntington-Ashland, OH. Adams County (part). Monroe Township. Sprigg Township. Gallia County (part). Addison Township. Cheshire Township. Lawrence County. Scioto County .....	12/31/12	Attainment.
* * * * *	*	*

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

\* \* \* \* \*  
 [FR Doc. 2012-31276 Filed 12-28-12; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9 and 721**

[EPA-HQ-OPPT-2011-0941; FRL-9369-8]

RIN 2070-AB27

**Significant New Use Rule on Certain Chemical Substances; Removal of Significant New Use Rules**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is removing significant new use rules (SNURs) promulgated under the Toxic Substances Control Act (TSCA) for four chemical substances which were the subject of premanufacture notices (PMNs). EPA published these SNURs using direct final rulemaking procedures. EPA received notice of intent to submit adverse comments on these rules. Therefore, the Agency is removing these SNURs, as required under the expedited SNUR rulemaking process. EPA intends to publish in the near future proposed SNURs for these four chemical substances under separate notice and comment procedures.

**DATES:** This final rule is effective December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone

number: (202) 564-9232; email address: *Moss.Kenneth@epa.gov*.  
 For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave. Rochester, NY 14620; telephone number: (202) 554-1404; email address: *TSCA-Hotline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Does this action apply to me?**

A list of potentially affected entities is provided in the **Federal Register** of September 21, 2012 (77 FR 58666) (FRL-9357-2). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

**II. What rules are being removed?**

In the **Federal Register** of September 21, 2012 (77 FR 58666), EPA issued several direct final SNURs, including SNURs for the chemical substances that are the subject of this removal. These direct final rules were issued pursuant to the procedures in 40 CFR part 721, subpart D. In accordance with § 721.160(c)(3)(ii), EPA is removing these rules issued for four chemical substances which were the subject of PMNs P-07-204, P-10-58, P-10-59, and P-10-60, because the Agency received notice of intent to submit adverse comments without sufficient time to respond prior to the effective date of the rules. EPA intends to publish proposed SNURs for these chemical substances under separate notice and comment procedures.

For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D, and the **Federal Register** of July 27, 1989 (54 FR 31314). The record for the direct final

SNURs for the chemical substances that are being removed was established at EPA-HQ-OPPT-2011-0941. That record includes information considered by the Agency in developing this rule and the notice of intent to submit adverse comments.

**III. How do I access the docket?**

To access the electronic docket, please go to <http://www.regulations.gov> and follow the online instructions to access docket ID number EPA-HQ-OPPT-2011-0941. Additional information about the Docket Facility is provided under **ADDRESSES** in the **Federal Register** of September 21, 2012 (77 FR 58666). If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

**IV. Statutory and Executive Order Reviews**

This final rule removes existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this removal will not have any adverse impacts, economic or otherwise. The statutory and executive order review requirements applicable to the direct final rule were discussed in the **Federal Register** of September 21, 2012 (77 FR 58666). Those review requirements do not apply to this action because it is a removal and does not contain any new or amended requirements.

**V. Congressional Review Act (CRA)**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General