



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R06-OAR-2015-0852; FRL-9942-13-Region 6]

Air Plan Approval and Designation of Areas; AR; Redesignation of the Crittenden County, 2008 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On December 10, 2015, the State of Arkansas, through the Arkansas Department of Environmental Quality (ADEQ), submitted a request for the Environmental Protection Agency (EPA) to redesignate the portion of Arkansas that is within the Memphis, Tennessee-Mississippi-Arkansas (Memphis, TN-MS-AR) 2008 8-hour ozone nonattainment area (hereafter referred to as the “Memphis, TN-MS-AR Area” or “Area”) and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Area. EPA is proposing to determine that the Memphis, TN-MS-AR Area is continuing to attain the 2008 8-hour ozone national ambient air quality standards (NAAQS); to approve the State’s plan for maintaining attainment of the 2008 8-hour ozone standard in the Area, including the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_x) and volatile organic compounds (VOC) for the years 2012 and 2027 for the Arkansas portion of the Area, into the SIP; and to redesignate the Arkansas portion of the Area to attainment for the 2008 8-hour ozone NAAQS. EPA is also notifying the public of the status of EPA’s adequacy determination for the MVEBs for the Arkansas portion of the Memphis, TN-MS-AR Area.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2015-0852, at <http://www.regulations.gov> or via email to riley.jeffrey@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Jeffrey Riley, (214) 665-8542, riley.jeffrey@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley, (214) 665-8542,

riley.jeffrey@epa.gov. To inspect the hard copy materials, please schedule an appointment with Mr. Riley or Mr. Bill Deese at 214-665-7253.

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- I. What are the Actions EPA is Proposing to Take?**

EPA is proposing to take the following three separate but related actions, one of which involves multiple elements: (1) to determine that the Memphis, TN-MS-AR Area is continuing to attain the 2008 8-hour ozone NAAQS;¹ (2) to approve Arkansas’ plan for maintaining the

¹ On August 27, 2015, EPA published a proposed rulemaking entitled “Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as Marginal for the 2008 Ozone National Ambient Air Quality Standards” where the Agency proposed to determine that the Memphis, TN-MS-AR area had attained the 2008 8-hour ozone NAAQS, by the applicable attainment date of July

2008 8-hour ozone NAAQS (maintenance plan), including the associated MVEBs for the Arkansas portion of the Memphis, TN-MS-AR Area, into the SIP; and (3) to redesignate the Arkansas portion of the Memphis, TN-MS-AR Area to attainment for the 2008 8-hour ozone NAAQS. EPA is also notifying the public of the status of EPA's adequacy determination for the MVEBs for the Arkansas portion of the Memphis, TN-MS-AR Area. The Memphis, TN-MS-AR Area consists of a portion of DeSoto County in Mississippi, all of Shelby County in Tennessee and all of Crittenden County in Arkansas. Today's proposed actions are summarized below and described in greater detail throughout this notice of proposed rulemaking.

EPA is proposing to make the determination that the Memphis, TN-MS-AR Area is continuing to attain the 2008 8-hour ozone NAAQS based on recent air quality data and proposing to approve Arkansas' maintenance plan for its portion of the Memphis, TN-MS-AR Area as meeting the requirements of section 175A (such approval being one of the Clean Air Act (CAA or Act) criteria for redesignation to attainment status). The maintenance plan is designed to keep the Memphis, TN-MS-AR Area in attainment of the 2008 8-hour ozone NAAQS through 2027. The maintenance plan includes 2012 and 2027 MVEBs for NO_x and VOC for the Arkansas portion of the Memphis, TN-MS-AR Area for transportation conformity purposes. EPA is proposing to approve these MVEBs and incorporate them into the Arkansas SIP.

EPA also proposes to determine that the Arkansas portion of the Memphis, TN-MS-AR Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Accordingly, in this action, EPA is proposing to approve a request to change the legal designation of Crittenden County within the Arkansas portion of the Memphis, TN-MS-AR

20, 2015, based on 2012-2014 monitoring data. See 80 FR 51992. EPA is contemplating the final action for this proposed rule under a separate rulemaking from today's rulemaking.

Area, as found at 40 CFR part 81, from nonattainment to attainment for the 2008 8-hour ozone NAAQS.

EPA is also notifying the public of the status of EPA's adequacy process for the 2012 and 2027 NO_x and VOC MVEBs for the Arkansas portion of the Memphis, TN-MS-AR Area. The Adequacy comment period began on December 16, 2015, with EPA's posting of the availability of Arkansas' submissions on EPA's Adequacy website (<http://www3.epa.gov/otaq/stateresources/transconf/currships.htm>). The Adequacy comment period for these MVEBs closed on January 11, 2016. No comments, adverse, or otherwise, were received during the Adequacy comment period. Please see section VII of this proposed rulemaking for further explanation of this process and for more details on the MVEBs.

In summary, today's notice of proposed rulemaking is in response to Arkansas' December 10, 2015, redesignation request and associated SIP submission that address the specific issues summarized above and the necessary elements described in section 107(d)(3)(E) of the CAA for redesignation of the Arkansas portion of the Memphis, TN-MS-AR Area to attainment for the 2008 8-hour ozone NAAQS.

II. What is the Background for EPA's Proposed Actions?

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness

requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of complete, quality assured, and certified ambient air quality data at the conclusion of the designation process. The Memphis, TN-MS-AR Area was designated nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008-2010 ambient air quality data. *See* 77 FR 30088 (May 21, 2012). At the time of designation, the Memphis, TN-MS-AR Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. In the final implementation rule for the 2008 8-hour ozone NAAQS (SIP Implementation Rule),² EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA. This rule established an attainment date three years after the July 20, 2012, effective date of designation for areas classified as marginal for the 2008 8-hour ozone nonattainment designations.³ Therefore, the Memphis, TN-MS-AR Area's attainment date was July 20, 2015.

² This rule, entitled Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements and published at 80 FR 12264 (March 6, 2015), addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology (RACT), reasonably available control measures (RACM), major new source review (NSR), emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. This rule also addresses the revocation of the 1997 ozone NAAQS and the anti-backsliding requirements that apply when the 1997 ozone NAAQS are revoked.

³ The SIP Implementation Rule modified 40 CFR 51.1103 to establish attainment dates that run from the effective date of designation, *i.e.*, July 20, 2012. This action was in response to the D.C. Circuit's decision in *NRDC v. EPA* (D.C. Cir. No. 12-1321) (Dec. 23, 2014). The Court's decision held "that the EPA's decision to run the attainment periods from the end of the calendar year in which areas were designated was unreasonable." 80 FR 12264, at 12268.

III. What are the Criteria for Redesignation?

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

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

1. “Ozone and Carbon Monoxide Design Value Calculations,” Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. “Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

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

9. “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why is EPA Proposing These Actions?

On December 10, 2015, the State of Arkansas, through ADEQ, requested that EPA redesignate the Arkansas portion of the Memphis, TN-MS-AR Area to attainment for the 2008 8-hour ozone NAAQS. EPA’s evaluation indicates that the entire Memphis, TN-MS-AR Area has attained the 2008 8-hour ozone NAAQS, and that the Arkansas portion of the Memphis, TN-MS-AR Area meets the requirements for redesignation as set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. As a result, EPA is proposing to take the three related actions summarized in section I of this notice.

V. What is EPA’s Analysis of the Request?

Our analysis of the State’s request with respect to the five redesignation criteria provided under CAA section 107(d)(3)(E) is discussed in the following paragraphs of this section.

Criteria (1) - *The Memphis, TN-MS-AR Area has attained the 2008 8-hour ozone NAAQS.*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). For ozone, an area may be considered to be attaining the 2008 8-hour ozone NAAQS if it meets the

2008 8-hour ozone NAAQS, as determined in accordance with 40 CFR 50.15 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the NAAQS, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.075 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, Appendix I, the NAAQS are attained if the design value is 0.075 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA is proposing to determine that the Memphis, TN-MS-AR Area is continuing to attain the 2008 8-hour ozone NAAQS. EPA reviewed ozone monitoring data from monitoring stations in the Memphis, TN-MS-AR Area for the 2008 8-hour ozone NAAQS for 2012-2014, and the design values for each monitor in the Area are less than 0.075 ppm. These data have been quality-assured, are recorded in Aerometric Information Retrieval System (AIRS-AQS), and indicate that the Area is attaining the 2008 8-hour ozone NAAQS. The fourth-highest 8-hour ozone values at each monitor for 2012, 2013, 2014, and the 3-year averages of these values (i.e., design values), are summarized in Table 1, below.

Table 1. 2012 – 2014 Design Value Concentrations for the Memphis, TN-MS-AR Area

Location	Site	4th Highest 8-hour Ozone Value (ppm)			3-Year Design Values (ppm)
		2012	2013	2014	2012-2014
DeSoto, MS	Hernando	0.075	0.065	0.067	0.069

Shelby, TN	Frayser	0.083	0.069	0.067	0.073
Shelby, TN	Orgill Park	0.084	0.063	0.065	0.070
Shelby, TN	Shelby Farms	0.086	0.069	0.066	0.073
Crittenden, AR	Marion	0.079	0.067	0.067	0.071

The 3-year design value for 2012-2014 for the Memphis, TN-MS-AR Area is 0.073 ppm,⁴ which meets the NAAQS. EPA has reviewed 2015 preliminary monitoring data for the Area.⁵ This preliminary data is not yet certified to meet the QA requirements but continues to indicate the area is meeting the NAAQS. In today's action, EPA is proposing to determine that Memphis, TN-MS-AR Area is attaining the 2008 8-hour ozone NAAQS. EPA will not take final action to approve the redesignation if the 3-year design value exceeds the NAAQS prior to EPA finalizing the redesignation. As discussed in more detail below, the State of Arkansas has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

Criteria (2) – Arkansas has a fully approved SIP under section 110(k) for the Arkansas Portion of the Memphis, TN-MS-AR Area; and Criteria (5) – Arkansas has met all applicable requirements under section 110 and part D of title I of the CAA.

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Arkansas has met all applicable SIP requirements for the Arkansas portion of the Area under section 110

⁴ The monitor with the highest 3-year design value is considered the design value for the Area.

⁵ 2012-2014 data and preliminary 2015 data is available at EPA's air data website:
http://aqhdr1.epa.gov/aqsweb/aqstmp/airdata/download_files.html#Daily.

of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the Arkansas SIP satisfies the criterion that it meets applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. *The Arkansas portion of the Memphis, TN-MS-AR Area has met all applicable requirements under section 110 and part D of the CAA.*

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

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this

provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation. *See* 75 FR 2091, at 2095-2096.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174-53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

Title I, Part D, applicable SIP requirements. Section 172(c) of the CAA sets forth the basic requirements of attainment plans for nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the area's nonattainment classification. As provided in Subpart 2, the specific requirements of section 182(a) apply in lieu of the demonstration of attainment (and contingency measures) required by section 172(c). 42 U.S.C. 7511a(a). A thorough discussion of the requirements contained in sections 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

Section 182(a) Requirements. Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_x emitted within the boundaries of the ozone nonattainment area. Arkansas provided an emissions inventory for the Memphis, TN-MS-AR Area to EPA in an August 28, 2015 SIP submission. On January 14, 2016, EPA published a direct final rule to approve this emissions inventory into the SIP. *See* 81 FR 1884.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC RACT rules that were required under section 172(b)(3) of the CAA (and related guidance) prior to the 1990 CAA amendments. The Arkansas portion of the Memphis, TN-MS-AR Area is not subject to the section 182(a)(2) RACT "fix up" because it was designated as unclassifiable/attainment at that time.

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented, or was required to implement, an inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision providing for an I/M program no less stringent than that required prior to the 1990 amendments or already in the SIP at the time of the amendments, whichever is more stringent. The Arkansas portion of the Memphis, TN-MS-AR Area is not subject to the section 182(a)(2)(B) because it was designated as unclassifiable/attainment prior to 1990 and was not required to have an I/M program.

Regarding the permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), Arkansas does have an approved part D NSR program in place (72 FR 18394, April 12, 2007). However, EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR, because PSD requirements will apply after redesignation. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Arkansas' PSD program will automatically become applicable in the Memphis, TN-MS-AR Area upon redesignation to attainment. Arkansas Regulation 31, Chapter 1, section 31.102

Section 182(a)(3) requires states to submit periodic inventories and emissions statements. Section 182(a)(3)(A) requires states to submit a periodic inventory every three years. As discussed below in the section of this notice titled Criteria (4)(e), *Verification of Continued Attainment*, the State will continue to update its emissions inventory at least once every three

years. Under section 182(a)(3)(B), each state with an ozone nonattainment area must submit a SIP revision requiring emissions statements to be submitted to the state by sources within that nonattainment area. Arkansas provided a SIP revision to EPA on November 19, 2007, addressing the section 182(a)(3)(B) emissions statements requirement, and on January 15, 2009, EPA published a final rule to approve this SIP revision. *See* 74 FR 2383.

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

EPA interprets the conformity SIP requirements⁶ as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Crittenden County does not currently have fully approved conformity rules, but as mentioned, the Federal conformity

⁶ CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the MVEBs that are established in control strategy SIPs and maintenance plans.

rules apply, and a Memorandum of Agreement outlining interagency consultation procedures is in place for transportation conformity purposes.

EPA proposes that the Arkansas portion of the Memphis, TN-MS-AR Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

b. The Arkansas portion of the Memphis, TN-MS-AR Area has a fully approved applicable SIP under section 110(k) of the CAA.

EPA has fully approved the applicable Arkansas SIP for the Memphis, TN-MS-AR Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989-90 (6th Cir. 1998); *Wall*, 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein). Arkansas has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various SIP elements applicable for the ozone NAAQS. See *e.g.* 77 FR 50033 (August 20, 2012).

As indicated above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation. EPA has approved all part D requirements applicable for purposes of this redesignation.

Criteria (3) - The air quality improvement in the Memphis, TN-MS-AR Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP

and applicable Federal air pollution control regulations and other permanent and enforceable reductions.

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA has preliminarily determined that Arkansas has demonstrated that the observed air quality improvement in the Memphis, TN-MS-AR Area is due to permanent and enforceable reductions in emissions resulting from Federal measures and from state measures adopted into the SIP. EPA does not have any information to suggest that the decrease in ozone concentrations in the Memphis, TN-MS-AR Area is due to unusually favorable meteorological conditions.

Federal measures enacted in recent years have resulted in permanent emission reductions. Most of these emission reductions are enforceable through regulations. The Federal measures that have been implemented include the following:

Tier 2 vehicle and fuel standards. Implementation began in 2004 and requires all passenger vehicles in any manufacturer's fleet to meet an average standard of 0.07 grams of NO_x per mile. Additionally, in January 2006 the sulfur content of gasoline was required to be on average 30 ppm which assists in lowering the NO_x emissions. Most gasoline sold in Eastern Arkansas prior to January 2006 had a sulfur content of about 300 ppm (65 FR 6698, February 10, 2000).⁷

⁷ Arkansas also identified Tier 3 Motor Vehicle Emissions and Fuel Standards as a federal measure. EPA issued this rule in April 28, 2014, which applies to light duty passenger cars and trucks. EPA promulgated this rule to reduce

Large non-road diesel engines rule. This rule was promulgated in 2004, and was phased in between 2008 through 2014 (69 FR 38958, June 29, 2004). This rule reduces the sulfur content in the nonroad diesel fuel, and also reduces NO_x, VOC, particulate matter, and carbon monoxide emissions. These emission reductions are federally enforceable. This rule applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO_x emissions from non-road diesel engines by up to 90 percent nationwide.

Heavy-duty gasoline and diesel highway vehicle standards. EPA issued this rule in January 2001 (66 FR 5002). This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007, which further reduced the highway diesel fuel sulfur content to 15 ppm, leading to additional reductions in combustion NO_x and VOC emissions. EPA expects that this rule will achieve a 95 percent reduction in NO_x emissions from diesel trucks and buses and will reduce NO_x emissions by 2.6 million tons by 2030 when the heavy-duty vehicle fleet is completely replaced with newer heavy-duty vehicles that comply with these emission standards.⁸

Nonroad spark-ignition engines and recreational engines standards. The nonroad spark-ignition and recreational engine standards, effective in January 2003, regulate NO_x, hydrocarbons, and carbon monoxide from groups of previously unregulated nonroad engines (67 FR 68242, November 8, 2002). These engine standards apply to large spark-ignition engines (e.g., forklifts and airport ground service equipment), recreational vehicles (e.g., off-highway

air pollution from new passenger cars and trucks beginning in 2017. Tier 3 emission standards will lower sulfur content of gasoline and lower the emissions standards.

⁸ 66 FR 5002, 5012 (January 18, 2001).

motorcycles and all-terrain-vehicles), and recreational marine diesel engines sold in the United States and imported after the effective date of these standards. When all of the nonroad spark-ignition and recreational engine standards are fully implemented, an overall 72 percent reduction in hydrocarbons, 80 percent reduction in NO_x, and 56 percent reduction in carbon monoxide emissions are expected by 2020. These controls reduce ambient concentrations of ozone, carbon monoxide, and fine particulate matter.

National Program for greenhouse gas (GHG) emissions and Fuel Economy Standards.

The federal GHG and fuel economy standards apply to light-duty cars and trucks in model years 2012-2016 (phase 1) (75 FR 25324, May 7, 2010) and 2017-2025 (phase 2) (proposed at 80 FR 40138, July 13, 2015). The final standards are projected to result in an average industry fleet-wide level of 163 grams/mile of carbon dioxide which is equivalent to 54.5 miles per gallon if achieved exclusively through fuel economy improvements. The fuel economy standards result in less fuel being consumed, and therefore less NO_x emissions released.

Point Sources. Emissions reductions from industries in Crittenden County contribute to the area's improvement in air quality. Stationary point source emissions data is collected annually from sources that meet reporting requirements outlined in 40 CFR Part 51, Subpart A - Air Emissions Reporting Requirement. These point sources include, but are not limited to, refineries, chemical plants, bulk terminals, and utilities.

In 2010, Trojan Luggage Company/Americo was reclassified from a major source for Title V to a minor source and currently operates under Minor NSR Permit No. 1523-AR-2. With this action, allowable VOC emissions decreased by 0.1 tons per year (tpy) due to the modification of inks used at the printer. In addition, two facilities previously permitted to emit

VOCs shut down and had their Title V and NSR permits voided, currently have no active air permit, and have been removed from the State's emissions inventory: Crittenden County Landfill, previously permitted to emit 55.2 tpy of VOC, had its Title V air permit voided in 2009. Automated Conveyor Systems, previously permitted to emit 84.0 tpy of VOC, had its Title V air permit voided in 2010.

Criteria (4) - The Arkansas portion of the Memphis, TN-MS-AR Area has a fully approved maintenance plan pursuant to section 175A of the CAA.

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Arkansas portion of the Memphis, TN-MS-AR Area to attainment for the 2008 8-hour ozone NAAQS, ADEQ submitted a SIP revision to provide for the maintenance of the 2008 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA believes that this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS

violations, the maintenance plan must contain contingency measures as necessary to assure prompt correction of any future 2008 8-hour ozone violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA is proposing to determine that Arkansas' maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Arkansas SIP.

b. Attainment Emissions Inventory

EPA is proposing to determine that the Memphis, TN-MS-AR Area has attained the 2008 8-hour ozone NAAQS based on quality-assured monitoring data for the 3-year period from 2012-2014, and is continuing to attain the standard based on preliminary 2015 data. Arkansas selected 2012 as the base year (i.e., attainment emissions inventory year) for developing a comprehensive emissions inventory for NO_x and VOC, for which projected emissions could be developed for 2017, 2020 and 2027. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2008 8-hour ozone NAAQS. Arkansas began development of the attainment inventory by first generating a baseline emissions inventory for the State's portion of the Memphis, TN-MS-AR Area. The projected summer day emission inventories have been estimated using projected rates of growth in population, traffic, economic activity, and other parameters. In addition to comparing the final year of the plan (2027) to the base year (2012), Arkansas compared interim years to the baseline to demonstrate that these years are also expected to show continued maintenance of the 2008 8-hour ozone standard.

The emissions inventory is composed of four major types of sources: point, area, on-road mobile, and non-road mobile. The complete descriptions of how the inventories were developed are discussed in the Appendix A through Appendix C of the December 10, 2015, submittal, which can be found in the docket for this action. The 2012 NO_x and VOC emissions for the Arkansas portion of the Memphis, TN-MS-AR Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Tables 2 through 4 of the following subsection discussing the maintenance demonstration.

c. Maintenance Demonstration

The maintenance plan associated with the redesignation request includes a maintenance demonstration that:

- (i) Shows compliance with and maintenance of the 2008 8-hour ozone NAAQS by providing information to support the demonstration that current and future emissions of NO_x and VOC remain at or below 2012 emissions levels.
- (ii) Uses 2012 as the attainment year and includes future emissions inventory projections for 2017, 2020 and 2027.
- (iii) Identifies an “out year” at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, NO_x and VOC MVEBs were established for the last year (2027) of the maintenance plan (see section VII below).
- (iv) Provides actual (2012) and projected emissions inventories, in tons per summer day (tpsd), for the Arkansas portion of the Memphis, TN-MS-AR Area, as shown in Tables 2 and 3, below.

Table 2. Actual and Projected Average Summer Day NO_x Emissions (tpsd) for the Arkansas Portion of the Memphis, TN-MS-AR Area

Sector	2012	2017	2020	2027
Point	3.65	3.08	2.87	2.26
Area	3.22	2.85	2.65	2.10
Non-road	1.97	1.48	1.28	0.73
On-road	13.04	9.48	7.68	5.18
Total	21.88	16.89	14.48	10.27

Table 3. Actual and Projected Average Summer Day VOC Emissions (tpsd) for the Arkansas Portion of the Memphis, TN-MS-AR Area

Sector	2012	2017	2020	2027
Point	0.78	0.73	0.68	0.53
Area	7.90	7.57	7.46	7.15
Non-road	3.26	2.27	2.03	1.36
On-road	2.35	1.55	1.39	0.98
Total	14.29	12.12	11.56	10.01

Tables 2 and 3 summarize the 2012 and future projected emissions of NO_x and VOC from the Arkansas portion of the Memphis, TN-MS-AR Area, as reflected in Section 4.1, Table 4 of the State's submittal. In situations where local emissions are the primary contributor to nonattainment, such as the Memphis, TN-MS-AR Area if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the ambient air quality standard should not be exceeded in the future. Arkansas has projected emissions as described previously and determined that emissions in the Arkansas portion of the Memphis, TN-MS-AR Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

As discussed in section VI of this proposed rulemaking, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Arkansas selected 2012 as the attainment emissions inventory year for the Arkansas portion of the Memphis, TN-MS-AR Area. The State has allocated a portion of the 2027 safety margin to its 2027 MVEBs for the Memphis, TN-MS-AR Area.

**Table 4. Total Safety Margins for the Arkansas Portion of the
Memphis, TN-MS-AR Area
Tons per day (tpd)**

Year	VOC	NO_x
2027	4.28	11.61

The State has decided to allocate a portion of the available safety margin to the 2027 MVEBs to allow for unanticipated growth in VMT, changes and uncertainty in vehicle mix assumptions, etc., that will influence the emission estimations. ADEQ has allocated 6.29 tpd of the safety margin to the 2027 NO_x MVEB and 1.10 tpd of the safety margin to the 2027 VOC MVEB. After allocation of the available safety margin, the remaining safety margin was calculated as 5.32 tpd for NO_x and 3.18 tpd for VOC. This allocation and the resulting available safety margin for the Arkansas portion of the Memphis, TN-MS-AR Area are discussed further in section VI of this proposed rulemaking along with the MVEBs to be used for transportation conformity proposes.

d. Monitoring Network

There currently are 5 monitors measuring ozone in the Memphis, TN-MS-AR Area, one of which is in the Arkansas portion of the Memphis, TN-MS-AR Area. The State of Arkansas, through ADEQ, has committed to continue operation of the monitor in the Arkansas portion of the Memphis, TN-MS-AR Area in compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved Arkansas' monitoring plan on November 16, 2015. Mississippi and Tennessee have made similar commitments in their maintenance plans. Mississippi's monitoring plan was approved by EPA on November 7, 2014; whereas Tennessee's monitoring plan was approved by EPA on January 13, 2015.

e. Verification of Continued Attainment

The State of Arkansas, through ADEQ, has the legal authority to enforce and implement the maintenance plan for the Arkansas portion of the Area. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Large stationary sources are required to submit an emissions inventory annually to ADEQ. ADEQ commits to review these emissions inventories to determine if any unexpected growth in NO_x emissions in the Area may endanger the maintenance of the 2008 8-hour ozone NAAQS.

Additionally, under the Consolidated Emissions Reporting Rule (CERR) and Air Emissions Reporting Requirements (AERR), ADEQ is required to develop a comprehensive, annual, statewide emissions inventory every three years that is due twelve to eighteen months after the completion of the inventory year. The AERR inventory years match the base year and final year of the inventory for the maintenance plan, and are within one or two years of the interim inventory years of the maintenance plan. Therefore, ADEQ commits to compare the CERR and

AERR inventories as they are developed with the maintenance plan to determine if additional steps are necessary for continued maintenance of the 2008 8-hour ozone NAAQS in this Area.

f. Contingency Measures in the Maintenance Plan.

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

In the December 10, 2015, submittal, Arkansas affirms that all programs instituted by the State and EPA will remain enforceable and that sources are prohibited from decreasing emissions controls following the redesignation of the Area. The contingency plan included in the submittal includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The primary trigger of the contingency plan will be a violation of the 2008 8-hour ozone NAAQS (i.e., when the three-year average of the 4th highest values is equal to or greater than 0.076 ppm at a monitor in the Area). The trigger date will be the date that the State observes a 4th highest value that, when averaged with the two previous ozone seasons' fourth highest values, would result in a three-year average equal to or greater than 0.076 ppm. The secondary trigger will

apply where no actual violation of the 2008 8-hour ozone NAAQS has occurred, but when ADEQ forecasts ozone levels above the 2008 8-hour ozone NAAQS.

Once the primary or secondary trigger is activated, the ADEQ, shall commence analyses including trajectory analyses of high ozone days and an emissions inventory assessment to determine those emission control measures that will be required for attaining or maintaining the 2008 8-hour ozone NAAQS. ADEQ commits⁹ to adopt and implement at least one of the following contingency measures listed in Table 5 as expeditiously as practicable, but no later than 24 months after a primary triggering event.

Table 5. Crittenden County Contingency Measure Options

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- Reasonable Available Control Technology (RACT) for VOC and NO_x sources;
 - Anti-idling ordinances;
 - Open burning restrictions during peak ozone season;
 - Diesel retrofit/replacement incentives;
 - Programs or incentives to decrease motor vehicle use;
 - Trip reduction ordinances;
 - Requirements for additional emissions reductions from stationary sources;
 - Enhancement of inspection of stationary sources to ensure emissions control equipment is functioning properly;
 - Fuel programs, including incentives for alternative fuels;
 - Employer-based transportation management plans, including incentives;
 - Limitation/restriction of vehicle use in downtown areas, or other areas of high emissions concentration, particularly during periods of peak use;
 - New construction and major reconstruction of paths for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest; and
 - Other currently unspecified control measures that might prove to be advantageous.
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⁹ On January 20, 2016, ADEQ clarified ADEQ's commitment is to adopt and implement contingency measures upon a violation-triggering event if it is determined that the violation is caused by a source or sources within Crittenden County. Clarification Letter from Stuart Spencer to Ron Curry, January 20, 2016 (Clarification Letter). A copy is contained in the docket for this rulemaking.

EPA proposes to conclude that the maintenance plan adequately addresses the five basic components of a maintenance plan: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. Therefore, EPA proposes that the maintenance plan SIP revision submitted by Arkansas for the State's portion of the Area meets the requirements of section 175A of the CAA and is approvable.

VI. What is EPA's Analysis of Arkansas' Proposed NO_x and VOC MVEBs for the Arkansas Portion of the Area?

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

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

As part of the interagency consultation process on setting MVEBs, ADEQ held discussions to determine what years to set MVEBs for the Memphis, TN-MS-AR maintenance plan. According to the transportation conformity rule, a maintenance plan must establish MVEBs for the last year of the maintenance plan (in this case, 2027). *See* 40 CFR 93.118. Arkansas also provided MVEBs for 2012. Table 6 below provides the NO_x and VOC MVEBs in tpd for 2012 and 2027, as reflected in Section 4.2, Table 6 of the State's submittal.

Table 6. Arkansas' portion of the Memphis, TN-MS-AR Area MVEBs (tpd)

	2012		2027	
	NO _x	VOC	NO _x	VOC
Base Emissions	13.04	2.35	5.18	0.98
Safety Margin Allocated to MVEB	N/A	N/A	6.29	1.10

Conformity MVEB	13.04	2.35	11.47	2.08
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As mentioned above, Arkansas has chosen to allocate a portion of the available safety margin to the NO_x and VOC MVEBs for 2027. As discussed in section V of this proposed rulemaking, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. As discussed above, Arkansas has selected 2012 as the base year.

Through this rulemaking, EPA is proposing to approve the MVEBs for NO_x and VOC for 2012 and 2027 for the Arkansas portion of the Memphis, TN-MS-AR Area because EPA believes that the Area maintains the 2008 8-hour ozone NAAQS with the emissions at the levels of the budgets. Once the MVEBs for the Arkansas portion of the Memphis, TN-MS-AR Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations.

VII. What is the Status of EPA’s Adequacy Determination for the Proposed NO_x and VOC MVEBs for the Arkansas Portion of the Area?

When reviewing submitted “control strategy” SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. The adequacy process, as described below, is generally faster than approval of the controls strategy revision thus allowing submitted MVEBs to be used sooner. EPA is evaluating the adequacy of the submitted MVEBs in parallel to this proposed approval action on the redesignation request and maintenance plan. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must

be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

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

As discussed earlier, Arkansas' maintenance plan includes NO_x and VOC MVEBs for the Arkansas portion of the Memphis, TN-MS-AR Area for 2012 as well as 2027, the last year of the maintenance plan. EPA is reviewing the NO_x and VOC MVEBs through the adequacy process. The NO_x and VOC MVEBs for the Arkansas portion of the Memphis, TN-MS-AR Area, opened for public comment on EPA's adequacy Web site on December 16, 2015, found at: <http://www3.epa.gov/otaq/stateresources/transconf/currrips.htm>.

EPA intends to make its determination on the adequacy of the 2012 and 2027 MVEBs for the Arkansas portion of the Memphis, TN-MS-AR Area for transportation conformity purposes in the near future by completing the adequacy process that was started on December 16, 2015. After EPA finds the 2012 and 2027 MVEBs adequate or approves them, the new MVEBs for NO_x and VOC must be used for future transportation conformity determinations. For required regional emissions analysis years between 2012 and 2027, the applicable budgets will be the new 2012 MVEBs established in the maintenance plan, as defined in section VI of this proposed rulemaking. For analysis years 2027 and beyond, the applicable budgets will be the new 2027 MVEBs established in the maintenance plan.

VIII. What is the Effect of EPA's Proposed Actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Arkansas' redesignation request would change the legal designation of the portion of Crittenden County that is within the Memphis, TN-MS-AR Area, as found at 40 CFR part 81, from nonattainment to attainment for the 2008 8-hour ozone NAAQS. Approval of Arkansas' associated SIP revision would also incorporate a plan for maintaining the 2008 8-hour ozone NAAQS in the Memphis, TN-MS-AR Area through 2027 into the SIP. This maintenance plan includes contingency measures to remedy any future violations of the 2008 8-hour ozone NAAQS and procedures for evaluation of potential violations. The maintenance plan also establishes NO_x and VOC MVEBs for 2012 and 2027 for the Arkansas portion of the Memphis, TN-MS-AR Area. The MVEBs are listed in Table 6 in section VI. Additionally, EPA is notifying the public of the status of EPA's adequacy determination for the newly-established NO_x and VOC MVEBs for 2012 and 2027 for the

Arkansas portion of the Memphis, TN-MS-AR Area.

IX. Proposed Actions.

EPA is taking three separate but related actions regarding the redesignation and maintenance of the 2008 8-hour ozone NAAQS for the Arkansas portion of the Memphis, TN-MS-AR Area. EPA is proposing to determine that the entire Memphis, TN-MS-AR Area is attaining the 2008 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan (including the Clarification Letter) for the Arkansas portion of the Area, including the NO_x and VOC MVEBs for 2012 and 2027, into the Arkansas SIP (under CAA section 175A). The maintenance plan demonstrates that the Area will continue to maintain the 2008 8-hour ozone NAAQS through 2027 and that the budgets meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5). Further, as part of today's action, EPA is describing the status of its adequacy determination for the NO_x and VOC MVEBs for 2012 and 2027 in accordance with 40 CFR 93.118(f)(2). Within 24 months from the effective date of EPA's adequacy determination for the MVEBs or the publication date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_x and VOC MVEBs pursuant to 40 CFR 93.104(e)(3).

Additionally, EPA is proposing to determine that the Arkansas portion of the Memphis, TN-MS-AR Area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 2008 8-hour ozone NAAQS. On this basis, EPA is proposing to approve Arkansas' redesignation request for the Arkansas portion of the Memphis, TN-MS-AR Area. If finalized, approval of the redesignation request would change the official

designation of the portion of Crittenden County that is within the Memphis, TN-MS-AR Area, as found at 40 CFR part 81, from nonattainment to attainment for the 2008 8-hour ozone NAAQS.

X. Statutory and Executive Order Reviews

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

- are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: January 27, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016-02567 Filed: 2/9/2016 8:45 am; Publication Date: 2/10/2016]