DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–112756–09]

RIN 1545–BI60

Amendments to the Regulations Regarding Questions and Answers Relating to Church Tax Inquiries and Examinations; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on a notice of proposed rulemaking amending the questions and answers relating to church tax inquiries and examinations. These proposed regulations replace references to positions that were abolished by the Internal Revenue Service Restructuring and Reform Act of 1998 with references that are consistent both with the statute and the IRS's current organizational structure.

DATES: The public hearing is being held on January 20, 2010, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by December 9, 2009.

ADDRESSES: The public hearing is being held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC: PA: LPD: PR (REG–112756–09), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC: PA: LPD: PR (REG–112756–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Benjamin Akins, (202) 622–1124 or Monice Rosenbaum, (202) 622–6070; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–112756–09) that was published in the **Federal Register** on Wednesday, August 5, 2009 (74 FR 39003).

Persons, who wish to present oral comments at the hearing that submitted written comments, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by December 9, 2009.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue NW. entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration)

[FR Doc. E9–27773 Filed 11–18–09; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2009–0164; FRL–8982–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of the Shelby County, TN Portion of the Memphis, Tennessee-Arkansas 1997 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 26, 2009, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Air Pollution Control Division, submitted a request to redesignate the Tennessee portion of the bi-State Memphis, Tennessee-Arkansas 8-hour ozone nonattainment area (the ''bi-State Memphis Area'') to attainment for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS); and to approve the State Implementation Plan (SIP) revision containing a maintenance plan for the Tennessee portion of the bi-State Memphis Area. The bi-State Memphis 1997 8-hour ozone NAAQS nonattainment area is composed of Shelby County, Tennessee and Crittenden County, Arkansas. In this action, EPA is proposing to approve the February 26, 2009 redesignation request for Shelby County, Tennessee as part of the Memphis Area. Additionally, EPA is proposing to approve the 1997 8-hour ozone NAAQS maintenance plan for Shelby County, including the emissions inventory and the State motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for the years 2006, 2009, 2017, and 2021. This proposed approval of Tennessee's redesignation request is based on EPA's determination that Tennessee has demonstrated that Shelby County has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire bi-State Memphis ozone nonattainment area has attained the 1997 8-hour ozone standard. The State of Arkansas has submitted a similar redesignation request and maintenance plan for the Arkansas portion of this 8-hour ozone area. EPA is taking action on Arkansas' redesignation request and maintenance plan through a separate rulemaking action. In this action, EPA is also describing the status and proposing approval of its transportation conformity adequacy determination for the new 2006, 2009, 2017 and 2021 MVEBs that are contained in the 1997 8-hour ozone NAAQS maintenance plan for Shelby County, Tennessee. MVEBs for Crittenden County, Arkansas are included in the Arkansas submittal, and will be addressed through EPA's separate action for that submittal.

DATES: Comments must be received on or before December 21, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0164, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: benjamin.lynorae@epa.gov.*
- *Fax:* (404) 562–9019.
- *Mail:* EPA–R04–OAR–2009–0164, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

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

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2009–0164. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Spann or Ms. Twunjala Bradley of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Jane Spann may be reached by phone at (404) 562–9029, or via electronic mail at *spann.jane@epa.gov.* The telephone number for Ms. Bradley is (404) 562–9352, and the electronic mail is *bradley.twunjala@epa.gov.*

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I. What Proposed Actions Is EPA Taking?

EPA is proposing several related actions, which are summarized below and described in greater detail throughout this notice of rulemaking: (1) To redesignate Shelby County, Tennessee to attainment for the 1997 8-hour ozone NAAQS; (2) to approve under section 182(a)(1) the emissions inventory submitted with the maintenance plan; and (3) to approve under section 175A Tennessee's 1997 8-hour ozone NAAQS maintenance plan into the Tennessee SIP, including the associated MVEBs. In addition, and related to today's actions, EPA is also notifying the public of the status of EPA's adequacy determination for the Shelby County MVEBs.

First, EPA is proposing to determine that the bi-State Memphis Area has attained the 1997 8-hour ozone standard. EPA further proposes to determine that, if EPA's proposed approval of the emissions inventory for the Shelby County, Tennessee portion of this area is finalized, the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The bi-State Memphis 1997 8-hour ozone area is composed of Shelby County in Tennessee and Crittenden County in Arkansas. Today's proposal addresses only the Tennessee portion of the bi-State Memphis Area. In a separate action, EPA will address the redesignation request and maintenance plan for the Crittenden County, Arkansas portion of the bi-State Memphis Area. In this action, EPA is now proposing to approve a request to change the legal designation of Shelby County, Tennessee from nonattainment to attainment for the 1997 8-hour ozone NAAQS.

Second, EPA is proposing to approve under section 182(a)(1) Tennessee's 2006 inventory for Shelby County, Tennessee. In coordination with Arkansas, Tennessee selected 2006 as ''the attainment year'' for the bi-State Memphis Area for the purpose of demonstrating attainment of the 1997 8-hour ozone NAAQS. This attainment inventory identifies the level of emissions in the Area, which is sufficient to attain the 1997 8-hour ozone standard.

Third, EPA is proposing to approve Tennessee's 1997 8-hour ozone NAAQS maintenance plan for Shelby County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the bi-State Memphis Area (of which Shelby County is a part) in attainment of the 1997 8-hour ozone NAAQS through 2021. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2006, 2009, 2017 and 2021 NO_X and VOC MVEBs. EPA is proposing to approve (into the Tennessee SIP) the 2006, 2009, 2017 and 2021 State MVEBs that are included as part of Tennessee's maintenance plan for the 1997 8-hour ozone NAAQS. These MVEBs apply only to Shelby County, Tennessee.

MVEBs contained in the Arkansas submittal for Crittenden County will be addressed in a separate action.

EPA is also notifying the public of the status of EPA's adequacy process for the newly-established 2006, 2009, 2017, and 2021 NO_X and VOC State MVEBs for Shelby County, Tennessee. The MVEBs for the Arkansas portion of this 8-hour ozone area will be addressed in a separate action. The Adequacy comment period for the Shelby County, Tennessee 2006, 2009, 2017, and 2021 State MVEBs began on March 12, 2009, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site. (*http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*). The adequacy comment period for these MVEBs closed on April 13, 2009. No adverse comments were received during the adequacy public comment period. Please *see* section VIII of this proposed rulemaking for further explanation of this process, and for more details on the MVEBs determination.

Today's notice of proposed rulemaking is in response to Tennessee's February 26, 2009, SIP submittal requesting the redesignation of Shelby County, Tennessee as part of the bi-State Memphis 1997 8-hour ozone area, and includes a SIP revision addressing the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

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

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

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

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

The CAA required EPA to designate as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The bi-State Memphis 1997 8-hour ozone nonattainment area was initially designated nonattainment for the 1997 8-hour ozone standard using 2001–2003 ambient air quality data. The **Federal Register** document making these designations was signed on April 15, 2004, and published on April 30, 2004 (69 FR 23857).

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

Shelby County, Tennessee was originally designated as a marginal nonattainment area for the 1-hour ozone standard on November 6, 1991 (56 FR 56694). Crittenden County, Arkansas was designated attainment at that time. On February 16, 1995 (60 FR 3352) Shelby County, Tennessee was redesignated as attainment for the 1-hour ozone standard, and was considered to be a maintenance area subject to a CAA section 175A maintenance plan for the 1-hour standard.

On April 30, 2004, EPA designated the bi-State Memphis Area (which then included Crittenden County, Arkansas) under subpart 2 as a ''moderate'' 1997 8-hour ozone NAAQS nonattainment area (69 FR 23857, April 30, 2004). On July 15, 2004, pursuant to section 181(a)(4) of the CAA, the States of Tennessee and Arkansas submitted a petition to EPA, requesting that the classification of the bi-State Memphis Area be adjusted downward from ''moderate'' to ''marginal'' for the 1997 8-hour ozone standard. The petition was based on the fact that the area's ''moderate'' design value of 0.092 ppm was within five percent of the maximum ''marginal'' design value of 0.091 ppm. Pursuant to Section 181(a)(4), areas with design values within five percent of the standard may request a reclassification under specific circumstances. EPA approved the petition for reclassification, which became effective on November 22, 2004 (69 FR 56697, September 22, 2004). As a result of the downward classification, the new attainment date for the bi-State Memphis ''marginal'' nonattainment area was set at June 15, 2007, consistent with the CAA, with attainment to be determined based on 2004–2006 air quality data.

However, from 2004–2006, the bi-State Memphis Area measured 8-hour average ozone concentrations that precluded the bi-State Memphis Area from attaining the 1997 8-hour ozone NAAQS by the June 15, 2007, the deadline for marginal areas. Section 181(b)(2) of the CAA provides that, when EPA finds that an area failed to attain by the applicable date, the area is reclassified by operation of law to the higher of: the next higher classification or the classification applicable to the area's ozone design value at the time of the required notice under Section 181(b)(2)(B). On March 28, 2008, EPA issued a notice that the bi-State Memphis Area was reclassified by operation of law to ''moderate,'' for failing to attain the standard by the

marginal area applicable attainment date (73 FR 16547). EPA set a deadline of March 1, 2009, for Tennessee and Arkansas to submit the moderate area SIP provisions required under the area's new classification (73 FR 16550).

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

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, nor does EPA believe the Court's ruling prevents EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of the Shelby County, Tennessee portion of the bi-State Memphis Area to attainment, because (1) this area is already classified as a subpart 2 area and is obligated to meet subpart 2 requirements; and (2) redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

At the time the redesignation request was submitted, the bi-State Memphis Area was classified as subpart 2 moderate, but the requirements under its moderate area classification had not yet become due. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992, Calcagni Memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). *See also* Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) (upholding this interpretation); 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

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

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

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

[1] CAA Section 176(c)(4)(E) requires States to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emission budgets that are established in control strategy SIPs and maintenance plans.

conformity SIP, which was approved on May 16, 2003 (68 FR 26492).

Second, with regard to the three other anti-backsliding provisions for the 1-hour standard that the D.C. Circuit Court found were not properly retained, Shelby County, Tennessee is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR requirement no longer applies to this area because it was redesignated to attainment of the 1-hour standard. (Because Shelby County was a marginal 1-hour nonattainment area, the contingency measure (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements never applied to it). As a result, the decisions in *SCAQMD* should not alter any requirements that would preclude EPA from finalizing the redesignation of the bi-State Memphis Area to attainment for the 1997 8-hour ozone standard.

As was noted earlier, in 2008, the ambient ozone data for the bi-State Memphis Area indicated no further violations of the 1997 8-hour ozone NAAQS, using data from the 3-year period of 2006–2008 to demonstrate attainment. As a result, on February 26, 2009, Tennessee requested redesignation of Shelby County, Tennessee to attainment for the 1997 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (March 1st through October 31st) of 2006–2008, indicating that the 1997 8-hour ozone NAAQS has been achieved for the entire bi-State Memphis Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation?

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

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

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Proposing These Actions?

On February 26, 2009, Tennessee requested redesignation of the Tennessee portion (Shelby County) of the bi-State Memphis 1997 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone standard. EPA's evaluation indicates that the bi-State Memphis Area has attained the standard and that Shelby County has met the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. EPA is also proposing to approve the 2006 baseline emission inventory under section 182(a)(1). EPA is also announcing the status of its adequacy determination and proposing approval of the 2006, 2017, 2009 and 2021 NO_X and VOC MVEBs which are relevant to the requested redesignation.

V. What Is the Effect of EPA's Proposed Actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Tennessee's redesignation request would change the legal designation of Shelby County for the 1997 8-hour ozone NAAQS found at 40 CFR part 81 from nonattainment to attainment. Approval of Tennessee's request would also incorporate into the Tennessee SIP, a plan for Shelby County for maintaining the 1997 8-hour ozone NAAQS in the area through 2021. This maintenance plan includes contingency measures to remedy future violations of the 1997 8-hour ozone NAAQS. The maintenance plan also establishes NO_X and VOC State MVEBs for Shelby County. Table 1 identifies the State NO_X and VOC MVEBs for the years 2006, 2009, 2017 and 2021 for Shelby County. Final action would also approve the

Area's emissions inventory under section 182(a)(1).

TABLE 1—SHELBY COUNTY NO_X AND VOC MVEBS

[Summer season tons per day]

	2006	2009	2017	2021
NO_X	55.878	55.620	55.173	54.445
VOC	25.216	27.240	18.323	13.817

Approval of Tennessee's maintenance plan would also result in approval of the NO_X and VOC State MVEBs. Additionally, EPA is notifying the public of the status of its adequacy determination for the 2006, 2009, 2017 and 2021 NO_X and VOC State MVEBs pursuant to 40 CFR 93.118(f)(1).

VI. What Is EPA's Analysis of the Request?

EPA is proposing to make the determination that the bi-State Memphis 1997 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard, and that all other redesignation criteria have been met for the Tennessee portion of the bi-State Memphis Area. The basis for EPA's determination for the area is discussed in greater detail below.

Criteria (1)—Shelby County, Tennessee Has Attained the 1997 8-Hour Ozone NAAQS

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

EPA reviewed ozone monitoring data from ambient ozone monitoring stations in the bi-State Memphis Area for the ozone season from 2006–2008. These data have been quality-assured and are recorded in AQS. The fourth-highest 8-hour ozone average for 2006, 2007 and 2008, and the 3-year average of these values (*i.e.*, design values), are summarized in the following Table:

TABLE 2—ANNUAL 4TH MAX HIGH AND DESIGN VALUE CONCENTRATION FOR 8-HOUR OZONE FOR THE MEMPHIS, TN-ARKANSAS AREA

[Parts per million]

County	Shelby County, Tennessee		Crittenden County, Arkansas
Monitor (AIRS ID)	Memphis-Frayser Boulevard (#47–157–0021)	Edmond Orgill Park (#47–157–1004)	Marion (#05–035–0005)
2006	0.083	0.084	0.089
2007	0.081	0.080	0.084
2008	0.084	0.077	0.074
Design Value	0.082	0.080	0.082

As discussed above, the design value for an area is the highest 3-year average of the annual fourth-highest 8-hour ozone value recorded at any monitor in the area. Therefore, the most recent 3-year design value (2006–2008) for the bi-State Memphis Area is 0.082 ppm, which meets the standard as described above. Currently available data show that the Area continues to attain the standard. If the area does not continue to attain until EPA finalizes the redesignation, EPA will not go forward with the redesignation. As discussed in more detail below, Tennessee has committed to continue monitoring in this Area in accordance with 40 CFR part 58. EPA proposes to find that the bi-State Memphis Area has attained the 1997 8-hour ozone NAAQS.

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

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

EPA proposes to find that Tennessee has met all applicable SIP requirements for Shelby County under section 110 of the CAA (general SIP requirements) for purposes of redesignation. EPA also proposes to find that the Tennessee SIP satisfies the criterion that it meet applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to subpart 2 moderate 1997 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. Shelby County, Tennessee Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

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

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

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address the transport of air pollutants (NO_X SIP Call and Clean Air Interstate Rule (CAIR)). The section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State. Thus, we do not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

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

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

Part D requirements. EPA proposes that if EPA approves the State's base year emissions inventory, which is part of the maintenance plan submittal, the Tennessee SIP will meet applicable SIP requirements under part D of the CAA. We believe the emission inventory is approvable because the 2006 VOC and NO_X emissions, as well as the emissions for other years, for the bi-State Memphis Area were developed consistent with EPA guidance for emission inventories and the choice of the 2006 base year is appropriate because it represents the 2006–2008 period when the 8 hour ozone NAAQS was not violated. EPA also proposes to determine that the Tennessee SIP meets applicable SIP requirements under part D of the CAA since no subpart 2 moderate requirements became due prior to the submission of the Area's redesignation request, and the area has met all the requirements under its previous marginal classification. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification.

Part D, subpart 2 applicable SIP requirements. For purposes of evaluating this redesignation request, the applicable part D, subpart 2 SIP requirements for all moderate nonattainment areas are contained in sections 182(b)(1)–(5). A thorough discussion of the requirements contained in section 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498). No moderate area requirements applicable for purposes of redesignation under part D became due prior to the submission of the redesignation request, and therefore none are applicable to the Area for purposes of redesignation. For example, the requirements for an attainment demonstration that meets the requirements of reasonable further progress (RFP) (section 182(b)(1), Reasonably Achievable Control Technology (RACT) (section 182(b)(2)), Gasoline Vapor Recovery section 182(b)(3), and Motor Vehicle Inspection and Maintenance section 182(b)(4). If

EPA finalizes its proposed approval of the Area's emissions inventory under section 182(a)(1), the Area will have met all the requirements applicable under its prior marginal classification for purposes of redesignation.

In addition to the fact that no moderate area part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and NSR requirements as not requiring approval prior to redesignation.

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

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See Wall*, 265 F.3d 426 (upholding this interpretation); *See also* 60 FR 62748 (December 7, 1995, Tampa, Florida).

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

b. Shelby County, Tennessee Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Tennessee SIP for the Shelby County portion of the Memphis 8-hour ozone nonattainment area, under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, *see* Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426, plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Tennessee has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the bi-State Memphis Area (45 FR 53809, August 13, 1980).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the moderate area part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation. As set forth above, the Area has met all other applicable requirements for purposes of redesignation under its prior marginal classification.

Criteria (3)—The Air Quality Improvement in the Shelby County Portion of the Memphis, TN–AR 1997 8-Hour Ozone NAAQS Nonattainment Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

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

Measured reductions in ozone concentrations in and around Shelby County are largely attributable to reductions from emission sources of VOC and NO_X, which are precursors in the formation of ozone. Table 3 summarizes several of the measures adopted that resulted in emission reductions. The majority of these reductions have been realized from Federal measures related to mobile sources and electrical power generation.

TABLE 3—SHELBY COUNTY EMISSION REDUCTIONS PROGRAMS

Mobile Sources:
○ Tier 2 Fuel and Vehicle Emission Standards
○ Onboard Refueling Vapor Recovery (ORVR) for light-duty vehicles
○ NO_X SIP Call
State and Local Measures:
○ Inspection and Maintenance (I/M) Program
○ Expressway speed limit Reductions
○ ''No Burn'' Days for increase ozone levels
○ Memphis Area Transit Authority Ozone Action Day Fare Reduction
○ Retrofit of refuse trucks with diesel oxidation catalyst
○ Motor Vehicle Tampering Rule

Emission reductions in Shelby County as a result of Federal motor vehicle controls from 2002 to 2006 are estimated to be 7 tons per day of VOC and 28 tons per day of NO_X.

Regarding point source emissions, the Tennessee Valley Authority's (TVA's) Allen Steam Plant located in Shelby County operates three coal-fired boilers. As a result of EPA's ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group

Region for Purposes of Reducing Region Transport of Ozone'' (NO_X SIP Call), TVA began operation of two selective catalytic reduction (SCR) systems during the 2002 ozone control season, May 1st through September 30th. The third SCR began operating in 2003. Ozone season daily NO_X reductions in the Area as a result of these controls equal approximately 45 tons per day.

These are substantial reductions when compared to the remaining total NO_X inventory from all sources in Shelby and Crittenden counties in 2006 of 116.81 tons per day (99.09 tons per day in Shelby county and 17.72 tons per day in Crittenden County) and a VOC inventory of 128.67 tons per day (99.11 tons per day in Shelby County and 29.56 tons per day in Crittenden county).

Because of the uncertainty introduced by the recent court actions affecting the CAIR Rule and NO_X SIP Call, EPA undertook an analysis of the changes in NO_X expected across a broader region. In particular, EPA reviewed available projections of NO_X emissions from nearby States from 2002 to 2018.

TABLE 4—2002 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO_X*

[Tons per year]

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

TABLE 5—2018 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO_X*

[tons per year]

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

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

From 2002 to 2018 NO_X emissions are projected to decrease in the region by 1,215,024 tpy or 41.4 percent in all. Energy Generating Unit (EGU) NO_X anticipated decreases due to CAIR and the NO_X SIP Call are projected to be 198,150 tpy. However the largest source in this region remains the motor vehicle sector, which is projected to decrease 737,744 tpy. Hence, even without EGU controls on NO_X emissions, total NO_X emissions are projected to continually decrease throughout the maintenance period.

The NO_X SIP Call requires States to make significant, specific emissions reductions. It also provided a mechanism, the NO_X Budget Trading Program, which States could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO_X Budget Trading Program, 40 CFR 51.121(r), but created another mechanism—the CAIR ozone season trading program—which States could use to meet their SIP Call obligations, 70 FR 25289–90. EPA notes that a number of States, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program removed the SIP provisions that required sources to participate in the NO_X Budget Trading Program. In addition, because the provisions of CAIR including the ozone season NO_X trading program remain in place during the remand (*North Carolina* v. *EPA*, 550 F.3d 1176 (DC Cir. Dec. 23, 2008)), EPA is not currently administering the NO_X Budget Trading Program. Nonetheless, all States, regardless of the current status of their regulations that previously required participation in the NO_X Budget Trading Program, will remain subject to all of the requirements in the NO_X SIP Call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP Call, including the statewide NO_X emission budgets, continue to apply after revocation of the 1-hour standard.

All NO_X SIP Call States have SIPs that currently satisfy their obligations under the SIP Call, the SIP Call reduction requirements are being met, and EPA will continue to enforce the requirements of the NO_X SIP Call even after any response to the CAIR remand. For these reasons, EPA believes that regardless of the status of the CAIR program, the NO_X SIP call requirements can be relied upon in demonstrating maintenance. Here, the State has demonstrated maintenance based in part on those requirements.

These regional projections of emissions data have been prepared through 2018. However, since motor vehicle and non-road emissions continue to decrease long after a rule is adopted as the engine population is gradually replaced by newer engines, it is reasonable to expect that this projected decrease in regional NO_X

emissions from mobile and non-road sources should continue through 2020 and assure that ozone in the Memphis region will continue to decline throughout the 10-year maintenance period. Hence, we believe the projected regional NO_X reductions are adequate to assure that the Memphis region will continue demonstrating maintenance throughout the 10-year maintenance period.

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

In conjunction with its request to redesignate Shelby County, Tennessee (as part of the bi-State Memphis 1997 8-hour ozone nonattainment area) to attainment, Tennessee submitted a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment.

a. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State of Tennessee must submit a revised maintenance plan, which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 1997 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, Tennessee's maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

In coordination with Arkansas, Shelby County, Tennessee selected 2006 as ''the attainment year'' for the purposes of demonstrating attainment of the 1997 8-hour ozone NAAQS. The attainment inventory identifies the level of emissions in the area, which is sufficient to attain the 1997 8-hour ozone standard. Shelby County began development of the attainment inventory by first developing a baseline emissions inventory for the bi-State Memphis Area. The year 2006 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2009, 2017 and 2021. The projected inventory estimates emissions forward to 2021, which is beyond the 10-year interval required in Section 175(A) of the CAA. Non-road mobile emissions estimates were based on EPA's NONROAD2005 model. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2006 VOC and NO_X emissions, as well as the emissions for other years, for Shelby County were developed consistent with EPA guidance, and are summarized in Tables 4 and 5 in the following subsection.

c. Maintenance Demonstration

The February 26, 2009, final submittal includes a maintenance plan for Shelby County. This demonstration:

(i) Shows compliance and maintenance of the 1997 8-hour ozone standard by providing information to support the demonstration that current and future emissions of VOC and NO_X remain at or below attainment year 2006 emissions levels. The year 2006 was chosen as the attainment year because it is one of the most recent three years (*i.e.,* 2006, 2007, and 2008) for which Shelby County has clean air quality data for the 1997 8-hour ozone standard.

(ii) Uses 2006 as the attainment year and includes future emission inventory projections for 2009, 2017, and 2021.

(iii) Identifies an ''out year,'' at least 10 years (and beyond) after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, State NO_X and VOC MVEBs were established for the last year (2021) of the maintenance plan. Additionally, Tennessee chose, through interagency consultation, to establish MVEBs for the years 2006, 2009 and 2017 for NO_X and VOC. *See* section VII below.

(iv) Provides the following actual and projected emissions inventories, in tons per day (tpd) for Shelby County, Tennessee. *See* Tables 6 and 7.

TABLE 6—SHELBY COUNTY VOC EMISSIONS

[Summer season tons per day]

Source category	2006	2009	2017	2021
Point	13.665	14.335	16.985	18.391
Area	37.531	36.880	44.185	47.039
Mobile *	25.216	21.019	12.811	11.362
Non-road **	22.698	20.328	19.327	19.734
Total	99.110	92.562	93.308	96.526
Safety Margin	N/A	6.221	5.512	2.455

* Calculated using MOBILE6.2.
** Calculated using NONROAD2005c.

TABLE 7—SHELBY COUNTY AREA NO_X EMISSIONS

[Summer season tons per day]

Source category	2006	2009	2017	2021
Point *	14.458	15.353	17.254	18.376
Area	2.101	2.271	2.595	2.695

TABLE 7—SHELBY COUNTY AREA NO_X EMISSIONS—Continued

[Summer season tons per day]

Source category	2006	2009	2017	2021
Mobile **	55.878	44.477	20.925	16.999
Non-road ***	26.657	25.264	22.270	21.607
Total	99.094	87.365	63.044	59.677
Safety Margin	N/A	11.142	32.247	37.447

* TVA Allen Plant addressed in 2002–2003 by NO_X SIP call.
** Calculated using MOBILE6.2.
*** Calculated using NONROAD2005c.

A safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Tennessee has decided to allocate a portion of the available safety margin to the Area's VOC and NO_X MVEBs for the years 2006, 2009, 2017, and 2021 for Shelby County and has calculated the safety margin in its submittal. *See* Tables 6 and 7, above. This allocation and the resulting available safety margin for Shelby County are discussed further in section VII of this proposed rulemaking.

d. Monitoring Network

There are currently three monitors measuring ozone in the bi-State Memphis Area (two in Shelby County, Tennessee and one in Crittenden County, Arkansas). TDEC has committed, in the maintenance plan, to continue operation of the two monitors in Shelby County, Tennessee in compliance with 40 CFR part 58, and has addressed the requirement for monitoring. Arkansas has made a similar commitment in their redesignation and maintenance plan submission to EPA for this area.

e. Verification of Continued Attainment

The State of Tennessee and the Memphis-Shelby County Health Department (MSCHD) have the legal authority to enforce and implement the requirements of the ozone maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

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

f. Contingency Plan

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

In the February 26, 2009, submittal, Shelby County affirms that all programs instituted by the State and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the area. The contingency plan included in the submittal provides a three-phase approach to tracking and triggering mechanisms to determine when contingency measures are needed and a process of developing and adopting appropriate control measures.

Phase I

Designed to respond immediately in the event MSCHD *forecasts ozone levels above the 2008 NAAQS. An air quality alert will be issued to the local media and other parties. In the event such an alert is given, Shelby County will take the following actions:*

- Suspend all open burning permits until the ozone forecasts exhibits improvements; during ozone season, entities with permits are required to contact MSCHD daily to determine if burning will be allowed.
- Reduce fares for public transportation (conducted by the Memphis Area Transit Authority).
- Beginning in 2009, air quality alerts will be posted on the Intelligent Transportation System boards located on the expressway system in Shelby County encouraging motorists to take actions to reduce emissions.
- TVA Allen Steam Plant as agreed to postpone any scheduled operation of combustion turbines during an alert of peak energy generation.

In addition to these contingency measures, MSCHD will continue to work with State and local agencies to encourage adoption of measures to reduce ozone formation at all times especially during air quality alerts.

Phase II

Potential increases in local emissions specifically, when the certified triennial emissions inventory for VOC or NO_X exceed the 2006 base year attainment inventory by ten percent or more and at least one documentation of an exceedance of the 1997 ozone NAAQS from any nonattainment monitor in the area based on certified data during the most recent monitoring season.

In the event this occurs, MSCHD will conduct an investigation into the cause to determine if they are due to reporting errors or a non-recurring variance in the local emission profile. The investigation will last approximately three months from the time the inventory data is certified after which results will be reported to EPA and the State of Tennessee. If the investigation reveals the data are valid, MSCHD will expand voluntary programs and develop regulations to address the concerns. All

regulatory programs will be implemented within 18–24 months and include the following measures:

- Programs or incentives to decrease motor vehicle use;
- Programs to require additional emissions reduction on stationary sources;
- Employer-based transportation incentive plans;
- Restrictions of certain roads or lanes for, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles.

Phase III

Addresses a monitored violation of the 1997 ozone NAAQS in the nonattainment area according to certified data during the most recent monitoring season.

In the event this occurs, MSCHD will conduct an investigation to determine if the cause of the violation can be attributed to errors or clearly identifiable exceptional events outside of local control. MSCHD will solicit the involvement of all State agencies having jurisdiction in the surrounding area. The investigation will last no longer than three months after which results will be submitted to EPA and the State of Tennessee. If the investigation reveals the data are valid, further action will be taken. In addition to provisions described in Phase II, the following provisions will be adopted and implemented according to EPA guidance.

- Expand Basic I/M in Shelby County that meets requirements of Section 182(a)(2)(B) of the CAA;
- Develop RACT regulation for remaining major sources of NO_X emissions in Shelby County;
- Adopt all industrial and commercial VOC controls as provided in final EPA-approved Control Technology Guidelines through the date of the monitored violations.
- Develop regulations for submission to the Shelby County Commission or Tennessee State Air Board to adopt necessary control measures (within six months after the investigation)

All regulatory programs will be implemented within 18–24 months by the appropriate entity within Tennessee.

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

VII. What Is EPA's Analysis of Tennessee's Proposed State NO_X and VOC MVEBs for Shelby County, Tennessee?

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

After interagency consultation with the transportation partners for Shelby County, Tennessee has elected to develop State MVEBs for VOC and NO_X. Shelby County is developing these MVEBs, as required, for the last year of its maintenance plan, 2021, an interim year, 2017 and the first year, 2009 and a base year of 2006. The MVEBs for 2006 reflect mobile emissions for that year. The remaining MVEBs reflect the total on-road emissions for 2009, 2017 and 2021, plus an allocation from the available NO_X and VOC safety margin for each year. Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. These MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model VMT and new emission factor models. The NO_X and VOC State MVEBs for Shelby County are defined in Table 8 below.

TABLE 8—SHELBY COUNTY VOC AND NO_X MVEBS

[Summer season tons per day]

Year	2006	2009 *	2017 *	2021 *
NO_X	55.878	55.620	55.173	54.445
VOC	25.216	27.240	18.323	13.817

* Includes an allocation from the available NO_X and VOC safety margins (*see* Table 7).

As mentioned above, Shelby County has chosen to allocate a portion of the available safety margin to the 2009, 2017 and 2021 NO_X and VOC State MVEBs. No safety margin was available to apply to the 2006 MVEBs. The following table identifies the amount of the NO_X and VOC safety margin that was allotted to the State MVEBs for applicable years.

TABLE 9—NO_X AND VOC SAFETY MARGIN ALLOCATION

[Summer season tons per day]

Year	2009	2017	2021
NO_X	11.142	32.247	37.447
VOC	6.221	5.512	2.455

Ninety-five percent of the safety margin emissions is allocated to the MVEBs. Specifically, 6.221 tpd of the available VOC safety margin and 11.142 tpd of the available NO_X safety margin are allocated to the 2009 MVEB, 5.512 tpd of the available VOC safety margin and 34.247 tpd of the available NO_X safety margin are allocated to the 2017 MVEB, and, 2.455 tpd of the available VOC safety margin and 37.447 tpd of the available NO_X safety margin are allocated to the 2021 MVEB. The remaining NO_X safety margin after allocation of some of the safety margin to the MVEBs for Shelby County is 0.586 tpd in 2009, 1.802 tpd in 2017 and 1.971 tpd in 2021. The remaining VOC safety margin after allocation of some of the safety margin to the MVEBs for Shelby County is 0.327 tpd in 2009, 0.290 tpd in 2017 and 0.129 tpd in 2021.

Through this rulemaking, EPA is proposing to approve the 2006, 2009, 2017 and 2021 MVEBs for VOC and NO_X for Shelby County because EPA has determined that the area maintains the 1997 8-hour ozone standard with the emissions at the levels of the budgets. Once the MVEBs for Shelby County (the subject of this rulemaking) are approved or found adequate (whichever is done first), they must be used for future conformity determinations.

VIII. What Is the Status of EPA's Adequacy Determination for the Proposed State NO_X and VOC MVEBs for the years 2006, 2009, 2017 and 2021 for Shelby County, Tennessee?

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

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

EPA's substantive criteria for determining ''adequacy'' of an MVEB are set out in 40 CFR 93.118(e)(4). The process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8–Hour Ozone and PM2.5 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 MVEBs is available in the proposed rule entitled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Tennessee's maintenance plan submission includes VOC and NO_X State MVEBs for Shelby County for the years 2006, 2009, 2017 and 2021. EPA reviewed both the VOCs and NO_X State MVEBs through the adequacy process. The Tennessee SIP submission, including the Shelby County VOC and NO_X MVEBs was open for public comment on EPA's adequacy Web site on March 12, 2009, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2006, 2009, 2017 and 2021 VOC and NO_X State MVEBs for Shelby County, Tennessee closed on April 13, 2009. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal. EPA provided a separate adequacy posting for the MVEBs in association with Crittenden County, Arkansas. The status of the adequacy process for the Crittenden County MVEBs will be discussed in EPA's separate action related to Crittenden County.

EPA intends to make its determination on the adequacy of the 2006, 2009, 2017 and 2021 MVEBs for Shelby County for transportation conformity purposes in the near future by completing the adequacy process that was started on March 12, 2009. After EPA finds the 2006, 2009, 2017 and 2021 MVEBs, adequate or approves them, the new MVEBs for VOC and NO_X must be used, for future transportation conformity determinations. For required regional emissions analysis years that involve the years 2009 through 2016, the applicable budgets for the purposes of conducting transportation conformity will be the new 2009 MVEBs; for years that involve the years 2017 through 2020, the applicable budget will be the new 2017 MVEBs for Shelby County. For required regional emissions analysis years that involve 2021 or beyond, the applicable budgets will be the new 2021 MVEBs. The 2006, 2009, 2017 and 2021 MVEBs are defined in section VII of this proposed rulemaking.

IX. Proposed Action on the Redesignation Request and Maintenance Plan SIP Revision Including Approval of the 2006, 2009, 2017 and 2021 State NO_X and VOC MVEBs for Shelby County, Tennessee

EPA is proposing to make the determination that Shelby County, Tennessee has met the criteria for redesignation from nonattainment to attainment for the 1997 8-hour ozone NAAQS. Further, EPA is proposing to approve Tennessee's February 26, 2009, SIP submittal including the redesignation request for Shelby County, Tennessee (as part of the bi-State Memphis Area). Additionally, EPA is proposing to approve the emissions inventory for Shelby County in association with the bi-State Memphis Area. EPA will address the redesignation request, emission inventory and maintenance plan for Crittenden County, Arkansas (as a portion of the bi-State Memphis Area) in a separate but coordinated action. EPA believes that the redesignation request and monitoring data demonstrate that the bi-State Memphis Area has attained the 1997 8-hour ozone standard.

EPA is also proposing to approve the maintenance plan for Shelby County included as part of the February 26, 2009, SIP revision as meeting the requirements of section 175A of the CAA. The maintenance plan includes

State NO_X and VOC State MVEBs for 2006, 2009, 2017 and 2021. EPA is proposing to approve the 2006, 2009, 2017 and 2021 NO_X and VOC State MVEBs for Shelby County because the maintenance plan demonstrates that in light of expected emissions for all source categories, the area will continue to maintain the 1997 8-hour ozone standard.

Further as part of today's action, EPA is describing the status of its adequacy determination for the 2006, 2009, 2017 and 2021 State NO_X and VOC State MVEBs, in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy finding for the MVEBs, or the effective date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e).

X. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

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

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

Dated: November 6, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–27815 Filed 11–18–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2009–0036; MO 92210 50083 B2]

RIN 1018–AV47

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Flying Earwig Hawaiian Damselfly (Megalagrion nesiotes) and Pacific Hawaiian Damselfly (M. pacificum) Throughout Their Ranges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our July 8, 2009, proposal to list two species of Hawaiian damselflies, the flying earwig Hawaiian damselfly (*Megalagrion nesiotes*) and the Pacific Hawaiian damselfly (*M. pacificum*), as endangered under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*).

DATES: The comment period for the proposed rule published July 8, 2009 (74 FR 32490) is reopened. To allow us adequate time to consider and incorporate submitted information into our review, we request that we receive information on or before December 21, 2009.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R1–ES–2009–0036, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Loyal Mehrhoff, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Box 50088, Honolulu, HI 96850; telephone 808–792–9400; facsimile 808–792–9581. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We reopen the public comment period on our July 8, 2009, proposal (74 FR 32490) to list two species of Hawaiian damselflies: the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly, as endangered under the Act (16 U.S.C. 1531 *et seq.*). Some peer review comments have already been received during the initial comment period on the proposal and may be found at *http://www.regulations.gov*. In order to allow for additional peer review, we are reopening the comment period for an additional 30 days. Comments previously received on this proposal need not be resubmitted, as they are already incorporated in the public record and will be fully considered in