9. Answers to the Motion of the United States Postal Service for Partial Waiver or Suspension of Commission Rules Specifying Materials to be filed in Support of its Request for Changes in Postal Rates and Classifications, filed May 3, 2006, are due no later than June 5, 2006.

10. The Secretary shall cause this Notice and Order to be published in the **Federal Register**.

Steven W. Williams,

Secretary.

[FR Doc. E6–7218 Filed 5–10–06; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA R03–OAR–2004–WV–0001; FRL–8168–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing its Notice of Proposed Rulemaking to redesignate the City of Weirton PM–10 nonattainment area to attainment and approval of the maintenance plan published on October 27, 2004 (69 FR 62637). EPA is also withdrawing the correcting amendment to the NPR published on November 9, 2004 (69 FR 64860).

DATES: The proposed rule is withdrawn as of May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION: Elsewhere in today's **Federal Register**, a separate proposed rulemaking entitled ''*Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the City of Weirton PM–10 Nonattainment Area to Attainment and Approval of the Limited Maintenance Plan,*'' provides more detailed legal and factual basis for supporting our decision to withdraw the NPR and its related correcting amendment. Our proposed action to approve the State of West Virginia request to redesignate the Weirton area to attainment and approve the associated maintenance plan is also found in the NPR in today's **Federal Register.**

Separate dockets have been prepared for the new proposal and this notice to withdraw the October 27, 2004 Weirton notice of proposed rulemaking.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

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

Dated: April 28, 2006.

Judith Katz,

Acting Regional Administrator, Region III.

[FR Doc. E6–7215 Filed 5–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2005–0480; FRL–8168–6]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the City of Weirton PM–10 Nonattainment Area to Attainment and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 24, 2004, the State of West Virginia submitted a request that EPA redesignate the Weirton nonattainment area (Weirton Area) to attainment for the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10), and concurrently requested approval of a limited maintenance plan (LMP) as a revision to the West Virginia State Implementation Plan (SIP). In this action, the EPA proposes to approve the LMP for the Weirton Area in West Virginia and grant the State's request to redesignate the area from nonattainment to attainment. EPA's proposed approval is based on its determination that the area has met the criteria for redesignation for attainment specified in the Clean Air Act (CAA). EPA is also proposing to determine that, because the Weirton Area has continued to attain the PM–10 NAAQS, certain attainment demonstration requirements, along with other related requirements of the CAA, are not applicable to the Weirton Area.

DATES: Written comments must be received on or before June 12, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2005–0480 by one of the following methods:

A. *http://www.regulations.gov.* Follow the online instructions for submitting comments.

B. E-mail: *Morris.makeba@epa.gov.*

C. Mail: EPA–R03–OAR–2005–0480, Makeba Morris, Chief, Air Quality Planning and Analysis Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2005–0480. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and 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.

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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us'', or ''our'' are used, we mean EPA.

Table of Contents

I. Background
A. What NAAQS Are Considered in Today's Rulemaking?
B. What is a State Implementation Plan (SIP)?
C. What are the Requirements for Redesignating a Nonattainment Area to Attainment?
D. What is the Background of the SIP for the Weirton Area?
E. What are the Air Quality Characteristics of the Weirton Area?
II. Review of the West Virginia State Submittal Addressing the Requirements for Redesignation
A. Does the Submittal Meet the Criteria for Redesignation?
1. Has the State Demonstrated that the Weirton Area has attained the applicable NAAQS?
2. Does the Weirton Area have a fully approved SIP under Section 110(k) of the Act that meets all requirements applicable under Section 110 and Part D of the Act for Purposes of Redesignation?
3. Clean Data Policy
4. Has the State Demonstrated that the Air Quality Improvement is due to permanent and enforceable reductions?
III. Review of the Limited Maintenance Plan
A. What is a Maintenance Plan?
B. What is the LMP Option for PM–10 Nonattainment Areas seeking Redesignation to Attainment
C. Does the Weirton Area Qualify for the LMP Option?
D. Does the LMP submitted meet all the requirements for a Fully Approved Maintenance Plan?
E. Has the State met conformity requirements?
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. Background

A. What NAAQS Are Considered in Today's Rulemaking?

Particulate matter with an aerodynamic diameter less than or equal to a nominal ten microns (PM–10) is the pollutant subject to this action. The NAAQS are safety thresholds for certain ambient air pollutants set to protect public health and welfare. PM–10 is among the ambient air pollutants for which we have established such a health-based standard. PM–10 causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable. On July 1, 1987 (52 FR 24634) we revised the NAAQS for particulate matter with an indicator that includes those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. See 40 CFR 50.6. The annual primary PM–10 standard is 50 μ/m^3 as an annual arithmetic mean. The 24-hour primary PM–10 standard is 150 $\mu g/m^3$ with no more than one expected exceedance per year. The secondary PM–10 standards, promulgated to protect against adverse welfare effects, are identical to the primary standards.

B. What Is a State Implementation Plan (SIP)?

The Act requires states to attain and maintain ambient air quality equal to or better than the NAAQS. Section 107(d)(1)(A)(I) of the Act defines nonattainment area as any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for that pollutant.

A state's strategy for attaining and maintaining the NAAQS are outlined in the state implementation plan (SIP). The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS by the applicable attainment date. The Act requires that states make SIP revisions periodically, as necessary, to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) A current, accurate and comprehensive inventory of emission sources; (2) statutes and regulations adopted by the State Legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date.

A state must make the SIP and subsequent revisions available for public review and comment through a public hearing, it must be adopted by the State, and submitted to EPA by the Governor or the Governor's designee. EPA takes action to approve the SIP, thus rendering the rules and regulations federally enforceable. The approved SIP is the state's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

C. What are the Requirements for Redesignating a Nonattainment Area to Attainment?

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain additional requirements are met. Section 107(d)(3)(E) of the Act provides the criteria for redesignation. These criteria are further clarified in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992, as supplemented 57 FR 18070, April 28, 1992) (the General Preamble), and in a guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards dated September 4, 1992, ''Procedures for Processing Requests to Redesignate Areas to Attainment, (Calcagni memo).'' The criteria for redesignation are:

(1) A determination that the area has attained the applicable NAAQS;

(2) Full approval of the applicable SIP for the area under section 110(k) of the Act;

(3) The state containing the area has met all requirements applicable to the area under section 110 and part D of the Act;

(4) A determination that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions; and

(5) Full approval of a maintenance plan for the area as meeting the requirements of section 175A of the Act.

D. What is the Background of the SIP for the Weirton Area?

The Weirton Area, consisting of Hancock County and part of Brooke County, West Virginia, was designated

by EPA as a moderate PM–10 nonattainment area on December 21, 1993 (58 FR 67334).

On May 16, 2001 (66 FR 27034), EPA promulgated a final rule entitled, ''Determination of Attainment of the NAAQS for PM–10 in the Weirton, West Virginia Nonattainment Area'' finding that the Weirton PM–10 nonattainment had attained the NAAQS for PM–10 by its applicable December 31, 2000 attainment date.

In order to be redesignated from nonattainment to attainment, West Virginia requested that EPA apply its clean data policy to the Weirton Area in a letter dated October 14, 2003. West Virginia submitted a request to redesignate the Weirton Area to attainment for PM–10 and a SIP submittal for the related maintenance plan on May 24, 2004.

EPA published a direct final rule (DFR) and notice of proposed rulemaking (NPR) in which we determined that certain attainment demonstration requirements, along with other related requirements of the Act, are not applicable to the Weirton Area. In the same October 27, 2004 DFR and NPR, EPA also approved the request from the State of West Virginia to redesignate the Weirton Area from nonattainment to attainment of the NAAQS for PM–10, and to approve the 10-year maintenance plan for the area submitted by the WVDEP as a revision to the West Virginia SIP. (October 27, 2004, 69 FR 62591 and 69 FR 62637).

EPA published a correcting amendment to the DFR and NPR on November 9, 2004 (69 FR 64860) to include additional explanation of why motor vehicle emissions do not contribute significantly to any nonattainment with the PM–10 NAAQS in the Weirton Area.

EPA received adverse comments on the October 27, 2004 DFR/NPR from one commenter. Therefore, EPA withdrew the DFR on December 20, 2004 (69 FR 75847). The withdrawal of the DFR converted EPA's action to a proposal based on the October 27, 2004 NPR. In a separate rulemaking in today's **Federal Register**, EPA is withdrawing the October, 27 2004 NPR and the November 9, 2004 amendment thereto, and issuing this current proposal. Because we are withdrawing the earlier action, we will not respond to the comments received on the withdrawn DFR and NPR. Any person wishing to comment on this current proposal must submit comments pursuant to the instructions given in this notice of proposed rulemaking.

E. What are the Air Quality Characteristics of the Weirton Area?

The primary years used by EPA for the purposes of establishing PM–10 designations and classifications were 1987 to 1989. For this base year period, the Weirton Area 24-hour average PM–10 design value was 198 μg/m^3. This value exceeded the NAAQS of 150 μg/m^3. The Weirton Area has never exceeded the annual average standard of 50 μg/m^3. As provided in the WV SIP submittal, for the 2000 to 2002 period, the comparable 24-hour average design value is 112 μg/m^3 and the PM–10 annual average design value is 32 μg/m. Both values meet the NAAQS. Based on the certified ambient air quality data through the close of calendar year 2005, EPA proposes to determine that the area continues to attain the PM–10 NAAQS. Furthermore, there have been no recorded exceedances of the 24-hour PM–10 standard or the annual PM–10 standard from 1997 through the end of 2005 in the Weirton Area, and the highest annual value in the Weirton area for the years 2003–2005 is 29 μg/m^3. See also the discussion in Section II.A.1. and the technical support document (TSD) accompanying this rulemaking.

II. Review of the West Virginia Submittal Addressing the Requirements for Redesignation

A. Does the Submittal Meet the Criteria for Redesignation?

1. Has the State demonstrated that the Weirton Area has attained the applicable NAAQS?

States must demonstrate that an area has attained the PM–10 NAAQS through analysis of ambient air quality data from an ambient air monitoring network representing peak PM–10 concentrations. The data should be stored in the EPA Air Quality System (AQS) database. The 24-hour PM–10 NAAQS is 150 μg/m^3. An area has attained the 24-hour standard when the average number of expected exceedences per year is less than or equal to one, when averaged over a three-year period (40 CFR 50.6). To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with Federal requirements (40 CFR part 58, including appendices). The annual PM–10 NAAQS is 50 μg/m^3. To determine attainment, the standard is compared to the expected annual mean, which is the average of the weighted annual mean for three consecutive years. More detailed monitoring data is available in the TSD.

EPA previously determined in ''A Determination of Attainment of the NAAQS for PM–10 in the Weirton, West Virginia Nonattainment Area'' on May 16, 2001 (66 FR 27034) that the area had attained the PM–10 NAAQS. As previously stated, the most recent air quality monitoring continues to support this determination. Thus, EPA proposes to determine that the Weirton Area has satisfied the criterion of section 107(d)(3)(E)(I) that the area has attained the PM–10 NAAQS.

2. Does the Weirton Area have a Fully Approved SIP under section 110(k) of the Act that meets all requirements applicable under section 110 and Part D for Purposes of Redesignation?

In order to qualify for redesignation, the SIP must satisfy all requirements that apply to the area for purposes of redesignation. EPA interprets the Act to require state adoption and EPA approval of the requirements applicable for purposes of redesignation under section 110 and part D before EPA may approve a redesignation request. Thus in order to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) with respect to all requirements that apply to the area for purposes of redesignation.

As we explain more fully in later sections of this action, EPA has determined that West Virginia has met all SIP requirements applicable for purposes of redesignation under section 110 of the CAA and has also determined that the West Virginia SIP meets requirements applicable for purposes of redesignation under Part D, Title I of the CAA. EPA has analyzed the SIP codified at 40 CFR part 52, subpart XX, and determined that it is consistent with the requirements of section 110 applicable for purposes of redesignation.

The air quality planning requirements for moderate PM–10 nonattainment areas under part D of Title I of the CAA are set out in subparts 1 and 4. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic requirements applicable to all nonattainment areas. Subpart 4 of part D, found in section 189 of the CAA, establishes additional specific requirements for PM–10 areas depending upon the area's nonattainment classification. For purposes of evaluating the redesignation request, EPA is proposing to determine that these applicable requirements have been met for the reasons discussed in later sections of this notice.

The Part D provisions that the Weirton Area must evaluate prior to redesignation as attainment include an emissions inventory, conformity, a

permit program for new and modified stationary sources (called new source review or NSR), Reasonably Available Control Measure (RACM) requirements contained in sections 172 and 189 of the Act), a demonstration of reasonable further progress (RFP) toward attainment, an attainment demonstration, and contingency measures. We address how the Weirton Area has met the RACM, RFP, attainment demonstration and contingency measure requirements in the next section of this notice (Clean Data Policy).

With respect to the emissions inventory requirement, the Calcagni memo notes that the requirements for an emission inventory will be satisfied by the inventory requirements of the maintenance plan. An attainment year emissions inventory for the Weirton Area has been included in the maintenance plan, and thus this requirement has been satisfied.

With respect to the conformity requirement, section 176(c) of the CAA requires states to establish criteria and procedures to ensure the 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 U.S.C and the Federal Transit Act (''transportation conformity'') as well as to other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes 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 *Wall* v. *EPA,* 265F 3d 426 (6th Cir. 2001), upholding this interpretation. See, also, 60 FR 62748 (December 7, 1995).

With respect to the NSR program requirement, EPA has determined that areas being redesignated need not have an approved NSR program prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this view is described in a memorandum for Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements of Areas Requesting Redesignation to Attainment.'' The State has demonstrated that the area will be able to maintain the standard without Part D NSR in effect, and therefore the State need not have a fully approved Part D NSR program prior to approval of the redesignation request. The State's Prevention of Significant Deterioration (PSD) program will become effective in the area upon redesignation to attainment. Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorrain, OH (61 FR 20458, 20469–20470, May 7, 1996); Louisville, KY (66 FR 53665, October 23 2001); Grand Rapids, MI (61 FR 31834–31837, June 21, 1996).

3. Clean Data Policy

In some designated nonattainment areas, monitored data demonstrates that the NAAQS has already been achieved. Based on its interpretation of the Act, EPA has determined that certain requirements of part D, subpart 1 and 2 of the Act do not apply and therefore do not require certain submissions for an area that has attained the NAAQS. These include reasonable further progress (RFP) requirements, attainment demonstrations and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS.

The so-called Clean Data Policy is the subject of two EPA memoranda setting forth our interpretation of the provisions of the Act as they apply to areas that have attained the relevant NAAQS. EPA also finalized the statutory interpretation set forth in the policy in a final rule, 40 CFR 51.918, as part of its Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2 (Phase 2 Final Rule). See discussion in the preamble to the rule at 70 FR 71645–71646 (November 29, 2005). EPA believes that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (Seitz memo), and our December 14, 2004 memorandum from Stephen D. Page entitled ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' (Page memo), are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM–10. EPA's interpretation of how the provisions of the Act apply to areas with ''clean data'' is not logically limited to ozone and PM–2.5, because the rationale is not dependent upon the type of pollutant. Our interpretation that an area that is attaining the standard is relieved of obligations to demonstrate reasonable further progress (RFP) and to provide an attainment demonstration and contingency measures pursuant to part D of the CAA, pertains whether the standard is PM–10, ozone or PM–2.5.

The reasons for relieving an area that has attained the relevant standard of certain part D, subpart 1 and 2 (sections 171 and 172) obligations, applies equally as well to part D, subpart 4, which contains specific attainment demonstration and RFP provisions for PM–10 nonattainment areas. As we have explained in the Phase 2 Final Rule and our ozone and PM–2.5 clean data memoranda, EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with related requirements, so as not to require SIP submissions if an area subject to those requirements is already attaining the NAAQS (i.e., attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured air quality monitoring data). Three U.S. Circuit Courts of Appeals have upheld EPA rulemakings applying its interpretation of subparts 1 and 2 with respect to ozone. *Sierra Club* v. *EPA,* 99F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* N. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion). It has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS. In the General Preamble, we stated:

> [R]equirements for RFP will not apply in evaluating a request for redesignation to attainment, since, at a minimum, the air quality data for the area must show that the area has already attained. A showing that the State will make RFP toward attainment will, therefore, have no meaning at that point. 57 FR at 13564.

EPA believes the same reasoning applies to the PM–10 provisions of part D, subpart 4.

With respect to RFP, section 171(1) states that, for purposes of part D of title I, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.'' Thus, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of

sections 182(b) and (c), or the specific RFP requirements for PM–10 areas of part D, subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date. Section 189(c)(1) states that:

> Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(l) of this title, toward attainment by the applicable date.

Although this section states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, such milestones are designed to show reasonable further progress ''toward attainment by the applicable date'', as defined by section 171. Thus it is clear that once the area has attained the standard, no further milestones are necessary or meaningful. This interpretation is supported by language in section 189(c)(3), which mandates that a state that fails to achieve a milestone must submit a plan that assures that the state achieve the next milestone or attain the NAAQS if there is no next milestone. Section 189(c)(3) assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS.

If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.[1] EPA took this position with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 memorandum with respect to the requirements of sections 182(a)(b) and (c). We are extending that interpretation to the specific provisions of part D, subpart 4. In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.'' (57 FR at 13564). See also Calcagni memo, p.6.

With respect to the attainment demonstration requirements of section 189(a)(1)(B) an analogous rationale leads to the same result. Section 189(a)(1)(B) requires that the plan provide for ''a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date.* * *'' As with the RFP requirements, if an area is already monitoring attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble, the Page memo and of the section 182(b) and (c) requirements set forth in the Seitz memo. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' (57 FR at 13564).

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of sections 172(c)(9) and 182(c)(9). We have interpreted the contingency measure requirements of sections 172(c)(9) and 182(c)(9) as no longer applying when an area has attained the standard because those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' (57 FR at 13564); Seitz memo, pp. 5–6.

Both sections 172(c) and 189(a)(1)(c) require ''provisions to assure that reasonable available control measures'' (i.e, RACM) are implemented in a nonattainment area. However, the Weirton Area was able to attain the PM–10 NAAQS without any additional measures being implemented. The General Preamble, 57 FR 13560 (April 16, 1992) states that EPA interprets section 172(c)(1) so that RACM requirements are a ''component'' of an area's attainment demonstration. Thus, for the same reason the attainment demonstration no longer applies by its own terms, the requirement for RACM no longer applies. EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable further progress or to attainment. General Preamble, 57 FR at 13498. Thus, where an area is already attaining the standard, no additional RACM measures are required.[2] EPA is interpreting section 189(a)(1)(c) consistent with its interpretation of section 172(c)(1). Therefore, there is no requirement for the West Virginia SIP to contain RACM for the Weirton Area in order for EPA to redesignate that area as attainment for the PM–10 NAAQS.

Here, as in both our Phase 2 final rule and ozone and PM–2.5 clean data memoranda, we emphasize that the suspension of a requirement to submit SIP revisions concerning these RFP, attainment demonstration, RACM, and other related requirements exists only for as long as a nonattainment area continues to monitor attainment of the standard. If such an area experiences a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. Therefore, the area would again be subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard. However, once EPA ultimately redesignates the area to attainment, the area will be entirely relieved of these requirements to the extent the maintenance plan for the area does not rely on them.

Therefore, we believe that, for the reasons set forth here and established in our prior ''clean data'' memoranda and rulemakings, a PM–10 nonattainment area that has ''clean data,'' should be relieved of the part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B) the RACM provisions of 189(a)(1)(c), and the RFP provisions established by section 189(c)(1) of the Act, as well as the aforementioned attainment demonstration, RACM, RFP and contingency measure provisions of

[1] Thus we believe that it is a distinction without a difference that section 189(c)(1) speaks of the RFP requirement as one to be achieved until an area is ''redesignated as attainment'', as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone nonattainment area RFP requirements in sections 182(b)(1) or 182(c)(2), which refer to the RFP requirements as applying until the ''attainment date'', since, section 189(c)(1) defines RFP by reference to section 171(l) of the Act. Reference to 171(l) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2), the PM-specific requirements may only be required ''for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' 42 U.S.C. section 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(l), and incorporated in section 189(c)(1), to be a requirement that no longer applies once the standard has been attained.

[2] The EPA's interpretation that the statute only requires implementaion of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit (Sierra Club v. EPA, 314 F.3d 735, 743–745 (5th Cir. 2002)), and by the United States Court of Appeals for the D.C. Circuit (Sierra Club v. EPA, 294 F3d 155, 162–163 (D.C. Cir. 2002)).

part D, subpart 1 contained in section 172 of the Act.[3]

Should EPA at some future time determine that an area that had clean data, but which has not yet been redesignated as attainment for a NAAQS has violated the relevant standard, the area would again be required to submit the pertinent requirements under the SIP for the area. Attainment determinations under the policy do not shield an area from other required actions, such as provisions to address pollution transport.

As set forth, above, EPA proposes to find that because the Weirton Area has continued to attain the NAAQS the requirement of an attainment demonstration, reasonable further progress, reasonably available control measures and contingency measures no longer apply.

Thus, EPA has determined that all provisions of CAA section 110 and part D applicable to the Weirton Area for purposes of redesignation have been approved into the West Virginia SIP.

4. Has the State demonstrated that the air quality improvement is due to permanent and enforceable reductions?

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual enforceable emission reductions. The control measures for the area, which were responsible for bringing the area into attainment, are contained in a Consent Order (CO) between the State of West Virginia and the Weirton Steel Corporation. The control measures and emission limits established in the CO were made permanent and enforceable when EPA approved them into the West Virginia SIP on May 5, 2004 (69 FR 24986). These control measures resulted in a reduction of 1345.5 tons per year of allowable PM–10 emissions and a reduction of 886 tons per year of actual PM–10 emissions. EPA approved these measures as RACT in the West Virginia SIP on May 4, 2004 (69 FR 24986).

[3] In prior rulemakings involving the Clean Data Policy and PM–10, EPA has applied criteria in addition to that of attainment of the standard. See *e.g.*, 67 FR 43020 (June 26, 2002). EPA does not believe that those additional criteria are required by statute or are necessary for application of the policy for PM–10 areas, and does not employ them in applying the policy to ozone and $PM_{2.5}$ areas. EPA intends to make its application of the policy consistent for ozone, PM–10, and $PM_{2.5}$, and does not intend to require an area to meet additional criteria for PM–10.

III. Review of the Limited Maintenance Plan

A. What is a Maintenance Plan?

As discussed in section II of this action, to be redesignated to attainment, the Weirton Area is required to have a fully approved maintenance plan under section 175A of the CAA. A maintenance plan should identify the level of air emissions from cars, industry and other sources which is sufficient to attain the NAAQS. The State must commit to re-evaluate the maintenance plan. The plan must also show that the area will maintain clean air for at least 10 years after redesignation. Additionally, the plan must include a list of contingency measures to be implemented should the NAAQS be violated. The requirements for the contingency measures is found in paragraph (d) of CAA section 175A.

B. What is the LMP Option for PM–10 Nonattainment Areas Seeking Redesignation to Attainment

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM–10 nonattainment areas seeking redesignation to attainment (Memorandum from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled ''Limited Maintenance Plan Option for Moderate PM–10 Nonattainment Areas'', (Wegman memo). The Wegman memo contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain compliance with the standard 10 years into the future. Thus, EPA has already provided the maintenance demonstration for areas that meet the air quality criteria outlined in the Wegman memo. The Wegman memo streamlines the full maintenance plan requirements and establishes the LMP option. The LMP option does not require air quality modeling estimates that clean air can be maintained, a projection of emissions into the future, or some of the standard analyses to determine conformity with the air quality standards. The Wegman memo identifies core provisions that must be included in the LMP. These provisions include an attainment year emission inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

C. Does the Weirton Area qualify for the LMP option?

To qualify for the LMP option, the area must have attained the PM–10 NAAQS, and the average annual PM–10 design value for the area, based upon the most recent 5 years of air quality data at all monitors in the area, should be at or below 40 μg/m3, and the 24 hour design value should be at or below 98 μg/m3. If an area cannot meet this test, it may still be able to qualify for the LMP Option if the average design value (ADV) for the site is less than the site-specific critical design values (CDV) (as those terms are used in the Wegman memo). In addition, the area should expect only limited growth in on-road motor vehicle PM–10 emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test.

To show that future emissions will not exceed the level of the attainment inventory, the WVDEP determined the CDV. The CDV is a statistical technique based upon the average design value and its observed variability to estimate the probability of exceeding the NAAQS in the future.

When applied specifically to the Weirton Area 24-hour data for the years 2000 through 2004, the CDV is 137 $\mu g/m^3$. The actual 5-year average design value for the Weirton Area is 96.8 $\mu g/m^3$ which is below the level of 98 $\mu g/m^3$ established for the LMP option. Furthermore, the maximum site average design value of 105.2 $\mu g/m^3$ is less than the area-specific CDV of 137 $\mu g/m^3$.

There is no expected population growth in the Weirton Area. The impact of vehicle emissions in the Weirton Area has been determined to be an insignificant contributor to PM–10 nonattainment in the area. Details can be found in the TSD.

Based on our foregoing analysis, we have determined that the Weirton Area qualifies for use of the LMP option.

D. Does the LMP Submitted Meet all the Requirements for a Fully Approved Maintenance Plan?

The Weirton Area meets the criteria for using a LMP for redesignation. The LMP does not require a modeling demonstration to show maintenance of the NAAQS. A projected emissions inventory is also not required. The LMP does require the following:

1. An attainment year emissions inventory
2. Assurance of continued operation of an EPA-approved air quality monitoring network
3. Contingency provisions.

The LMP for the Weirton Area, dated May 24, 2004 includes the necessary provisions for approval. Specifically, it contains the following:

1. Attainment Year Emission Inventory

In the May 24, 2004 submittal, an inventory of allowable emissions of

sources in the nonattainment area was included in the maintenance plan. This inventory will be approved into the SIP as part of the LMP. The inventory is presented in the TSD.

2. Continued Operation of Air Quality Monitoring Network

The LMP includes a commitment to continue to monitor PM–10 in the Weirton Area throughout the 10-year term of the maintenance plan to verify continued attainment of the NAAQS. The monitoring procedures will be determined in accordance with 40 CFR parts 53 and 58.

3. Contingency Measures

Pursuant to section 175A of the Act, 42 U.S.C. 7505A, a maintenance plan must include such contingency measures, as EPA deems necessary, to promptly correct any violation of the NAAQS which may occur after redesignation of the area to attainment. As explained in the Wegman and Calcagni memos, these contingency measures do not have to be fully adopted at the time of redesignation.

The State will rely on monitored ambient air data to determine the need to implement contingency measures. In the event of an exceedance of the PM–10 standard, the State will review the monitored data, the local meteorological data, and the compliance of certain local facilities identified in the maintenance plan. If all such facilities are in compliance with applicable SIP and permit emission limits, the State will then determine the additional control measures the state will need to impose on the area's stationary sources in order to continue to maintain the NAAQS.

In the event of three exceedances of the 24-hour PM–10 standard within a three-year period, the State will notify the stationary sources in the Weirton Area that the potential exists for a NAAQS violation, and that if a violation occurs, these sources will need to implement the measures previously identified. Within six months of receiving notice from the State, the stationary sources must submit a detailed plan of action to WVDEP to implement the identified additional control measures within 18 months after the state notifies the source of an actual violation of the NAAQS. The sources' additional control measure plans will be submitted to EPA for approval and incorporation into the SIP.

E. Has the State met Conformity Requirements?

As we stated previously in this notice, EPA believes the conformity SIP requirements do not apply for purposes of evaluating a redesignation request, because conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. The transportation conformity rule (40 CFR parts 51 and 93) and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While EPA's LMP policy does not exempt an area from the need to demonstrate conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the LMP policy, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the PM–10 NAAQS would result. For transportation conformity purposes, EPA concludes that mobile source emissions in these areas need not be capped at any level for the maintenance period, and therefore the requirement for a regional emissions analysis would be considered to be met. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the ''budget test'' specified in § 93.158(a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

For Federal actions which are required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that ''the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP.'' 40 CFR 93.158(a)(5)(i)(A).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the State and local air quality agencies. These emissions budgets are not the same as those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels. West Virginia has chosen not to include specific emissions allocations for Federal projects that would be subject to the provisions of general conformity.

While areas with maintenance plans approved under the LMP option are thus essentially not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the State will still need to document and ensure that: (a) Transportation plans and projects provide for timely implementation of SIP transportation control measures in accordance with 40 CFR 93.113; (b) transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108; (c) the MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105; (d) conformity of transportation plans is determined no less frequently than every four years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104; (e) the latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111; (6) projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and, (7) project sponsors and/or operators provide appropriate written commitments as specified in 40 CFR 93.125.

IV. Proposed Action

Based on the foregoing analysis, we have determined that the Weirton Area fulfills the criteria for redesignation as attainment with the PM–10 NAAQS. EPA has determined that the submitted maintenance plan meets the requirements of the Act, and the Weirton Area fulfills the criteria for redesignation to attainment for the PM–10 NAAQS based on the State's May 24, 2004 submission. EPA is proposing to determine that the area has continued to attain the PM–10 NAAQS and to determine that certain attainment demonstration requirements, along with other related requirements of part D title I of the CAA as set forth above, are not applicable to the area. EPA is proposing to redesignate the Weirton PM–10

moderate nonattainment area to attainment and to approve the West Virginia SIP revision for the 10-year maintenance plan for the Weirton Area, submitted on May 24, 2004. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This proposed rule to redesignate the Weirton Area to attainment with the PM–10 NAAQS and approve the LMP as a SIP revision does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air Pollution Control, National parks, Wilderness areas.

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

Dated: May 3, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–7216 Filed 5–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2006–0429; FRL–8168–3]

Tennessee: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Tennessee has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Tennessee. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble of the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal.

If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment.

DATES: Comments must be received on or before June 12, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2006–0429 by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *Gleaton.Gwen@epa.gov.*
- Fax: (404) 562–8439 (prior to faxing, please notify the EPA contact listed below)
- Mail: Send written comments to Gwen Gleaton, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The