Dated: July 29, 2014.

H. Curtis Spalding,

Regional Administrator, EPA New England.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2014–0281; FRL– 9915–49–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Redesignation Request and Associated Maintenance Plan for the Maryland Portion of the Martinsburg-Hagerstown, WV-MD Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State of Maryland's request to redesignate to attainment the Maryland portion of the Martinsburg-Hagerstown, WV-MD Nonattainment Area (Martinsburg Area or Area) for the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The Maryland portion of the Martinsburg Area is comprised of Washington County, Maryland. EPA has determined that the Martinsburg Area attained the standard and continues to attain the standard. In addition, EPA is proposing to approve, as a revision to the Maryland State Implementation Plan (SIP), the Washington County maintenance plan to show maintenance of the 1997 annual $PM_{2.5}$ NAAQS through 2025 for the Maryland portion of the Area. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and nitrogen oxides (NO_X) mobile vehicle emissions budgets (MVEBs) for Washington County, Maryland for the 1997 annual $PM_{2.5}$ NAAQS, which EPA is proposing to approve for transportation conformity purposes. These actions are being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 22, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0281 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2014–0281, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, 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–2014–0281. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *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 *www.regulations.gov* or email. The *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 email comment directly to EPA without going through *www.regulations.gov,* your email 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 *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 *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 the Maryland Department of the Environment, Air and Radiation Management Administration, 1800 Washington Boulevard, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, at (215) 814–2308, or by email at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The first air quality standards for $PM_{2.5}$ were established on July 18, 1997 (62 FR 38652). EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a three-year average of annual mean $PM_{2.5}$ concentrations (the 1997 annual $PM_{2.5}$ standard). In the same rulemaking, EPA promulgated a 24-hour standard of 65 $\mu g/m^3$ based on a three-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005 (70 FR 944, 1014), EPA published air quality area designations for the 1997 $PM_{2.5}$ NAAQS. In that rulemaking action, EPA designated the Martinsburg Area as nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. The Martinsburg Area is comprised of Washington County in Maryland and Berkeley County in West Virginia. *See* 40 CFR 81.321 (Maryland) and 40 CFR 81.349 (West Virginia).

On October 17, 2006 (71 FR 61144), EPA retained the annual average standard at 15 $\mu g/m^3$, but revised the 24-hour standard to 35 $\mu g/m^3$, based again on the three-year average of the 98th percentile of the 24-hour concentrations (the 2006 annual $PM_{2.5}$ standard). On November 13, 2009 (74 FR 58688), EPA published designations for the 2006 24-

hour $PM_{2.5}$ standard, which became effective on December 14, 2009. In that rulemaking action, EPA designated the Martinsburg Area as attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 74 FR 58737 and 40 CFR 81.321 (Maryland) and also *see* 74 FR 58775 and 40 CFR 81.349 (West Virginia). Since the Martinsburg Area is designated nonattainment for the annual NAAQS promulgated in 1997, today's proposed rulemaking action addresses the redesignation to attainment only for this standard.

On November 20, 2009 (74 FR 60199), EPA determined that the Martinsburg Area had attained the 1997 annual $PM_{2.5}$ NAAQS. Pursuant to 40 CFR 51.1004(c) and based on this determination, the requirements for States that comprise the Martinsburg Area to submit attainment demonstrations and associated reasonably available control measures (RACM), reasonable further progress (RFP) plans, contingency measures, and other planning SIP revisions related to the attainment of the 1997 annual $PM_{2.5}$ NAAQS are suspended until such time as: (1) the Area is redesignated to attainment for the standard, at which time the requirements no longer apply or (2) EPA determines that the Area has again violated the standard, at which time such plans are required to be submitted. On January 20, 2012 (77 FR 1411), EPA determined that the Martinsburg Area had attained the 1997 annual $PM_{2.5}$ NAAQS by the statutory attainment date of April 5, 2010.

On December 12, 2013, the State of Maryland, through the Maryland Department of the Environment (MDE), formally submitted a request to redesignate the Maryland portion of the Martinsburg Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. Concurrently, MDE submitted a maintenance plan for Washington County as a SIP revision to ensure continued attainment throughout the Maryland portion of the Area over the next 10 years. In addition, the maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs used for transportation conformity purposes for Washington County, Maryland for the 1997 annual $PM_{2.5}$ NAAQS.

II. EPA's Requirements

A. Criteria for Redesignation to Attainment

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) EPA determines that the area has attained the applicable NAAQS; (2) EPA has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) EPA 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) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the CAA. Each of these requirements are discussed in section V. (EPA's Analysis of Maryland's SIP Submittal) of this proposed rulemaking action.

EPA has provided guidance on redesignation in the ''State Implementation Plans; General Preamble for the Implementation of Title I of the CAA Amendments of 1990,'' (57 FR 13498, April 16, 1992) (the ''General Preamble'') and has provided further guidance on processing redesignation requests in the following documents: (1) ''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 ''1992 Calcagni Memorandum''); (2) ''SIP Actions Submitted in Response to CAA Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and, (3) ''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.

B. Requirements of 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 of the CAA, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future $PM_{2.5}$ violations.

The 1992 Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a $PM_{2.5}$ maintenance plan should address the following provisions: (1) An attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and, (5) a contingency plan to prevent or correct future violations of the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for nonattainment areas and for areas seeking redesignation to attainment for a given NAAQS. These emission control strategy SIP revisions (e.g., RFP and attainment demonstration SIP revisions) and maintenance plans create MVEBs based on onroad mobile source emissions for the relevant criteria pollutants and/or their precursors, where appropriate, to address pollution from onroad transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to onroad vehicle use that, together with emissions from all other sources in the area, will provide attainment, RFP, or maintenance, as applicable. The budget serves as a ceiling on emissions from an area's planned transportation system. Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan.

The maintenance plan for Washington County includes the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for transportation conformity purposes. The transportation conformity determination for the Area is further discussed in section V.C. (Transportation Conformity) of this proposed rulemaking action and a technical support document (TSD) dated April 3, 2014 is available in the docket for this proposed rulemaking action.

III. Summary of Proposed Actions

EPA is proposing to take several rulemaking actions related to the redesignation of the Maryland portion of the Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA is proposing to find that the Maryland portion of the Area meets the requirements for redesignation for the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3)(E) of the CAA. EPA is proposing to approve the maintenance plan for the Maryland portion of the Area as a revision to the Maryland SIP for the 1997 annual $PM_{2.5}$

NAAQS. The approval of a maintenance plan is one of the CAA criteria for redesignation of the Area to attainment. The Washington County maintenance plan is designed to ensure continued attainment of the 1997 annual $PM_{2.5}$ standard in the Maryland portion of the Area for 10 years after redesignation. EPA is also proposing to approve the MVEBs for $PM_{2.5}$ and NO_X emissions for the 1997 annual $PM_{2.5}$ standard, which are included as part of the Washington County maintenance plan.

EPA previously determined that the Martinsburg Area has attained the 1997 annual $PM_{2.5}$ NAAQS, 74 FR 60199 (November 20, 2009) and 77 FR 1411 (January 10, 2012) and, in the rulemaking action proposing approval of the redesignation request for the West Virginia portion of the Area, EPA proposed to find that the Area continues to attain the standard, 79 FR 25540 (May 5, 2014). EPA is, therefore, proposing to approve MDE's request to change the designation for the Maryland portion of the Martinsburg Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. This action does not impact the designation of the West Virginia portion of the Area, for which EPA is taking separate action. *See* 79 FR 25540, May 5, 2014 for information related to the redesignation of the West Virginia portion of the Area, Docket I.D. EPA–R03–OAR–2013–0690.

IV. Effects of Recent Court Decisions on Proposed Actions

In this proposed rulemaking action, EPA considers the effects of three legal decisions on this redesignation. EPA first considers the effects of the D.C. Circuit Court and U.S. Supreme Court's decisions in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), *rev'd,* No. 12–1182 (S. Ct. April 29, 2014). The Supreme Court reversed the D.C. Circuit Court decision vacating and remanding CSAPR. EPA is also considering the effect of the January 4, 2013 D.C. Circuit decision remanding to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule''). *Natural Resources Defense Council (NRDC*) v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013).

A. Effect of the Supreme Court and D.C. Circuit Court's Decisions Regarding EPA's CSAPR

EPA has considered the recent decisions from the U.S. Supreme Court and the D.C. Circuit Court regarding EPA's CSAPR, and has concluded that the decisions do not affect the Agency's proposal to redesignate the Maryland portion of the Martinsburg Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA promulgated CSAPR (76 FR 48208, August 8, 2011) to replace the Clean Air Interstate Rule (CAIR), which has been in place since 2005. *See* 76 FR 59517. Both CSAPR and CAIR require significant reductions in emissions of SO_2 and NO_X from electric generating units (EGUs) to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. The D.C. Circuit Court initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). After staying the implementation of CSAPR on December 20, 2011 and instructing EPA to continue to implement CAIR in the interim, on August 21, 2012, the D.C. Circuit Court issued a decision to vacate CSAPR, with further instruction to continue administering CAIR ''pending the promulgation of a valid replacement.'' *EME Homer City Generation L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012). On April 29, 2014, the Supreme Court reversed the opinion of the D.C. Circuit Court and remanded the matter to the D.C. Circuit Court for further proceedings. *EPA* v. *EME Homer City Generation, L.P.,* No. 12–1182 (S. Ct. April 29, 2014).

In its submission, Maryland does not rely on either CAIR or CSAPR for emission reductions that contributed to the Martinsburg Area's attainment of the 1997 annual $PM_{2.5}$ NAAQS, nor does the State rely on either of the rules to show maintenance of the standard in the Maryland portion of the Area for 10 years following redesignation. However, because CAIR was promulgated in 2005 and incentivized sources and states to begin achieving early emission reductions, the air quality data examined by EPA in issuing a final determination of attainment for the Martinsburg Area in 2009 (November 20, 2009, 74 FR 60119) and the air quality data from the Area since 2005 necessarily reflect reductions in emissions from upwind sources as a result of CAIR. Nonetheless, in this case EPA believes that it is appropriate to redesignate the Maryland portion of the Area. Modeling conducted by EPA during the CSAPR rulemaking process, which used a baseline emissions scenario that ''backed out'' the effects of CAIR, *see* 76 FR at 48223, projected that the counties in the Martinsburg Area would have $PM_{2.5}$ annual design values [1] below the level of the 1997 annual $PM_{2.5}$ standard for 2012 and 2014 without taking into account emission reductions from CAIR or CSAPR. *See* Appendix B of EPA's ''Air Quality Modeling Final Rule Technical Support Document,'' (Page B–46), which is available in the docket for this proposed rulemaking action. In addition, the 2010–2012 quality-assured, quality-controlled, and certified monitoring data for the Martinsburg Area confirms that 2012 $PM_{2.5}$ annual design values for each monitoring site in the Area remained well below the 1997 annual $PM_{2.5}$ NAAQS, and, thus, the entire Area continued to attain the standard in 2012. *See* Table 1 of this proposed rulemaking action for the Martinsburg Area's monitoring data for 2010–2012.

The status of CSAPR is not relevant to this redesignation. CSAPR was promulgated in June 2011, and the rule was stayed by the D.C. Circuit Court just six months later, before the trading programs it created were scheduled to go into effect. Therefore, the Martinsburg Area's attainment of the 1997 annual $PM_{2.5}$ standard cannot have been a result of any emission reductions associated with CSAPR. In sum, neither the current status of CAIR nor the current status of CSAPR affects any of the criteria for proposed approval of this redesignation request for the Maryland portion of the Area.

B. Effect of the January 4, 2013 D.C. Circuit Court Decision Regarding the $PM_{2.5}$ Implementation Under Subpart 4 of Part D of Title I of the CAA

1. Background

On January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit Court remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule''). 706 F.3d 428 (D.C. Cir. 2013). The D.C. Circuit Court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the

[1] As defined in 40 CFR part 50, Appendix N, section (1)(c). A monitoring site's design value is compared to the level of the 1997 annual $PM_{2.5}$ NAAQS to determine compliance with the standard.

general implementation provisions of subpart 1 of Part D of Title I of the CAA (subpart 1), rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I (subpart 4).

Prior to the January 4, 2013 decision, the states had worked towards meeting the air quality goals of the 1997 annual $PM_{2.5}$ NAAQS in accordance with EPA regulations and guidance derived from subpart 1. Subsequent to this decision, in rulemaking that responds to the D.C. Circuit Court's remand, EPA took this history into account by setting a new deadline for any remaining submissions that may be required for moderate nonattainment areas as a result of the Court's decision regarding subpart 4.

On June 2, 2014 (79 FR 31566), EPA finalized the ''Identification of Nonattainment Classification and Deadlines for Submission of SIP Provisions for the 1997 $PM_{2.5}$ NAAQS and 2006 $PM_{2.5}$ NAAQS'' rule (the $PM_{2.5}$ Subpart 4 Classification and Deadline Rule). The rule identifies the classification under subpart 4 for areas currently designated nonattainment for the 1997 annual and/or 2006 24-hour $PM_{2.5}$ standards and sets a new deadline for states to submit attainment-related and other SIP elements required for these areas pursuant to subpart 4. The rule also identifies EPA guidance that is currently available regarding subpart 4 requirements. The $PM_{2.5}$ Subpart 4 Classification and Deadline Rule specifies December 31, 2014 as the deadline for the states to submit any additional attainment-related SIP elements that may be needed to meet the applicable requirements of subpart 4 for areas currently designated nonattainment for the 1997 annual and/or 2006 24-hour $PM_{2.5}$ NAAQS and to submit SIPs addressing the nonattainment NSR requirements in subpart 4. Therefore, as explained in detail in the following section, any additional attainment-related SIP elements that may be needed for the Maryland portion of the Area to meet the applicable requirements of subpart 4 were not due at the time that MDE submitted its redesignation request for the Maryland portion of the Area. Maryland submitted its request for redesignating the Maryland portion of the Area for the 1997 annual $PM_{2.5}$ NAAQS on December 12, 2013.

2. Proposal on This Issue

EPA has considered the effect of the D.C. Circuit Court's January 4, 2013 ruling and the $PM_{2.5}$ Subpart 4 Nonattainment Classification and Deadline Rule on Maryland's request for redesignation of the Maryland portion of the Area. In this proposed rulemaking action, EPA is proposing to determine that the D.C. Circuit Court's January 4, 2013 decision does not prevent EPA from redesignating the Maryland portion of the Area to attainment. Even in light of the D.C. Circuit Court's decision, redesignation for the Area is appropriate under the CAA and EPA's longstanding interpretations of the CAA provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the redesignation request for the Maryland portion of the Area and disregards the provisions of its 1997 annual $PM_{2.5}$ implementation rule recently remanded by the D.C. Circuit Court, the State's request for redesignation of the Area still qualify for approval. EPA's discussion takes into account the effect of the D.C. Circuit Court's ruling and the proposed $PM_{2.5}$ Subpart 4 Classification and Deadline Rule on the Area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

a. Applicable Requirements Under Subpart 4 for Purposes of Evaluating the Redesignation Request for the Maryland Portion of the Martinsburg Area

With respect to the 1997 $PM_{2.5}$ Implementation Rule, the D.C. Circuit Court's January 4, 2013 ruling rejected EPA's reasons for implementing the $PM_{2.5}$ NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 annual $PM_{2.5}$ NAAQS under subpart 4, in addition to subpart 1. For the purposes of evaluating the redesignation request for the Maryland portion of the Area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not ''applicable'' for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the redesignation of the Maryland portion of the Area. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* 1992 Calcagni Memorandum. *See also* ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statute is ''whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment'').[2] In this case, at the time that States submitted their redesignation requests, the requirements under subpart 4 were not due.

EPA's view that, for purposes of evaluating the redesignation of the Maryland portion of the Area, the subpart 4 requirements were not due at the time Maryland submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit Court's decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). In *South Coast,* the D.C. Circuit Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that ''applicable requirements,'' for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.,* Proposed Redesignation of Manitowoc County and Door County

[2] 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. Section 175A(c) of the CAA.

Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA, therefore, did not consider subpart 2 requirements to be ''applicable'' for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet ''all requirements 'applicable' to the area under section 110 and part D.'' Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the ''applicable'' SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of ''applicable'' as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If ''applicable requirements'' were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the D.C. Circuit Court's January 4, 2013 decision in *NRDC* v. *EPA* and EPA's November 21, 2013 proposed $PM_{2.5}$ Subpart 4 Nonattainment Classification and Deadline Rule compound the consequences of imposing requirements that come due after the redesignation request is submitted. Maryland submitted its redesignation request for the 1997 annual $PM_{2.5}$ NAAQS on December 12, 2013, which is prior to the deadline by which the Maryland portion of the Area is required to meet the applicable requirements pursuant to subpart 4.

To require Maryland's fully-completed and pending redesignation request for the 1997 annual $PM_{2.5}$ NAAQS to comply now with requirements of subpart 4 that the D.C. Circuit Court announced only in January 2013 and for which the deadline to comply has not yet come, would be to give retroactive effect to such requirements and provide the State a unique and earlier deadline for compliance solely on the basis of submitting its redesignation request for the Maryland portion of the Area. The D.C. Circuit Court recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002),[3] where it upheld the D.C. Circuit Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the D.C. Circuit Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The D.C. Circuit Court rejected this view, stating that applying it ''would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.'' *Id.* at 68. Similarly, it would be unreasonable to penalize the States by rejecting their redesignation request for an area that is already attaining the 1997 annual $PM_{2.5}$ standard and that met all applicable requirements known to be in effect at the time of the requests. For EPA now to reject the redesignation requests solely because the States did not expressly address subpart 4 requirements which have not yet come due, would inflict the same unfairness condemned by the D.C. Circuit Court in *Sierra Club* v. *Whitman.*

b. Subpart 4 Requirements and Maryland Redesignation Request

Even if EPA were to take the view that the D.C. Circuit Court's January 4, 2013 decision requires that, in the context of pending redesignations for the 1997 annual $PM_{2.5}$ standard, subpart 4 requirements were due and in effect at the time Maryland submitted its redesignation request, EPA proposes to determine that the Maryland portion of the Area still qualifies for redesignation to attainment for the 1997 annual $PM_{2.5}$ standard. As explained subsequently, EPA believes that the redesignation request for the Maryland portion of the Area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the Maryland portion of the Area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Maryland portion of the Area, EPA notes that subpart 4 incorporates components of subpart 1, which contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for coarse particulate matter (PM_{10})[4] nonattainment areas, and under the D.C. Circuit Court's January 4, 2013 decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See* the General Preamble. In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM_{10} requirements'' (57 FR 13538, April 16, 1992). The subpart 1 requirements include, among other things, provisions

[3] *Sierra Club* v. *Whitman* was discussed and distinguished in a recent D.C. Circuit Court decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n* v. *EPA.* 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

[4] PM_{10} refers to particulates nominally 10 micrometers in diameter or smaller.

for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of this redesignation request, in order to identify any additional requirements which would apply under subpart 4, consistent with EPA's June 2, 2014 $PM_{2.5}$ Subpart 4 Nonattainment Classification and Deadline Rule, EPA is considering the Maryland portion of the Area to be a ''moderate'' $PM_{2.5}$ nonattainment area. As EPA explained in its June 2, 2014 rule, section 188 of the CAA provides that all areas designated nonattainment areas under subpart 4 are initially classified by operation of law as ''moderate'' nonattainment areas, and will remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM_{10}, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[5] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment NSR program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,[6] when EPA evaluates a redesignation request under either subpart 1 or 4, any area that is attaining the $PM_{2.5}$ standards is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated 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.''

The General Preamble also explained that: ''The section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.'' *Id.* EPA similarly stated in its 1992 Calcagni Memorandum that: ''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

It is evident that even if we were to consider the D.C. Circuit Court's January 4, 2013 decision in *NRDC* v. *EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively [7] or prior to December 31, 2014 and, thus, were due prior to the State's redesignation request, those requirements do not apply to an area that is attaining the 1997 annual $PM_{2.5}$ NAAQS, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago.

Courts have recognized the scope of EPA's authority to interpret ''applicable requirements'' in the redesignation context. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the 1997 annual $PM_{2.5}$ standard. EPA's prior ''Clean Data Policy'' rulemakings for the PM_{10} NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* ''Determination of Attainment for Coso Junction Nonattainment Area,'' (75 FR 27944, May 19, 2010). *See also* Coso Junction Proposed PM_{10} Redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006 and 71 FR 63641, 63643–47, October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

EPA has proposed to determine that the Martinsburg Area has attained and continues to attain the 1997 annual $PM_{2.5}$ NAAQS. *See* 79 FR 25540, May 5, 2014. Under its longstanding interpretation, EPA is proposing to determine here that the Maryland portion of the Area meets the attainment-related plan requirements of subparts 1 and 4 for the 1997 annual $PM_{2.5}$ NAAQS. Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating this redesignation request.

c. Subpart 4 and Control of $PM_{2.5}$ Precursors

The D.C. Circuit Court in *NRDC* v. *EPA* remanded to EPA the two rules at issue in the case with instructions to

[5] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation request is discussed in this rulemaking action.

[6] i.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

[7] As EPA has explained previously, we do not believe that the D.C. Circuit Court's January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club* v. *Whitman, supra.*

EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the D.C. Circuit Court's opinion with respect to $PM_{2.5}$ precursors. While past implementation of subpart 4 for PM_{10} has allowed for control of PM_{10} precursors such as NO_X from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, section 189(e) of the CAA specifically provides that control requirements for major stationary sources of direct PM_{10} shall also apply to PM_{10} precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

EPA's 1997 $PM_{2.5}$ Implementation Rule, remanded by the D.C. Circuit Court, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures.'' EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The D.C. Circuit Court in its January 4, 2013 decision made reference to both section 189(e) and 40 CFR 51. 1002, and stated that: ''In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.'' *NRDC* v. *EPA,* at 27, n.10. Elsewhere in the D.C. Circuit Court's opinion, however, the D.C. Circuit Court observed: ''Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated. *See* 42 U.S.C. § 7513a(e) [section 189(e)].'' *Id.* at 21, n.7.

For a number of reasons, EPA believes that its proposed redesignation of the Maryland portion of the Area for the 1997 annual $PM_{2.5}$ NAAQS is consistent with the D.C. Circuit Court's decision on this aspect of subpart 4. While the D.C. Circuit Court, citing section 189(e), stated that ''for a PM_{10} area governed by subpart 4, a precursor is 'presumptively regulated,' '' the D.C. Circuit Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ Implementation Rule provisions regarding ammonia and VOC as precursors. The D.C. Circuit Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the State submitted the redesignation request, and disregards the 1997 $PM_{2.5}$ Implementation Rule's rebuttable presumptions regarding ammonia and VOC as $PM_{2.5}$ precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the Maryland portion of the Area, EPA believes that doing so is consistent with proposing redesignation of the Area for the 1997 annual $PM_{2.5}$ standard. The Martinsburg Area has attained the 1997 annual $PM_{2.5}$ standard without any specific additional controls of VOC and ammonia emissions from any sources in the Area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM_{10} precursors.[8] Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of ammonia and VOC. Thus, EPA must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the Maryland portion of the Area for the 1997 annual $PM_{2.5}$ NAAQS. As explained subsequently, EPA does not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOC under other CAA requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). *See* 57 FR 13542. EPA in this rulemaking action proposes to determine that Maryland's SIP has met the provisions of section 189(e) with respect to ammonia and VOC as precursors. This proposed determination is based on our findings that: (1) The Maryland portion of the Area contains no major stationary sources of ammonia; and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[9] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the Maryland portion of the Area, which is attaining the 1997 annual $PM_{2.5}$ standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 annual $PM_{2.5}$ standard in the Area. *See* 57 FR 13539–42.

EPA notes that its 1997 $PM_{2.5}$ Implementation Rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment for the 1997 annual $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the nonattainment area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the D.C. Circuit Court's January 4, 2013 decision as calling for ''presumptive regulation'' of ammonia and VOC for $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring the State to address precursors differently

[8] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

[9] The Maryland portion of the Martinsburg Area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology (RACT) regulations and various onroad and nonroad motor vehicle control programs.

than it has already, would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10} contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.[10] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[11] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Martinsburg Area has already attained the 1997 annual $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the D.C. Circuit Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of the State's request for redesignation of the Maryland portion of the Area for the 1997 annual $PM_{2.5}$ NAAQS. In the context of a redesignation, the State has shown that the Martinsburg Area has attained the standard. Moreover, the State has shown and EPA is proposing to determine that attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Maryland portion of the Area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment of the standard (*see* section V.A.3 of this rulemaking notice). It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013 decision of the D.C. Circuit Court as precluding redesignation of the Maryland portion of the Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS at this time. In summary, even if, prior to the date of the redesignation request submittal, the State was required to address precursors for the Maryland portion of the Area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded 1997 $PM_{2.5}$ Implementation Rule, EPA would still conclude that the Maryland portion of the Area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3(E)(ii) and (v).

V. EPA's Analysis of Maryland's SIP Submittal

EPA is proposing several rulemaking actions for the Maryland portion of the Martinsburg Area: (1) To redesignate the Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS; (2) to approve into the Maryland SIP, the associated maintenance plan for the 1997 annual $PM_{2.5}$ NAAQS; and (3) to approve the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for transportation conformity purposes. EPA's proposed approval of the redesignation request and maintenance plan for the 1997 annual $PM_{2.5}$ NAAQS is based upon EPA's determination that the Martinsburg Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS, and that all other redesignation criteria have been met for the Maryland portion of the Area. The following is a description of how the December 12, 2013 Maryland submittal satisfies the requirements of section 107(d)(3)(E) of the CAA for the 1997 annual $PM_{2.5}$ NAAQS.

A. Redesignation Request

1. Attainment

EPA has previously determined that the Martinsburg Area has attained the 1997 annual $PM_{2.5}$ NAAQS. As noted previously, on November 20, 2009 (74 FR 60199), EPA determined that the Martinsburg Area had attained the 1997 annual $PM_{2.5}$ standard, based on 2007–2009 and 2008–2010 quality-assured, quality-controlled, and certified ambient air quality monitoring data. Pursuant to 40 CFR 51.2004(c), this ''clean data'' determination for the Area suspended the requirements for the State to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and other planning SIPs related to the attainment of the 1997 annual $PM_{2.5}$ NAAQS until the Area is redesignated to attainment for the standard or EPA determines that the Area has again violated the standard, at which time such plans are required to be submitted. On January 10, 2012 (77 FR 1411), EPA determined that the entire Martinsburg Area had attained the 1997 annual $PM_{2.5}$ NAAQS by its statutory attainment date of April 5, 2010, based upon complete, quality-assured and certified ambient air quality monitoring data for the period of 2007–2009.

Maryland's redesignation request submittal included the historic monitoring data for the annual $PM_{2.5}$ monitoring sites in the Martinsburg Area. The historic monitoring data shows that the Martinsburg Area has attained and continues to attain the 1997 annual $PM_{2.5}$ NAAQS. MDE assures that all $PM_{2.5}$ monitoring data for the Maryland portion of the Area has been quality-assured, quality-controlled, and certified by the State in accordance with 40 CFR 58.10. Furthermore, EPA has thoroughly reviewed the most recent ambient air quality monitoring data for $PM_{2.5}$ in the Area, as submitted by the State and recorded in EPA's Air Quality System (AQS). The $PM_{2.5}$ quality-assured, quality-controlled, and state-certified 2009–2012 air quality data shows that the Martinsburg Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. The Area's $PM_{2.5}$ annual design values for the 2009–2011, and 2010–2012 monitoring periods as well as preliminary data for 2013 are provided in Table 1.

TABLE 1—DESIGN VALUES IN THE MARTINSBURG AREA FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS FOR 2008–2010, 2009–2011 AND 2010–2012 MONITORING PERIODS

[In $\mu g/m^3$]

Monitor ID	Monitor location	Annual design values			
		2008–2010	2009–2011	2010–2012	2011–2013
54–003–0003	Martinsburg, WV	12.9	11.8	11.6	10.7
24–043–0009	Hagerstown, MD	11.0	10.9	11.3	10.5

[10] *See, e.g.,* ''Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM_{10} Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM_{10} Standards,'' (69 FR 30006, May 26, 2004) (approving a PM_{10} attainment plan that impose controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or ammonia emissions).

[11] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.,* 423 F.3d 989 (9th Cir. 2005).

The Martinsburg Area's recent monitoring data supports EPA's previous determinations that the Area has attained the 1997 annual $PM_{2.5}$ NAAQS. In addition, as discussed subsequently with respect to the maintenance plan for the Maryland portion of the Area, the State has committed to continue monitoring ambient $PM_{2.5}$ concentrations in accordance with 40 CFR part 58.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA

In accordance with section 107(d)(3)(E)(v) of the CAA, the SIP revisions for the 1997 annual $PM_{2.5}$ NAAQS for the Maryland portion of the Area must be fully approved under section 110(k) of the CAA and all the requirements applicable to the Maryland portion of the Area under section 110 of the CAA (general SIP requirements) and part D of Title I of the CAA (SIP requirements for nonattainment areas) must be met.

a. Section 110 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. The general SIP elements and requirements set forth in section 110(a)(2) of the CAA include, but are not limited to the following: (1) Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; (2) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (3) implementation of a source permit program; provisions for the implementation of Part C requirements (PSD); (4) provisions for the implementation of Part D requirements for NSR permit programs; (5) provisions for air pollution modeling; and (6) provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants in accordance with the NO_X SIP Call (63 FR 57356, October 27, 1998), amendments to the NO_X SIP Call (64 FR 26298, May 14, 1999 and 65 FR 11222, March 2, 2000), and CAIR (70 FR 25162, May 12, 2005). However, section 110(a)(2)(D) of the CAA requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110(a)(2) elements of the CAA which are not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Maryland portion of the Martinsburg Area will still be subject to these requirements after it is redesignated. EPA concludes that section 110(a)(2) of the CAA 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, and that section 110(a)(2) elements of the CAA not linked to the area's nonattainment status are not applicable for purposes of redesignation. This approach is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000) and in the Pittsburgh, Pennsylvania redesignation (66 FR 53099, October 19, 2001).

EPA has reviewed the Maryland SIP and has concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of Maryland's SIP addressing section 110(a)(2) requirements, including provisions addressing $PM_{2.5}$. *See* 76 FR 72624, November 25, 2011. These requirements are, however, statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the Maryland portion of the Area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of Maryland's $PM_{2.5}$ redesignation request.

b. Subpart 1 Requirements

Subpart 1 sets forth the basic nonattainment plan requirements applicable to $PM_{2.5}$ nonattainment areas. Under section 172 of the CAA, states with nonattainment areas must submit plans providing for timely attainment and meet a variety of other requirements. The General Preamble for Implementation of Title I discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining the standard. *See* 57 FR 13498, April 16, 1992.

As noted previously, EPA has determined that the Martinsburg Area has attained the 1997 annual $PM_{2.5}$ NAAQS. Pursuant to 40 CFR 51.2004(c), the requirement for Maryland to submit, for the Maryland portion of the Martinsburg Area, an attainment demonstration and associated RACM, an RFP plan, contingency measures, and other planning SIPs related to the attainment of the 1997 annual $PM_{2.5}$ NAAQS are suspended until the Area is redesignated to attainment for the standard, or EPA determines that the Area again violated the standard, at which time such plans are required to be submitted. Since attainment has been reached for the Area for the 1997 annual $PM_{2.5}$ NAAQS and continues to attain the standard, no additional measures are needed to provide for attainment. Therefore, the requirements of sections 172(c)(1), 172(c)(2), 172(c)(6), and 172(c)(9) of the CAA are no longer considered to be applicable for purposes of redesignation of the Maryland portion of the Area for the 1997 annual $PM_{2.5}$ NAAQS.

The requirement under section 172(c)(3) was not suspended by EPA's clean data determination for the 1997 annual $PM_{2.5}$ NAAQS, and is the only remaining requirement under section 172 of the CAA to be considered for purposes of redesignation of the Maryland portion of the Area. Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions.

On December 7, 2012 (77 FR 72966), EPA approved a 2002 emissions inventory for the 1997 annual $PM_{2.5}$ NAAQS for the Maryland portion of the Area. The emissions inventory was submitted with Maryland's attainment plan for the 1997 annual $PM_{2.5}$ NAAQS on June 6, 2008, to meet the requirements of section 172(c)(3) of the CAA. The 2002 comprehensive emissions inventories for the 1997 annual $PM_{2.5}$ standard submitted by the State with its attainment plan for the Maryland portion of the Area included emissions estimates that cover the general source categories of point sources, area sources, onroad mobile sources, and nonroad mobile sources for the Maryland portion of the Area. The pollutants that comprise the State's 2002 emissions inventories for the Maryland portion of the Area are $PM_{2.5}$, NO_X, SO_2, VOC, and ammonia. An evaluation of the comprehensive emissions inventories for the Maryland portion of the Area is provided in the TSD prepared by EPA for the separate rulemaking action. *See* Docket ID No. EPA–R03–OAR–2010–0154.

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) of the CAA requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since the PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994 entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Maryland's PSD program for the 1997 annual $PM_{2.5}$ NAAQS will become effective in the Maryland portion of the Martinsburg Area upon redesignation to attainment. *See* (77 FR 45949, August 2, 2012) (approving revisions to Maryland's PSD program).

Section 172(c)(7) of the CAA requires the SIP to meet the applicable provisions of section 110(a)(2) of the CAA. As noted previously, EPA believes the Maryland SIP meets the requirements of section 110(a)(2) of the CAA that are applicable for purposes of redesignation. Section 175A of the CAA requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' In conjunction with its request to redesignate the Maryland portion of the Martinsburg Area to attainment status, Maryland submitted the Washington County maintenance plan as a SIP revision to provide for maintenance of the 1997 annual $PM_{2.5}$ NAAQS in the Maryland portion of the Area for at least 10 years after redesignation, through 2025. Maryland is requesting that EPA approve this SIP revision as meeting the requirement of section 175A of the CAA. Once approved, the Washington County maintenance plan will ensure that the SIP for Maryland meets the requirements of the CAA regarding maintenance of the 1997 annual $PM_{2.5}$ NAAQS for the Maryland portion of the Area. EPA's analysis of the maintenance plan is provided in section V.B (Maintenance Plan) of this document.

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 which EPA promulgated pursuant to its authority under the CAA. EPA interprets the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) of the CAA because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426, (6th Cir. 2001) (upholding this interpretation). *See also* (60 FR 62748, December 7, 1995) (discussing Tampa, Florida).

Thus, for purposes of redesignating to attainment the Maryland portion of the Martinsburg Area for the 1997 annual $PM_{2.5}$ NAAQS, EPA determines that the Maryland portion of the Area has met all applicable SIP requirements under part D of Title I of the CAA.

c. The Maryland Portion of the Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved all applicable requirements of the Maryland SIP for the Maryland portion of the Area for purposes of redesignaton to attainment for the 1997 annual $PM_{2.5}$ NAAQS in accordance with section 110(k) of the CAA.

3. Permanent and Enforceable Reductions in Emissions

For redesignating a nonattainment area to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions. Maryland's redesignation request indicates that a variety of federal vehicle control programs have created emission reductions that contributed to attainment in 2007. In making this demonstration, Maryland has calculated the change in emissions for the on-road sector between 2002, one of the years used to designate the Area as nonattainment, and 2007, one of the years the Area monitored attainment, as shown in Table 2.

TABLE 2—COMPARISON OF 2002 NONATTAINMENT YEAR AND 2007 ATTAINMENT YEAR REDUCTIONS FOR ON ROAD EMISSIONS IN THE MARYLAND PORTION OF THE AREA (tpy)

	2002	2007	Decrease
SO_2	286	218	68
NO_X	9,163	6,022	3,141
$PM_{2.5}$	263	45	218
VOC	2,557	1,657	990
NH_3	111	92	19
Total	12,380	8,034	4,436

The reduction in emissions and the corresponding improvement in air quality from 2002 to 2007 in the Maryland portion of the Martinsburg Area can be attributed to a number of regulatory control measures that have been implemented in the Maryland portion of the Area and contributing areas in recent years. An evaluation of the State's 2002 comprehensive emissions inventory for the Maryland portion of the Area is provided in the TSD prepared by EPA for the December 7, 2012 rulemaking action approving the base year inventory. *See* Docket ID No. EPA–R03–OAR–2010–0154. An evaluation of the 2007 emissions inventory is provided in EPA's emissions inventory TSD dated April 30, 2014, which is available in the docket for this proposed rulemaking action.

Reductions in $PM_{2.5}$ precursor emissions have occurred statewide and in upwind states as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. The Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards (Tier 2 Standards) have resulted in lower NO_X and SO_2 emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. EPA has estimated that, after phasing in the new requirements, new vehicles emit less NO_X in the following percentages: Passenger cars (light duty vehicles)—77 percent; light duty trucks, minivans, and sports utility vehicles—86 percent; and larger sports utility vehicles, vans, and heavier trucks—69–95 percent. EPA expects fleet wide average emissions to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006, which reflects up to a 90 percent reduction in sulfur content.

EPA issued the Heavy-Duty Diesel Engine Rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced $PM_{2.5}$ emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to achieve a 90 percent reduction in direct $PM_{2.5}$ emissions and a 95 percent reduction in NO_X emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur diesel fuel. The reduction in fuel sulfur content also yielded an immediate reduction in particulate sulfate emissions from all diesel vehicles.

In May 2004, EPA promulgated the Nonroad Diesel Rule for large nonroad diesel engines, such as those used in construction, agriculture, and mining, to be phased in between 2008 and 2014. The rule also reduces the sulfur content in nonroad diesel fuel by over 99 percent. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. This rule limited nonroad diesel sulfur content to 500 ppm by 2006, with a further reduction to 15 ppm by 2010.

B. Maintenance Plan

On December 12, 2013, MDE submitted a maintenance plan for Washington County for the 1997 annual $PM_{2.5}$ NAAQS as required by section 175A of the CAA. EPA's analysis for proposing approval of the maintenance plan is provided in this section.

1. Attainment Emissions Inventory

Section 172(c)(3) requires states to submit a comprehensive, accurate, current inventory of actual emissions from all sources in the nonattainment area. For a maintenance plan, states are required to submit an inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS, referred to as the attainment inventory (or the maintenance plan base year inventory), and which should be based on actual emissions. MDE submitted an attainment inventory for 2007, one of the years in the period during which the Martinsburg Area monitored attainment of the 1997 annual $PM_{2.5}$ standard. The attainment inventory is comprised of NO_X, $PM_{2.5}$, SO_2, VOC, and NH_3 emissions from point sources, nonpoint sources, onroad mobile sources, and nonroad mobile sources.

For the 2007 emissions inventory for point, nonpoint, and nonroad source categories, MDE submitted the 2007 Version 3 emissions inventory developed through the Mid-Atlantic Regional Air Management Association (MARAMA) regional planning process. Details related to the development of the 2007 emissions inventory can be found in the January 23, 2012 MARAMA TSD entitled ''Technical Support Document for the Development of the 2007 Emissions Inventory for the Regional Air Quality Modeling in the Northeast/Mid-Atlantic Region Version 3.3'' which may be found in Appendix D of the State's submittal, which is available in the docket for this proposed rulemaking action.

The 2007 point source inventory includes emissions from EGUs and non-EGU sources as developed by MARAMA in consultation with MDE. The nonpoint source emissions inventory for 2007 was developed using 2007 specific activity data along with EPA emission factors and the most recently available emission calculation methodologies. The 2007 nonroad mobile source emissions was generated using EPA's National Mobile Inventory Model (NMIM) 2008, which used the NONROAD 2008a emissions model. Since marine, air and rail/locomotive (MAR) emissions are not part of the NONROAD model, they were calculated separately outside of the NONROAD model using the most recent methodologies and inputs.

The 2007 onroad mobile source inventory was developed by using EPA's highway mobile source emissions model MOVES2010a and the most recent planning assumptions. Local data inputs to MOVES2010a reflect the latest available planning assumptions using data obtained from MDE, the Maryland Motor Vehicle Administration (MMVA), the Maryland State Highway

Administration (MSHA), the Hagerstown/Eastern Panhandle Metropolitan Planning Organization (HEPMPO), and other local/national sources. The 2007 onroad emissions inventory, including a summary of the methodology and data assumptions used for the analysis may be found in Appendix F of the State's submittal, available in the docket for this proposed rulemaking action.

EPA has reviewed the documentation provided by MDE and found the emissions inventory to be acceptable. For more information on the emissions inventories submitted by MDE and EPA's analysis of the inventories, see Appendices A–G of the State's submittal and EPA's emissions inventory TSD dated April 30, 2014, all of which are available on line at *www.regulations.gov,* Docket ID No. EPA–OAR–R03–2014–0281.

2. Maintenance Demonstration

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. *See* 1992 Calcagni Memorandum, pages 9–10.

For a demonstration of maintenance, emissions inventories are required to be projected to future dates to assess the influence of future growth and controls; however, the maintenance demonstration need not be based on modeling. *See Wall* v. *EPA, supra; Sierra Club* v. *EPA, supra. See also* 66 FR 53099–53100; 68 FR 25430–32. To show that the Maryland portion of the Area will remain in attainment, MDE uses projection inventories derived by applying appropriate growth and control factors to the 2007 attainment year emissions inventory. MDE developed projection inventories for an interim year of 2017 and a maintenance plan end year of 2025 to show that future emissions of SO_2, NO_X, $PM_{2.5}$, VOC, and NH_3, will remain at or below the 2007 emissions levels throughout the Maryland portion of the Area through the year 2025.

Projected emissions for EGU point sources were based on electricity generation projections delineated by region and fuel. Growth factors for EGU sources are based on the U.S. Energy Information Administration's (EIA) 2011 annual Energy Outlook (AEO2011). Projected emissions for non-EGU point sources were developed using AEO fuel consumption forecasts, State-level employment projections, and other State-specific emissions projection data.

The projected onroad mobile source inventories were developed by using MOVES2010a. Local data inputs to MOVES2010a included the most recent planning assumptions using data from MDE, MMVA, MSHA, the HEPMPO, and other local/national sources. The State developed growth factors based on consultation between the Maryland Department of Transportation, HEPMPO, and MDE.

Projected emissions for nonroad sources were developed using NMIM2008, which used the NONROAD2008a model, EPA's most recently approved emissions estimation tool for nonroad sources. Airport ground support equipment emissions were estimated based on EPA's aircraft inventory that uses the Federal Aviation Administration Emissions and Dispersion Modeling System. Because the NONROAD model does not estimate marine vessel, airport, and railroad sources, these emissions were estimated separately.

A discussion of emission projections, projection methodology, control factors and growth factors for the 2017 and 2025 inventories can be found in MARAMA's ''Technical Support Document for the Development of the 2017/2020 Emission Inventory for Regional Air Quality Modeling in the Northeast/Mid-Atlantic Region, Version 3.3'' and in the MANE–VU TSD, which are both available in the docket for this proposed rulemaking. EPA has reviewed the documentation provided by MDE and found the methodologies acceptable.

Based on the above discussion and available data, EPA has determined that the emissions inventories as provided by MDE are approvable. For more information on the State's emissions inventory submittal and EPA's analysis, *see* Appendices B and C of the State submittal and EPA's TSD dated April 30, 2014, which are available in the docket for this proposed rulemaking action. Table 3 shows a summary of the inventories for the 2007 attainment year, the 2017 interim year, and the 2025 maintenance plan end year for the Maryland portion of the Area.

TABLE 3—COMPARISON OF 2007 ATTAINMENT YEAR INVENTORY WITH 2017 AND 2025 PROJECTED EMISSIONS IN THE MARYLAND PORTION OF THE MARTINSBURG AREA (tpy)

	2007	2017	2025	Change from 2007–2017	Change from 2007–2025
SO_2	7,183	5,962	5,967	1,221	1,216
NO_X	10,781	7,909	6,466	2,872	4,315
$PM_{2.5}$	1,432	1,191	1,155	241	280
VOC	4,662	3,472	3,266	1,190	1,396
NH_3	1,206	1,184	1,192	25	14
Total	25,264	19,717	18,046	5,547	7,218

Table 3 shows that between 2007 and 2017, the Maryland portion of the Area is projected to reduce SO_2 emissions by 17 percent, NO_X emissions by 26.6 percent, $PM_{2.5}$ emissions by 16.8 percent, NH_3 by 2.1 percent, and VOC by 25.5 percent. Between 2007 and 2025, the Maryland portion of the Area is projected to reduce SO_2 emissions by 16.9 percent, NO_X emissions by 40.0 percent, $PM_{2.5}$ emissions by 19.6 percent, NH_3 by 1.2 percent and VOC by 30 percent. The projected emissions inventories show that the Maryland portion of the Area will continue to maintain the 1997 annual $PM_{2.5}$ NAAQS during the 10 year maintenance period.

3. Monitoring Network

There are two $PM_{2.5}$ monitors in the Martinsburg Area. One is located in Maryland and is operated by the Maryland Department of the Environment, and the other one is located in West Virginia and is operated by the West Virginia Division of Air

Quality. The Washington County maintenance plan includes the State's commitment to continue to operate and maintain its $PM_{2.5}$ air quality monitoring network, consistent with EPA's monitoring requirements, as necessary to demonstrate ongoing compliance with the 1997 annual $PM_{2.5}$ NAAQS. In its December 12, 2013 submittal, Maryland stated that it will consult with EPA prior to making any necessary changes to the network and will continue to quality assure the monitoring data in accordance with the requirements of 40 CFR part 58.

4. Verification of Continued Attainment

To provide for tracking of the emission levels in the Maryland portion of the Area, MDE will periodically update the emissions inventory, consisting of annual and periodic evaluations. Annual emissions updates of stationary sources, the Highway Performance Monitoring System vehicle miles travelled data reported to the Federal Highway Administration, and other growth indicators, which will be compared to the growth assumptions to determine if the projected growth and observed growth are consistent. MDE will also submit comprehensive tracking inventories to EPA every three years as required by EPA's Air Emissions Reporting Requirements (AERR) or as required by other federal regulations during the maintenance plan period.

5. Contingency Measures

The contingency plan provisions for maintenance plans 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 ensure that a state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

Maryland's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur. These procedures would be triggered in one of three situations: (1) When the annual actual emissions of SO_2, NO_X, or $PM_{2.5}$ exceed the attainment year inventories that are identified in Table 3; (2) when there is an annual exceedance (annual average for one year at the federal reference method monitor located in Washington County) of 15.0 $\mu g/m^3$; or, (3) When there is any violation (three year average of the annual average at the Federal reference method monitor located in Washington County) of 15.0 $\mu g/m^3$ or greater.

If any future year emissions inventory indicates that the Maryland portion of the Area's total emissions of SO_2, NO_X, or $PM_{2.5}$ exceeds the attainment year levels, MDE would first perform an audit to determine if inventory refinements are needed, including a review of whether appropriate models, control strategies, monitoring strategies, planning assumptions, industrial thoughput, and production data were used in the attainment year and future year projections. If the audit does not reconcile the emissions exceedances, MDE will implement one or more of the contingency measures identified in the plan. If an annual exceedance of 15.0 $\mu g/m^3$ occurs, MDE commits to implementing one of the contingency measures identified for additional emission reductions, and if a violation occurs, MDE commits to implementing two or more of the contingency measures of programs identified to correct the violation.

As explained in greater detail in Maryland's maintenance plan, Maryland's candidate contingency measures include the following: (1) $PM_{2.5}$ RACM determinations; (2) NO_X RACM determination; (3) Non Road diesel emission reduction strategies; (4) low sulfur home heating oil requirements; (5) alternative fuel and diesel retrofit programs for fleet vehicle operations; and, (6) wet suppression upgrade requirements for concrete manufacturing. EPA finds that the maintenance plan for the Maryland portion of the Area includes appropriate contingency measures as necessary to ensure Maryland will promptly correct any violation of the NAAQS that occurs after redesignation. Finally, the maintenance plan establishes a schedule for implementation of contingency measures if needed, and MDE has committed to full implementation of contingency measures or programs within 24 months after notification by EPA that contingency measures must be implemented or 27 months after quality assured data indicates an exceedance or violation has occurred. For all of the reasons discussed above, EPA is proposing to approve the 1997 annual $PM_{2.5}$ maintenance plan for the Maryland portion of the Area as meeting the requirements of section 175A of the CAA.

C. Transportation Conformity

Section 176(c) of the CAA requires Federal actions in nonattainment and maintenance areas to ''conform to'' the goals of SIPs. This means that such actions will not cause or contribute to violations of a NAAQS, worsen the severity of an existing violation, or delay timely attainment of any NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR Part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, and the FHWA and FTA to demonstrate that their long range transportation plans and transportation improvement programs (TIP) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the MVEBs contained in the SIP.

On December 12, 2013, Maryland submitted a SIP revision that contains the 2017 and 2025 $PM_{2.5}$ and NO_X onroad mobile source budgets for the Maryland portion of the Martinsburg Area. Maryland did not provide emission budgets for SO_2, VOC, and NH_3 because it concluded, consistent with the presumptions regarding these precursors in the Transportation Conformity Rule at 40 CFR 93.102(b)(2)(v), which predated and was not disturbed by the litigation on the 1997 $PM_{2.5}$ Implementation Rule, that emissions of these precursors from motor vehicles are not significant contributors to the Area's $PM_{2.5}$ air quality problem. EPA issued conformity regulations to implement the 1997 annual $PM_{2.5}$ NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005). Those actions were not part of the final rule recently remanded to EPA by the D.C. Circuit Court in *NRDC* v. *EPA,* No. 08–1250 (January 4, 2013), in which the D.C. Circuit Court remanded to EPA the 1997 $PM_{2.5}$ Implementation Rule because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4, rather than solely under the general provisions of subpart 1. That decision does not affect EPA's proposed approval of the MVEBs for the Maryland portion of the Martinsburg Area. The MVEBs are presented in Table 4.

TABLE 4—MVEBS FOR WASHINGTON COUNTY, MARYLAND FOR THE 1997 $PM_{2.5}$ NAAQS IN TPY

Year	$PM_{2.5}$	NO_X
2017	149.63	4,057.00
2025	93.35	2,774.63

EPA's substantive criteria for determining adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve the MVEBs, EPA must complete a thorough review of the SIP, in this case the $PM_{2.5}$ maintenance plan, and conclude that with the projected level of motor vehicle and all other emissions, the SIP will achieve its overall purpose, in this case providing for maintenance of the 1997 annual $PM_{2.5}$ NAAQS. EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA taking action on the MVEB.

On February 12, 2014, EPA initiated an adequacy review of the MVEBs for the 1997 annual $PM_{2.5}$ NAAQS that Maryland included in its redesignation request submittal. As such, a notice of the submission of these MVEBs were posted on the adequacy Web site (*http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*). The public comment period closed on March 14, 2014. There were no public comments received. EPA has reviewed the MVEBs and found them consistent with the maintenance plan and found that the budgets meet the criteria for adequacy and approval. EPA published a Notice of Adequacy in the **Federal Register** on May 7, 2014 (79 FR 26246). Therefore, EPA is proposing to approve the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for Washington County for transportation conformity purposes. Additional information pertaining to the review of the MVEBs can be found in the TSD dated April 4, 2014, available in the docket for this proposed rulemaking action.

VI. Proposed Actions

EPA is proposing to approve the redesignation of the Maryland portion of the Martinsburg Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. The monitoring data demonstrates that the Martinsburg Area has attained the 1997 annual $PM_{2.5}$ NAAQS and, for reasons discussed in this proposal, that it will continue to attain the standard. EPA is also proposing to approve the maintenance plan for the Maryland portion of the Area submitted on December 12, 2013 as a revision to the Maryland SIP because it meets the requirements of section 175A of the CAA as described previously in this rulemaking notice. Final approval of this redesignation request would change the designation of the Maryland portion of the Martinsburg Area from nonattainment to attainment, as found at 40 CFR part 81, for the 1997 annual $PM_{2.5}$ NAAQS, and would incorporate into the Maryland SIP the maintenance plan ensuring continued attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Area for 10 years after redesignation. Furthermore, EPA is proposing to approve the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs submitted by Maryland for Washington County for transportation conformity purposes. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve 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 (Public Law 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 proposing to approve Maryland's redesignation request, maintenance plan, and MVEBs for transportation conformity purposes for the Maryland portion of the Area for the 1997 annual $PM_{2.5}$ NAAQS 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, Incorporation by reference, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: August 6, 2014.

William C. Early,

Acting Regional Administrator, Region III.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BC34

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Pot Gear Fishing Closure in the Pribilof Islands Habitat Conservation Zone in the Bering Sea and Rebuilding Pribilof Islands Blue King Crab

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and