

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 81**

[EPA-R03-OAR-2013-0498; FRL-9903-76-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Approval of the Redesignation Requests of the West Virginia Portion of the Steubenville-Weirton, OH-WV Nonattainment Area for the 1997 and 2006 Fine Particulate Matter Standards****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State of West Virginia's requests to redesignate to attainment the West Virginia portion of the Steubenville-Weirton, OH-WV nonattainment area (hereafter "the Steubenville-Weirton Area" or "the Area") for both the 1997 annual and the 2006 24-hour fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS or standards). EPA is also proposing to approve as a revision to the West Virginia State Implementation Plan (SIP), the associated maintenance plans to show maintenance of the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS through 2025 for the West Virginia portion of the Area. West Virginia's maintenance plans include insignificance findings for the mobile source contribution of PM<sub>2.5</sub> and nitrogen oxides (NO<sub>x</sub>) emissions to the West Virginia portion of the Area for both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards. EPA agrees with these insignificance findings, and is proposing approval of such findings for transportation conformity purposes. In addition, EPA is proposing to approve the 2008 emissions inventory for the West Virginia portion of the Area for the 2006 24-hour PM<sub>2.5</sub> NAAQS. In this rulemaking action, EPA also addresses the effects of two decisions of the United States Court of Appeals for the District of Columbia (D.C. Circuit or Court): The Court's August 21, 2012 decision to vacate and remand to EPA the Cross-State Air Pollution Control Rule (CSAPR); and the Court's January 4, 2013 decision to remand to EPA two final rules implementing the 1997 annual PM<sub>2.5</sub> standard. EPA has taken separate rulemaking action to approve the redesignation of the Ohio portion of the Steubenville-Weirton Area for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. These actions are being taken under the Clean Air Act. (CAA).

**DATES:** Written comments must be received on or before January 8, 2014.**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2013-0498 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-2013-0498*, Cristina Fernández, Associate Director, Office of Air Quality 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-2013-0498. 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 West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

**FOR FURTHER INFORMATION CONTACT:**

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**I. Background**

The first air quality standards for PM<sub>2.5</sub> were established on July 16, 1997 (62 FR 38652, July 18, 1997). EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>), based on a three-year average of annual mean PM<sub>2.5</sub> concentrations (the 1997 annual PM<sub>2.5</sub> standard). In the same rulemaking action, EPA promulgated a 24-hour standard of 65 µg/m<sup>3</sup>, 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<sub>2.5</sub> standards. In that rulemaking action, EPA designated the Steubenville-Weirton Area as nonattainment for the 1997 annual PM<sub>2.5</sub> standard. The Steubenville-Weirton Area is comprised of Brooke County and Hancock County in West Virginia (the West Virginia

portion of the Area), and the Jefferson County in Ohio. See 40 CFR 81.336 (Ohio) and 40 CFR 81.349 (West Virginia).

On October 17, 2006 (71 FR 61144), EPA retained the annual average standard at 15 µg/m<sup>3</sup>, but revised the 24-hour standard to 35 µg/m<sup>3</sup>, based again on the three-year average of the 98th percentile of 24-hour concentrations (the 2006 annual PM<sub>2.5</sub> standard). On November 13, 2009 (74 FR 58688), EPA published designations for the 2006 24-hour PM<sub>2.5</sub> NAAQS, which became effective on December 14, 2009. In that rulemaking action, EPA designated the Steubenville-Weirton Area as nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. See 77 FR 58775 and also see 40 CFR 81.336 (Ohio) and 40 CFR 81.349 (West Virginia).

In response to legal challenges of the 2006 annual PM<sub>2.5</sub> standard, the D.C. Circuit remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual PM<sub>2.5</sub> standards are essentially identical, attainment of the 1997 annual PM<sub>2.5</sub> standard would also indicate attainment of the remanded 2006 annual PM<sub>2.5</sub> standard. Since the Steubenville-Weirton Area is designated nonattainment for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards, today's proposed rulemaking action addresses the redesignation to attainment of the West Virginia portion of the Steubenville-Weirton Area for these standards.

On September 14, 2011 (76 FR 56641) and May 14, 2012 (77 FR 28264), EPA made determinations that the entire Steubenville-Weirton Area had attained the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, respectively. Pursuant to 40 CFR 51.1004(c) and based on these determinations, the requirements for the Steubenville-Weirton Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning SIPs related to the attainment of either the 1997 annual or 2006 24-hour PM<sub>2.5</sub> NAAQS are suspended until such time as: The Area is redesignated to attainment for each standard, at which time the requirements no longer apply; or EPA determines that the Area has again violated any of the standards, at which time such plans are required to be submitted.

On April 13, 2012 and June 8, 2012, the West Virginia Department of Environmental Protection (WVDEP)

formally submitted two separate requests to redesignate the West Virginia portion of the Steubenville-Weirton Area from nonattainment to attainment for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS, respectively. Each submittal included a maintenance plan as a SIP revision to ensure continued attainment of the standards throughout the West Virginia portion of the Area over the next 10 years. The June 8, 2012 submittal also includes a 2008 comprehensive emissions inventory for PM<sub>2.5</sub>, SO<sub>2</sub> and NO<sub>x</sub> for the 2006 24-hour PM<sub>2.5</sub> NAAQS, which WVDEP supplemented on June 24, 2013 to include emissions of VOC and ammonia.

In this proposed action, EPA is taking into account two recent decisions of the D.C. Circuit. In the first of the two Court decisions, the D.C. Circuit, on August 21, 2012, issued *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), which vacated and remanded CSAPR and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) "pending . . . development of a valid replacement." *EME Homer City* at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. In the second decision, on January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit 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<sub>2.5</sub>)" final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013).

## 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); (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.

EPA has provided guidance on redesignation in the "State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act 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 the "1992 Calcagni Memorandum"); (2) "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; 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, 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<sub>2.5</sub> violations.

The 1992 Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a PM<sub>2.5</sub> 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.

## III. Summary of Proposed Actions

EPA is proposing to take several rulemaking actions related to the

redesignation of the West Virginia portion of the Steubenville-Weirton Area to attainment for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is proposing to find that the West Virginia portion of the Area meets the requirements for redesignation of the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve West Virginia's requests to change the legal designation of the West Virginia portion of the Area from nonattainment to attainment for both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. This rulemaking action does not impact the legal designation of the Ohio portion of the Steubenville-Weirton Area. EPA has taken separate rulemaking action to redesignate to attainment the Ohio portion of the Area for both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. (September 18, 2013, 78 FR 57273)

EPA is also proposing to approve the associated maintenance plans for the West Virginia portion of the Area as revisions to the West Virginia SIP for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, including the insignificance determinations for PM<sub>2.5</sub> and NO<sub>x</sub> for the onroad mobile source contribution of the West Virginia portion of the Area for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> standards. The approval of the maintenance plans is one of the CAA criteria for redesignation of the West Virginia portion of the Area to attainment for both standards. West Virginia's maintenance plans are designed to ensure continued attainment in the West Virginia portion of the Area of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards, respectively, for 10 years after redesignation.

EPA previously determined that the Steubenville-Weirton Area has attained both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, and EPA is proposing to find that the Area continues to attain both standards. Furthermore, under section 172(c)(3) of the CAA, EPA is proposing to approve the 2008 comprehensive emissions inventory for the West Virginia portion of the Area as part of West Virginia's SIP for the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA's analysis of the proposed actions is provided in section V. of today's proposed rulemaking action.

#### IV. Effects of Recent Court Decisions on Proposed Actions

##### A. Effect of the August 21, 2012 D.C. Circuit Decision Regarding EPA's CSAPR

###### 1. Background

EPA recently promulgated CSAPR (76 FR 48208, August 8, 2011), to replace CAIR, which has been in place since 2005. See 76 FR 59517. CAIR requires significant reductions in emissions of SO<sub>2</sub> and NO<sub>x</sub> from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. See 76 FR 70093. The D.C. Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation, L.P. v. EPA* (No. 11–1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR “pending the promulgation of a valid replacement.” *EME Homer City*, 696 F.3d at 38 (*D.C. Cir. 2012*). The D.C. Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court. On June 24, 2013 the Supreme Court granted EPA's petition for certiorari. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

###### 2. Proposal on This Issue

In light of these unique circumstances and for the reasons explained subsequently, to the extent that attainment is due to emission reductions associated with CAIR, EPA is hereby proposing to determine that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A. EPA, therefore, proposes to approve the redesignation requests and the related SIP revision for Brooke and Hancock Counties in West Virginia,

including West Virginia's plan for maintaining attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards in the West Virginia portion of the Steubenville-Weirton Area.

As directed by the D.C. Circuit, CAIR remains in place and enforceable until substituted by a valid replacement rule. West Virginia's SIP revision lists CAIR as a control measure that was approved by EPA on August 6, 2009 (74 FR 38536) and became state-effective on May 1, 2008 for the purpose of reducing SO<sub>2</sub> and NO<sub>x</sub> emissions. CAIR was thus in place and getting emission reductions when the Steubenville-Weirton Area monitored attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. The quality-assured, quality-controlled, certified monitoring data used to demonstrate the Area's attainment of both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS was also impacted by CAIR.

To the extent that West Virginia is relying on CAIR in its maintenance plan, the recent directive from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule to address interstate transport to replace CSAPR, and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until: (1) EPA has promulgated a final rule through a notice-and-comment rulemaking process; (2) states have had an opportunity to draft and submit SIPs; (3) EPA has reviewed the SIPs to determine if they can be approved; and (4) EPA has taken action on the SIPs, including promulgating a Federal Implementation Plan (FIP) if appropriate. The Court's clear instruction to EPA that it must continue to administer CAIR until a valid replacement exists provides an additional backstop: By definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR “might be more severe now in light of the reliance interests accumulated over the intervening four years.” *EME Homer City*, 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with

CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIP revisions as appropriate to identify whether there are any issues that need to be addressed.

*B. Effect of the January 4, 2013 D.C. Circuit Decision Regarding PM<sub>2.5</sub> Implementation Under Subpart 4 of Part D of Title I of the CAA*

1. Background

As discussed previously, on January 4, 2013, in *Natural Resources Defense Council (NRDC) v. EPA*, the D.C. Circuit 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<sub>2.5</sub>)” final rule (73 FR 28321, May 16, 2008) (collectively, “1997 PM<sub>2.5</sub> Implementation Rule”). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 annual PM<sub>2.5</sub> NAAQS pursuant to the 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). Although the Court did not directly address the 2006 24-hour PM<sub>2.5</sub> standard, EPA is taking into account the Court’s position on subpart 4 and the 1997 annual PM<sub>2.5</sub> standard in evaluating redesignations for the 2006 24-hour PM<sub>2.5</sub> standard.

2. Proposal on This Issue

EPA is proposing to determine that the Court’s January 4, 2013 decision does not prevent EPA from redesignating the West Virginia portion of the Steubenville-Weirton Area to attainment for either the 1997 annual or the 2006 24-hour PM<sub>2.5</sub> NAAQS. Even in light of the Court’s decision, redesignation for this Area is appropriate under the CAA and EPA’s longstanding interpretations of the CAA’s 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 West Virginia redesignation requests and disregards the provisions of its 1997 PM<sub>2.5</sub> Implementation Rule recently remanded by the Court, the State’s request for redesignation of the Area still qualifies for approval. EPA’s discussion takes into account the effect of the Court’s ruling on the Area’s maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

a. Applicable Requirements for Purposes of Evaluating the Redesignation Requests

With respect to the 1997 PM<sub>2.5</sub> Implementation Rule, the Court’s January 4, 2013 ruling rejected EPA’s reasons for implementing the PM<sub>2.5</sub> 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<sub>2.5</sub> NAAQS under subpart 4, in addition to subpart 1. For the purposes of evaluating the West Virginia’s redesignation request for the West Virginia 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 West Virginia portion of the Steubenville-Weirton 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”).<sup>1</sup> In this case, at the time that West Virginia submitted its redesignation requests for both standards, the requirements under subpart 4 were not due, and indeed, were not yet known to apply.

EPA’s view that, for purposes of evaluating the redesignation of the West Virginia portion of the Steubenville-Weirton Area, the subpart 4 requirements were not due at the time West Virginia submitted the redesignation requests is in keeping with the EPA’s interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit’s decision in *South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). In *South Coast*, the 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 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

<sup>1</sup> 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.

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 Court’s January 4, 2013 decision in *NRDC v.*

*EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. West Virginia submitted its two redesignation requests for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS on April 12, 2012 and June 12, 2012, respectively, but the Court did not issue its decision remanding EPA’s 1997 PM<sub>2.5</sub> Implementation Rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require West Virginia’s fully-completed and pending redesignation requests for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS to comply now with requirements of subpart 4 that the Court announced only in its January, 2013 decision on the 1997 PM<sub>2.5</sub> Implementation Rule, would be to give retroactive effect to such requirements when the State had no notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002),<sup>2</sup> where it upheld the District 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 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 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 State of West Virginia by rejecting its redesignation request for an area that is already attaining both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards 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 State did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club v. Whitman*.

<sup>2</sup> *Sierra Club v. Whitman* was discussed and distinguished in a recent D.C. Circuit 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).

b. Subpart 4 Requirements and West Virginia Redesignation Requests

Even if EPA were to take the view that the Court’s January 4, 2013 decision requires that, in the context of pending redesignations for either the 1997 annual or 2006 24-hour PM<sub>2.5</sub> standards, subpart 4 requirements were due and in effect at the time West Virginia submitted its redesignation requests, EPA proposes to determine that the West Virginia portion of the Steubenville-Weirton Area still qualifies for redesignation to attainment for both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards. As explained subsequently, EPA believes that the two redesignation requests for the West Virginia portion of the Steubenville-Weirton Area, though not expressed in terms of subpart 4 requirements, substantively meet the requirements of that subpart for purposes of redesignating the West Virginia portion of the Area to attainment for both standards.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the West Virginia portion of the Steubenville-Weirton Area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, 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<sub>10</sub>)<sup>3</sup> nonattainment areas, and under the Court’s January 4, 2013 decision in *NRDC v. EPA*, these same statutory requirements also apply for PM<sub>2.5</sub> 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<sub>10</sub> requirements” (57 FR 13538, April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of these redesignation requests, in order to identify any additional requirements which would apply under subpart 4, EPA is considering the Steubenville-

<sup>3</sup> PM<sub>10</sub> refers to particulates nominally 10 micrometers in diameter or smaller.

Weirton Area to be a “moderate” PM<sub>2.5</sub> nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as “moderate” nonattainment areas, and would 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<sub>10</sub>, 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.<sup>4</sup> In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review 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,<sup>5</sup> when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the PM<sub>2.5</sub> 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, “[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.” *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 Court’s January 4, 2013 decision in *NRDC v. EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively<sup>6</sup> and thus are now past due, those requirements do not apply to an area that is attaining the 1997 annual and/or the 2006 24-hour PM<sub>2.5</sub> 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 and/or the 2006 24-hour PM<sub>2.5</sub> standard. EPA’s prior “Clean Data Policy” rulemakings for the PM<sub>10</sub> 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<sub>10</sub> 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.

Elsewhere in this notice, EPA proposes to determine that the Steubenville-Weirton Area has attained both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. Under its longstanding interpretation, EPA is proposing to determine here that the West Virginia portion of the Area meets the attainment-related plan requirements of subparts 1 and 4 for both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> 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 these redesignation requests.

#### c. Subpart 4 and Control of PM<sub>2.5</sub> Precursors

The D.C. Circuit in *NRDC v. EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the Court’s opinion with respect to PM<sub>2.5</sub> precursors. While past implementation of subpart 4 for PM<sub>10</sub> has allowed for control of PM<sub>10</sub> precursors such as NO<sub>x</sub> 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<sub>10</sub> shall

<sup>4</sup> The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating these redesignation requests is discussed in this rulemaking action.

<sup>5</sup> I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

<sup>6</sup> As EPA has explained previously, we do not believe that the Court’s January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club v. Whitman*, *supra*.

also apply to PM<sub>10</sub> precursors from those sources, except where EPA determines that major stationary sources of such precursors “do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in the area.”

EPA’s 1997 PM<sub>2.5</sub> Implementation Rule, remanded by the D.C. Circuit, contained rebuttable presumptions concerning certain PM<sub>2.5</sub> 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<sub>2.5</sub> 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<sub>2.5</sub> concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The 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<sub>2.5</sub> precursors, as subpart 4 expressly governs precursor presumptions.” *NRDC v. EPA*, at 27, n.10.

Elsewhere in the Court’s opinion, however, the Court observed “Ammonia is a precursor to fine particulate matter, making it a precursor to both PM<sub>2.5</sub> and PM<sub>10</sub>. For a PM<sub>10</sub> 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 redesignations of the West Virginia portion of the Steubenville-Weirton Area for the 1997 annual and the 2006 PM<sub>2.5</sub> NAAQS are consistent with the Court’s decision on this aspect of subpart 4. While, the Court, citing section 189(e), stated that “for a PM<sub>10</sub> area governed by subpart 4, a precursor is ‘presumptively regulated,’” the Court expressly declined to decide the specific challenge to EPA’s 1997 PM<sub>2.5</sub> Implementation Rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular PM<sub>2.5</sub> 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<sub>2.5</sub> Implementation Rule’s rebuttable presumptions regarding ammonia and VOC as PM<sub>2.5</sub> precursors (and any similar provisions reflected in the guidance for the 2006 24-hour PM<sub>2.5</sub> NAAQS), 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 West Virginia portion of the Steubenville-Weirton Area, EPA believes that doing so is consistent with proposing redesignation of the West Virginia portion of the Area for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> standard. The West Virginia portion of the Area has attained both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards 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<sub>10</sub> precursors.<sup>7</sup> Under subpart 1 and EPA’s prior implementation rule, all major stationary sources of PM<sub>2.5</sub> 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 West Virginia portion of the Area for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. As explained subsequently, EPA does not believe that any additional controls of ammonia and VOC are required in the context of these redesignations.

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

<sup>7</sup> 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.

may suffice to relieve a state from the need to adopt precursor controls under section 189(e). See 57 FR 13542. EPA in this action proposes to determine that West Virginia’s SIP has met the provisions of section 189(e) with respect to ammonia and VOC as precursors. This proposed supplemental determination is based on our findings that: (1) The Steubenville-Weirton 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.<sup>8</sup> In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignations of the West Virginia portion of the Steubenville-Weirton Area, which is attaining the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 annual or the 2006 24-hour PM<sub>2.5</sub> standard in the Area. See 57 FR 13539–42.

EPA notes that its 1997 PM<sub>2.5</sub> Implementation Rule provisions in 40 CFR 51.1002 were not directed at evaluation of PM<sub>2.5</sub> precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 annual or the 2006 24-hour PM<sub>2.5</sub> 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 Court’s January 4, 2013 decision as calling for “presumptive regulation” of ammonia and VOC for PM<sub>2.5</sub> 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 West Virginia to address precursors differently 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

<sup>8</sup> The Steubenville-Weirton 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.

4 requirements with respect to precursors in attainment plans for PM<sub>10</sub> 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.<sup>9</sup> Courts have upheld this approach to the requirements of subpart 4 for PM<sub>10</sub>.<sup>10</sup> EPA believes that application of this approach to PM<sub>2.5</sub> precursors under subpart 4 is reasonable. Because the Steubenville-Weirton Area has already attained both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS with its current approach to regulation of PM<sub>2.5</sub> 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 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 West Virginia's requests for redesignation of the Steubenville-Weirton Area for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. In the context of a redesignation, the Area has shown that it has attained the standards. Moreover, the State has shown and EPA is proposing to determine that attainment of both 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS in this Area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment of the standards. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013 decision of the Court as precluding redesignation of the West Virginia portion of the Steubenville-Weirton Area to attainment for the 1997

annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS at this time.

In sum, even if West Virginia was required to address precursors for the Steubenville-Weirton Area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded 1997 PM<sub>2.5</sub> Implementation Rule, EPA would still conclude that the West Virginia 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 West Virginia's Submittals**

EPA is proposing several rulemaking actions for the West Virginia portion of the Steubenville-Weirton Area (1) To redesignate the West Virginia portion of the Area to attainment for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS; and (2) approve into the West Virginia SIP the associated maintenance plans for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is also proposing in this rulemaking action to approve the 2008 comprehensive emissions inventory to satisfy section 172(c)(3) requirement for the 2006 24-hour PM<sub>2.5</sub> NAAQS, one of the criteria for redesignation. EPA's proposed approvals of the redesignation requests and maintenance plans for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS are based upon EPA's determination that the Area continues to attain both standards, which EPA is proposing in this rulemaking action, and that all other redesignation criteria have been met for the West Virginia portion of the Area. The following is a description of how the West Virginia's April 13, 2012, June 8, 2012 and June 24, 2013 submittals satisfy the requirements of section 107(d)(3)(E) of the CAA for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards.

*A. Redesignation Requests*

1. Attainment

As noted previously, in a final rulemaking action dated September 14, 2011 (76 FR 56641), EPA determined that the entire Steubenville-Weirton Area attained the 1997 annual PM<sub>2.5</sub> NAAQS by its applicable attainment date, based upon complete, quality-assured, and certified ambient air quality monitoring data for the period of 2007–2009. In that same rulemaking action, EPA also determined that the Steubenville-Weirton Area continued to attain the 1997 annual PM<sub>2.5</sub> standard, based on complete, quality-assured and certified ambient air quality monitoring data for 2008–2010. In a separate rulemaking action dated May 4, 2012 (77 FR 28264), EPA also determined that the Steubenville-Weirton Area has attained the 2006 24-hour PM<sub>2.5</sub> standard, based on complete, quality-assured and certified ambient air quality monitoring data for 2008–2010. The basis and effect of these determinations of attainment for both the 1997 and 2006 PM<sub>2.5</sub> NAAQS were discussed in the notices of the proposed (76 FR 28393 and 76 FR 61291, respectively) and final (76 FR 56641 and 77 FR 28264, respectively) rulemakings.

EPA has reviewed the ambient air quality PM<sub>2.5</sub> monitoring data in the Steubenville-Weirton Area, consistent with the requirements contained at 40 CFR part 50, and recorded in EPA's Air Quality System (AQS). To support the previous determinations of attainment of the Area, EPA has reviewed the most recent data in AQS, including quality-assured, quality-controlled, and state-certified data for 2009–2011 and preliminary state-certified data for 2010–2012. The air quality data show that the Steubenville-Weirton Area continues to attain both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. The Area's PM<sub>2.5</sub> annual and 24-hour design values<sup>11</sup> from 2007–2012 are provided in Tables 1 and 2, respectively.

TABLE 1—STEUBENVILLE-WEIRTON AREA'S ANNUAL DESIGN VALUES FOR THE 1997 ANNUAL PM<sub>2.5</sub> STANDARD FOR THE 2007–2009, 2008–2010, 2009–2011, AND 2010–2012 MONITORING PERIODS, IN µg/m<sup>3</sup>

County	Monitor ID	Annual design values			
		2007–2009	2008–2010	2009–2011	Preliminary 2010–2012
Jefferson, OH .....	39–081–0017	14.2	13.0	12.5	12.2
Jefferson, OH .....	39–081–1001	13.6	12.7	11.8	11.4
Brooke, WV .....	54–009–0005	14.4	13.7	13.0	12.7

<sup>9</sup> See, e.g., “Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM<sub>10</sub> Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM<sub>10</sub> Standards,” (69 FR 30006, May 26, 2004)

(approving a PM<sub>10</sub> attainment plan that impose controls on direct PM<sub>10</sub> and NO<sub>x</sub> emissions and did not impose controls on SO<sub>2</sub>, VOC, or ammonia emissions).

<sup>10</sup> See, e.g., *Assoc. of Irrigated Residents v. EPA et al.*, 423 F.3d 989 (9th Cir. 2005).

<sup>11</sup> As defined in 40 CFR part 50, Appendix N, section (1)(c).

TABLE 1—STEUBENVILLE-WEIRTON AREA'S ANNUAL DESIGN VALUES FOR THE 1997 ANNUAL PM<sub>2.5</sub> STANDARD FOR THE 2007–2009, 2008–2010, 2009–2011, AND 2010–2012 MONITORING PERIODS, IN µg/m<sup>3</sup>—Continued

County	Monitor ID	Annual design values			
		2007–2009	2008–2010	2009–2011	Preliminary 2010–2012
Brooke, WV .....	54–009–0011	14.0	13.1	11.6	11.1
Hancock, WV .....	54–029–1004	13.4	12.4	11.7	11.3
Area's Annual Design Value		14.4	13.7	13.0	12.7

Source: EPA AQS Preliminary Design Value Reports (AMP480) dated December 6, 2012, and June 26, 2013.

Note: Monitoring site 54–009–0011 ceased operations temporarily from May to July 2011, due to significance maintenance on the site.

TABLE 2—STEUBENVILLE-WEIRTON AREA'S 24-HOUR DESIGN VALUES FOR THE 2006 24-HOUR PM<sub>2.5</sub> STANDARD FOR THE 2008–2010, 2009–2011, AND 2010–2012 MONITORING PERIODS, IN µg/m<sup>3</sup>

County	Monitor ID	24-Hour design values		
		2008–2010	2009–2011	Preliminary 2010–2012
Jefferson, OH .....	39–081–0017	30	28	27
Jefferson, OH .....	39–081–1001	28	24	24
Brooke, WV .....	54–009–0005	31	27	27
Brooke, WV .....	54–009–0011	31	29	27
Hancock, WV .....	54–029–1004	31	28	27
Area's 24-hour Design Value		31	29	27

Source: EPA AQS Preliminary Design Value Reports (AMP480) dated December 6, 2012, and June 26, 2013.

Note: Monitoring site 54–009–0011 ceased operations temporarily from May to July 2011, due to significance maintenance on the site.

EPA's review of the monitoring data for 2009–2011 and 2010–2012 supports EPA's previous determinations that the Area has attained the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, and that the Area continues to attain both standards. In addition, as discussed subsequently with respect to the maintenance plan, WVDEP has committed to continue monitoring ambient PM<sub>2.5</sub> concentrations in accordance with 40 CFR part 58. Thus, EPA is proposing to determine that the Steubenville-Weirton Area continues to attain the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS.

2. The Area Has Met All Applicable Requirements Under Section 110 and Subpart 1 of the CAA and Has a Fully Approved SIP Under Section 110(k)

In accordance with section 107(d)(3)(E)(v), the SIP revisions for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards for the West Virginia portion of the Steubenville-Weirton Area must be fully approved under section 110(k) and all the requirements applicable to 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) include, but are not limited to the following:

- Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirements (PSD);
- Provisions for the implementation of Part D requirements for NSR permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) 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 for various NAAQS, EPA has required certain states to establish programs to address

transport of air pollutants in accordance with the NO<sub>x</sub> SIP Call (63 FR 57356, October 27, 1998), amendments to the NO<sub>x</sub> 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) 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 not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Steubenville-Weirton Area will still be subject to these requirements after it is redesignated. EPA concludes that the section 110(a)(2) 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 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 at 37890, June 19, 2000), and in the Pittsburgh-Beaver Valley, Pennsylvania redesignation (66 FR at 53099, October 19, 2001).

EPA has reviewed the West Virginia 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 West Virginia's SIP addressing section 110(a)(2) requirements, including provisions addressing PM<sub>2.5</sub>. *See* (76 FR 47062, August 4, 2011). These requirements are, however, statewide requirements that are not linked to the PM<sub>2.5</sub> nonattainment status of the Steubenville-Weirton Area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the State's PM<sub>2.5</sub> redesignation requests.

#### b. Subpart 4 Requirements

Subpart 1 sets forth the basic nonattainment plan requirements applicable to PM<sub>2.5</sub> nonattainment areas. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and must 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).

On June 24, 2009, WVDEP submitted an attainment plan for the West Virginia portion of the Steubenville-Weirton Area for the 1997 annual PM<sub>2.5</sub> NAAQS, which included a 2002 comprehensive emissions inventory. As mentioned previously, on September 14, 2011 (76

FR 56641), EPA made a determination that the Steubenville-Weirton Area had attained the 1997 annual PM<sub>2.5</sub> NAAQS. This determination of attainment was based upon complete, quality-assured and certified ambient air quality monitoring data for the period of 2007–2009 showing that the entire Area had attained the standard by its applicable attainment date of April 5, 2010, and 2008–2010 data showing that the Area continued to attain the standard. In a separate rulemaking action dated May 14, 2012 (77 FR 28264), EPA made a determination of attainment for the Steubenville-Weirton Area for the 2006 24-hour PM<sub>2.5</sub> NAAQS, based on quality-assured and certified ambient air quality monitoring data for the period of 2008–2010.

Pursuant to 40 CFR 51.2004(c), upon these determinations by EPA that the Area has attained the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, the requirement for West Virginia to submit for the Steubenville-Weirton Area an attainment demonstration and associated RACM, a RFP plan, contingency measures, and other planning SIPs related to the attainment of the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS are suspended until the Area is redesignated to attainment for each standard or EPA determines that the Area has again violated any of the standards, at which time such plans are required to be submitted. Thus, because attainment has been reached for the Area for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS and the Area continues to attain both standards, no additional measures are needed to provide for attainment. Therefore, the requirements of section 172(c)(1), 172(c)(2), 172(c)(6), and 172(c)(9) are no longer considered to be applicable for purposes of redesignation of the Area for both standards.

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) 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 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." Nevertheless, West Virginia currently has an approved NSR program, codified in the State's regulation at 45 CSR 19. *See* (71 FR 64468, November 2, 2006) (approving nonattainment NSR program into the SIP) and (77 FR 63736, October 17, 2012) (approving revisions to West Virginia's PSD program). However, the State's PSD program for PM<sub>2.5</sub> will become effective in the Steubenville-Weirton Area upon redesignation to attainment.

Section 172(c)(7) of the CAA requires the SIP to meet the applicable provisions of section 110(a)(2). As noted previously, we believe the West Virginia SIP meets the requirements of section 110(a)(2) that are applicable for purposes of redesignation.

As a result of EPA's determinations of attainment of the Area for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, respectively, the only remaining requirement under section 172 to be considered for each of the PM<sub>2.5</sub> standards is the comprehensive emissions inventory required under section 172(c)(3). Section 172(c)(3) of the CAA requires submission of a comprehensive, accurate, and current inventory of actual emissions. For purposes of the PM<sub>2.5</sub> NAAQS, this emissions inventory should address not only direct emissions of PM<sub>2.5</sub>, but also emissions of all precursors with the potential to participate in PM<sub>2.5</sub> formation, i.e., SO<sub>2</sub>, NO<sub>x</sub>, VOC and ammonia.

The June 24, 2009 submittal is relevant to this proposed action to redesignate the West Virginia portion of the Area only with respect to the comprehensive emissions inventory requirement of section 172(c)(3) for the 1997 annual PM<sub>2.5</sub> standard. On April 16, 2013 (78 FR 22423), EPA approved the 2002 comprehensive emissions inventory included in the attainment plan for the 1997 annual PM<sub>2.5</sub> NAAQS, to meet the requirement of section 172(c)(3) for this standard. The 2002 comprehensive emissions inventory for the 1997 annual PM<sub>2.5</sub> standard includes emissions estimates that cover the general source categories of point sources, area sources, onroad mobile sources, and nonroad mobile sources. The pollutants that comprise the 2002 emissions inventory are PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC, and ammonia. An evaluation of West Virginia's 2002 comprehensive emissions inventory for the West Virginia portion of the Area is provided in the Technical Support Document (TSD) prepared by EPA for the

rulemaking action. See Docket ID No. EPA-R03-OAR-2012-0369.

To satisfy the 172(c)(3) requirement for the 2006 24-hour PM<sub>2.5</sub> standard, in the June 8, 2012 submittal West Virginia requested approval of the 2005 and 2008 comprehensive emissions inventories submitted with its maintenance plan. On June 24, 2013, WVDEP supplemented its June 8, 2012 submittal with 2008 emissions inventories for ammonia and VOC. The entire 2008 emissions inventory is the most current accurate and comprehensive emissions inventory of direct PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>,

VOC, and ammonia for the Area. Thus, as part of this rulemaking action, EPA is proposing to approve West Virginia's 2008 comprehensive emissions inventory for the 2006 24-hour PM<sub>2.5</sub> NAAQS as satisfying the requirement of section 172(c)(3) of the CAA for this standard. Final approval of the 2008 base year emissions inventory will satisfy the emissions inventory requirement under section 172(c)(3) of the CAA for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

The entire 2008 comprehensive emissions inventory addresses the

general source categories of point sources, area sources, onroad mobile sources, and nonroad mobile sources. A summary of the 2008 comprehensive emissions inventory is provided in Table 3. EPA has reviewed the documentation provided by WVDEP and found the 2008 emissions inventory to be approvable. For more information on EPA's analysis of the 2008 emissions inventory, see EPA's TSDs dated August 29, 2013, available in the docket for this rulemaking action at [www.regulations.gov](http://www.regulations.gov). See Docket ID No. EPA-R03-OAR-2013-0498.

TABLE 3—SUMMARY OF 2008 COMPREHENSIVE EMISSIONS INVENTORY FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA, IN TONS PER YEAR (TPY)

Sector	Direct PM <sub>2.5</sub>	NO <sub>x</sub>	SO <sub>2</sub>	VOC *	Ammonia *
Point .....	2,092	38,843	137,669	1,308	94
Area .....	593	1,480	582	1,655	231
Nonroad .....	40	496	7	739	0.49
Onroad .....	89	2,530	10	1,924	114
<b>Total .....</b>	<b>2,814</b>	<b>43,349</b>	<b>138,268</b>	<b>5,626</b>	<b>439</b>

\* VOC and ammonia emissions were supplemented by WVDEP from EPA's 2008 NEI v.1.5.

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." In conjunction with its request to redesignate the West Virginia portion of the Area to attainment status, West Virginia submitted SIP revisions to provide for maintenance of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS in the West Virginia portion of the Area for at least 10 years after redesignation, throughout 2025. West Virginia is requesting that EPA approve this SIP revision as meeting the requirement of CAA section 175A. Once approved, the maintenance plans for the West Virginia portion of the Area will ensure that the SIP for West Virginia meets the requirements of the CAA regarding maintenance of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS for the West Virginia portion of the Area. EPA's analysis of the maintenance plans is provided in section V.B. 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 that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity)

as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability which EPA promulgated pursuant to its authority under the CAA. EPA interprets the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under CAA section 107(d) because state conformity rules are still required after redesignation, and Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F. 3d 426 (6th Cir. 2001) (upholding this interpretation) and (60 FR 62748, December 7, 1995) (discussing Tampa, Florida).

Thus, for purposes of redesignating to attainment the Steubenville-Weirton Area for the 1997 annual PM<sub>2.5</sub> NAAQS, EPA determines that West Virginia has met all the applicable SIP requirements under part D of Title I of the CAA. EPA also determines that upon final approval of the 2008 comprehensive emissions inventory as proposed in this rulemaking action, West Virginia will also meet all the applicable SIP requirements under part D of Title I of the CAA for purposes of redesignating the Area to attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

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

For purposes of redesignation to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS, EPA has fully approved all applicable requirements of West Virginia's SIP for the Area in accordance with section 110(k) of the CAA. Upon final approval of the 2008 comprehensive emissions inventory as proposed in this rulemaking action, EPA will have fully approved all applicable requirements of West Virginia's SIP for the Area for purposes of redesignation to attainment for the 2006 24-hour PM<sub>2.5</sub> 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) 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. In making this demonstration, West Virginia has calculated the change in emissions between 2005, a year showing nonattainment for both the 1997 and 2006 PM<sub>2.5</sub> standards in the Steubenville-Weirton Area, and 2008, one of the years for which the

Steubenville-Weirton Area monitored attainment for both standards. A summary of the emissions reductions for PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub> from 2005 to 2008 submitted by WVDEP for the

Steubenville-Weirton Area is provided in Table 4. For more information on EPA's analysis of the 2005 and 2008 emissions inventory, see EPA's TSDs dated August 24, 2012 and August 29,

2013, available in the docket for this rulemaking action at [www.regulations.gov](http://www.regulations.gov).

TABLE 4—EMISSION REDUCTIONS OF DIRECT PM<sub>2.5</sub> FROM 2005 TO 2008 IN THE ENTIRE STEUBENVILLE-WEIRTON AREA, IN TONS PER YEAR (TPY)

	Sector	2005	2008	Net change 2005–2008
Direct PM <sub>2.5</sub> .....	Point—EGU .....	1,308	1,373	65
	Point—Non-EGU .....	799	719	–80
	Area .....	632	563	–69
	Locomotive/Marine .....	51	30	–21
	Nonroad .....	45	40	–5
	Onroad .....	111	89	–22
	Total .....	2,946	2,814	–132
NO <sub>x</sub> .....	Point—EGU .....	41,047	35,487	–5,560
	Point—Non-EGU .....	3,866	3,356	–510
	Area .....	2,010	531	–1,479
	Locomotive/Marine .....	1,458	949	–509
	Nonroad .....	575	496	–79
	Onroad .....	3,129	2,530	–599
	Total .....	52,083	43,349	–8,736
SO <sub>2</sub> .....	Point—EGU .....	225,595	135,507	–90,088
	Point—Non-EGU .....	2,951	2,162	–789
	Area .....	1,007	523	–484
	Locomotive/Marine .....	79	59	–20
	Nonroad .....	39	7	–32
	Onroad .....	32	10	–22
	Total .....	229,703	138,268	–91,436

The reduction in emissions and the corresponding improvement in air quality from 2005 to 2008 in the Steubenville-Weirton Area can be attributed to a number of regulatory control measures that have been implemented in the Area and contributing areas in recent years.

#### a. Federal Measures Implemented

Reductions in PM<sub>2.5</sub> precursors 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<sub>x</sub> and SO<sub>2</sub> emissions from new cars and light duty trucks, including sport-utility vehicles. These Federal rules were phased in between 2004 and 2009. EPA has estimated that, after phasing in the new requirements, new vehicles emit less NO<sub>x</sub> in the following percentages: Passenger cars (light duty vehicles)—77 percent (%); light duty trucks, minivans, and sports utility vehicles—86%; and, larger sports utility vehicles, vans, and heavier trucks—69–

95%. 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, up to a 90 percent reduction.

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 fine particulate emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 parts per million (ppm). The total program is estimated to achieve a 90% reduction in direct PM<sub>2.5</sub> emissions and a 95% reduction in NO<sub>x</sub> 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. This rule reduces the sulfur content in nonroad diesel fuel by over 99%. 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. State and Local Measures

The Area's air quality is affected by regulation of SO<sub>2</sub> and NO<sub>x</sub> from power plants (i.e., stationary sources containing electric generating units (EGUs)). There are two affected EGU sources in Jefferson County (the Ohio portion of the Area): W.H. Sammis Power Plant and Cardinal Power Plant.

EPA issued the NO<sub>x</sub> SIP Call in 1998 to require 22 states and the District of Columbia to reduce NO<sub>x</sub> emissions from large EGUs and large non-EGUs such as industrial boilers, internal combustion engines, and cement kilns. *See* (63 FR 57356, October 27, 1998). EPA approved West Virginia's Phase I NO<sub>x</sub> SIP Call rule on May 10, 2002 (67 FR 31733) and its Phase II rule on September 28, 2006 (71 FR 56881). West Virginia's NO<sub>x</sub> SIP Call rules established West Virginia's

NO<sub>x</sub> Budget Trading Program and set forth requirements for its non-trading sources, respectively. The former enabled West Virginia to participate in the EPA-administered regional NO<sub>x</sub> Budget Trading Program under the NO<sub>x</sub> SIP Call. The emission reductions resulting from regulations developed in response to the NO<sub>x</sub> SIP Call are permanent and enforceable.

On March 10, 2005, EPA issued CAIR, which applies to 27 eastern states and the District of Columbia. CAIR relied on 3 separate cap-and-trade programs to reduce SO<sub>2</sub> and NO<sub>x</sub> emissions. On August 4, 2009 (74 FR 38536), EPA approved West Virginia's CAIR rules into the West Virginia SIP. West Virginia's NO<sub>x</sub> SIP Call requirements were subsumed by the State's CAIR ozone season NO<sub>x</sub> trading program. On August 8, 2011, EPA promulgated CSAPR (76 FR 48208), to replace CAIR, which has been in place since 2005. The D.C. Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR "pending the promulgation of a valid replacement." *EME Homer City*, 696 F.3d at 38.

As noted earlier, EPA believes it is appropriate to allow states to rely on the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable pending a valid replacement rule, for purposes such as a redesignation. CAIR was in place and thus getting emission reductions when the Steubenville-Weirton Area monitored attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. The monitoring data used to demonstrate the Area's attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS was impacted by CAIR. EPA finds West Virginia appropriately included CAIR as a control measure in this SIP revision.

Also, a Federal consent decree with the Ohio Edison Company (OHECo) required significant emissions reductions of NO<sub>x</sub> and SO<sub>2</sub> from seven EGUs at the Sammis Power Station in Jefferson County, Ohio. The Federal consent decree established in the Sammis Power Station a plant-wide annual emissions limit (PAL) of NO<sub>x</sub> that started on 2005 at 11,371 tons and continued on 2012 and every year thereafter at 11,863 tons, and a declining PAL of SO<sub>2</sub> that started on

2005 at 58,000 tons and leveled on 2011 and every year thereafter at 29,900 tons. From 2005 to 2011, the consent decree also established various control measures that consist of the installation and continuous operation of various pollution control units at each EGU when combusting fossil fuels, including: Selective catalytic reduction (SCR), selective non-catalytic reduction (SNCR), low NO<sub>x</sub> burners, overfired air, and advanced combustion control optimization to reduce NO<sub>x</sub> emissions; and induct scrubbers, flash dry absorbers, and flue gas desulfurization (FGD) systems for reducing SO<sub>2</sub> emissions. In 2003, the Sammis Power Station emitted 40,430 tons of NO<sub>x</sub> and 164,400 tons of SO<sub>2</sub>. As a result of the control measures established by the consent decree, the Sammis Power Station reduced NO<sub>x</sub> emissions by 28,567 tpy by 2007 (42 percent reduction from 2003), and SO<sub>2</sub> emissions by 134,500 tpy by 2012 (82 percent reduction from 2003).

Additional controls have and will be installed on the Cardinal Power Plant, a coal-fired power plant also located in Jefferson County that consists of three EGUs, each with approximately a nominal net capacity of 600 megawatts (MW). As a result of the American Electric Plant (AEP) Federal consent decree, the Cardinal Power Plant was required to install and continuously operate SCR systems on each EGU to control NO<sub>x</sub> emissions starting in January 2009, and FGD systems to reduce SO<sub>2</sub> emissions on Units 1 and 2 by December 2008 and Unit 3 by December 2012. The Federal consent decree also achieves direct particulate matter emissions reductions by establishing new emissions rates to each EGU to be achieved by December 2009, and by optimizing the operation of the existing electrostatic precipitators (ESPs). EPA believes that West Virginia has adequately demonstrated that the observed air quality improvement in the West Virginia portion of the Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures.

#### B. Maintenance Plans

On April 12, 2012 and June 8, 2012, WVDEP submitted maintenance plans for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, respectively, as required by section 175A of the CAA. EPA's analysis for proposing approval of the maintenance plans is provided in this section.

#### 1. Attainment Emissions Inventory

An attainment inventory is comprised of the emissions during the time period associated with the monitoring data showing attainment. WVDEP determined that the appropriate attainment inventory year for the maintenance plans of both standards is 2008, one of the years in the periods during which the Steubenville-Weirton Area monitored attainment of the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS, respectively, as described previously. The 2008 inventory included in the maintenance plans contains primary PM<sub>2.5</sub> emissions (including condensables), SO<sub>2</sub>, and NO<sub>x</sub>. The same inventory and supporting documentation was provided in the maintenance plans for 2008.

WVDEP used data from the 2008 annual emissions inventory submitted to EPA's National Emissions Inventory (NEI) database and EPA's Clean Air Markets Division (CAMD) database to compile their inventory. For the 2008 area (non-point) source inventory, WVDEP used the 2008 NEI v1.5 data developed by EPA. Commercial marine vessels and locomotive emissions were taken from the 2008 NEI v1.5. The nonroad mobile sources emissions were generated using EPA's NONROAD model. The 2008 onroad mobile source inventory was developed using the most current version of EPA's highway mobile source emissions model at the time, MOVES2010a. The Ohio Department of Transportation (ODOT) and the Wood-Washington-Wirt Interstate Planning Commission performed the onroad mobile source analysis in coordination with the Ohio Environmental Protection Agency (Ohio EPA) and WVDEP, with additional data provided by Ohio EPA, West Virginia Department of Transportation (WVDOT) and WVDEP. The maintenance plans also included Ohio's 2008 emissions inventory for the Ohio portion of the Area. This inventory include estimates for EGU point, non-EGU point, nonroad, area, marine, aircraft, and rail, and onroad mobile sources for emissions of PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub>.

EPA has reviewed the documentation provided by WVDEP and found the 2008 emissions inventory submitted with the maintenance plans to be approvable. For more information on EPA's analysis of the 2008 emissions inventory, see EPA's TSDs dated August 24, 2012 and August 29, 2013, available in the docket for this rulemaking action at [www.regulations.gov](http://www.regulations.gov).

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 demonstration need not be based on modeling. See *Wall v. EPA, supra*; *Sierra Club v. EPA, supra*. See also 66 FR 53099–53100 and 68 FR 25430–32. WVDEP uses projection inventories to show that the West Virginia portion of the Area will remain in attainment and developed projection inventories for an interim year of 2015 and a maintenance plan end year of 2025 to show that future emissions of NO<sub>x</sub>, SO<sub>2</sub>, and direct PM<sub>2.5</sub> will remain at or below the attainment year 2008 emissions levels throughout the West

Virginia portion of the Area through the year 2025.

EPA has reviewed the documentation provided by WVDEP for developing annual 2015 and 2025 emissions inventories for the West Virginia portion of the Area. Emissions estimates for 2015 and 2025 for non-EGU point and area sources were grown from the 2008 inventory using Workforce West Virginia economic forecasts (WV Workforce). There are no EGUs located in the WV portion of the Area. Locomotive and marine emissions for 2015 and 2025 were also based on the 2008 inventory using Workforce WV economic forecasts. The WV Workforce projections were selected because they relied more on local data and provided more coverage of various categories and a wider range of years based on 2008 emissions data. Nonroad mobile source emissions estimates for 2015 and 2025 were developed using monthly NONROAD model runs and summarizations of monthly data to obtain annual data values. Onroad mobile emissions for 2015 and 2025 were calculated from the emissions factors produced by MOVES2010a, as performed by ODOT.

EPA has determined that the 2015 and 2025 projected emissions inventories provided by WVDEP are approvable. For more information on EPA’s analysis of

the emissions inventories, see EPA’s TSDs dated August 24, 2012 and August 29, 2013, available in the docket for this rulemaking action at [www.regulations.gov](http://www.regulations.gov). The maintenance plans also included Ohio’s emissions inventories for the Ohio portion of the Area for 2015 and 2025. These inventories include estimates for EGU point, non-EGU point, nonroad, area, marine, aircraft, and rail, and onroad mobile sources for emissions of PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub>.

Tables 5, 6, and 7 provide a summary of the emissions inventories for the entire Steubenville-Weirton Area for the 2008 attainment year, the 2015 interim year, and the 2025 maintenance plan end year. The inventories show that, between 2008 and 2025, the Area is projected to reduce direct PM<sub>2.5</sub> emissions by 116 tpy, NO<sub>x</sub> emissions by 25,816 tpy and SO<sub>2</sub> emissions by 90,823 tpy. Thus, the projected emissions inventories show that the West Virginia portion of the Steubenville-Weirton Area will continue to maintain the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards during the maintenance period. In addition, EPA has evaluated ammonia and VOC emissions of the Area for the maintenance demonstration, and such evaluation is addressed on section V.B.6. of this notice.

TABLE 5—COMPARISON OF 2008, 2015, AND 2025 EMISSIONS OF DIRECT PM<sub>2.5</sub> FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA, IN TONS PER YEAR (TPY)

Sector	Direct PM <sub>2.5</sub>				
	2008	2015	2025	Net change 2008–2015	Net change 2008–2025
Point—EGU .....	1,373	1,405	1,450	32	77
Point—Non-EGU .....	719	677	630	–42	–89
Area .....	563	556	552	–7	–11
Locomotive/Marine .....	30	27	23	–3	–7
Nonroad .....	40	29	18	–11	–22
Onroad .....	89	45	25	–44	–64
Total .....	2,814	2,741	2,698	–75	–116

TABLE 6—COMPARISON OF 2008, 2015, AND 2025 EMISSIONS OF NO<sub>x</sub> FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA, IN TONS PER YEAR (TPY)

Sector	NO <sub>x</sub>				
	2008	2015	2025	Net change 2008–2015	Net change 2008–2025
Point—EGU .....	35,487	19,488	12,632	–15,999	–22,855
Point—Non-EGU .....	3,356	3,206	3,006	–150	–350
Area .....	531	527	523	–4	–8
Locomotive/Marine .....	949	854	729	–95	–220
Nonroad .....	496	294	207	–202	–289
Onroad .....	2,530	1,194	437	–1,336	–2,093
Total .....	43,349	25,563	17,533	–17,786	–25,815

TABLE 7—COMPARISON OF 2008, 2015, AND 2025 EMISSIONS OF SO<sub>2</sub> FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA, IN TONS PER YEAR (TPY)

Sector	SO <sub>2</sub>				
	2008	2015	2025	Net change 2008–2015	Net change 2008–2025
Point—EGU .....	135,507	72,203	45,073	– 63,304	– 90,434
Point—Non-EGU .....	2,162	2,049	1,867	– 113	– 295
Area .....	523	502	459	– 21	– 64
Locomotive/Marine .....	59	51	39	– 8	– 20
Nonroad .....	7	1	1	– 6	– 6
Onroad .....	10	7	6	– 3	– 4
Total .....	138,268	74,813	47,446	– 63,455	– 90,823

### 3. Monitoring Network

West Virginia's maintenance plans include a commitment to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. There are five PM<sub>2.5</sub> monitors in the Steubenville-Weirton Area: Two monitors in Brooke County and one in Hancock County, West Virginia, and two monitors in Jefferson County, Ohio. WVDEP will consult with EPA prior to making any necessary changes to the PM<sub>2.5</sub> monitoring 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 West Virginia portion of the Area, WVDEP requires major point sources to submit air emissions information annually and prepares a new periodic inventory for all PM<sub>2.5</sub> precursors every three years in accordance with EPA's Air Emissions Reporting Requirements (AERR). Emissions information will be compared to the attainment year inventory (2008) to assure continued attainment with the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS and will be used to assess emissions trends, as necessary.

### 5. Contingency Measures

The contingency plan provisions are designed to promptly correct a violation of either the 1997 annual or the 2006 24-hour PM<sub>2.5</sub> NAAQS that occurs in the Area after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that West Virginia will promptly correct a violation of either the 1997 annual or the 2006 24-hour PM<sub>2.5</sub> NAAQS that occurs in the Area 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).

West Virginia's maintenance plans outline the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur. West Virginia's contingency measures include a warning level response and an action level response. An initial warning level response is triggered for the 1997 annual PM<sub>2.5</sub> NAAQS when the PM<sub>2.5</sub> average of the weighted annual mean for a single calendar year exceeds 15.5 µg/m<sup>3</sup> within the Steubenville-Weirton Area. An initial warning level response is triggered for the 2006 24-hour PM<sub>2.5</sub> NAAQS when the 98th percentile 24-hour PM<sub>2.5</sub> concentration for a single calendar year exceeds 35.5 µg/m<sup>3</sup> within the Area. In the case of triggering a warning level, a study will be conducted to determine if the emissions trends show increasing concentrations of PM<sub>2.5</sub>, and whether this trend, if any, is likely to continue. If it is determined through the study that action is necessary to reverse emissions increases, West Virginia will follow the same procedures for control selection and implementation as for an action level response, and implementation of necessary controls will take place as expeditiously as possible, but no later than 12 months from the end of the most recent calendar year.

For the 1997 annual PM<sub>2.5</sub> NAAQS, the action level response will be prompted by any one of the following: (1) A warning level response study showing emissions increases; (2) a two-year average of the weighted annual mean of 15.0 µg/m<sup>3</sup> or greater occurs within the Area; or (3) a violation of the standard occurs in the Area (i.e. a three-year average of the weighted annual

means of 15.0 µg/m<sup>3</sup> or greater). For the 2006 24-hour PM<sub>2.5</sub> NAAQS, the action level response will be prompted by any one of the following: (1) A warning level response study showing emissions increases; (2) a two-year average of the 98th percentile of 35 µg/m<sup>3</sup> or greater within the Area; or (3) a violation of the standard occurs in the Area (i.e. a three-year average of the 98th percentile of 35 µg/m<sup>3</sup> or greater). If an action level response is triggered for any of the standards, West Virginia will adopt and implement appropriate control measures within 18 months from the end of the year in which monitored air quality triggering a response occurs. West Virginia will also consider whether additional regulations that are not a part of the maintenance plan can be implemented in a timely manner to respond to the trigger.

West Virginia commits to adopt and expeditiously implement the necessary corrective actions. West Virginia's potential contingency measures include the following: (1) Diesel reduction emission strategies; (2) alternative fuels and diesel retrofit programs for fleet vehicle operations; (3) PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> emissions offsets for new and modified major sources; (4) concrete manufacturing controls; and (5) additional NO<sub>x</sub> reductions. Additionally, West Virginia has identified a list of sources that could potentially be controlled, including: Industrial, commercial and institutional (ICI) boilers for SO<sub>2</sub> and NO<sub>x</sub> controls, EGUs, process heaters, internal combustion engines, combustion turbines, other sources greater than 100 tons per year, fleet vehicles, and aggregate processing plants.

### 6. EPA's Evaluation of VOC and Ammonia Precursors in West Virginia's Maintenance Plans

With regard to the redesignation of the West Virginia portion of the Steubenville Weirton Area in evaluating the effect of the Court's remand of EPA's

1997 PM<sub>2.5</sub> Implementation Rule, which included presumptions against consideration of VOC and ammonia as PM<sub>2.5</sub> precursors, EPA in this proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standard and that West Virginia has shown that attainment of these standards is due to permanent and enforceable emission reductions.

EPA proposes to determine that the West Virginia's maintenance plan shows continued maintenance of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards by tracking the levels of the precursors whose control brought about attainment of the standards in the Steubenville-Weirton Area. EPA, therefore, believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013 decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this Area. As explained subsequently, based upon documentation provided by the State and supporting information, EPA believes that the maintenance plan

for the West Virginia portion of the Area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS.

First, as noted previously in EPA's discussion of section 189(e), VOC emission levels in the Steubenville-Weirton Area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Steubenville-Weirton Area are low, especially when comparing in comparison to the total amounts of SO<sub>2</sub>, NO<sub>x</sub>, and even direct PM<sub>2.5</sub> emissions from sources in the Area.

West Virginia's maintenance plan shows that significant emissions of direct PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub> are projected to decrease by 116 tpy, 25,816 tpy, and 90, 823 tpy, respectively, over the maintenance period in the Area. See Tables 5–7. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 PM<sub>2.5</sub> NAAQS<sup>12</sup> show that VOC emissions in the Area are projected to decrease by 1,405 tpy between 2007 and 2020. Ammonia emissions are projected to increase by 150 tpy between 2007 and

2020; however this increase is not significant when compared with the emissions reductions projected for the other precursors. See Table 8. Given that the Steubenville-Weirton Area is already attaining the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS even with the current level of emissions from sources in the Area, the downward trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that West Virginia is addressing for purposes of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS indicate that the Area should continue to attain both standards following the precursor control strategy that the State has already elected to pursue. Even if VOC and ammonia emissions were to increase unexpectedly between 2007 and 2025, the overall emissions reductions projected between 2008 and 2025 of direct PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>2</sub> would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential PM<sub>2.5</sub> precursors will not increase to the extent that they will cause monitored PM<sub>2.5</sub> levels to violate either the 1997 annual or 2006 24-hour PM<sub>2.5</sub> standard during the maintenance period.

TABLE 8—COMPARISON OF 2007 AND 2020 EMISSIONS OF VOC AND AMMONIA FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA, IN TONS PER YEAR (TPY)<sup>13</sup>

Sector	VOC			Ammonia		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Point .....	1,316	1,491	175	94	271	177
Area .....	1,441	1,443	2	239	241	2
Nonroad .....	829	380	-449	1	1	0
Onroad .....	1,673	540	-1,133	56	27	-29
Fires .....	18	18	0	1	1	0
Total .....	5,276	3,872	-1,405	391	542	150

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The current annual design value for the Area is 12.7 µg/m<sup>3</sup> and the current 24-hour design value is 27 µg/m<sup>3</sup>, based on preliminary 2010–2012 air quality data, which are well below the levels of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. See Tables 1 and 2. Moreover, the modeling analysis conducted for the RIA for the 2012 PM<sub>2.5</sub> NAAQS indicates that the design values for the Steubenville-

Weirton Area are expected to continue to decline through 2020. In the RIA analysis, the 2020 modeled annual design value for the Area is 9.3 µg/m<sup>3</sup> and the 2020 24-hour design value is 23 µg/m<sup>3</sup>.<sup>14</sup> Given that most precursor emissions are projected to decrease through 2025, it is reasonable to conclude that monitored PM<sub>2.5</sub> levels in the Area will also continue to decrease through 2025.

Thus, EPA believes that there is ample justification to conclude that the West Virginia portion of the Steubenville-Weirton Area should be

redesignated, even taking into consideration the emissions of other precursors potentially relevant to PM<sub>2.5</sub>. After consideration of the D.C. Circuit's January 4, 2013 decision, and for the reasons set forth in this notice, EPA proposes to approve West Virginia's maintenance plans and requests to redesignate its portion of the Steubenville-Weirton Area to attainment for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards. This proposed approval is based on a showing that the West Virginia's maintenance plans provides for maintenance of both the

<sup>12</sup> "Review of the NAAQS for Particulate Matter—Regulatory Impact Analysis." Docket ID No. EPA–HQ–OAR–2010–0955.

<sup>13</sup> These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 PM<sub>2.5</sub> NAAQS.

<sup>14</sup> The 2020 projected PM<sub>2.5</sub> design values are part of the RIA for the 2012 PM<sub>2.5</sub> NAAQS.

1997 annual and 2006 24-hour PM<sub>2.5</sub> standards for at least ten years after redesignation, throughout 2025, in accordance with section 175A.

### C. Transportation Conformity Insignificance Determinations

Transportation conformity is required under section 176(c) of the CAA to ensure that Federally supported highway, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. The CAA requires Federal actions in nonattainment and maintenance areas to “conform to” the goals of SIP. 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, FHWA, and FTA to demonstrate that their metropolitan transportation plans and transportation improvement plans (TIPs) 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 motor vehicle emissions budgets (MVEBs) contained in a SIP.

For MVEBs to be approvable, they must meet, at a minimum, EPA’s adequacy criteria found at 40 CFR 93.118(e)(4). However, in certain instances, the Transportation Conformity Rule allows areas to forgo establishment of a MVEB where it is demonstrated that the regional motor vehicle emissions for a particular pollutant or precursor are an insignificant contributor to the air quality problem in an area. The general criteria for insignificance determinations can be found in 40 CFR 93.109(f). Insignificance determinations are based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory; the current state of air quality as determined by monitoring data for the relevant NAAQS; the absence of SIP motor vehicle control measures; and the historical trends and future projections of the growth of motor vehicle emissions. EPA’s rationale for providing for insignificance determinations is described in the July 1, 2004, revision to the Transportation

Conformity Rule at 69 FR 40004. Specifically, the rationale is explained on page 40061 under the subsection XXIII.B. entitled, “Areas With Insignificant Motor Vehicle Emissions.”

As part of the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS redesignation requests and maintenance plans, West Virginia is requesting that EPA finds that onroad emission of direct PM<sub>2.5</sub> and NO<sub>x</sub> emissions for the Steubenville-Weirton Area are insignificant for transportation conformity purposes. On August 15, 2013, EPA initiated an adequacy review of the findings of insignificance for both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS that West Virginia included in its redesignation submittals. As such, notices of the submission of these findings were posted on the adequacy Web site (<http://epa.gov/otaq/stateresources/transconf/currstips.htm>). The public comment period closed on September 16, 2013. There were no public comments. EPA is acting on making these adequacy findings final through a separate notice of adequacy. Consistent with EPA’s adequacy review of West Virginia’s redesignation requests and maintenance plans and EPA’s thorough review of the entire SIP submissions, EPA is proposing to approve West Virginia’s insignificance determinations for the onroad motor vehicle contribution of PM<sub>2.5</sub> and NO<sub>x</sub> emissions to the overall PM<sub>2.5</sub> emissions for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS for the Steubenville-Weirton Area.

Because EPA finds that West Virginia’s submittals meet the criteria in the Transportation Conformity Rule for insignificance findings for motor vehicle emissions of PM<sub>2.5</sub> and NO<sub>x</sub> in the Steubenville-Weirton Area, it is not necessary to establish PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs for the Area. EPA finds that the submittals demonstrate that PM<sub>2.5</sub> and NO<sub>x</sub>, regional motor vehicle emissions are insignificant contributors to the annual and daily PM<sub>2.5</sub> air quality in the Steubenville-Weirton Area. These findings are based on the following: (1) The State provided information that projects that onroad mobile source NO<sub>x</sub> constitutes 5 percent or less of the Area’s total NO<sub>x</sub> emissions in 2015 and 2025 due to continuing fleet turnover; (2) the State provided information that projects that onroad mobile source PM<sub>2.5</sub> emissions constitute 3.59% of the Area’s total PM<sub>2.5</sub> emissions and decreases significantly in later analysis years to 1.84% (2015) and 1.21% (2025); (3) there are no SIP requirements for motor vehicle control measures for the Steubenville-Weirton Area and it is unlikely that motor vehicle control

measures will be implemented for PM<sub>2.5</sub> in the Area in the future; and (4) the Area has attained both the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. As a result, MVEBs for PM<sub>2.5</sub> and NO<sub>x</sub> are not required for the Steubenville-Weirton Area to maintain the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is proposing to approve the findings of insignificant contribution by onroad sources for PM<sub>2.5</sub> and NO<sub>x</sub>, resulting in no proposed MVEBs for the Steubenville-Weirton Area for the 2015 and 2025 projected maintenance years. Onroad emissions were calculated using the EPA required MOVES2010a model.

West Virginia did not provide emission budgets for SO<sub>2</sub>, VOC, and ammonia 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<sub>2.5</sub> Implementation Rule, that emissions of these precursors from motor vehicles are not significant contributors to the Area’s PM<sub>2.5</sub> air quality problem.

EPA issued conformity regulations to implement the 1997 annual PM<sub>2.5</sub> NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005, respectively). Those actions were not part of the final rule recently remanded to EPA by the Court of Appeals for the District of Columbia in *NRDC v. EPA*, No. 08–1250 (Jan. 4, 2013), in which the Court remanded to EPA the 1997 PM<sub>2.5</sub> 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 insignificance findings.

First, as noted above, EPA’s conformity rule implementing the 1997 annual PM<sub>2.5</sub> NAAQS was a separate action from the overall PM<sub>2.5</sub> implementation rule addressed by the Court and was not considered or disturbed by the decision. Therefore, the conformity regulations were not at issue in *NRDC v. EPA*.<sup>15</sup> In addition, as

<sup>15</sup> The 2004 rulemaking action addressed most of the transportation conformity requirements that apply in PM<sub>2.5</sub> nonattainment and maintenance areas. The 2005 conformity rule included provisions addressing treatment of PM<sub>2.5</sub> precursors in MVEBs. See 40 CFR 93.102(b)(2). While none of these provisions were challenged in the *NRDC* case, EPA also notes that the Court declined to address challenges to EPA’s presumptions regarding PM<sub>2.5</sub> precursors in the PM<sub>2.5</sub> implementation rule. *NRDC v. EPA*, at 27, n. 10.

discussed in section V.A.1 of this rulemaking action, the air quality data show that the Steubenville-Weirton Area continues to attain both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. Further, the State's maintenance plan shows continued maintenance through 2025 by demonstrating that NO<sub>x</sub>, SO<sub>2</sub>, and direct PM<sub>2.5</sub> emissions continue to decrease through the maintenance period. With regard to SO<sub>2</sub>, the 2005 final conformity rule (70 FR 24280) based its presumption concerning onroad SO<sub>2</sub> MVEBs on emissions inventories that show that SO<sub>2</sub> emissions from onroad sources constitute a "de minimis" portion of total SO<sub>2</sub> emissions. For the Steubenville-Weirton Area, onroad mobile source SO<sub>2</sub> constitutes less than one tenth of one percent (<0.1%) of the Area's total SO<sub>2</sub> emissions in the 2015 and 2025 horizon years. For more information on EPA's review of the determination of insignificance, see the TSD dated September 24, 2013, available in the docket for this rulemaking action at [www.regulations.gov](http://www.regulations.gov).

## VI. Proposed Actions

EPA is proposing to approve the two redesignation requests of the West Virginia portion of the Steubenville-Weirton Area from nonattainment to attainment for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS, respectively. EPA has evaluated West Virginia's redesignation requests and determined that upon approval of the 2008 comprehensive emissions inventory for the 2006 24-hour PM<sub>2.5</sub> NAAQS proposed as part of this rulemaking action, it would meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for both standards. EPA believes that the monitoring data demonstrate that the Steubenville-Weirton Area is attaining and will continue to attain the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is also proposing to approve the associated maintenance plans for the West Virginia portion of the Area as a revision to the West Virginia SIP for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards because it meets the requirements of CAA section 175A for both standards. For transportation conformity purposes, EPA is also proposing to approve for both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> standards West Virginia's determinations that onroad emissions of PM<sub>2.5</sub> and NO<sub>x</sub> are insignificant contributors to PM<sub>2.5</sub> concentrations in

the Steubenville-Weirton Area. Final approval of the redesignation requests would change the official designations of the West Virginia portion of the Steubenville-Weirton Area for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS, respectively, found at 40 CFR part 81, from nonattainment to attainment, and would incorporate into the West Virginia SIP the associated maintenance plans ensuring continued attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS in the West Virginia portion of the Area for the next 10 years, until 2025. 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, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law and the CAA. 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 (Publ. L. 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rulemaking, in which EPA is proposing approval of the redesignation requests and maintenance plans for the West Virginia portion of the Steubenville-Weirton Area for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS and the 2008 comprehensive emissions inventory for the 2006 24-hour PM<sub>2.5</sub> 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, 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: November 20, 2013.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

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