

**§ 811.9 Periodic verification of registration information.**

\* \* \* \* \*

(c) Quarterly or annually, as appropriate, CSOSA will send a certified letter with return receipt requested to the home of the sex offender.

\* \* \* \* \*

(e) CSOSA, either on its own accord or with its law enforcement partners, will conduct home verifications of registered sex offenders pursuant to the following schedule:

(1) Semi-annually, at least every six months, for all registered Class A sex offenders without supervision obligation.

(2) Annually, for all registered Class B sex offenders without a supervision obligation.

(3) As directed by CSOSA and consistent with Agency policy for all Class A and B sex offenders with supervision obligation.

Dated: December 3, 2012

Nancy M. Ware,  
Director, CSOSA.

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BILLING CODE 3129-01-P

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

[EPA-R03-OAR-2012-0386; FRL- 9761-5]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the West Virginia Portion of the Parkersburg-Marietta, WV-OH 1997 Annual Fine Particulate Matter (PM<sub>2.5</sub>) Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revision submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) is requesting that the West Virginia portion of the Parkersburg-Marietta, WV-OH fine particulate matter (PM<sub>2.5</sub>) nonattainment area (Parkersburg-Marietta Area or Area) be redesignated as attainment for the 1997 annual PM<sub>2.5</sub> national ambient air quality standard (NAAQS). The Parkersburg-Marietta Area is comprised of Wood County and a portion of Pleasants County in West

Virginia (West Virginia portion of the Area); and Washington County in Ohio. In this rulemaking action, EPA is proposing to approve the PM<sub>2.5</sub> redesignation request for the West Virginia portion of the Parkersburg-Marietta Area. EPA is also proposing to approve the maintenance plan SIP revision that the State submitted in conjunction with its redesignation request. The maintenance plan provides for continued attainment of the 1997 annual PM<sub>2.5</sub> NAAQS for 10 years after redesignation of the West Virginia portion of the Area. The maintenance plan includes an insignificance determination for the on-road motor vehicle contribution of PM<sub>2.5</sub>, nitrogen oxides (NO<sub>x</sub>), and sulfur dioxide (SO<sub>2</sub>) for the West Virginia portion of the Area for purposes of transportation conformity. EPA is proposing to find that West Virginia's insignificance determination for transportation conformity is adequate.<sup>1</sup> EPA is also proposing to find that the Area continues to attain the standard. This action to propose approval of the 1997 annual PM<sub>2.5</sub> NAAQS redesignation request, maintenance plan, and insignificance determination for transportation conformity for the West Virginia portion of the Area is based on EPA's determination that the Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is taking separate action to propose redesignation of the Ohio portion of the Parkersburg-Marietta Area.

**DATES:** Written comments must be received on or before January 10, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2012-0386 by one of the following methods:

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

B. *Email: mastro.donna@epa.gov*

C. *Mail: EPA-R03-OAR-2012-0386*, Donna Mastro, Acting 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-2012-0386. 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.

<sup>1</sup> On November 5, 2012, EPA initiated the comment period for this proposed insignificance determination on the Office of Transportation and Air Quality (OTAQ) web site <http://www.epa.gov/otaq/stateresources/transconf/cursips.htm> in order to allow for a full 30 day public comment period in conjunction with this proposed rulemaking action.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, (215) 814-2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

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## I. Summary of Actions

On March 5, 2012, the State of West Virginia through WVDEP formally submitted a request to redesignate the West Virginia portion of the Area from nonattainment to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS. Concurrently, West Virginia submitted a maintenance plan for the Area as a SIP revision to ensure continued attainment throughout the Area over the next 10 years.

EPA is proposing to take several actions related to redesignation of the West Virginia portion of the Area to attainment for the 1997 annual 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 PM<sub>2.5</sub> NAAQS under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve West Virginia's request to change the legal definition of the West Virginia portion of the Area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. This action does not impact the legal definition of the Ohio portion of the area. EPA is taking separate action to redesignate the Ohio portion.

EPA is also proposing to approve the maintenance plan for the West Virginia portion of the Area as a revision to the West Virginia SIP. Such approval is one of the CAA criteria for redesignation of an area to attainment. The maintenance plan is designed to ensure continued attainment in the West Virginia portion of the Area for 10 years after redesignation. The maintenance plan includes an insignificance determination for the on-road motor vehicle contribution of PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>2</sub> in the West Virginia portion of the Area for transportation conformity purposes. EPA has determined that the on-road motor vehicle insignificance finding that is included as part of West Virginia's maintenance plan for the 1997 annual PM<sub>2.5</sub> NAAQS is adequate, and is proposing to approve the

insignificance determination. EPA's analysis of these proposed actions is discussed in Sections VI and VII of today's proposed rulemaking.

## II. Background

### A. General

The first air quality standards for PM<sub>2.5</sub> were established on July 18, 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. In the same rulemaking, 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 October 17, 2006, at 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.

On January 5, 2005, at 70 FR 944, as supplemented on April 14, 2005, at 70 FR 19844, EPA designated the Parkersburg-Marietta Area as nonattainment for the 1997 p.m.<sub>2.5</sub> air quality standards. The Parkersburg-Marietta Area is comprised of Wood County and the Grant tax district in Pleasants County, West Virginia, and Washington County in Ohio. On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 24-hour standard set in 2006, designating the Parkersburg-Marietta Area as attaining this standard. In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Parkersburg-Marietta Area remained designated nonattainment for the 1997 annual PM<sub>2.5</sub> standard, but was designated attainment for the 1997 24-hour standard. Today's action therefore does not address attainment of either the 1997 or the 2006 24-hour NAAQS.

In response to legal challenges of the annual standard promulgated in 2006, the DC Circuit remanded the 2006 annual standard to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (DC Cir. 2009). However, given that the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard. Since the Parkersburg-Marietta Area is designated nonattainment only for the annual standard promulgated in 1997, today's action addresses redesignation to attainment only for this standard.

In a final rulemaking action dated December 2, 2011, at 76 FR 75464, EPA determined, pursuant to CAA section 179(c), that the entire Parkersburg-Marietta Area is attaining 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 area had attained the NAAQS by its applicable attainment date of April 5, 2010.

### B. Clean Air Interstate Rule (CAIR) and Cross State Air Pollution Rule (CSAPR or the Transport Rule)

On May 12, 2005, EPA published CAIR, which 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* 70 FR 25162. The DC Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (DC Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *See North Carolina v. EPA*, 550 F.3d 1176, 1178 (DC Cir. 2008). In response to the court's decision, EPA issued the Transport Rule, also known as CSAPR, to address interstate transport of NO<sub>x</sub> and SO<sub>2</sub> in the eastern United States. *See* 76 FR 48208 (August 8, 2011). On August 21, 2012, the DC Circuit issued a decision to vacate the Transport Rule. In that decision, it also ordered EPA to continue administering CAIR "pending the promulgation of a valid replacement." *EME Homer City Generation, L.P. v. EPA*, No. 11–1302 (DC Cir., August 21, 2012).<sup>2</sup>

In light of the above and as explained below, EPA proposes to approve the redesignation request for Wood County and the Grant tax district in Pleasants County, West Virginia, and the related maintenance plan SIP revision for maintaining attainment of the 1997 annual PM<sub>2.5</sub> NAAQS in the West Virginia portion of the Area. The air quality modeling analysis conducted for the Transport Rule demonstrates that the Parkersburg-Marietta Area would be able to attain the 1997 annual PM<sub>2.5</sub> NAAQS even in the absence of either CAIR or the Transport Rule. *See* "Air Quality Modeling Final Rule Technical Support Document," App. B, B–115 to B–134. This modeling is available in the docket for the Transport Rule rulemaking. *See* FDMS Docket ID No.

<sup>2</sup> The court's judgment is not final, as of November 20, 2012, as the mandate has not yet been issued.

EPA-HQ-OAR-2009-0491. Nothing in the DC Circuit's August 21, 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based.

In addition, 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 became State-effective on May 1, 2008 and was approved by EPA on August 4, 2009 for the purpose of reducing SO<sub>2</sub> and NO<sub>x</sub> emissions. The monitoring data used to demonstrate the Area's attainment of the 1997 annual PM<sub>2.5</sub> NAAQS by the April 2010 attainment deadline was also impacted by CAIR. To the extent that the State is relying on CAIR in its maintenance plan, the recent directive from the DC 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, 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. CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. These steps alone will take many years, even with EPA and the states acting expeditiously. 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 eliminate significant downwind contributions.

Further, in vacating the Transport Rule 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*, slip op. at 60. 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 pending a valid replacement rule for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

### III. 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 CAA section 175A; and

5. The state containing such area has met all requirements applicable to the area under CAA section 110 and Part D.

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

1. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "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.

### IV. Reasons for Taking These Actions

On March 5, 2012, the WVDEP requested redesignation of the West Virginia portion of the Area to attainment for the 1997 annual PM<sub>2.5</sub> standard. As a part of the redesignation request, WVDEP submitted a maintenance plan for the West Virginia portion of the Area as a SIP revision, to ensure continued attainment of the 1997 annual PM<sub>2.5</sub> NAAQS over the next 10 years. EPA has determined that the Parkersburg-Marietta Area has attained the 1997 annual PM<sub>2.5</sub> standard and that West Virginia has met the requirements set forth in CAA section 107(d)(3)(E) for redesignation of the West Virginia portion of the Area.

### V. Effect of These Proposed Actions

Final approval of the redesignation request would change the official designation of the West Virginia portion of the Area for the 1997 annual PM<sub>2.5</sub> NAAQS, found at 40 CFR part 81, from nonattainment to attainment. It would incorporate into the West Virginia SIP a maintenance plan ensuring continued attainment of the 1997 annual PM<sub>2.5</sub> NAAQS in the Area for the next 10 years. The maintenance plan includes, among other components, contingency measures to remedy any future violations of the 1997 annual PM<sub>2.5</sub> NAAQS (should they occur). Approval of the maintenance plan would also result in approval of the insignificance determination for PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub> for transportation conformity purposes in the West Virginia portion of the Area.

### VI. Analysis of West Virginia's Redesignation Request

EPA proposes to redesignate the West Virginia portion of the Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS and to approve into the West Virginia SIP the 1997 annual PM<sub>2.5</sub> NAAQS maintenance plan for the West Virginia portion of the Area. These actions are based upon EPA's determination that the Area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS and that all other redesignation criteria have been met for the West Virginia portion of the Area, provided EPA approves the base year emissions inventory that has been proposed in a separate rulemaking action. See 77 FR 60087 (Oct. 2, 2012). The following is a description of how the WVDEP March 5, 2012 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

### 1. Attainment

As noted above, in a final rulemaking action dated December 2, 2011, at 76 FR 75464, EPA determined, pursuant to CAA section 179(c), that the entire Parkersburg-Marietta Area is attaining 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 Area had attained the NAAQS by its applicable attainment

date of April 5, 2010. Further discussion of pertinent air quality issues underlying this determination was provided in the notice of proposed rulemaking for EPA's determination of attainment for this Area, published on July 21, 2011 (76 FR 43634). EPA has reviewed more recent data in its Air Quality System (AQS) database, including certified, quality-assured data for the monitoring periods 2008–2010 and 2009–2011. This data, shown on Table 1, shows that the Parkersburg-Marietta Area continues to attain the

1997 annual PM<sub>2.5</sub> NAAQS (see the rulemaking docket for Parkersburg-Marietta Area AQS reports). In addition, as discussed below with respect to the maintenance plan, WVDEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by West Virginia and data taken from AQS indicate that the Parkersburg-Marietta Area has attained and continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE PARKERSBURG-MARIETTA AREA FOR THE 1997 ANNUAL PM<sub>2.5</sub> NAAQS (µG/M<sup>3</sup>) FOR 2008–2010 AND 2009–2011

County	Monitor ID	3-Year Annual Design Values	
		2008–2010	2009–2011
Wood County, WV .....	541071002	13.1	12.3

**Note:** There are no PM<sub>2.5</sub> monitors in the Ohio portion of the nonattainment area.

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

EPA has determined that the West Virginia portion of the Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that, upon final approval of the 2002 base year inventory as discussed in section VI, it will have met all applicable SIP requirements under Part D of Title I of the CAA, in accordance with CAA section 107(d)(3)(E)(v). In addition, EPA is proposing to find that all applicable requirements of the West Virginia SIP for purposes of redesignation have been approved in accordance with CAA section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which SIP requirements are applicable for purposes of redesignation of this Area and concluded that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. EPA notes that SIPs must be fully approved only with respect to applicable requirements.

#### a. CAA 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 (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) 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 (Oct. 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, the CAA 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 CAA 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 Area will still be subject to these requirements after it is redesignated. EPA concludes that the CAA 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 CAA 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 redesignation (65

FR at 37890 (June 19, 2000)) and in the Pittsburgh redesignation (66 FR at 53099 (Oct. 19, 2001)).

EPA has reviewed the West Virginia SIP and have 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 Parkersburg-Marietta 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 request.

#### b. Part D Nonattainment Requirements Under the Standard

Subpart 1 of Part D, sections 172 to 175 of the CAA, set forth the basic nonattainment plan requirements applicable to PM<sub>2.5</sub> nonattainment areas. Under CAA section 172, states with nonattainment areas must submit plans providing for timely attainment and must meet a variety of other requirements. On September 9, 2008, WVDEP submitted an attainment plan and base year inventory for the West Virginia portion of the Area to meet its part D requirements. On November 20, 2009, at 74 FR 60199, EPA made a determination that the Parkersburg-Marietta Area was attaining the 1997 annual PM<sub>2.5</sub> NAAQS. Pursuant to 40 CFR 51.1004(c), upon a determination by EPA that an area designated nonattainment for the PM<sub>2.5</sub> NAAQS has attained the standard, the requirement for such an area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress plan (RFP), contingency measures, and other planning SIPs related to the attainment of the PM<sub>2.5</sub> NAAQS are suspended until the area is redesignated to attainment or EPA determines that the area has again violated the PM<sub>2.5</sub> NAAQS, at which time such plans are required to be submitted. The September 9, 2008 submittal is relevant to this proposed action to redesignate the West Virginia portion of the Area only with respect to the base year inventory that was submitted with the attainment plan. In a separate rulemaking action, as detailed below, EPA has proposed approval of the base year inventory, which, upon final approval, will meet the requirements of CAA section 172(c)(3), one of the

criteria for redesignation. See 77 FR 60087 (October 2, 2012).

The General Preamble for Implementation of Title I also 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 General Preamble for Implementation of Title I (57 FR 13498 (April 16, 1992)).

Because attainment has been reached for the Area, no additional measures are needed to provide for attainment, and CAA section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the area continues to attain the standard until redesignation. See also 40 CFR 51.1004(c). The RFP requirement under CAA section 172(c)(2) and contingency measures requirement under CAA section 172(c)(9) are similarly not relevant for purposes of redesignation.

Section 172(c)(3) of the CAA requires submission of a comprehensive, accurate, and current inventory of actual emissions. As part of West Virginia's attainment plan submittal, the State submitted a 2002 emissions inventory. On November 20, 2009 (74 FR 60199), EPA determined that the Parkersburg-Marietta Area was attaining the 1997 annual PM<sub>2.5</sub> NAAQS, based on complete, quality-assured data for the period of 2007–2009. That rulemaking action suspended certain planning requirements related to attainment, including the RACT/RACM requirement of section 172(c)(1), the RFP requirement of CAA section 172(c)(2), the attainment demonstration requirement of CAA section 172(c)(3), and the requirement for contingency measures in CAA section 172(c)(9). As a result of the determination of attainment, the only remaining requirement under CAA section 172 to be considered for purposes of redesignation of the West Virginia portion of the Area is the emissions inventory required under CAA section 172(c)(3). On October 2, 2012 (77 FR 60087), EPA proposed approval of the base year inventory for the West Virginia portion of the Area for the 1997 annual PM<sub>2.5</sub> NAAQS. An evaluation of West Virginia's 2002 base year inventory for the West Virginia portion of the Area is provided in the Technical Support Document (TSD) prepared by EPA for that rulemaking action. See Docket ID No. EPA–R03–OAR–2010–0077. In that action, EPA determined that the emissions inventory and

emissions statement requirements for the West Virginia portion of the Area have been satisfied, and proposed to approve the inventory as meeting the requirements of CAA section 172(c)(3). Final approval of the emissions inventory in that separate rulemaking action will satisfy the emissions inventory requirement for redesignation under CAA section 172(c)(3).

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 CAA 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 prevention of significant deterioration (PSD) requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment new source review (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 45 CSR 19. See 71 FR 64468 (November 2, 2006) (approving NSR program into the SIP). See also 77 FR 63736 (October 17, 2012) (approving revisions to West Virginia's PSD program). However, the State's PSD program for annual PM<sub>2.5</sub> will become effective in the Parkersburg-Marietta Area upon redesignation to attainment.

Section 172(c)(6) of the CAA requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

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

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); *see also* 60 FR 62748 (Dec. 7, 1995) (discussing Tampa, Florida). Thus, EPA determines that the West Virginia portion of the Area has satisfied all applicable requirements for purposes of redesignation under CAA section 110, and, upon final approval of the 2002 base year inventory proposed on October 2, 2012, will have satisfied all

applicable requirements under part D of title I of the CAA.

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

Upon final approval of the 2002 base year inventory, as proposed in the October 2, 2012 rulemaking action, EPA will have fully approved the West Virginia portion of the Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation to attainment for the 1997 annual PM<sub>2.5</sub> standard. Therefore, upon final approval of the 2002 base year emissions inventory, EPA will have approved all part D title 1 requirements applicable for purposes of this redesignation for the West Virginia portion of the Area.

**3. The 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 and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions**

For redesignating a nonattainment area to attainment, CAA 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. EPA believes that West Virginia has 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. In making this demonstration, West Virginia has calculated the change in emissions between 2005, one of the years used to designate the Area as nonattainment, and 2008, one of the years for which the Area monitored attainment, shown in Table 2.

**TABLE 2—COMPARISON OF THE 2005 BASE YEAR AND 2008 ATTAINMENT YEAR FOR THE PARKERSBURG-MARIETTA AREA, IN TONS PER YEAR (TPY)**

		2005	2008	Decrease
SO <sub>2</sub> .....	Electric Generating Units (EGUs) .....	193,253	149,152	44,101
	Non-EGUs .....	16,056	9,724	6,332
	Area Sources .....	748	544	204
	Locomotive & Marine .....	112	75	37
	Onroad .....	59	19	40
NO <sub>x</sub> .....	Nonroad .....	73	21	52
	EGUs .....	28,455	25,420	3,035
	Non-EGU .....	3,332	2,958	374
	Area Sources .....	911	587	324
	Locomotive & Marine .....	1,926	1,307	619
PM <sub>2.5</sub> .....	Onroad .....	5,201	4,412	789
	Nonroad .....	841	727	114
	EGUs .....	1,745	1,680	65
	Non-EGU .....	848	804	44
	Area Sources .....	1101	944	157
	Locomotive & Marine .....	64	39	25
	Onroad .....	173	143	30
	Nonroad .....	75	66	9

The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of Federal and other measures that the Parkersburg-Marietta Area and contributing areas have implemented in recent years.

**a. Federal Measures Implemented**

Reductions in PM<sub>2.5</sub> precursor emissions have occurred statewide and in upwind states as a result of Federal emission control measures with

additional emission reductions expected to occur in the future. Federal emission control measures include the following:

**(1) Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards**

These emission control requirements result in lower NO<sub>x</sub> and SO<sub>2</sub> emissions from new cars and light duty trucks, including sport-utility vehicles. The Federal rules were phased in between 2004 and 2009. EPA has estimated that, after phasing in the new requirements,

new vehicles emit less NO<sub>x</sub> in the following percentages: Passenger cars and light duty vehicles—77 percent; light duty trucks, minivans, and sports utility vehicles—86 percent; and larger sports utility vehicles, vans, and heavier trucks—69 to 95 percent. EPA expects fleet wide average emissions to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per

million (ppm) beginning in January 2006, which reflects up to a 90 percent reduction in sulfur content.

#### (2) Heavy-Duty Diesel Engine Rule

EPA issued this rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced PM<sub>2.5</sub> emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to achieve a 90 percent reduction in direct PM<sub>2.5</sub> emissions and a 95 percent 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 sulfate particle emissions from all diesel vehicles.

#### (3) Nonroad Diesel Rule

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

#### b. Controls on PM<sub>2.5</sub> Precursors

The Parkersburg-Marietta Area's air quality is strongly affected by regulation of SO<sub>2</sub> and NO<sub>x</sub> from power plants. EPA promulgated the NO<sub>x</sub> SIP Call, CAIR, and CSAPR to address SO<sub>2</sub> and NO<sub>x</sub> emissions from electric generating units (EGUs) and certain non-EGUs across the eastern United States. The affected EGUs in the West Virginia portion of the Area are the Pleasants Power Station, Willow Island Power Station, and Pleasants Energy. Additionally, because PM<sub>2.5</sub> concentrations in the Area are impacted by the transport of sulfates and nitrates, the Area's air quality is affected by SO<sub>2</sub> and NO<sub>x</sub> emissions from power plants in states in the region that significantly contribute to the Area.

EPA reviewed SO<sub>2</sub> and NO<sub>x</sub> emissions from EGUs in states that contribute to the Area, which show that states impacting the Area reduced SO<sub>2</sub> and NO<sub>x</sub> emissions from EGUs by 1,426,166 tpy and 619,601 tpy, respectively, between 2002 and 2008, continuing the generally downward trend of SO<sub>2</sub> and NO<sub>x</sub> emissions from these states. Information on the reductions made by states that contribute to the Area is available at the Air Markets Program Data (AMPD)<sup>3</sup> database at <http://ampd.epa.gov/ampd/>.

#### (1) NO<sub>x</sub> SIP Call

EPA issued the NO<sub>x</sub> SIP Call in 1998 pursuant to the CAA 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. (63 FR 57356, October 27, 1998). EPA approved West Virginia's Phase I NO<sub>x</sub> SIP Call rule in 2002 and Phase II in 2006. Emission reductions resulting from regulations developed in response to the NO<sub>x</sub> SIP Call are permanent and enforceable.

#### (2) CAIR and CSAPR

EPA approved West Virginia's CAIR rules in 2009 (74 FR 38536, August 4, 2009). The maintenance plan for the West Virginia portion of the Area thus lists CAIR as a control measure for the purpose of reducing SO<sub>2</sub> and NO<sub>x</sub> emissions from EGUs.

As previously discussed, the D.C. Circuit's 2008 remand of CAIR left the rule in place to "temporarily preserve the environmental values covered by CAIR" until EPA replaced it with a rule consistent with the court's opinion, and the court's August 2012 decision on the Transport Rule also left CAIR in effect until the legal challenges to the Transport Rule are resolved. As noted, 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 pending a valid replacement rule, for purposes such as redesignation.

Furthermore, as previously discussed, the air quality modeling analysis conducted for the Transport Rule

demonstrates that the Parkersburg-Marietta Area would be able to attain the 1997 annual PM<sub>2.5</sub> NAAQS even in the absence of either CAIR or the Transport Rule. EPA's modeling projections show that all ambient monitors in the Area are expected to continue to maintain compliance in the 2012 and 2014 "no CAIR" base cases. Therefore, none of the ambient monitoring sites in the Parkersburg-Marietta Area are "receptors" that EPA projects will have future nonattainment problems or difficulty maintaining the NAAQS. EPA finds West Virginia appropriately included CAIR as a control measure.

#### (3) Controls on PM<sub>2.5</sub> Precursors From EGUs in the Area

First Energy's Pleasants Power Station, located in the Grant tax district of Pleasants County has installed additional controls which will continue to contribute to the reductions in precursor pollutants for PM<sub>2.5</sub>. Pleasants Power Station has been equipped with selective catalytic reduction (SCR) since 2003, and in 2007 eliminated the 15 percent flue gas bypass to increase the efficiency of the scrubber. It is also covered by a State consent order that requires the operation of the SCR whenever the units are in operation, except for periods of required SCR maintenance, beginning January 1, 2009. The consent order is included as part of West Virginia's March 5, 2012 submittal, available in the docket for this rulemaking action at [www.regulations.gov](http://www.regulations.gov), and will become federally enforceable upon redesignation of this Area. In the Ohio portion of the Area, the Muskingum River Station in Washington County, Ohio, has implemented, as part of a federally enforceable consent decree, continuous operation of NO<sub>x</sub> controls on unit #5 and is required to retire, repower, or retrofit all remaining units by 2015. Also, the R.H. Gorsuch Station in Washington County permanently shut down at the end of 2010. Table 3 shows the reductions from EGUs in the Area between 2005 and 2008.

TABLE 3—SUMMARY OF REDUCTIONS FROM EGUS IN THE PARKERSBURG-MARIETTA AREA, IN TPY

		2005	2008	Reductions
West Virginia .....	SO <sub>2</sub> .....	52,296	15,804	36,492
	NO <sub>x</sub> .....	16,137	8,251	4,067
	PM <sub>2.5</sub> .....	1,360	1,287	73
Ohio .....	SO <sub>2</sub> .....	140,957	133,348	7609
	NO <sub>x</sub> .....	16,137	17,169	– 1032

<sup>3</sup> Formerly the Clean Air Markets Program (CAMD) database.



TABLE 3—SUMMARY OF REDUCTIONS FROM EGUS IN THE PARKERSBURG-MARIETTA AREA, IN TPY—Continued

		2005	2008	Reductions
	PM <sub>2.5</sub> .....	385	393	—8

Based on the information summarized above, West Virginia has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions. The reductions result from Federal requirements, a Federally enforceable consent decree, regulation of precursors under the NO<sub>x</sub> SIP Call and CAIR, and a State consent order affecting EGUs in the Area. These reductions are all expected to continue into the future.

*4. The West Virginia Portion of the Area Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the CAA*

In conjunction with its request to redesignate the West Virginia portion of the Area to attainment status, West Virginia submitted a SIP revision to provide for maintenance of the 1997 annual PM<sub>2.5</sub> NAAQS in the Area for at least 10 years after redesignation. West Virginia is requesting that EPA approve this SIP revision as meeting the requirement of CAA section 175A. Once approved, the maintenance plan 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 PM<sub>2.5</sub> NAAQS for this Area.

*a. Requirements of a Maintenance Plan*

Section 175 of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under CAA 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, West Virginia 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 Calcagni Memorandum dated September 4, 1992 provides additional guidance on the content of a maintenance plan. The Calcagni 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.

*b. Analysis of the Maintenance Plan*

*(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 is 2008, one of the years in the period during which the Parkersburg-Marietta Area monitored attainment of the 1997 annual PM<sub>2.5</sub> NAAQS, as described previously. The 2008 inventory contains primary PM<sub>2.5</sub> emissions (including condensables), SO<sub>2</sub>, and NO<sub>x</sub>, but did not include volatile organic compounds (VOC) or ammonia (NH<sub>3</sub>), which were insignificant. The 2008 point source inventory contained emissions for EGUs and non-EGU sources in Wood County and the Grant tax district of Pleasants County, and included Pleasants, Willow Island, and Pleasants Energy power plants and the Cabot Black Carbon (Cabot) and Cytec Industries (Cytec) non-EGU plants. West Virginia used its 2008 annual emissions inventory submitted to EPA's National Emissions Inventory (NEI) database and EPA's AMPD database to compile the 2008 point source inventory. For the 2008 nonpoint emissions, WVDEP used 2008 NEI version 1.5 data developed by EPA, and for 2008 nonroad mobile sources, WVDEP used the NONROAD model to generate emissions. The 2008 onroad mobile source inventory was developed using the current version of Motor Vehicle Emissions Simulator (MOVES), i.e., MOVES2010a. The Ohio Department of Transportation (ODOT) and the Wood-Washington-Wirt Interstate Planning Commission (WWW) performed the analysis, in coordination with the Ohio Environmental Protection Agency (OEPA) and WVDEP. The analysis included additional data provided by WVDEP and the West

Virginia Department of Transportation (WVDOT). EPA reviewed the submitted emissions inventory and found them to be approvable.

*(2) Maintenance Demonstration*

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 at 53099–53100; 68 FR at 25430–32. On March 5, 2012, the WVDEP submitted a maintenance plan for the West Virginia portion of the Area as required by section 175A of the CAA. WVDEP uses projection inventories to show that the Area will remain in attainment and developed projection inventories for an interim year of 2015 and a maintenance plan end year of 2022 to show that future emissions of NO<sub>x</sub>, SO<sub>2</sub>, and direct PM<sub>2.5</sub> remain at or below the attainment year 2008 emissions levels throughout the West Virginia portion of the Area through at least the year 2022.

*(a) 2015 and 2022 Projection Emission Inventories*

For EGU emissions projections, WVDEP used EPA's Integrated Planning Model (IPM) projections that supported CSAPR. 2015 data was taken from these IPM runs, and 2022 projections were developed by interpolating between the IPM runs from 2020 and 2030. The EGUs considered included Pleasants, Willow Island, and Pleasants Energy Power Stations located in the tax district in Pleasants County. Non-EGU point sources (including Cytec, but not Cabot, which was shut down in 2008), area sources, and locomotive/marine source inventories for 2015 and 2022 were projected by applying, to the 2008 inventory, the growth factors developed from economic forecasts by Workforce West Virginia. Nonroad source emissions for 2015 and 2022 were developed using annualized NONROAD model. Onroad mobile emission projections for 2015 and 2022 were calculated by ODOT using MOVES2010a.

EPA has determined that the methodologies for projecting emissions inventories provided by WVDEP are acceptable. More detail on EPA's analysis of the methodologies used by



West Virginia for projection inventories may be found in the TSD related to emissions inventories available in the docket for this rulemaking action. Tables 4 and 5 show the inventories for the 2008 attainment base year, the 2015 interim year, and the 2022 maintenance

plan end year for the West Virginia portion of the Area and the entire nonattainment area, respectively. These tables show that projected inventories remain below the 2008 attainment year inventory. Table 5 shows that between 2008 and 2022, the Area is projected to

reduce SO<sub>2</sub> emissions by 111,095 tpy, NO<sub>x</sub> emissions by 22,426 tpy, and direct PM<sub>2.5</sub> emissions by 130 tpy. Thus the projected emissions inventories show that the Area will continue to maintain the annual PM<sub>2.5</sub> standard during the maintenance period.

TABLE 4—COMPARISON OF 2008, 2015, 2022 SO<sub>2</sub>, NO<sub>x</sub>, AND DIRECT PM<sub>2.5</sub> EMISSION TOTALS, IN TPY FOR THE WEST VIRGINIA PORTION OF THE AREA

	SO <sub>2</sub> (tpy)	NO <sub>x</sub> (tpy)	PM <sub>2.5</sub> (tpy)
2008 .....	20,749	13,046	2,483
2015 .....	9,668	7,069	2,450
2022 .....	11,088	6,568	2,375
Decrease from 2008 to 2022 .....	9,660	6,478	107

TABLE 5—COMPARISON OF 2008, 2015, 2022 SO<sub>2</sub>, NO<sub>x</sub>, AND DIRECT PM<sub>2.5</sub> EMISSION TOTALS, IN TONS PER YEAR (TPY) FOR THE ENTIRE PARKERSBURG-MARIETTA NONATTAINMENT AREA WV—OH

	SO <sub>2</sub> (tpy)	NO <sub>x</sub> (tpy)	PM <sub>2.5</sub> (tpy)
2008 .....	159,535	35,412	3,686
2015 .....	77,294	18,509	3,648
2022 .....	48,439	12,985	3,557
Decrease from 2008 to 2022 .....	111,095	22,426	130

#### (b) Maintenance Demonstration Through 2023

As noted in section 4.a of this notice, CAA 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.” Calcagni Memorandum at p. 9. 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. Calcagni Memorandum at pp. 9–10.

As discussed in detail above, the State’s maintenance plan submission expressly documents that the Area’s emissions inventories will remain below the attainment year inventories through at least 2022. In addition, for the reasons set forth below, EPA believes that the State’s submission, in conjunction with additional supporting information, further demonstrates that the Area will continue to maintain the 1997 annual PM<sub>2.5</sub> NAAQS at least through 2023:

- Significant emissions controls remain in place and will continue to provide reductions that keep the Area in attainment. First Energy’s Pleasants Power Station, located in Pleasants County, is covered by a State consent decree that requires the operation of

SCR controls on the EGU, beginning January 1, 2009.

- West Virginia has committed to maintaining all of the control measures upon which it relies in its March 5, 2012 submittal and will submit any changes to EPA for approval as a SIP revision.

- Emissions inventory levels for SO<sub>2</sub> and NO<sub>x</sub> in 2022 are well below the attainment year inventory levels (see Table 4), and EPA believes that it is highly improbable that sudden increases would occur that could exceed the attainment year inventory levels in 2023.

- The mobile source contribution has been determined to be insignificant, and is expected to remain insignificant in 2023 with fleet turnover in upcoming years that will result in cleaner vehicles and cleaner fuels. Further, the transportation conformity analysis of historical trends and growth patterns indicates that this determination should not change, out to 2030.

- Air quality concentrations, which are well below the standard, coupled with the emissions inventory projections through 2022, demonstrate that it would be very unlikely for a violation to occur in 2023. The 2009–2011 design value of 12.3 µg/m<sup>3</sup> provides a sufficient margin in the event any emissions increase. In addition, the 2009–2011 design value shows the continued downward trend of monitored data in this Area for the last several years.

Thus, even if EPA finalizes its proposed approval of the redesignation request and maintenance plans in 2013, EPA’s approval is based on a showing, in accordance with CAA section 175A, that the State’s maintenance plan provides for maintenance for at least ten years after redesignation.

#### (3) Monitoring Network

EPA has determined that West Virginia’s maintenance plan includes a commitment to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. West Virginia currently operates a PM<sub>2.5</sub> monitor in Wood County. In its March 5, 2012 submittal, West Virginia states that it will consult with EPA prior to making any necessary changes to the network and will continue to quality assure the monitoring data in accordance with the requirements of 40 CFR part 58.

#### (4) Verification of Continued Attainment

To provide for tracking of the emission levels in the 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). WVDEP will continue to compare emissions information to the attainment year inventory to assure continued attainment with the 1997 annual PM<sub>2.5</sub>

NAAQS and that WVDEP will use this information to assess emissions trends, as necessary.

(5) The Maintenance Plan's Contingency Measures

The contingency plan provisions for the maintenance plan are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that a state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would "trigger" the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the West Virginia portion of the Area to stay in compliance with the PM<sub>2.5</sub> standard after redesignation depends upon NO<sub>x</sub> and SO<sub>2</sub> emissions in the Parkersburg-Marietta Area remaining at or below 2008 levels. West Virginia's maintenance plan projects NO<sub>x</sub> and SO<sub>2</sub> emissions to decrease and stay below 2008 levels through at least the year 2022. West Virginia's maintenance plan outlines 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 when the average weighted annual mean for a single calendar year exceeds 15.5 µg/m<sup>3</sup> within the maintenance area. In that case, a study will be conducted to determine if the emissions trends show increases; if 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. 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.

The Action Level Response will be prompted by any one of the following: A Warning Level Response study that shows emissions increases, a weighted annual mean over a two-year average that exceeds the standard, or a violation of the standard in the maintenance area. If an Action Level Response is triggered, 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's candidate 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. These include: 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. EPA finds that the West Virginia maintenance plan for the Parkersburg-Marietta Area includes appropriate contingency measures as necessary to ensure that West Virginia will promptly correct any violation of the NAAQS that occur after redesignation.

For all of the reasons discussed above, EPA is proposing to approve West Virginia's 1997 annual PM<sub>2.5</sub> NAAQS maintenance plan for the West Virginia portion of the Area as meeting the requirements of CAA section 175A.

**VII. Analysis of West Virginia's Transportation Conformity Insignificance Determination for the Parkersburg-Marietta Area**

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from mobile sources. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of a NAAQS or an interim milestone. 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. If a transportation plan does not "conform," most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of such transportation activities to a SIP.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEBs contained therein "adequate" for use in determining transportation conformity. The process for determining adequacy is set forth in the guidance "*Transportation Conformity Rule Amendments for the New 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments; Response to Court Decision and Additional Rule Changes.*" 69 FR 40004 (July 1, 2004). After EPA affirmatively finds the submitted MVEBs are adequate for transportation conformity purposes, in accordance with the guidance, the MVEBs can be used by state and Federal agencies in determining whether proposed transportation projects "conform" to the SIP as required by section 176(c) of the CAA.

For budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria in 40 CFR 93.118(e)(4). However, the transportation conformity rule at 40 CFR 93.109(f) allows areas to forego establishment of MVEBs 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. EPA's rationale for providing for insignificance determinations may be found in the July 1, 2004 revision to the Transportation Conformity Rule. The general criteria for insignificance determinations, per 40 CFR 93.109(f), 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 in the area.

In West Virginia's March 5, 2012 submittal, the State provided information that projects that onroad mobile source NO<sub>x</sub> emissions constitute 12 percent or less of the Area's total NO<sub>x</sub> emissions in 2015 and 2022 due to continuing fleet turnover and that onroad mobile source PM<sub>2.5</sub> emissions constitute less than 2.1 percent of the Area's total PM<sub>2.5</sub> emissions. Both projections took into consideration future vehicle miles traveled (VMT) growth. In addition, neither EPA nor the State has made any findings that VOCs, SO<sub>2</sub>, or NH<sub>3</sub> are significant contributors to PM<sub>2.5</sub> mobile emissions. While the

level of NO<sub>x</sub> is higher than the 10 percent benchmark, WVDEP has provided additional information that supports its insignificance determination for NO<sub>x</sub>. For more detail on EPA's analysis of West Virginia's insignificance determination, see the Transportation Conformity TSD in the docket for today's rulemaking. Therefore, the March 5, 2012 submittal meets the criteria in the relevant portions of 40 CFR 93.102 and 93.118 for an insignificance finding, and EPA agrees with the determination of insignificance for both NO<sub>x</sub> and PM<sub>2.5</sub> for the West Virginia portion of the Area. As previously discussed, EPA initiated a comment period on November 5, 2012 on the proposed insignificance determination for the West Virginia portion of the Area on the OTAQ Web site to allow for a 30-day review of this proposed insignificance determination in conjunction with this proposed rulemaking. EPA is proposing to find that West Virginia's insignificance determination for transportation conformity is adequate. For more information on EPA's insignificance findings, see the TSD dated August 3, 2012, available in the docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov).

### VIII. Proposed Actions

EPA is proposing to approve the redesignation of the West Virginia portion of the Area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. EPA has evaluated West Virginia's redesignation request and determined that upon approval of the base year emissions inventory in the separate rulemaking action noted previously, it would meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the monitoring data demonstrate that the Parkersburg-Marietta Area attains the 1997 annual PM<sub>2.5</sub> NAAQS and will continue to attain the standard. Final approval of this redesignation request would change the designation of the West Virginia portion of the Area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. EPA is also proposing to approve the associated maintenance plan for the West Virginia portion of the Area, submitted on March 5, 2012, as a revision to the West Virginia SIP because it meets the requirements of CAA section 175A as described previously in this notice. EPA is also proposing to approve the insignificance determination for on-road motor vehicle contribution of PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub> submitted by WVDEP for the West Virginia portion of the Area in conjunction with its redesignation

request. As noted previously, the 30-day public comment period for the proposed insignificance determination started on November 5, 2012 and will end on December 5, 2012. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### IX. Statutory and Executive Order Reviews

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

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

In addition, this rule proposing approval of West Virginia's redesignation request, maintenance plan, and transportation conformity insignificance determination for the Parkersburg-Marietta Area for the 1997 annual 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, Incorporation by reference, Nitrogen oxides, PM<sub>2.5</sub>, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

#### 40 CFR Part 81

Air pollution control, National parks, Wilderness Areas.

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

Dated: November 27, 2012.

**W. C. Early,**

*Acting, Regional Administrator, Region III.*

[FR Doc. 2012-29865 Filed 12-10-12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2012-0840, FRL-9761-7]

### Approval and Promulgation of Implementation Plans; New Jersey and New York Ozone Attainment Demonstrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing action on the ozone attainment demonstration portion of comprehensive State Implementation Plan revisions submitted by New Jersey and New York to meet Clean Air Act requirements for attaining the 1997 8-hour ozone national ambient air quality standard. EPA is proposing to approve New Jersey's and New York's demonstration of attainment of the 1997 8-hour ozone standard as they relate to their portions of three moderate nonattainment areas; the New York-Northern New Jersey-Long Island, NY-NJ-CT area, the Philadelphia-