

significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This proposed rule is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a safety zone. This proposed rule is categorically excluded from further review under paragraph 34–g of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0834 to read as follows:

#### § 165.T05–0834 Safety Zone, Chesapeake Bay; Cape Charles, VA.

(a) Definitions. For the purposes of this section, Captain of the Port means the Commander, Sector Hampton Roads.

*Representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port

(b) Location. The following area is a proposed safety zone: Specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, in the Chesapeake Bay in the vicinity of Bayshore Road in the Cape Charles Bay, Cape Charles, VA all waters within a 700 foot radius of 37°–15′–47″ N/076°–01′–29″ W (NAD 1983).

(c) Regulations.

(1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Contact on scene contracting vessels via VHF channel 13 and 16 for passage instructions.

(ii) If on scene proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement Period: This section will be enforced from 10 p.m. until 10:30 p.m. on December 31, 2014.

Dated: September 16, 2014.

**Christopher S. Keane,**  
*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 2014–23650 Filed 10–2–14; 8:45 am]

**BILLING CODE 9110–04–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[EPA–R03–OAR–2014–0387; FRL–9917–40–Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Redesignation Request and Associated Maintenance Plan for the Baltimore, Maryland Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the State of Maryland’s request to redesignate to attainment the Baltimore, Maryland Nonattainment Area (Baltimore Area or Area) for the 1997 annual fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS). The EPA has determined that the Baltimore Area attained the standard and is proposing to determine that it continues to attain the standard. In addition, EPA is proposing to approve, as a revision to the Maryland State Implementation Plan (SIP), the Baltimore Area maintenance plan to show maintenance of the 1997 annual PM<sub>2.5</sub> NAAQS through 2025 for the Area. The maintenance plan includes the 2017 and 2025 PM<sub>2.5</sub> and nitrogen oxides (NO<sub>x</sub>) mobile vehicle emissions budgets (MVEBs) for the Baltimore Area for the 1997 annual PM<sub>2.5</sub> NAAQS, which EPA is proposing to approve for transportation conformity purposes. These actions are being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before November 3, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0387 by one of the following methods:

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

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

C. *Mail:* EPA–R03–OAR–2014–0387, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2014-0387. 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](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://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](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, Air and Radiation Management Administration, 1800 Washington Boulevard, Baltimore, Maryland 21230.

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

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## I. Background

The first air quality standards for PM<sub>2.5</sub> were established on July 18, 1997 (62 FR 38652). 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, 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> NAAQS. In that rulemaking action, EPA designated the Baltimore Area as nonattainment for the 1997 annual PM<sub>2.5</sub> NAAQS. The Baltimore Area is comprised of the City of Baltimore, and Anne Arundel, Baltimore, Carroll, Harford, Howard, and Queen Anne Counties. See 40 CFR 81.321.

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 the 24-hour concentrations (the 2006 24-hour 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> standard, which became effective on December 14, 2009. In that rulemaking action, EPA designated the Baltimore Area as attainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. See 74 FR 58737 and 40 CFR 81.321. Since the Baltimore Area is designated nonattainment for the annual NAAQS promulgated in 1997, today's proposed rulemaking action addresses the redesignation to attainment only for this standard.

On May 22, 2012 (77 FR 30208), EPA determined that the Baltimore Area had

attained the 1997 annual PM<sub>2.5</sub> NAAQS, and that the Area attained the NAAQS by the statutory attainment date of April 5, 2010. Pursuant to 40 CFR 51.1004(c) and based on the determination of attainment, the requirements for the Baltimore Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning SIP revisions related to the attainment of the 1997 annual PM<sub>2.5</sub> NAAQS were suspended until such time as: (1) The Area is redesignated to attainment for the standard, at which time the requirements no longer apply or (2) EPA determines that the Area has again violated the standard, at which time such plans are required to be submitted.

On December 12, 2013, the State of Maryland, through the Maryland Department of the Environment (MDE), formally submitted a request to redesignate the Baltimore Area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. Concurrently, MDE submitted a maintenance plan for the Area as a SIP revision to ensure continued attainment throughout the Area over the next 10 years. The maintenance plan includes the 2017 and 2025 PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs used for transportation conformity purposes for the Baltimore Area for the 1997 annual PM<sub>2.5</sub> NAAQS.

## II. EPA's Requirements

### A. Criteria for Redesignation to Attainment

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

of Maryland's SIP Submittal) of this proposed rulemaking action.

EPA has provided guidance on redesignation in the "State Implementation Plans; General Preamble for the Implementation of Title I of the CAA Amendments of 1990," (57 FR 13498, April 16, 1992) (the "General Preamble") and has provided further guidance on processing redesignation requests in the following documents: (1) "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "1992 Calcagni Memorandum"); (2) "SIP Actions Submitted in Response to CAA Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and, (3) "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

#### B. Requirements of a Maintenance Plan

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A of the CAA, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after EPA approves the 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 maintenance plan should address the following provisions: (1) An attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and, (5) a contingency plan to prevent or correct future violations of the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for nonattainment areas and for areas

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

The maintenance plan for the Baltimore Area includes 2017 and 2025 PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs for transportation conformity purposes. The transportation conformity determination for the Area is further discussed in subsection C of section V (Transportation Conformity) of this proposed rulemaking action and in a technical support document (TSD) dated May 20, 2014, which is available in the docket for this proposed rulemaking action.

#### III. Summary of Proposed Actions

EPA is proposing to take several rulemaking actions related to the redesignation of the Baltimore Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. EPA is proposing to find that the Baltimore Area meets the requirements for redesignation for the 1997 annual PM<sub>2.5</sub> NAAQS under section 107(d)(3)(E) of the CAA. EPA is proposing to approve the maintenance plan for the Baltimore Area as a revision to the Maryland SIP for the 1997 annual PM<sub>2.5</sub> NAAQS. Approval of the maintenance plan is one of the CAA criteria for redesignation of the Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. The Baltimore Area maintenance plan is designed to ensure continued attainment in the Area for 10 years after redesignation. EPA is also proposing to approve the MVEBs for PM<sub>2.5</sub> and NO<sub>x</sub> emissions for the 1997 annual PM<sub>2.5</sub> standard. In this rulemaking action, EPA is proposing to find that the Area continues to attain the standard.

EPA previously determined that the Baltimore Area had attained the 1997 annual PM<sub>2.5</sub> NAAQS and that it had done so by its applicable attainment date. See 77 FR 30208, May 22, 2012. In this rulemaking action, EPA is

proposing to find that the Area continues to attain the standard. EPA is, therefore, proposing to approve MDE's request to change the designation for the Baltimore Area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS.

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

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

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

EPA has considered the recent decisions from the U.S. Supreme Court and the D.C. Circuit Court regarding EPA's CSAPR, and has concluded that the decisions do not affect the Agency's proposal to redesignate the Baltimore Area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. EPA promulgated CSAPR (76 FR 48208, August 8, 2011) to replace the Clean Air Interstate Rule (CAIR), which has been in place since 2005. See 76 FR 59517. Both CSAPR and CAIR require significant reductions in emissions of sulfur dioxide (SO<sub>2</sub>) and NO<sub>x</sub> from electric generating units (EGUs) to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. The D.C. Circuit Court initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). After staying the implementation of CSAPR on December 20, 2011 and instructing EPA to continue to implement CAIR in

the interim, on August 21, 2012, the D.C. Circuit Court issued a decision to vacate CSAPR, with further instruction to continue administering CAIR “pending the promulgation of a valid replacement.” *EME Homer City Generation L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012). On April 29, 2014, the Supreme Court reversed the opinion of the D.C. Circuit Court and remanded the matter to the D.C. Circuit Court for further proceedings. *EPA v. EME Homer City Generation, L.P.*, No. 12–1182 (S. Ct. April 29, 2014).

In its submission, MDE does not rely on either CAIR or CSAPR for emission reductions that contributed to the Baltimore Area’s attainment of the 1997 annual PM<sub>2.5</sub> NAAQS, nor does the State rely on either of the rules to show maintenance of the standard in the Area for 10 years following redesignation. However, because CAIR was promulgated in 2005 and incentivized sources and states to begin achieving early emission reductions, the air quality data examined by EPA in issuing a final determination of attainment for the Baltimore Area in 2009 (November 20, 2009, 74 FR 60119) and the air quality data from the Area since 2005 necessarily reflect reductions in emissions from upwind sources as a result of CAIR. Nonetheless, in this case EPA believes that it is appropriate to redesignate the Area. Modeling conducted by EPA during the CSAPR rulemaking process, which used a baseline emissions scenario that “backed out” the effects of CAIR, *see* 76 FR at 48223, projected that the counties in the Baltimore Area would have PM<sub>2.5</sub> annual design values<sup>1</sup> below the level of the 1997 annual PM<sub>2.5</sub> standard for 2012 and 2014 without taking into account emission reductions from CAIR or CSAPR. *See* Appendix B of EPA’s “Air Quality Modeling Final Rule Technical Support Document,” (Page B–45, B–46), which is available in the docket for this proposed rulemaking action. In addition, the 2010–2012 quality-assured, quality-controlled, and certified monitoring data for the Baltimore Area confirms that 2012 PM<sub>2.5</sub> annual design values for each monitoring site in the Area remained well below the 1997 annual PM<sub>2.5</sub> NAAQS, and, thus, the entire Area continued to attain the standard in 2012. *See* Table 1 of this proposed rulemaking action for the Baltimore Area’s monitoring data for 2010–2012.

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

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

##### 1. Background

On January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit Court remanded to EPA the “Final Clean Air Fine Particle Implementation Rule” (72 FR 20586, April 25, 2007) and the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<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 D.C. Circuit Court found that EPA erred in implementing the 1997 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).

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

On June 2, 2014 (79 FR 31566) EPA finalized the “Identification of Nonattainment Classification and Deadlines for Submission of SIP Provisions for the 1997 PM<sub>2.5</sub> NAAQS and 2006 PM<sub>2.5</sub> NAAQS” rule (the PM<sub>2.5</sub> Subpart 4 Classification and Deadline Rule). The rule identifies the classification under subpart 4 for areas currently designated nonattainment for the 1997 annual and/or 2006 24-hour PM<sub>2.5</sub> standards, and sets a new deadline for states to submit attainment-

related and other SIP elements required for these areas pursuant to subpart 4. The rule also identifies EPA guidance that is currently available regarding subpart 4 requirements. The PM<sub>2.5</sub> Subpart 4 Classification and Deadline Rule specifies December 31, 2014 as the deadline for the states to submit any additional attainment-related SIP elements that may be needed to meet the applicable requirements of subpart 4 for areas currently designated nonattainment for the 1997 annual and/or 2006 24-hour PM<sub>2.5</sub> NAAQS and to submit SIPs addressing the nonattainment NSR requirements in subpart 4. Therefore, as explained in detail in the following section, any additional attainment-related SIP elements that may be needed for the Baltimore Area to meet the applicable requirements of subpart 4 were not due at the time that Maryland submitted its redesignation request for the Area. Maryland submitted its request for redesignating the Baltimore Area for the 1997 annual PM<sub>2.5</sub> NAAQS on December 12, 2013.

##### 2. Proposal on This Issue

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

<sup>1</sup> As defined in 40 CFR part 50, Appendix N, section (1)(c). A monitoring site’s design value is compared to the level of the 1997 annual PM<sub>2.5</sub> NAAQS to determine compliance with the standard.

approvable when subpart 4 requirements are considered.

a. Applicable Requirements Under Subpart 4 for Purposes of Evaluating the Redesignation Request for the Baltimore Area

With respect to the 1997 PM<sub>2.5</sub> Implementation Rule, the D.C. Circuit 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 redesignation request for the Baltimore 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 Baltimore 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>2</sup> In this case, at the time

that the State submitted its redesignation request, the requirements under subpart 4 were not due.

EPA's view that, for purposes of evaluating the redesignation of the Baltimore Area, the subpart 4 requirements were not due at the time Maryland submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit Court's decision in *South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). In *South Coast*, the D.C. Circuit Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that "applicable requirements," for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. See, e.g., Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA, therefore, did not consider subpart 2 requirements to be "applicable" for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet "all requirements 'applicable' to the area under section 110 and part D." Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the "applicable" SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of "applicable" as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section

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)(D). If "applicable requirements" were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

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

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

To require Maryland's fully-completed and pending redesignation request for the 1997 annual PM<sub>2.5</sub> NAAQS to comply now with requirements of subpart 4 that the D.C. Circuit Court announced only in January 2013 and for which the deadline to comply has not yet come, would be to give retroactive effect to

<sup>2</sup> Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete

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

#### b. Subpart 4 Requirements and Maryland Redesignation Request

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

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Baltimore Area, EPA notes that subpart 4 incorporates components of subpart 1, which contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for coarse particulate matter (PM<sub>10</sub>)<sup>4</sup> nonattainment areas, and under the D.C. Circuit Court's January 4, 2013 decision in *NRDC v. EPA*, these same statutory requirements also apply for PM<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 this redesignation request, in order to identify any additional requirements which would apply under subpart 4, consistent with EPA's June 2, 2014 PM<sub>2.5</sub> Subpart 4 Nonattainment Classification and Deadline Rule, EPA is considering the Baltimore Area to be a "moderate" PM<sub>2.5</sub> nonattainment area. As EPA explained in its June 2, 2014 rule, section 188 of the CAA provides that all areas designated nonattainment areas under subpart 4 are initially classified by operation of law as "moderate" nonattainment areas, and will remain moderate nonattainment areas unless and until EPA reclassifies the area as a "serious" nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4)

quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM<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>5</sup> In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment NSR program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,<sup>6</sup> when EPA evaluates a redesignation request under either subpart 1 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: "The section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable

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

<sup>4</sup> PM<sub>10</sub> refers to particulates nominally 10 micrometers in diameter or smaller.

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

<sup>6</sup> i.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

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

It is evident that even if we were to consider the D.C. Circuit Court’s January 4, 2013 decision in *NRDC v. EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively<sup>7</sup> or prior to December 31, 2014 and, thus, were due prior to the State’s redesignation request, those requirements do not apply to an area that is attaining the 1997 annual PM<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 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 Baltimore Area has attained and continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS. Under its longstanding interpretation, EPA is proposing to determine here that the Baltimore Area meets the attainment-related plan requirements of subparts 1 and 4 for the 1997 annual 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 this redesignation request.

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

The D.C. Circuit Court 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 D.C. Circuit 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 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 Court, 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 D.C. Circuit Court in its January 4, 2013 decision made reference to both section 189(e) and 40 CFR 51.1002, and stated that: “In light of our disposition, we need not address the petitioners’ challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not PM<sub>2.5</sub> precursors, as subpart 4 expressly governs precursor presumptions.” *NRDC v. EPA*, at 27, n.10. Elsewhere in the D.C. Circuit Court’s opinion, however, the D.C. Circuit Court observed: “Ammonia is a precursor to fine particulate matter, making it a precursor to both PM<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 redesignation of the Baltimore Area for the 1997 annual PM<sub>2.5</sub> NAAQS is consistent with the D.C. Circuit Court’s decision on this aspect of subpart 4. While the D.C. Circuit Court, citing section 189(e), stated that “for a PM<sub>10</sub> area governed by subpart 4, a precursor is ‘presumptively regulated,’” the D.C. Circuit Court expressly declined to decide the specific challenge to EPA’s 1997 PM<sub>2.5</sub> Implementation Rule provisions regarding ammonia and VOC as precursors. The D.C. Circuit Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular PM<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, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the Baltimore Area, EPA believes that doing so is consistent with proposing redesignation of the Area for the 1997 annual PM<sub>2.5</sub> standard. The Baltimore Area has attained the 1997 annual PM<sub>2.5</sub> standard without any specific additional controls of VOC and

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



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>8</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 Baltimore Area for the 1997 annual 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 this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOC under other CAA requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). *See* 57 FR 13542. EPA in this rulemaking action proposes to determine that Maryland's SIP has met the provisions of section 189(e) with respect to ammonia and VOC as precursors. This proposed determination is based on our findings that: (1) The Baltimore 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>9</sup> In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the Baltimore Area, which is attaining the 1997 annual PM<sub>2.5</sub> standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 annual PM<sub>2.5</sub> standard in the Area. *See* 57 FR 13539–42.

<sup>8</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.

<sup>9</sup> The Baltimore 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.

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 for the 1997 annual 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 D.C. Circuit 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 the State 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 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>10</sup> Courts have upheld this approach to the requirements of subpart 4 for PM<sub>10</sub>.<sup>11</sup> EPA believes that application of this approach to PM<sub>2.5</sub> precursors under subpart 4 is reasonable. Because the Baltimore Area has already attained the 1997 annual 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 D.C. Circuit Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider

<sup>10</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>11</sup> *See, e.g.*, *Assoc. of Irrigated Residents v. EPA et al.*, 423 F.3d 989 (9th Cir. 2005).

additional precursors under subpart 4, it would not affect EPA's approval here of the State's request for redesignation of the Baltimore Area for the 1997 annual PM<sub>2.5</sub> NAAQS. In the context of a redesignation, the State has shown that the Baltimore Area has attained the standard. Moreover, the State has shown and EPA is proposing to determine that attainment of the 1997 annual PM<sub>2.5</sub> NAAQS in the Baltimore Area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment of the standard (*see* section V.A.3 of this rulemaking notice). It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013 decision of the D.C. Circuit Court as precluding redesignation of the Baltimore Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS at this time. In summary, even if, prior to the date of the redesignation request submittal, the State was required to address precursors for the Baltimore 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 Baltimore Area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) and (v).

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

EPA is proposing several rulemaking actions for the Baltimore Area: (1) To redesignate the Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS; (2) to approve into the Maryland SIP the associated maintenance plan for the 1997 annual PM<sub>2.5</sub> NAAQS; and, (3) to approve the 2017 and 2025 PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs for the Baltimore Area for transportation conformity purposes. EPA's proposed approval of the redesignation request and maintenance plan for the 1997 annual PM<sub>2.5</sub> NAAQS is 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 Baltimore Area. The following is a description of how the December 12, 2013 Maryland submittal satisfies the requirements of section 107(d)(3)(E) of the CAA for the 1997 annual PM<sub>2.5</sub> NAAQS.

### A. Redesignation Request

#### 1. Attainment

EPA has previously determined that the Baltimore Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS. As noted earlier, on May 22, 2012 (77 FR 30208), EPA determined that the Baltimore Area



had attained the 1997 annual PM<sub>2.5</sub> standard, based on 2007–2009 and 2008–2010 quality-assured, quality-controlled, and certified ambient air quality monitoring data. Pursuant to 40 CFR 51.2004(c), this “clean data” determination for the Area suspended the requirements for the State to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and other planning SIPs related to the attainment of the 1997 annual PM<sub>2.5</sub> NAAQS until the Area is redesignated to attainment for the standard or EPA determines that the Area has again violated the standard, at which time such plans are required to be submitted. EPA also

determined in the May 22, 2012 rulemaking, that the Baltimore Area had attained the 1997 annual PM<sub>2.5</sub> NAAQS by its statutory attainment date of April 5, 2010. The basis and effect of the determination of attainment for the 1997 annual PM<sub>2.5</sub> NAAQS was discussed in the proposed (76 FR 72374, November 23, 2011) and final rulemaking notice (77 FR 30208, May 22, 2012).

Maryland’s redesignation request submittal included the historic monitoring data for the annual PM<sub>2.5</sub> monitoring sites in the Baltimore Area. The historic monitoring data shows that the Baltimore Area has attained and continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS. MDE assures that all PM<sub>2.5</sub> monitoring data for the Baltimore

Area has been quality-assured, quality-controlled, and certified by the State in accordance with 40 CFR 58.10. Furthermore, EPA has thoroughly reviewed the most recent ambient air quality monitoring data for PM<sub>2.5</sub> in the Area, as submitted by the State and recorded in EPA’s Air Quality System (AQS). The PM<sub>2.5</sub> quality-assured, quality-controlled, and state-certified 2009–2012 air quality data shows that the Baltimore Area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS. The Area’s PM<sub>2.5</sub> annual design values for the 2009–2011, and 2010–2012 monitoring periods as well as preliminary data for 2013 are provided in Table 1.

TABLE 1—DESIGN VALUES IN THE BALTIMORE AREA FOR THE 1997 ANNUAL PM<sub>2.5</sub> NAAQS

Monitor ID	Monitor location	Annual design value (in µg/m <sup>3</sup> )		
		2009–2011	2010–2012	2011–2013
24–003–1003 .....	Glen Burnie, Anne Arundel County .....	10.9	10.7	10.0
24–005–1007 .....	Padonia, Baltimore County .....	10.1	9.6	9.0
24–005–3001 .....	Essex, Baltimore County .....	11.1	11.0	10.3
24–025–1001 .....	Edgewood, Harford County .....	9.8	10.3	10.3
24–510–0006 .....	Baltimore City .....	10.0	10.0	9.9
24–510–0007 .....	Baltimore City .....	10.2	9.9	9.3
24–510–0008 .....	Baltimore City .....	10.9	10.4	9.9
24–510–0040 .....	Baltimore City .....	11.3	11.1	10.5

The Baltimore Area’s recent monitoring data supports EPA’s previous determinations that the Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS. In addition, as discussed subsequently with respect to the Baltimore Area’s maintenance plan, the State 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 Baltimore Area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS.

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

In accordance with section 107(d)(3)(E)(v) of the CAA, the SIP revisions for the 1997 annual PM<sub>2.5</sub> NAAQS for the Baltimore Area must be fully approved under section 110(k) of the CAA and all the requirements applicable to the Baltimore Area under section 110 of the CAA (general SIP requirements) and part D of Title I of the CAA (SIP requirements for nonattainment areas) must be met.

### a. Section 110 General SIP Requirements

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

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain

measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants in accordance with the NO<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) of the CAA requirements for a state are not linked with a particular nonattainment area’s designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area’s designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110(a)(2) elements of the CAA which are not connected with nonattainment plan submissions and not linked with an area’s attainment

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

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

#### b. Subpart 1 Requirements

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

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

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

On December 10, 2012 (77 FR 73313), EPA approved a 2002 emissions inventory for the 1997 annual PM<sub>2.5</sub> NAAQS for the Baltimore Area. The emissions inventory, submitted by Maryland on June 8, 2008 along with the Baltimore Area attainment plan for the 1997 annual PM<sub>2.5</sub> NAAQS, was submitted to meet the requirements of section 172(c)(3) of the CAA. The 2002 comprehensive emissions inventory for the 1997 annual PM<sub>2.5</sub> standard submitted by the State included emissions estimates that cover the general source categories of point sources, area sources, onroad mobile sources, and nonroad mobile sources for the Baltimore Area. The pollutants that comprise the State's 2002 emissions inventory for the Baltimore Area are PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC, and ammonia (NH<sub>3</sub>). An evaluation of the 2002 comprehensive emissions inventory for the Baltimore Area is provided in the TSD prepared by EPA for that separate rulemaking action. *See* Docket ID No. EPA-R03-OAR-2010-0143.

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) of the CAA

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

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

Section 175A of the CAA requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area "for at least 10 years after the redesignation." In conjunction with its request to redesignate the Baltimore Area to attainment status, Maryland submitted a SIP revision to provide for maintenance of the 1997 annual PM<sub>2.5</sub> NAAQS in the Baltimore Area through 2025, which is at least 10 years after redesignation. Maryland is requesting that EPA approve this SIP revision as meeting the requirement of section 175A of the CAA. Once approved, the Baltimore Area maintenance plan will ensure that the SIP for Maryland meets the requirements of the CAA regarding maintenance of the 1997 annual PM<sub>2.5</sub> NAAQS for the Area. EPA's analysis of the maintenance plan is provided in section V.B (Maintenance Plan) of this document.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 of the United States Code

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

Thus, for purposes of redesignating the Baltimore Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS, EPA determines that the Area has meet all applicable SIP requirements under part D of Title I of the CAA.

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

EPA has fully approved all applicable requirements of the Maryland SIP for the Baltimore Area for purposes of redesignation to attainment for the 1997 annual 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) of the CAA requires

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

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

	2002	2007	Decrease
SO <sub>2</sub> .....	2,025.51	385.34	1,640.17
NO <sub>x</sub> .....	76,060.01	49,140.12	26,219.89
PM <sub>2.5</sub> .....	2,344.86	1,789.28	555.52
VOC .....	28,060.25	19,998.51	8,061.74
NH <sub>3</sub> .....	1,402.09	91.77	1,310.32
Total .....	109,892.72	71,405.02	37,787.64

The reduction in emissions and the corresponding improvement in air quality from 2002 to 2007 in the Baltimore Area can be attributed to a number of regulatory control measures that have been implemented in the Baltimore Area and contributing areas in recent years. An evaluation of the State's 2002 comprehensive emissions inventory for the Baltimore Area is provided in the TSD prepared by EPA for the December 7, 2012 rulemaking action approving the base year inventory. *See* Docket ID No. EPA-R03-OAR-2010-0143. An evaluation of the 2007 emissions inventory is provided in EPA's emissions inventory TSD dated July 23, 2014, which is available in the docket for this proposed rulemaking action.

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. 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 all new

passenger vehicles, including sport utility vehicles, minivans, vans, and pick-up trucks. 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 (light duty vehicles)—77 percent; light duty trucks, minivans, and sports utility vehicles—86 percent; and larger sports utility vehicles, vans, and heavier trucks—69–95 percent. EPA expects fleet wide average emissions to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006, which reflects up to a 90 percent reduction in sulfur content.

EPA issued the Heavy-Duty Diesel Engine Rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced PM<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 particulate sulfate emissions from all diesel vehicles.

On June 29, 2004 (69 FR 38958), EPA promulgated the Nonroad Diesel Rule for large nonroad diesel engines, such as those used in construction, agriculture, and mining, to be phased in between 2008 and 2014. The rule phased in requirements for reducing the sulfur content of diesel used in nonroad diesel engines. The reduction in sulfur content prevents damage to the more advanced emission control systems needed to meet the engine standards. It will also reduce fine particulate emissions from diesel engines. The rule also reduces the sulfur content in nonroad diesel fuel by over 99%. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. Starting in 2007, this rule limited nonroad diesel sulfur content to 500 ppm, with a further reduction to 15 ppm in 2010. The combined engine standards and the sulfur in fuel reductions will reduce NO<sub>x</sub> and PM emissions from large nonroad engines by over 90%,

compared to current nonroad engines using higher sulfur content diesel.

In November 2002, EPA promulgated emission standards for groups of previously unregulated nonroad engines. These engines include large spark-ignition engines such as those used in forklifts, airport ground service equipment, and farm and construction equipment; recreational vehicles using spark-ignition engines such as off highway motorcycles, all-terrain vehicles and snowmobiles; and recreational marine diesel engines. Emission standards from large spark-ignition engines were implemented in two tiers, with Tier 1 starting in 2004 and Tier 2 in 2007. Recreational vehicle emission standards were phased in from 2006 through 2012. Marine diesel engine standards were phased in from 2006 through 2009. With full implementation of the entire nonroad spark-ignition engine and recreational engine standards, an 80% reduction in NO<sub>x</sub> is expected by 2020.

#### B. Maintenance Plan

On December 12, 2013, MDE submitted a maintenance plan for the Baltimore Area for the 1997 annual PM<sub>2.5</sub> NAAQS pursuant to section 175A of the CAA. EPA's analysis for proposing approval of the maintenance plan is provided in this section.

##### 1. Attainment Emissions Inventory

Section 172(c)(3) requires states to submit a comprehensive, accurate, current inventory of actual emissions from all sources in the nonattainment area. For a maintenance plan, states are required to submit an inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS, referred to as the attainment inventory (or the maintenance plan base year inventory), and which should be based on actual emissions. MDE submitted an attainment inventory for 2007, one of the years in the period during which the Baltimore Area monitored attainment of the 1997 annual PM<sub>2.5</sub> standard. The attainment inventory is comprised of NO<sub>x</sub>, PM<sub>2.5</sub>, SO<sub>2</sub>, VOC, and NH<sub>3</sub> emissions from point sources, nonpoint sources, onroad mobile sources, and nonroad mobile sources.

For the 2007 emissions inventory for point, nonpoint, and nonroad source categories, MDE submitted the 2007 Version 3 emissions inventory developed through the Mid-Atlantic Regional Air Management Association (MARAMA) regional planning process. Details related to the development of the 2007 emissions inventory can be found in the January 23, 2012 MARAMA TSD

entitled "Technical Support Document for the Development of the 2007 Emissions Inventory for the Regional Air Quality Modeling in the Northeast/Mid-Atlantic Region Version 3.3", which may be found in Appendix D of the State's submittal, and is available in the docket for this proposed rulemaking action.

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

The 2007 onroad mobile source inventory was developed by using EPA's highway mobile source emissions model MOVES2010a. A mix of default and local data was used to develop the inventory. The 2007 onroad emissions inventory, including a summary of the methodology and data assumptions used for the analysis may be found in Appendix F of the State's submittal, which is available in the docket for this proposed rulemaking action.

EPA has reviewed the documentation provided by MDE and found the emissions inventory to be approvable. For more information on the 2007 inventory submitted by MDE and EPA's analysis of the inventory, see Appendix A of the State's submittal and EPA's emissions inventory TSD dated July 23, 2014, both of which are available in the docket for this proposed rulemaking action.

##### 2. Maintenance Demonstration

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

1992 Calcagni Memorandum, pages 9–10.

For a demonstration of maintenance, emissions inventories are required to be projected to future dates to assess the influence of future growth and controls; however, the maintenance demonstration need not be based on modeling. See *Wall v. EPA, supra*; *Sierra Club v. EPA, supra*. See also 66 FR 53099–53100; 68 FR 25430–32. The measures described in subsection A.3 of section V (Permanent and Enforceable Reductions in Emissions) of this proposed rulemaking action achieved the reduction in emissions from point, area, and mobile sources in the Area that led to attainment in 2007, and will continue through 2025. In addition, some of the nonroad and on-road measures that helped the Area attain the standard in 2007 have requirements which became applicable after 2007, and will help maintain the standard during the 10 year maintenance period. In addition to the measures described in subsection A.3 of section V, Maryland's Healthy Air Act (HAA) regulation will help to ensure the continuing decline of SO<sub>2</sub> and NO<sub>x</sub> emissions in the Area during the maintenance period and beyond. Maryland's HAA regulation requires emission reductions of NO<sub>x</sub> and SO<sub>2</sub> from large coal-fired power plants in Maryland, and will limit emissions from the Brandon Shores, Herbert A. Wagner, and C.P. Crane Generating Stations, all of which are located in the Baltimore Area. See 73 FR 51599, September 4, 2008 (approving Maryland's HAA regulation into the Maryland SIP). The HAA was phased in starting in 2009 with a second phase that started in 2012. At full implementation, the HAA will reduce NO<sub>x</sub> and SO<sub>2</sub> emissions from affected units by 65 percent and 80 percent, respectively, from 2002 levels.

To show that the Baltimore Area will remain in attainment, MDE uses projection inventories derived by applying appropriate growth and control factors to the 2007 attainment year emissions inventory. MDE developed projection inventories for an interim year of 2017 and a maintenance plan end year of 2025 to show that future emissions of SO<sub>2</sub>, NO<sub>x</sub>, PM<sub>2.5</sub>, VOC, and NH<sub>3</sub>, will remain at or below the 2007 emissions levels throughout the Baltimore Area through the year 2025.

For EGU emissions, the Department of Energy 2011 Annual Energy Outlook growth factors, delineated by region and fuel, were used to develop the projected EGU emissions. Non-EGU emissions were developed using employment projections and other state specific

emission data. Nonpoint emissions for 2017 and 2025 were developed by applying the appropriate growth and control factors to the 2007 inventory. Nonroad source emissions for 2017 and 2025 were developed using growth factors from EPA's NMIM2008 model. On-road emissions for 2017 and 2025 were developed using EPA's

MOVES2010a mobile source inventory model.

EPA has determined that the emissions inventories discussed above as provided by MDE are approvable. For detailed information on the projected inventories, *see* Appendices B and C of the State submittal, and for more information on EPA's analysis of the

emissions inventory, *see* EPA's emissions inventory TSD dated July 23, 2014, all of which are available in the docket for this proposed rulemaking action. Table 3 shows the inventories for the 2007 attainment year, the 2017 interim year, and the 2025 maintenance plan end year for the Baltimore Area.

TABLE 3—COMPARISON OF 2007 ATTAINMENT YEAR INVENTORY WITH 2017 AND 2025 PROJECTED EMISSIONS IN THE BALTIMORE AREA (TPY)

	2007	2017	2025	Change from 2007–2017	Change from 2007–2025
SO <sub>2</sub> .....	103,510	24,714	24,620	78,796	78,890
NO <sub>x</sub> .....	116,595	69,258	58,249	47,337	58,346
PM <sub>2.5</sub> .....	19,005	16,374	16,205	2,631	2,800
VOC .....	64,416	46,800	44,302	17,616	20,114
NH <sub>3</sub> .....	4,117	3,905	3,930	212	187
Total .....	307,643	161,051	147,305	146,592	160,337

Table 3 shows that between 2007 and 2017, the Baltimore Area is projected to reduce SO<sub>2</sub> emissions by 76.1 percent, NO<sub>x</sub> emissions by 40.6 percent, PM<sub>2.5</sub> emissions by 13.8 percent, NH<sub>3</sub> by 5.1 percent, and VOC by 27.3 percent. Between 2007 and 2025, the Baltimore Area is projected to reduce SO<sub>2</sub> emissions by 76.2 percent, NO<sub>x</sub> emissions by 50.0 percent, PM<sub>2.5</sub> emissions by 14.7 percent, NH<sub>3</sub> by 4.5 percent and VOC by 31.2 percent. The projected emissions inventories show that the Baltimore Area will continue to maintain the 1997 annual PM<sub>2.5</sub> NAAQS during the 10 year maintenance period.

### 3. Monitoring Network

There are eight PM<sub>2.5</sub> monitors in the Baltimore Area. EPA has determined that Maryland's maintenance plan includes a commitment to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. The Baltimore Area maintenance plan includes the State's commitment to continue to operate and maintain its PM<sub>2.5</sub> air quality monitoring network, consistent with EPA's monitoring requirements, as necessary to demonstrate ongoing compliance with the 1997 annual PM<sub>2.5</sub> NAAQS. In its December 12, 2013 submittal, Maryland 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 Baltimore Area, MDE will periodically update the

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

### 5. Contingency Measures

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

Maryland's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur. These procedures would be triggered in one of

three situations: (1) When the annual actual emissions of SO<sub>2</sub>, NO<sub>x</sub>, or PM<sub>2.5</sub> exceed the attainment year inventories that are identified in Table 3, (2) when there is an annual exceedance (annual average for one year at a federal reference method monitor located in the Baltimore Area) of 15.0 µg/m<sup>3</sup>; or, (3) When there is any violation (three year average of the annual average at a federal reference method monitor located in the Baltimore Area) of 15.0 µg/m<sup>3</sup> or greater.

If any future year emissions inventory indicates that the Baltimore Area's total emissions of SO<sub>2</sub>, NO<sub>x</sub>, or PM<sub>2.5</sub> exceeds the attainment year levels, MDE would first perform an audit to determine if inventory refinements are needed, including a review of whether appropriate models, control strategies, monitoring strategies, planning assumptions, industrial throughput, and production data were used in the attainment year and future year projections. If the audit does not reconcile the emissions exceedances, MDE will implement one or more of the contingency measures identified in the plan. If an annual exceedance of 15.0 µg/m<sup>3</sup> occurs, MDE commits to implementing one of the contingency measures identified for additional emission reductions, and if a violation occurs, MDE commits to implementing two or more of the contingency measures to correct the violation.

As explained in greater detail in the Baltimore Area maintenance plan, the candidate contingency measures include the following: (1) PM<sub>2.5</sub> RACM determinations; (2) NO<sub>x</sub> RACM determination; (3) Non Road diesel emission reduction strategies; (4) low

sulfur home heating oil requirements; (5) alternative fuel and diesel retrofit programs for fleet vehicle operations; and, (6) wet suppression upgrade requirements for concrete manufacturing. EPA finds that the Baltimore Area maintenance plan includes appropriate contingency measures as necessary to ensure MDE will promptly correct any violation of the NAAQS that occurs after redesignation. Finally, the maintenance plan establishes a schedule for implementation of contingency measures if needed, and MDE has committed to full implementation of contingency measures or programs within 24 months after notification by EPA that contingency measures must be implemented or 27 months after quality assured data indicates an exceedance or violation has occurred. For all of the reasons discussed above, EPA is proposing to approve the 1997 annual PM<sub>2.5</sub> maintenance plan for the Baltimore Area as meeting the requirements of section 175A of the CAA.

### C. Transportation Conformity

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

On December 12, 2013, Maryland submitted a SIP revision that contains the 2017 and 2025 PM<sub>2.5</sub> and NO<sub>x</sub> onroad mobile source budgets for the Baltimore Area. Maryland did not provide emission budgets for SO<sub>2</sub>, VOC, and NH<sub>3</sub> 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). Those actions were not part of the final rule remanded to EPA by the D.C. Circuit Court in *NRDC v. EPA*, No. 08–1250 (January 4, 2013), in which the D.C. Circuit Court remanded to EPA the 1997 PM<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 MVEBs for the Baltimore Area. The MVEBs are presented in Table 4.

TABLE 4—MVEBs FOR BALTIMORE AREA, MARYLAND FOR THE 1997 PM<sub>2.5</sub> NAAQS IN TPY

Year	PM <sub>2.5</sub>	NO <sub>x</sub>
2017 .....	1,218.60	29,892.01
2025 .....	1,051.39	21,594.96

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

On April 30, 2014, EPA initiated an adequacy review of the MVEBs for the 1997 annual PM<sub>2.5</sub> NAAQS that Maryland included in its redesignation request submittal. As such, a notice of the submission of these MVEBs were posted on the adequacy Web site (<http://www.epa.gov/otaq/stateresources/transconf/currrips.htm>). The public comment period closed on May 30, 2014. There were no public comments received. EPA is acting on making the adequacy finding final through a separate notice of adequacy. EPA has

reviewed the MVEBs and found them consistent with the maintenance plan and found that the budgets meet the criteria for adequacy and approval. Therefore, EPA is proposing to approve the 2017 and 2025 PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs for the Baltimore Area for transportation conformity purposes. Additional information pertaining to the review of the MVEBs can be found in the transportation conformity TSD dated May 20, 2014, available in the docket for this proposed rulemaking action.

### VI. Proposed Actions

EPA is proposing to approve the request submitted by Maryland to redesignate the Baltimore Area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. EPA has evaluated the State’s redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for the 1997 annual PM<sub>2.5</sub> standard. The monitoring data demonstrates that the Baltimore Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS, and, for the reasons discussed previously, that it will continue to attain the 1997 annual PM<sub>2.5</sub> NAAQS. EPA is also proposing to approve the maintenance plan for the Baltimore Area as a revision to the Maryland SIP for the 1997 annual PM<sub>2.5</sub> standard because the plan meets the requirements of CAA section 175A for the standard, as described previously in this proposed rulemaking notice. In addition, EPA is proposing to approve the 2017 and 2025 PM<sub>2.5</sub> and NO<sub>x</sub> MVEBs for the Baltimore Area for transportation conformity purposes. Final approval of the redesignation request would change the official designation of the Baltimore Area from nonattainment to attainment as found at 40 CFR part 81, for the 1997 annual PM<sub>2.5</sub> NAAQS, and would incorporate into the Maryland SIP the maintenance plan ensuring continued attainment of the 1997 annual PM<sub>2.5</sub> NAAQS in the Area for 10 years after redesignation. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does

not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 to approve Maryland’s redesignation request, associated maintenance plan, and MVEBs for transportation conformity purposes for the Baltimore 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 81

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

##### 40 CFR Part 81

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

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

Dated: September 15, 2014.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2014–23638 Filed 10–2–14; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

#### 42 CFR Parts 1001 and 1003

**RIN 0936–AA06**

#### Medicare and State Health Care Programs: Fraud and Abuse; Revisions to Safe Harbors Under the Anti-Kickback Statute, and Civil Monetary Penalty Rules Regarding Beneficiary Inducements and Gainsharing

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the safe harbors to the anti-kickback statute and the civil monetary penalty (CMP) rules under the authority of the Office of Inspector General (OIG). The proposed rule would add new safe harbors, some of which codify statutory changes set forth in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) and the Patient Protection and Affordable Care Act, Public Law 111–148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, 124 Stat. 1029 (2010) (ACA), and all of which would protect certain payment practices and business arrangements from criminal prosecution or civil sanctions under the anti-kickback statute. We also propose to codify revisions to the definition of “remuneration,” added by the Balanced Budget Act (BBA) of 1997 and ACA, and add a gainsharing CMP provision in our regulations.

**DATES:** To ensure consideration, comments must be delivered to the address provided below by no later than 5 p.m. Eastern Standard Time on December 2, 2014.

**ADDRESSES:** In commenting, please reference file code OIG–403–P3. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

However, you may submit comments using one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. (Attachments should be in Microsoft Word, if possible.)

2. *By regular, express, or overnight mail.* You may mail your printed or written submissions to the following address:

Patrice Drew, Office of Inspector General, Department of Health and Human Services, Attention: OIG–403–P, Room 5269, Cohen Building, 330 Independence Avenue SW., Room 5269, Washington, DC 20201.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* You may deliver, by hand or courier, before the close of the comment period, your printed or written comments to:

Patrice Drew, Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW., Room 5269, Washington, DC 20201.

Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff at (202) 619–1368.

*Inspection of Public Comments:* All comments received before the end of the comment period will be posted on <http://www.regulations.gov> for public viewing. Hard copies will also be available for public inspection at the Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, Monday through Friday from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 619–1368.

#### FOR FURTHER INFORMATION CONTACT:

Heather Westphal, Office of Counsel to the Inspector General, (202) 619–0335, for questions relating to the proposed rule.

#### Executive Summary

##### A. Need For Regulatory Action

MMA and ACA include exceptions to the anti-kickback statute, and BBA of 1997 and ACA include exceptions to the definition of “remuneration” under the civil monetary penalties law. OIG proposes to codify those changes here. At the same time, OIG proposes additional changes to make technical corrections to an existing regulation and proposes new safe harbors to the anti-