

Extension of Comment Period

The comment period for Docket No. FAA–2013–0981, Directorate Identifier 2013–NM–032–AD, has been revised. The comment period now closes May 6, 2014.

No other part of the regulatory information has been changed; therefore, the NPRM (78 FR 73739, December 9, 2013) is not republished in the **Federal Register**.

Issued in Renton, Washington, on April 4, 2014.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–08144 Filed 4–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION**34 CFR Chapter VI****Negotiated Rulemaking Committee, Notice of Additional Committee Meeting—Title IV Federal Student Aid Programs, Program Integrity and Improvement**

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of intent to establish negotiated rulemaking committee.

SUMMARY: On November 20, 2013, we announced our intention to establish a negotiated rulemaking committee to prepare proposed regulations to address program integrity and improvement issues for the Federal Student Aid Programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA), (Title IV Federal Student Aid Programs). We also announced the schedule for three sessions of committee meetings. We now announce the addition of a fourth session, consisting of two days of committee meetings to focus on the development of proposed regulations to define “adverse credit” for borrowers in the Federal Direct PLUS Loan Program.

DATES: The dates, times, and locations of the fourth session are set out in the *Schedule for Negotiations* section under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: For information about the content of this notice, including information about the negotiated rulemaking process, contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., room 8017, Washington, DC 20006. Telephone: (202) 502–7526 or by email: wendy.macias@ed.gov.

For general information about the negotiated rulemaking process, see *The*

Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions at <http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html>.

If you use a telecommunications device for the deaf or text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On November 20, 2013, we published a document in the **Federal Register** (78 FR 69612) announcing our intention to establish a negotiated rulemaking committee to prepare proposed regulations to address program integrity and improvement issues for the Title IV Federal Student Aid Programs. In that notice, we set a schedule for three sessions of committee meetings and requested nominations for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on the committee.

At the committee meeting on March 26, 2013, the Department proposed that a fourth committee meeting be scheduled to ensure that the Committee had sufficient time to discuss the issues, in view of additional time being devoted to the gathering and consideration of data pertinent to defining “adverse credit” for borrowers in the Federal Direct PLUS Loan Program. The Committee approved the proposal by consensus.

We now announce the addition of a fourth session consisting of committee meetings to take place May 19–20, 2014, to focus on the development of proposed regulations to define “adverse credit,” but also to discuss, subject to time available, any other issues remaining open from the initial three meetings. The meetings will run from 9 a.m. to 5 p.m. The schedule for the fourth session follows.

Schedule for Negotiations: The committee will meet for its fourth and final session on May 19–20, 2014. The meetings will run from 9 a.m. to 5 p.m.

The meetings will be held at the U.S. Department of Education at: 1990 K Street NW., Eighth Floor Conference Center, Washington, DC 20006. The meetings are open to the public.

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official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1098a.

Dated: April 8, 2014.

Lynn B. Mahaffie,

Senior Director, Policy Coordination, Development, and Accreditation Service, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2014–08211 Filed 4–10–14; 8:45 am]

BILLING CODE 4000–01–P

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

[EPA–R03–OAR–2014–0022; FRL–9909–41–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Redesignation Requests, Associated Maintenance Plans, and Motor Vehicle Emissions Budgets for the Delaware Portion of the Philadelphia-Wilmington, PA-NJ-DE Nonattainment Area for the 1997 Annual and 2006 24-Hour Fine Particulate Matter Standards, and the 2007 Comprehensive Emissions Inventory for the 2006 24-Hour 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 Delaware’s requests to redesignate to attainment the Delaware portion of the Philadelphia-Wilmington, PA-NJ-DE nonattainment area (hereafter “the Philadelphia Area” or “the Area”) for both the 1997 annual and the 2006 24-hour fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS or standards). EPA is also proposing to approve as revisions to the

Delaware State Implementation Plan (SIP), the associated maintenance plans to show maintenance of the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS through 2025 for the Delaware portion of the Area. EPA is also proposing to approve the motor vehicle emissions budgets (MVEBs) included in Delaware's maintenance plans for the Delaware portion of the Area for both the 1997 annual and 2006 24-hour PM_{2.5} standards. EPA is also proposing to determine that the Delaware portion of the Philadelphia Area continues to attain both the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS. In addition, EPA is proposing to approve the 2007 emissions inventory for the Delaware portion of the Area for the 2006 24-hour PM_{2.5} NAAQS. In this rulemaking action, EPA also addresses the effects of two decisions of the United States Court of Appeals for the District of Columbia (D.C. Circuit or Court): The Court's August 21, 2012 decision to vacate and remand to EPA the Cross-State Air Pollution Control Rule (CSAPR); and the Court's January 4, 2013 decision to remand to EPA two final rules implementing the 1997 annual PM_{2.5} standard. This rulemaking action to propose approval of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS redesignation requests and associated maintenance plans for the Delaware portion of the Philadelphia Area is based on EPA's determination that Delaware has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA) for both the 1997 annual and 2006 24-hour PM_{2.5} standards. EPA has taken separate rulemaking action to approve the redesignation of the New Jersey portion of the Philadelphia Area for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. See 78 FR 54396.

DATES: Written comments must be received on or before May 12, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2014-0022 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-2014-0022*, Cristina Fernandez, Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and

special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2014-0022. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814-2181, or by email at *pino.maria@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background

The first air quality standards for PM_{2.5} were established on July 16, 1997 (62 FR 38652, July 18, 1997). EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m³), based on a three-year average of annual mean PM_{2.5} concentrations (the 1997 annual PM_{2.5} standard). In the same rulemaking action, EPA promulgated a 24-hour standard of 65 µg/m³, based on a three-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005 (70 FR 944, 1014), EPA published air quality area designations for the 1997 PM_{2.5} standards. In that rulemaking action, EPA designated the Philadelphia Area as nonattainment for the 1997 annual PM_{2.5} standard. The Philadelphia Area is comprised of New Castle County in Delaware (the Delaware portion of the Area); Burlington, Camden, and Gloucester Counties in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania. See 40 CFR 81.308 (Delaware), 40 CFR 81.331 (New Jersey), and 40 CFR 81.339 (Pennsylvania).

On October 17, 2006 (71 FR 61144), EPA retained the annual average standard at 15 µg/m³, but revised the 24-hour standard to 35 µg/m³, based again on the three-year average of the 98th percentile of 24-hour concentrations (the 2006 annual PM_{2.5} standard). On November 13, 2009 (74 FR 58688), EPA published designations for the 2006 24-hour PM_{2.5} NAAQS, which became effective on December 14, 2009. In that rulemaking action, EPA designated the Philadelphia Area as nonattainment for the 2006 24-hour PM_{2.5} NAAQS. See 77 FR 58775 and also see 40 CFR 81.308 (Delaware), 40 CFR 81.331 (New Jersey), and 40 CFR 81.339 (Pennsylvania).

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

On May 16, 2012 (77 FR 28782) and January 7, 2013 (78 FR 882), EPA made determinations that the entire Philadelphia Area had attained the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, respectively. Pursuant to 40 CFR 51.1004(c) and based on these determinations, the requirements for the Philadelphia Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning SIPs related to the attainment of either the 1997 annual or 2006 24-hour PM_{2.5} NAAQS are suspended until such time as: The Area is redesignated to attainment for each standard, at which time the requirements no longer apply; or EPA determines that the Area has again violated any of the standards, at which time such plans are required to be submitted. However, these determinations of attainment do not preclude states from submitting and EPA from approving planning SIP revisions for the 1997 or 2006 PM_{2.5} NAAQS. Delaware submitted an attainment plan for the 1997 PM_{2.5} NAAQS, and EPA approved that plan on December 17, 2013 (78 FR 76209).

On December 12, 2012, the Delaware Department of Natural Resources and Environmental Control (DNREC) formally submitted two separate requests to redesignate the Delaware portion of the Philadelphia Area from nonattainment to attainment for the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS, respectively. Each submittal included a maintenance plan as a SIP revision to ensure continued attainment of the standards throughout the Delaware portion of the Area over the next 10 years. The December 12, 2012 submittal also includes a 2007 comprehensive emissions inventory for the 2006 24-hour PM_{2.5} NAAQS.

In this proposed rulemaking action, EPA is taking into account two recent decisions of the D.C. Circuit. In the first of the two Court decisions, the D.C. Circuit, on August 21, 2012, issued *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), which vacated and remanded CSAPR and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) "pending . . . development of a valid replacement." *EME Homer City* at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. In the second decision, on January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013).

II. EPA's Requirements

A. Criteria for Redesignation to Attainment

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

EPA has provided guidance on redesignation in the "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (57 FR 13498, April 16, 1992) (the "General Preamble") and has provided further guidance on processing redesignation requests in the following documents: (1) "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter the "1992 Calcagni Memorandum"); (2) "State Implementation Plan (SIP) Actions

Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and (3) "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

B. Requirements of a Maintenance Plan

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future PM_{2.5} violations.

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

III. Summary of Proposed Actions

EPA is proposing to take several rulemaking actions related to the redesignation of the Delaware portion of the Philadelphia Area to attainment for both the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS. EPA is proposing to find that the Delaware portion of the Area meets the requirements for redesignation of the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Delaware's requests to change the legal designation of the Delaware portion of the Area from nonattainment to attainment for both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. This rulemaking action does not impact the legal designation of the New Jersey and Pennsylvania portions of the Philadelphia Area. On September 4, 2013 (78 FR 54396), EPA took

separate rulemaking action to redesignate to attainment the New Jersey portion of the Area for both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.

EPA is also proposing to approve the associated maintenance plans for the Delaware portion of the Area as revisions to the Delaware SIP for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, including the MVEBs for the Delaware portion of the Area for both the 1997 annual and the 2006 24-hour PM_{2.5} standards. The approval of the maintenance plans is one of the CAA criteria for redesignation of the Delaware portion of the Area to attainment for both standards. Delaware's maintenance plans are designed to ensure continued attainment in the Delaware portion of the Area of the 1997 annual and 2006 24-hour PM_{2.5} standards, respectively, for 10 years after redesignation.

EPA previously determined that the Philadelphia Area has attained both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, and EPA is proposing to find that the Area continues to attain both standards. Furthermore, under section 172(c)(3) of the CAA, EPA is proposing to approve the 2007 comprehensive emissions inventory for the Delaware portion of the Area as part of Delaware's SIP for the 2006 24-hour PM_{2.5} NAAQS. EPA's analysis of the proposed actions is provided in section V of today's proposed rulemaking action.

IV. Effects of Recent Court Decisions on Proposed Actions

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

Delaware has demonstrated that attainment of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS will be maintained with or without the implementation of CAIR or CSAPR. Delaware does not rely on either CAIR or CSAPR in its maintenance plans for either the 1997 or the 2006 PM_{2.5} NAAQS, and demonstrates that emission reductions from CAIR or CSAPR are not needed to maintain the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. In addition, modeling conducted by EPA during the CSAPR rulemaking process also demonstrates that the counties in the Philadelphia Area will have PM_{2.5} levels below the 1997 annual and 2006 24-hour PM_{2.5} NAAQS in both 2012 and 2014 without taking into account emissions reductions from CAIR or CSAPR. See "Air Quality Modeling Final Rule Technical Support Document," App. B, B-37, B-51, B-57, B-58, B-66, B-80, B-

86. This modeling is available in the docket for this proposed redesignation action.

Moreover, in its August 2012 decision, the Court also ordered EPA to continue implementing CAIR. See *EME Homer City Generation LP v. EPA*, 696 F.3d 7 (D.C. Cir. 2012). 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 Philadelphia Area.

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

1. Background

As discussed previously, on January 4, 2013, in *Natural Resources Defense Council (NRDC) v. EPA*, the D.C. Circuit remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" final rule (73 FR 28321, May 16, 2008) (collectively, "1997 PM_{2.5} Implementation Rule"). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 annual PM_{2.5} NAAQS pursuant to the general implementation provisions of subpart 1 of part D of Title I of the CAA (subpart 1), rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I (subpart 4). Although the Court did not directly address the 2006 24-hour PM_{2.5} standard, EPA is taking into account the Court's position on subpart 4 and the 1997 annual PM_{2.5} standard in evaluating redesignations for the 2006 24-hour PM_{2.5} standard.

2. Proposal on This Issue

EPA is proposing to determine that the Court's January 4, 2013 decision does not prevent EPA from redesignating the Delaware portion of the Philadelphia Area to attainment for either the 1997 annual or the 2006 24-hour PM_{2.5} NAAQS. Even in light of the Court's decision, redesignation for this Area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements

to the Delaware redesignation requests and disregards the provisions of its 1997 PM_{2.5} Implementation Rule recently remanded by the Court, the State's request for redesignation of the Area still qualifies for approval. EPA's discussion takes into account the effect of the Court's ruling on the Area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

a. Applicable Requirements for Purposes of Evaluating the Redesignation Requests

With respect to the 1997 PM_{2.5} Implementation Rule, the Court's January 4, 2013 ruling rejected EPA's reasons for implementing the PM_{2.5} NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 annual PM_{2.5} NAAQS under subpart 4, in addition to subpart 1. For the purposes of evaluating Delaware's redesignation request for the Delaware portion of the Area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not "applicable" for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the redesignation of the Delaware portion of the Philadelphia 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”).¹ In this case, at the time that Delaware submitted its redesignation requests for both standards, the requirements under subpart 4 were not due, and indeed, were not yet known to apply.

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

EPA’s interpretation derives from the provisions of section 107(d)(3). Section 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,

¹ Applicable requirements of the CAA that come due subsequent to the area’s submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If “applicable requirements” were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

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

In the context of this redesignation, the timing and nature of the Court’s January 4, 2013 decision in *NRDC v. EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. Delaware submitted its two redesignation requests for the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS on December 12, 2012, but the Court did not issue its decision remanding EPA’s 1997 PM_{2.5} Implementation Rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require Delaware’s fully-completed and pending redesignation requests for both the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS to comply now with requirements of subpart 4 that the Court announced only in its January 2013 decision on the 1997 PM_{2.5} Implementation Rule, would be to give retroactive effect to such requirements when the State had no notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002),² where it upheld the District Court’s ruling refusing to make retroactive EPA’s determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA’s nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it “would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.” *Id.* at 68. Similarly, it would be unreasonable to penalize the State of Delaware by rejecting its redesignation request for an area that is already attaining both the 1997 annual and 2006 24-hour PM_{2.5} standards and that met all applicable requirements known to be in effect at the time of the requests. For EPA now to reject the redesignation requests solely because the State did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club v. Whitman*.

b. Subpart 4 Requirements and Delaware Redesignation Requests

Even if EPA were to take the view that the Court’s January 4, 2013 decision requires that, in the context of pending redesignations for either the 1997 annual or 2006 24-hour PM_{2.5} standards, subpart 4 requirements were due and in effect at the time Delaware submitted its redesignation requests, EPA proposes to determine that the Delaware portion of the Philadelphia Area still qualifies for redesignation to attainment for both the 1997 annual and 2006 24-hour PM_{2.5}

² *Sierra Club v. Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass’n v. EPA*, 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

standards. As explained subsequently, EPA believes that the two redesignation requests for the Delaware portion of the Philadelphia Area, though not expressed in terms of subpart 4 requirements, substantively meet the requirements of that subpart for purposes of redesignating the Delaware portion of the Area to attainment for both standards.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Delaware portion of the Philadelphia Area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for coarse particulate matter (PM₁₀)³ nonattainment areas, and under the Court's January 4, 2013 decision in *NRDC v. EPA*, these same statutory requirements also apply for PM_{2.5} nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See*, the General Preamble. In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent "subsumed by, or integrally related to, the more specific PM₁₀ requirements" (57 FR 13538, April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of these redesignation requests, in order to identify any additional requirements which would apply under subpart 4, EPA is considering the Philadelphia Area to be a "moderate" PM_{2.5} nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as "moderate" nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a "serious" nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment

areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM₁₀, 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 1.⁴ In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,⁵ when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the PM_{2.5} standards is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that, "The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air

quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." *See* 57 FR 13564.

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

It is evident that even if we were to consider the Court's January 4, 2013 decision in *NRDC v. EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively⁶ and, thus, are now past due, those requirements do not apply to an area that is attaining the 1997 annual and/or the 2006 24-hour PM_{2.5} NAAQS, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret "applicable requirements" in the redesignation context. *See Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the 1997 annual and/or the 2006 24-hour PM_{2.5} standard. EPA's prior "Clean Data Policy" rulemakings for the PM₁₀ 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

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

⁵ I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

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

³ PM₁₀ refers to particulates nominally 10 micrometers in diameter or smaller.

27944, May 19, 2010). *See also* Coso Junction Proposed PM₁₀ 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 Philadelphia Area has attained both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. Under its longstanding interpretation, EPA is proposing to determine here that the Delaware portion of the Area meets the attainment-related plan requirements of subparts 1 and 4 for both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating these redesignation requests.

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

The D.C. Circuit in *NRDC v. EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the Court's opinion with respect to PM_{2.5} precursors. While past implementation of subpart 4 for PM₁₀ has allowed for control of PM₁₀ precursors such as NO_x from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that control requirements for major stationary sources of direct PM₁₀ shall also apply to PM₁₀ precursors from those sources, except where EPA determines that major stationary sources of such precursors "do not contribute significantly to PM₁₀ levels which exceed the standard in the area."

EPA's 1997 PM_{2.5} implementation rule, remanded by the D.C. Circuit, contained rebuttable presumptions concerning certain PM_{2.5} precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was "not required to address VOC

[and ammonia] as . . . PM_{2.5} attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures." EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing PM_{2.5} concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013 decision made reference to both section 189(e) and 40 CFR 51.1002, and stated that, "In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not PM_{2.5} precursors, as subpart 4 expressly governs precursor presumptions." *NRDC v. EPA*, at 27, n.10.

Elsewhere in the Court's opinion, however, the Court observed, "Ammonia is a precursor to fine particulate matter, making it a precursor to both PM_{2.5} and PM₁₀. For a PM₁₀ 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 Delaware portion of the Philadelphia Area is consistent with the Court's decision on this aspect of subpart 4. First, while the Court, citing section 189(e), stated that "for a PM₁₀ area governed by subpart 4, a precursor is 'presumptively regulated,'" the Court expressly declined to decide the specific challenge to EPA's 1997 PM_{2.5} implementation rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular PM_{2.5} nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as PM_{2.5} precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the

case of the Delaware portion of the Philadelphia Area, EPA believes that doing so is consistent with proposing redesignation of the area for the 1997 annual and 2006 24-hour PM_{2.5} standard. The Philadelphia Area has attained the standard without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM₁₀ precursors.⁷ Under subpart 1 and EPA's prior implementation rule, all major stationary sources of PM_{2.5} precursors were subject to regulation, with the exception of ammonia and VOC. Thus, EPA must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the area for the 1997 annual and 2006 24-hour PM_{2.5} standards. As explained further in this rulemaking action, 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 VOCs 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. In this proposed rulemaking action, EPA proposes to determine that the SIP has met the provisions of section 189(e) with respect to ammonia and VOCs as precursors. This proposed determination is based on EPA's findings that (1) the Delaware portion of the Philadelphia 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.⁸ In the alternative, EPA proposes to determine that, under the express exception provisions of section

⁷ 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.

⁸ The Philadelphia Area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology regulations and various on-road and non-road motor vehicle control programs.

189(e), and in the context of the redesignation of the area, which is attaining the 1997 annual and 2006 24-hour PM_{2.5} standards, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 annual and 2006 24-hour PM_{2.5} standards in the Philadelphia Area. See 57 FR 13539–42.

EPA notes that its 1997 annual PM_{2.5} implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of PM_{2.5} precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 PM_{2.5} NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013 decision as calling for "presumptive regulation" of ammonia and VOC for PM_{2.5} under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring Delaware to address precursors differently than they have 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 PM₁₀ 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.⁹ Courts have upheld this approach to the requirements of subpart 4 for PM₁₀.¹⁰ EPA believes that application of this approach to PM_{2.5} precursors under subpart 4 is reasonable. Because the Philadelphia Area has already attained the 1997 annual and 2006 24-hour PM_{2.5} NAAQS with its current approach to regulation of PM_{2.5} precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control

strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Delaware's request for redesignation of the Delaware portion of the Philadelphia Area. In the context of a redesignation, the Area has shown that it has attained the standard. Moreover, the State has shown and EPA has proposed to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013 decision of the Court as precluding redesignation of the Delaware portion of the Philadelphia Area to attainment for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS at this time.

In sum, even if Delaware were required to address precursors for the Delaware portion of the Philadelphia Area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded PM_{2.5} implementation rule, EPA would still conclude that the area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) and (v).

V. EPA's Analysis of Delaware's Submittals

EPA is proposing several rulemaking actions for the Area: (1) To redesignate the Delaware portion of the Area to attainment for both the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS; and (2) to approve into the Delaware SIP the associated maintenance plans for both the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS. EPA is also proposing in this rulemaking action to approve the 2007 comprehensive emissions inventory to satisfy section 172(c)(3) requirement for the 2006 24-hour PM_{2.5} NAAQS, which is one of the criteria for redesignation. EPA's proposed approvals of the redesignation requests and maintenance plans for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS are based upon EPA's determination that the Area continues to attain both standards, which EPA is proposing in this rulemaking action, and that all other redesignation criteria have been met for the Delaware portion of the Area. The following is a description of

(approving a PM₁₀ attainment plan that impose controls on direct PM₁₀ and NO_x emissions and did not impose controls on SO₂, VOC, or ammonia emissions).

how the Delaware's December 12, 2012 submittals satisfy the requirements of section 107(d)(3)(E) of the CAA for the 1997 annual and 2006 24-hour PM_{2.5} standards.

A. Redesignation Requests

1. Attainment

On January 23, 2012, EPA published a direct final rulemaking (77 FR 3147) and companion notice of proposed rulemaking (NPR) (77 FR 3223), proposing to determine that the Philadelphia Area attained the 1997 PM_{2.5} NAAQS by its attainment date and that the Philadelphia Area continued to attain the 1997 annual PM_{2.5} standard. Because EPA received adverse comments, EPA withdrew the direct final rule on March 13, 2012 (77 FR 14697), and the direct final rule was converted to a proposed rule. In a final rulemaking action dated May 16, 2012 (77 FR 28782), EPA determined that the entire Philadelphia Area attained the 1997 annual PM_{2.5} NAAQS by its applicable attainment date, based upon quality-assured and certified ambient air quality monitoring data for the period of 2007–2009, and continued to attain that standard based upon quality-assured and certified ambient air quality monitoring data for the period of 2008–2010. In a separate rulemaking action dated January 7, 2013 (78 FR 882), EPA also determined that the Philadelphia Area has attained the 2006 24-hour PM_{2.5} standard, based on quality-assured and certified ambient air quality monitoring data for 2008–2010 and 2009–2011. The basis and effect of these determinations of attainment for both the 1997 and 2006 PM_{2.5} NAAQS were discussed in the notices of the proposed (77 FR 3147 and 77 FR 60089, respectively) and final (77 FR 28782 and 78 FR 882, respectively) rulemakings.

EPA has reviewed the ambient air quality PM_{2.5} monitoring data in the Philadelphia Area, consistent with the requirements contained at 40 CFR part 50, and recorded in EPA's Air Quality System (AQS), including quality-assured, quality-controlled, and state-certified data for the monitoring periods 2009–2011 and 2010–2012 and preliminary data for 2011–2013. The air quality data show that the Philadelphia Area continues to attain both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. The Area's annual and 24-hour PM_{2.5} design values¹¹ are provided in Tables 1 and 2, respectively.

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

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

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

TABLE 1—PHILADELPHIA AREA'S ANNUAL DESIGN VALUES FOR THE 2006 24-HOUR PM_{2.5} STANDARD FOR THE 2010–2012 AND 2011–2013 MONITORING PERIODS, IN µg/m³

State	County	Annual design values		
		2009–2011	2010–2012	Preliminary 2011–2013
Delaware	New Castle	10.7	10.4	9.9
New Jersey	Camden	9.7	9.7	9.9
	Burlington	No monitor.		
Pennsylvania	Gloucester	9.7	9.5	9.3
	Bucks	10.9	10.9	10.8
	Chester	13.7	12.3	11.1
	Delaware	12.7	13.1	12.3
	Montgomery	10.1	9.8	9.7
	Philadelphia	11.4	11.0	10.9
Area's Annual Design Value		13.7	13.1	12.3

Source: EPA AQS.

TABLE 2—PHILADELPHIA AREA'S 24-HOUR DESIGN VALUES FOR THE 2006 24-HOUR PM_{2.5} STANDARD FOR THE 2010–2012 AND 2011–2013 MONITORING PERIODS, IN µg/m³

State	County	24-Hour design values		
		2009–2011	2010–2012	Preliminary 2011–2013
Delaware	New Castle	27	26	24
New Jersey	Camden	24	23	25
	Burlington	No monitor.		
Pennsylvania	Gloucester	22	22	23
	Bucks	28	29	29
	Chester	33	31	28
	Delaware	30	31	29
	Montgomery	27	25	24
	Philadelphia	29	28	29
Area's Annual Design Value		33	31	29

Source: EPA AQS.

EPA's review of the monitoring data for 2009–2011, 2010–2012 supports EPA's previous determinations that the Area has attained the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, and that the Area continues to attain both standards. Preliminary 2013 data is consistent with attainment. Please note that preliminary 2013 data is uncertified. States are required to certify 2013 data by May 1, 2014. In addition, as discussed subsequently, with respect to the maintenance plan, Delaware has committed to continue monitoring ambient PM_{2.5} concentrations in accordance with 40 CFR part 58. Thus, EPA is proposing to determine that the Philadelphia Area continues to attain the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.

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

In accordance with section 107(d)(3)(E)(v), the SIP revisions for the 1997 annual and 2006 24-hour PM_{2.5} standards for the Delaware portion of the Philadelphia Area must be fully approved under section 110(k) and all the requirements applicable to the Area under section 110 of the CAA (general SIP requirements) and part D of Title I of the CAA (SIP requirements for nonattainment areas) must be met.

a. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and

operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to the following:

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

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

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

Cincinnati, Ohio redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh-Beaver Valley, Pennsylvania redesignation (66 FR at 53099, October 19, 2001).

EPA has reviewed the Delaware 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 Delaware's SIP addressing section 110(a)(2) requirements, including provisions addressing PM_{2.5}. See (76 FR 47068, August 4, 2011 and 76 FR 53638, August 29, 2011). These requirements are, however, statewide requirements that are not linked to the PM_{2.5} nonattainment status of the Philadelphia Area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the State's PM_{2.5} redesignation requests.

b. Subpart 4 Requirements

Subpart 1 sets forth the basic nonattainment plan requirements applicable to PM_{2.5} nonattainment areas. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and must meet a variety of other requirements.

The General Preamble for Implementation of Title I discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining the standard. See 57 FR 13498, April 16, 1992.

As mentioned previously, on May 16, 2012 (77 FR 28782), EPA made a determination that the Philadelphia Area had attained the 1997 annual PM_{2.5} NAAQS. This determination of attainment was based upon quality-assured and certified ambient air quality monitoring data for the period of 2007–2009 showing that the entire Area had attained the standard by its applicable attainment date, and 2008–2010 data showing that the Area continued to attain the standard. In a separate rulemaking action, dated January 7, 2013 (78 FR 882), EPA made a determination of attainment for the Philadelphia Area for the 2006 24-hour PM_{2.5} NAAQS, based on quality-assured and certified ambient air quality monitoring data for the 2008–2010 and 2009–2011 monitoring periods.

Pursuant to 40 CFR 51.2004(c), upon these determinations by EPA that the Area has attained the 1997 annual and

2006 24-hour PM_{2.5} NAAQS, the requirement for Delaware to submit for the Philadelphia Area an attainment demonstration and associated RACM, a RFP plan, contingency measures, and other planning SIPs related to the attainment of the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS were suspended until the Area is redesignated to attainment for each standard or EPA determines that the Area has again violated any of the standards, at which time such plans are required to be submitted. Thus, because attainment has been reached for the Area for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS and the Area continues to attain both standards, no additional measures are needed to provide for attainment. Therefore, the requirements of section 172(c)(1), 172(c)(2), 172(c)(6), and 172(c)(9) are no longer considered to be applicable for purposes of redesignation of the Area for both standards.

However, determinations of attainment do not preclude states from submitting and EPA from approving planning SIP revisions for the 1997 or 2006 PM_{2.5} NAAQS. On April 3, 2008, DNREC submitted an attainment plan for the Delaware portion of the Philadelphia Area for the 1997 annual PM_{2.5} NAAQS, which included a 2002 comprehensive emissions inventory. On April 25, 2012, DNREC submitted a SIP revision to replace the MVEBs in the April 3, 2008 submittal with a budget that is based on the Motor Vehicle Emissions Simulator (MOVES) model. On December 17, 2013 (78 FR 76209), EPA approved Delaware's attainment plan for the 1997 PM_{2.5} NAAQS for the Delaware portion of the Philadelphia Area and MVEBs for transportation conformity purposes for New Castle County, Delaware submitted on April 3, 2008 and April 25, 2012.

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and

Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Nevertheless, Delaware currently has an approved NSR program, including an approved PSD program, codified in the State's regulation at 7 DE Admin. Code 1125, "Requirements for Preconstruction Review." See (77 FR 60053, October 2, 2012) and (78 FR 13496, February 28, 2013). The State's PSD program for PM_{2.5} will become effective in the Philadelphia Area upon redesignation to attainment.

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

As a result of EPA's determinations of attainment of the Area for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, respectively, the only remaining requirement under section 172 to be considered for each of the PM_{2.5} standards is the comprehensive emissions inventory required under section 172(c)(3). Section 172(c)(3) of the CAA requires submission of a comprehensive, accurate, and current inventory of actual emissions. For purposes of the PM_{2.5} NAAQS, this emissions inventory should address not only direct emissions of PM_{2.5}, but also emissions of all precursors with the potential to participate in PM_{2.5} formation, i.e., sulfur dioxide (SO₂), NO_x, volatile organic compounds (VOC) and ammonia.

DNREC's April 3, 2008 attainment plan submittal for the 1997 annual PM_{2.5} standard is relevant to this proposed rulemaking action to redesignate the Delaware portion of the Area only with

respect to the comprehensive emissions inventory requirement of section 172(c)(3) for the 1997 annual PM_{2.5} standard. On March 4, 2013 (78 FR 14020), EPA approved the 2002 comprehensive emissions inventory included in the attainment plan for the 1997 annual PM_{2.5} NAAQS, to meet the requirement of section 172(c)(3) for this standard. The 2002 comprehensive emissions inventory for the 1997 annual PM_{2.5} standard includes emissions estimates that cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. The pollutants that comprise the 2002 emissions inventory are PM_{2.5}, NO_x, SO₂, VOC, and ammonia. An evaluation of Delaware's 2002 comprehensive emissions inventory for the Philadelphia portion of the Area is provided in the Technical Support Document (TSD) prepared by EPA for the rulemaking action. See Docket ID No. EPA-R03-OAR-2010-0141.

To satisfy the 172(c)(3) requirement for the 2006 24-hour PM_{2.5} standard, Delaware's December 12, 2012 redesignation request and maintenance plan for the 2006 24-hour PM_{2.5} standard contains a 2007 comprehensive emissions inventories. DNREC had previously prepared the 2007 inventory for the Delaware portion of the Philadelphia Area for modeling and SIP purposes. DNREC is using that 2007 inventory as the base year inventory for the 2006 24-hour PM_{2.5} standard, because 2007 is one of the three years used to designate the Philadelphia nonattainment area for the 2006 24-hour PM_{2.5} standard. DNREC has submitted that 2007 emissions inventory to fulfill its obligation to submit a comprehensive inventory under Clean Air Act section 172(c)(3),

because that inventory has gone through extensive quality assurance. The 2007 emissions inventory is the most current accurate and comprehensive emissions inventory of direct PM_{2.5}, NO_x, SO₂, VOC, and ammonia for the Area. Thus, as part of this rulemaking action, EPA is proposing to approve Delaware's 2007 comprehensive emissions inventory for the 2006 24-hour PM_{2.5} NAAQS as satisfying the requirement of section 172(c)(3) of the CAA for this standard. Final approval of the 2007 base year emissions inventory will satisfy the emissions inventory requirement under section 172(c)(3) of the CAA for the 2006 24-hour PM_{2.5} NAAQS.

The 2007 comprehensive emissions inventory addresses the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. A summary of the 2007 comprehensive emissions inventory is provided in Table 3. EPA has reviewed the documentation provided by DNREC and found the 2007 emissions inventory to be approvable. For more information on EPA's analysis of the 2007 emissions inventory, see the TSDs prepared by the EPA Region III Office of Air Monitoring and Analysis and both dated January 28, 2014, "Technical Support Document (TSD) for the Redesignation Request and Maintenance Plan for the New Castle County Portion of the Philadelphia-Wilmington, PA-NJ-DE 1997 PM_{2.5} Nonattainment Area" and "Technical Support Document (TSD) for the Redesignation Request and Maintenance Plan for the New Castle County Portion of the Philadelphia-Wilmington, PA-NJ-DE 2006 PM_{2.5} Nonattainment Area" ("Inventory TSDs"), available in the docket for this rulemaking action at www.regulations.gov. See Docket ID No. EPA-R03-OAR-2014-0022.

TABLE 3—SUMMARY OF 2007 COMPREHENSIVE INVENTORY FOR NEW CASTLE COUNTY, IN TONS PER YEAR (TPY)

Sector	Direct PM _{2.5}	NO _x	SO ₂	VOC	Ammonia
Point	1,335	6,635	13,380	1,727	64
Non-point	1,207	1,293	630	4,795	653
On-road	324	10,577	100	4,298	243
Non-road	327	4,580	1,118	2,490	2
Total	3,193	23,084	15,228	13,310	962

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area "for at least 10 years after the redesignation." In conjunction with its request to redesignate the Delaware portion of the Area to attainment status,

Delaware submitted SIP revisions to provide for maintenance of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS in the Delaware portion of the Area for at least 10 years after redesignation, throughout 2025. Delaware is requesting that EPA approve this SIP revision as meeting the requirement of CAA section

175A. Once approved, the maintenance plans for the Delaware portion of the Area will ensure that the SIP for Delaware meets the requirements of the CAA regarding maintenance of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS for the Delaware portion of the Area. EPA's analysis of the maintenance plans

is provided in section V.B. of this rulemaking action.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability which EPA promulgated pursuant to its authority under the CAA. EPA interprets the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under CAA section 107(d) because state conformity rules are still required after redesignation, and Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F. 3d 426 (6th Cir. 2001) (upholding this interpretation) and (60 FR 62748, December 7, 1995) (discussing Tampa, Florida).

Thus, for purposes of redesignating to attainment the Delaware portion of the Philadelphia Area for the 1997 annual

PM_{2.5} NAAQS, EPA determines that Delaware has met all the applicable SIP requirements under part D of Title I of the CAA. EPA also determines that upon final approval of the 2007 comprehensive emissions inventory as proposed in this rulemaking action, Delaware will also meet all the applicable SIP requirements under part D of Title I of the CAA for purposes of redesignating the Area to attainment for the 2006 24-hour PM_{2.5} NAAQS.

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

For purposes of redesignation to attainment for the 1997 annual PM_{2.5} NAAQS, EPA has fully approved all applicable requirements of Delaware's SIP for the Area in accordance with section 110(k) of the CAA. Upon final approval of the 2007 comprehensive emissions inventory as proposed in this rulemaking action, EPA will have fully approved all applicable requirements of Delaware's SIP for the Area for purposes of redesignation to attainment for the 2006 24-hour PM_{2.5} NAAQS in accordance with section 110(k) of the CAA.

3. Permanent and Enforceable Reductions in Emissions

For redesignating a nonattainment area to attainment, section 107(d)(3)(E)(iii) 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. Delaware has calculated the change in emissions between 2002, a year showing nonattainment for the 1997 annual PM_{2.5} standard in the Delaware portion of the Philadelphia Area, and 2007, one of the years for which the Philadelphia Area monitored attainment for the 1997 annual PM_{2.5} standard. Delaware did the same analysis for the 2006 24-hour PM_{2.5} standard, using 2007 as a year showing nonattainment for the 2006 24-hour PM_{2.5} standard in the Delaware portion of the Philadelphia Area, and 2008, one of the years for which the Philadelphia Area monitored attainment for the 2006 24-hour PM_{2.5} standard.

A summary of the emissions reductions of direct PM_{2.5}, NO_x, and SO₂ from 2002 to 2007 in the Delaware portion of the Philadelphia Area, submitted by DNREC, is provided in Table 4a. A summary of the emissions reductions of direct PM_{2.5}, NO_x, and SO₂ from 2007 to 2008, submitted by DNREC, is provided in Table 4b. For more information on EPA's analysis of the 2007 and 2008 emissions inventories, see EPA's Inventory TSDs, dated January 28, 2014, available in the docket for this rulemaking action at www.regulations.gov.

TABLE 4a—EMISSION REDUCTIONS FROM 2002 TO 2007 IN THE DELAWARE PORTION OF THE PHILADELPHIA AREA [tpy]

	Sector	2002	2007	Net reduction 2002–2007	Percent reduction 2002–2007
Direct PM _{2.5}	Point	1,733	1,335	398	23
	Non-point	1,073	1,207	– 134	– 12
	On-road	209	324	– 115	– 55
	Non-road	415	327	88	21
	Total	3,430	3,193	237	7
NO _x	Point	9,157	6,635	2,522	28
	Non-point	1,513	1,293	220	15
	On-road	11,799	10,577	1,222	10
	Non-road	8,279	4,580	3,699	45
	Total	30,748	23,084	7,664	25
SO ₂	Point	47,070	13,380	33,690	72
	Non-point	780	630	150	19
	On-road	326	100	226	69
	Non-road	2,061	1,118	943	46
	Total	50,237	15,228	35,009	70

TABLE 4b—EMISSION REDUCTIONS FROM 2007 TO 2008 IN THE DELAWARE PORTION OF THE PHILADELPHIA AREA [tpy]

	Sector	2007	2008	Net reduction 2007–2008	Percent reduction 2007–2008
Direct PM _{2.5}	Point	1,335	1,109	226	17

TABLE 4b—EMISSION REDUCTIONS FROM 2007 TO 2008 IN THE DELAWARE PORTION OF THE PHILADELPHIA AREA—
Continued
[tpy]

	Sector	2007	2008	Net reduction 2007–2008	Percent reduction 2007–2008
NO _x	Non-point	1,207	1,191	16	1
	On-road	324	283	42	13
	Non-road	327	312	15	5
	Total	3,193	2,894	300	9
	Point	6,635	5,589	1,046	16
SO ₂	Non-point	1,293	1,287	6	0
	On-road	10,577	9,311	1,266	12
	Non-road	4,580	4,317	263	6
	Total	23,084	20,504	2,580	11
	Point	13,380	10,576	2,805	21
	Non-point	630	402	228	36
	On-road	100	94	6	6
	Non-road	1,118	1,067	51	5
	Total	15,228	12,139	3,089	20

The reduction in emissions and the corresponding improvement in air quality from 2002 to 2007 and from 2007 to 2008, for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, respectively, in the Philadelphia Area can be attributed to a number of regulatory control measures that have been implemented in the Area and contributing areas in recent years.

In Sections 4.3, Enforceable and Permanent PM_{2.5}, NO_x, and SO₂ Measures that Contributed to Improved Air Quality, of Delaware's redesignation requests and maintenance plans for both the 1997 annual and 2006 24-hour PM_{2.5}, DNREC makes demonstrations that numerous permanent and enforceable state and federal control measures achieved emission reductions that resulted in improved air quality in the Philadelphia Area. The following is a list of the permanent and enforceable control measures.

a. Delaware-Specific Control Measures

- 7 DE Admin. Code 1144, *Control of Stationary Generator Emissions*. This statewide regulation controls SO₂, PM, VOC, and NO_x emissions. The regulation was effective in January 2006, and was approved into Delaware's SIP on August 11, 2010 (75 FR 48566).

- 7 DE Admin. Code 1148, *Control of Stationary Combustion Turbine Electric Generating Unit Emissions*. This statewide regulation controls NO_x emissions, and was effective in July 2007. EPA approved this regulation into the Delaware SIP on August 11, 2010 (75 FR 48566).

- 7 DE Admin. Code 1142. EPA approved this rule, which controls NO_x emissions, into the Delaware SIP on November 22, 2002 (67 FR 70315). Section 1 of this rule, Control of NO_x

Emissions from Industrial Boilers, is applicable state-wide, and was effective in December 2001. Section 2, Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, is applicable in New Castle County. DNREC revised Section 2, effective July 2007. EPA approved the revisions to Section 2 into the Delaware SIP on May 15, 2012 (77 FR 28489).

- 7 DE Admin. Code 1131, *Low Enhanced Inspection and Maintenance (I/M)*. Delaware's enhanced I/M program is applicable in New Castle and Kent Counties, and was approved into the Delaware SIP by EPA on September 30, 1999 (64 FR 52657). Revisions to the enhanced I/M program were approved by EPA on November 26, 2003 (68 FR 228).

Please note that for Delaware's redesignation request for the 1997 annual PM_{2.5} NAAQS, the following additional control measure was also included.

Delaware-Specific Control Measures

- *Consent Decree with Premcor Refinery at Delaware City (formerly Motiva Enterprises), New Castle County, Control of SO₂, and NO_x Emissions from Boilers and Heaters, Effective 2006*, Civil Action No. H-01-0978. This federal consent decree was lodged in the United States Court for the Southern District of Texas on March 21, 2001.

b. Federal Measures Implemented

- EPA's New Source Performance Standards for Woodstoves (NSPS), 40 CFR part 60, subpart AAA.
- Control of Emissions from New and In-Use non-road Compression Engines, 40 CFR part 89.
- Control of Air Pollution; Determination of Significance for Non-

road Sources and Emission Standards for New Non-road Compression Ignition Engines at or Above 37 Kilowatts (59 FR 31036, June 17, 1994).

- Emissions from New Non-road Spark-Ignition Engines At or Below 19 Kilowatts (60 FR 34581, July 3, 1995).

- Final Rule for New Gasoline Spark-Ignition Marine Engines; Exemptions for New Non-road Compression-Ignition Engines at or Above 37 Kilowatts and New Non-road Spark-Ignition Engines at or Below 19 Kilowatts (61 FR 52088, October 4, 1996).

- Control of Emissions of Air Pollution from Non-road Diesel Engines (63 FR 56967, October 23, 1998).

- Phase 2 Emission Standards for New Non-road Non-handheld Spark Ignition Engines At or Below 19 Kilowatts (64 FR 15207, March 30, 1999).

- Phase 2 Emission Standards for New Non-road Spark-Ignition Handheld Engines At or Below 19 Kilowatts and Minor Amendments to Emission Requirements Applicable to Small Spark-Ignition Engines and Marine Spark-Ignition Engines (65 FR 24268, April 25, 2000).

- Control of Emissions from Non-road Large Spark-Ignition Engines and Recreational Engines (Marine and Land-Based), (67 FR 68241, November 8, 2002).

- Control of Emissions of Air Pollution from Non-road Diesel Engines and Fuel (Clean Air Non-road Diesel Rule—Tier 4), (69 FR 38958, June 29, 2004).

- Control of Emissions from Non-road Spark-Ignition Engines and Equipment (Bond Rule), (73 FR 59034, October 8, 2008).

- Heavy-Duty Highway Rule, 40 CFR part 86, Subpart P.

- Federal Tier 1 New Vehicle Emission and New Federal Evaporative Emission Standards.
- The Tier 2 vehicle and gasoline sulfur program, Subpart H of 40 CFR part 80, 40 CFR part 85, and 40 CFR part 86.
- Ozone Transport Commission (OTC) National Low Emission Vehicle Program (NLEV).

EPA has reviewed both redesignation requests and maintenance plans for the 1997 annual and 2006 24-hour PM_{2.5} standards and found that DNREC has demonstrated that it has controlled emissions of PM_{2.5} and its precursors through numerous permanent and enforceable emission control measures, resulting in permanent and enforceable emission reductions adequate to attain both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. Therefore, DNREC has met this criterion for redesignation. However, in a separate rulemaking action, published on February 22, 2013, EPA identified deficiencies associated with several regulations within the approved Delaware SIP including a specific provision within 7–1100–1142 Del. Code Regs § 2 (Regulation 1142, Section 2.0, Control of Nitrogen Oxide (NO_x) Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries). See 78 FR 12460. In that proposed rulemaking action, EPA identified specific Delaware regulations in which state officials are provided unbounded discretion to set alternative emission limits during periods of start-up and shutdown of equipment through a permitting process that does not entail subsequent approval of the alternative emission limits through a SIP submission. EPA has proposed to find that this process constitutes an impermissible director's discretion provision with the potential to allow impermissible discretionary exemptions from SIP emission limits. See 78 FR 12495–12496. EPA will be taking a separate final action on the February 22, 2013 proposed rulemaking action.

EPA's analysis indicates that Regulation 1142, Section 2.0 is not necessary for attainment of the Philadelphia Area. The Philadelphia Area is attaining the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. The Philadelphia Area came into attainment of the 1997 annual NAAQS in 2009, considering 2007–2009 ambient air quality monitoring data (77 FR 28782), and continues to meet that standard. The Philadelphia Area came into attainment for the 2006 24-hour standard in 2010, considering 2008–2010 data (78 FR 882), and continues to meet that standard. Furthermore, actual emission reductions of PM_{2.5} and its

precursors have been achieved between the base years and the attainment years for both standards. For the 1997 NAAQS, NO_x has decreased in the Delaware portion of the Philadelphia Area from 30,748 tpy in 2002 to 23,084 tpy in 2007. For the 2006 NAAQS, NO_x has decreased in the Delaware portion of the Philadelphia Area from 23,084 tpy in 2007 to 20,504 tpy in 2008.

Regulation 1142 Section 2.0 applies to NO_x emissions at petroleum refineries. There is only one such petroleum refinery in Delaware, and it is subject to a federally-enforceable consent decree and several consent decree addendums between the source and EPA which limit NO_x emissions and require NO_x control measures at several units at the refinery. Therefore, EPA is not relying upon Regulation 1142 Section 2.0 in its evaluation of the permanent and enforceable attainment measures. Through numerous permanent and enforceable regulations, which are incorporated into Delaware's SIP, Delaware has regulated and is continuing to regulate sources of PM_{2.5} and its precursors in the Philadelphia Area. Taking into consideration existing regulations, including those listed earlier in this rulemaking action, which Delaware included in Sections 4.3 of its redesignation requests and maintenance plans, (with the exception of Regulation 1142 Section 2.0), EPA has concluded that the Philadelphia Area has attained the 1997 and 2006 PM_{2.5} NAAQS and that Delaware has shown that attainment of these standards is due to permanent and enforceable emission reductions.

For more information on EPA's analysis, please refer to EPA's TSD, available in the docket for this rulemaking action at www.regulations.gov. See Docket ID No. EPA–R03–OAR–2014–0022.

B. Maintenance Plans

On December 12, 2012, DNREC submitted maintenance plans for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, as required by section 175A of the CAA. EPA's analysis for proposing approval of the maintenance plans is provided in this section.

1. Attainment Emissions Inventories

An attainment inventory is comprised of the emissions during the time period associated with the monitoring data showing attainment. DNREC determined that the appropriate attainment inventory year for the maintenance plan for the 1997 annual PM_{2.5} NAAQS is 2007, one of the years in the periods during which the Philadelphia Area monitored attainment of the 1997

annual PM_{2.5} NAAQS. DNREC determined that the appropriate attainment inventory year for the maintenance plan for the 2006 24-hour PM_{2.5} NAAQS is 2008, one of the years in the periods during which the Philadelphia Area monitored attainment of the 24-hour PM_{2.5} NAAQS. The 2007 and 2008 inventory included in the maintenance plans contains primary PM_{2.5} emissions (including condensables), SO₂, and NO_x. The underlying emissions data DNREC submitted to support the 2007 and 2008 inventories contains the additional PM_{2.5} precursors, ammonia and VOCs.

In its redesignation requests and maintenance plans for the 1997 annual and 2006 24-hour PM_{2.5} standards, DNREC described the methods used for developing its 2007 and 2008 inventories. EPA reviewed the procedures used to develop the projected inventories and found them to be reasonable. EPA has reviewed the documentation provided by DNREC and found the 2007 and 2008 emissions inventories submitted with the maintenance plans to be approvable. For more information on EPA's analysis of the 2007 and 2008 emissions inventories, see EPA's Inventory TSDs, dated January 28, 2014, available in the docket for this rulemaking action at www.regulations.gov.

2. Maintenance Demonstration

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

For a demonstration of maintenance, emissions inventories are required to be projected to future dates to assess the influence of future growth and controls; however, the demonstration need not be based on modeling. See *Wall v. EPA*, *supra*; *Sierra Club v. EPA*, *supra*. See also 66 FR 53099–53100 and 68 FR 25430–32. DNREC uses projection inventories to show that the Delaware portion of the Area will remain in attainment and developed projection inventories for an interim year of 2017 and a maintenance plan end year of 2025 to show that future emissions of NO_x, SO₂, and direct PM_{2.5} will remain

at or below the attainment year 2007 and 2008 attainment-level emissions levels, for the 1997 annual and 2006 24-hour PM_{2.5}, respectively, throughout the Delaware portion of the Area through the year 2025.

EPA has reviewed the documentation provided by DNREC for developing annual 2017 and 2025 emissions inventories for the Delaware portion of the Area. EPA has determined that the 2017 and 2025 projected emissions inventories provided by DNREC are approvable. For more information on EPA's analysis of the emissions inventories, see EPA's Inventory TSDs, dated January 28, 2014, available in the docket for this rulemaking action at www.regulations.gov.

Tables 5a, 6a, and 7a provide a summary of the direct PM_{2.5}, NO_x, and SO₂, respectively, emissions inventories for the Delaware portion of the Philadelphia Area for the 2007 attainment year, the 2017 interim year, and the 2025 maintenance plan end year for the 1997 annual PM_{2.5} NAAQS.

Tables 5b, 6b, and 7b provide a summary of the direct PM_{2.5}, NO_x, and SO₂, respectively, emissions inventories for the entire Philadelphia Area for the 2007 attainment year, the 2017 interim year, and the 2025 maintenance plan end year for the 1997 annual PM_{2.5} NAAQS. The inventories show that, between 2007 and 2025, the Area is projected to reduce direct PM_{2.5} emissions by 9,055 tpy, NO_x emissions

by 106,099 tpy, and SO₂ emissions by 34,265 tpy. Thus, the projected emissions inventories show that the Delaware portion of the Philadelphia Area will continue to maintain the 1997 annual PM_{2.5} standards during the maintenance period. Note that the emission projections for the Delaware portion of the Area contain subcategories for point source and non-road emissions sources. "Non-road, MAR" refers to Marine Vessels, Aircraft and Locomotives (MAR). "Non-road, NMIM" refers to emissions sources covered by the National Mobile Inventory Model (NMIM). Point source emissions are reported as either from electric generating units (EGUs) or from non-EGU point sources.

TABLE 5a—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF DIRECT PM_{2.5} FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA

[tpy]

Sector	Direct PM _{2.5}						
	2007	2017	2025	2007–2017		2007–2025	
				Reduction	Percent reduction	Reduction	Percent reduction
Non-point	1,207	1,235	1,310	–28	–2.3	–103	–8.5
Non-road, MAR	171	61	44	110	64.2	126	74.0
Non-road, NMIM	156	106	103	51	32.5	53	34.0
On-road	324	199	199	125	38.6	125	38.6
Point, EGU	519	502	520	17	3.2	–1	–0.2
Point, non-EGU	816	742	716	75	9.1	100	12.2
Total	3,193	2,844	2,893	349	11	301	9

TABLE 5b—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF DIRECT PM_{2.5} FOR THE ENTIRE PHILADELPHIA AREA

[tpy]

Sector	Direct PM _{2.5}				
	2007	2017	2025	2007–2025	
				Reduction	Percent reduction
Point	4,573	3,825	3,875	698	15.3
Non-point	17,879	13,358	12,983	4,897	27.4
On-road	3,795	2,488	1,443	2,352	62.0
Non-road	2,466	1,606	1,357	1,109	45.0
Total	28,713	21,277	19,657	9,055	31.5

TABLE 6a—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF NO_x FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA

[tpy]

Sector	NO _x						
	2007	2017	2025	2007–2017		2007–2025	
				Reduction	Percent reduction	Reduction	Percent reduction
Non-point	1,293	1,295	1,296	–3	–0.2	–3	–0.2
Non-road, MAR	2,825	1,810	1,279	1,015	35.9	1,546	54.7
Non-road, NMIM	1,755	997	837	758	43.2	918	52.3
On-road	10,577	6,273	6,273	4,304	40.7	4,304	40.7

TABLE 6a—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF NO_x FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA—Continued
[tpy]

Sector	NO _x						
	2007	2017	2025	2007–2017		2007–2025	
				Reduction	Percent reduction	Reduction	Percent reduction
Point, EGU	2,865	1,698	1,758	1,167	40.7	1,107	38.7
Point, non-EGU	3,770	2,402	2,355	1,368	36.3	1,415	37.5
Total	23,084	14,475	13,797	8,609	37	9,287	40

TABLE 6b—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF NO_x FOR THE ENTIRE PHILADELPHIA AREA
[tpy]

Sector	NO _x				
	2007	2017	2025	2007–2025	
				Reduction	Percent reduction
Point	31,759	13,049	19,817	11,942	37.6
Non-point	18,043	17,528	17,741	302	1.7
On-road	106,315	62,056	26,648	79,668	74.9
Non-road	31,850	20,935	17,662	14,188	44.5
Total	187,967	113,568	81,868	106,099	56.4

TABLE 7a—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF SO₂ FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA
[tpy]

Sector	SO ₂						
	2007	2017	2025	2007–2017		2007–2025	
				Reduction	Percent reduction	Reduction	Percent reduction
Non-point	630	521	469	109	17.4	161	25.6
Non-road, MAR	1,027	112	37	915	89.1	990	96.4
Non-road, NMIM	91	2	3	89	97.3	88	96.5
On-road	100	98	98	2	2.4	2	2.4
Point, EGU	9,119	2,419	2,572	6,700	73.5	6,547	71.8
Point, non-EGU	4,261	3,843	3,780	418	9.8	482	11.3
Total	15,228	6,995	6,958	8,234	54	8,271	54

TABLE 7b—COMPARISON OF 2007, 2017, AND 2025 EMISSIONS OF SO₂ FOR THE ENTIRE PHILADELPHIA AREA
[tpy]

Sector	SO ₂				
	2007	2017	2025	2007–2025	
				Reduction	Percent reduction
Point	35035	13375	13553	21482	61.3
Non-point	16763	13466	9756	7007	41.8
On-road	773	578	422	351	45.4
Non-road	6134	851	709	5425	88.4
Total	58705	28270	24440	34265	58.4

Tables 8a, 9a, and 10a provide a summary of the direct PM_{2.5}, NO_x, and

SO₂, respectively, emissions inventories for the Delaware portion of the

Philadelphia Area for the 2008 attainment year, the 2017 interim year,

and the 2025 maintenance plan end year for the 2006 24-hour PM_{2.5} NAAQS. Tables 8b, 9b, and 10b provide a summary of the direct PM_{2.5}, NO_x, and SO₂, respectively, emissions inventories for the entire Philadelphia Area for the 2007 attainment year, the 2017 interim

year, and the 2025 maintenance plan end year for the 2006 24-hour PM_{2.5} NAAQS. The inventories show that, between 2008 and 2025, the Area is projected to reduce direct PM_{2.5} emissions by 6,287 tpy, NO_x emissions by 73,606 tpy, and SO₂ emissions by

29,990 tpy. Thus, the projected emissions inventories show that the Delaware portion of the Philadelphia Area will continue to maintain the 2006 24-hour PM_{2.5} standards during the maintenance period.

TABLE 8a—COMPARISON OF 2008, 2017, AND 2025 EMISSIONS OF DIRECT PM_{2.5} FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA [tpy]

Sector	Direct PM _{2.5}						
	2008	2017	2025	2008–2017		2008–2025	
				Reduction	Percent reduction	Reduction	Percent reduction
Non-point	1,191	1,247	1,327	– 56	–4.7	– 136	– 11.4
Non-road, MAR	164	59	42	106	64.3	122	74.3
Non-road, NMIM	148	106	103	42	28.6	45	30.2
On-road	282	199	199	83	29.4	83	29.4
Point, EGU	396	410	427	– 14	–3.5	–32	–8.0
Point, non-EGU	713	504	398	209	29.3	315	44.1
Total	2,894	2,524	2,497	370	13	396	14

TABLE 8b—COMPARISON OF 2008, 2017, AND 2025 EMISSIONS OF DIRECT PM_{2.5} FOR THE ENTIRE PHILADELPHIA AREA [tpy]

Sector	Direct PM _{2.5}				
	2008	2017	2025	2008–2025	
				Reduction	Percent reduction
Point	4,790	4,006	4,058	731	15.3
Non-point	11,935	8,917	8,667	3,269	27.4
On-road	2,437	1,125	951	1,486	61.0
Non-road	1,728	1,598	927	801	46.4
Total	20,889	15,646	14,602	6,287	30.1

TABLE 9a—COMPARISON OF 2008, 2017, AND 2025 EMISSIONS OF NO_x FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA [tpy]

Sector	NO _x						
	2008	2017	2025	2008–2017		2008–2025	
				Reduction	Percent Reduction	Reduction	Percent Reduction
Non-point	1,287	1,299	1,297	– 12	–0.9	– 10	– 0.8
Non-road, MAR	2,641	1,760	1,247	881	33.3	1,394	52.8
Non-road, NMIM	1,676	997	837	679	40.5	840	50.1
On-road	9,311	6,273	6,273	3,038	32.6	3,038	32.6
Point, EGU	2,185	1,629	1,707	556	25.4	478	21.9
Point, non-EGU	3,404	1,724	1,421	1,680	49.4	1,983	58.3
Total	20,504	13,682	12,782	6,822	33	7,722	38

TABLE 9b—COMPARISON OF 2008, 2017, AND 2025 EMISSIONS OF NO_x FOR THE ENTIRE PHILADELPHIA AREA [tpy]

Sector	NO _x				
	2008	2017	2025	2008–2025	
				Reduction	Percent reduction
Point	31,233	12,833	19,489	11,744	37.6
Non-point	23,477	22,807	23,085	392	1.7
On-road	25,905	17,028	14,366	11,540	44.5
Non-road	66,631	38,892	16,701	49,930	74.9
Total	147,247	91,560	73,640	73,606	50.0

TABLE 10a—COMPARISON OF 2008, 2015, AND 2025 EMISSIONS OF SO₂ FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA [tpy]

Sector	SO ₂						
	2008	2017	2025	2008–2017		2008–2025	
				Reduction	Percent reduction	Reduction	Percent reduction
Non-point	402	336	286	66	16.5	116	28.8
Non-road, MAR	1,039	120	39	919	88.4	1,000	96.2
Non-road, NMIM	28	2	3	25	91.0	25	88.4
On-road	94	98	98	–3	–3.4	–3	–3.4
Point, EGU	7,122	2,017	2,161	5,104	71.7	4,960	69.7
Point, non-EGU	3,454	2,559	2,096	895	25.9	1,358	39.3
Total	12,139	5,132	4,683	7,007	58	7,456	61

TABLE 10b—COMPARISON OF 2008, 2015, AND 2025 EMISSIONS OF SO₂ FOR THE ENTIRE PHILADELPHIA AREA [tpy]

Sector	SO ₂				
	2008	2017	2025	2008–2025	
				Reduction	Percent reduction
Point	29,340	11,201	11,350	17,990	61.3
Non-point	17,016	13,669	9,903	7,113	41.8
On-road	5,312	737	614	4,698	88.4
Non-road	416	311	227	189	45.4
Total	52,085	25,919	22,095	29,990	57.6

Sections 8.2.3, Control Measures for Maintenance of Good Air Quality, in Delaware’s maintenance plans and redesignation requests for both the 1997 annual and 2006 24-hour PM_{2.5} standards, summarize emission

reductions between the attainment years and the maintenance plan end years, i.e. between 2007 or 2008 and 2025 in the Delaware portion of the Area. The emissions reductions data included in Tables 8–6 of Sections 8.2.3 of

Delaware’s redesignations requests and maintenance plans for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS are summarized in Tables 11a and 11b, for the 1997 annual and 2006 24-hour NAAQS, respectively.

TABLE 11a—2007 TO 2025 EMISSION REDUCTIONS DUE TO CONTROL MEASURES FOR THE 1997 ANNUAL PM_{2.5} STANDARD

	NO _x	PM _{2.5}	SO ₂
EGUs			
DE Admin Code 1146 (Multi-Pollutant Regulation)	1,240.8	10.5	6,562.4

TABLE 11a—2007 TO 2025 EMISSION REDUCTIONS DUE TO CONTROL MEASURES FOR THE 1997 ANNUAL PM_{2.5} STANDARD—Continued

	NO _x	PM _{2.5}	SO ₂
Non-EGUs			
Delaware City Refinery NO _x CAP (1650 tpy) post-2015	1,157.26	0.00	0.00
Reciprocating Internal Combustion Engines—Maximum Achievable Control Technology, (RICE MACT) (76 FR 12863)	0.02	0.08	0.00
Chrysler Plant Shutdown/unit shutdown	6.50	0.89	16.64
Non-point			
RICE MACT	42.51	0.30	0.00
EPA New Source Performance Standards for Woodstoves (NSPS), 40 CFR part 60, subpart AAA	5.00	76.64	0.84
Non-road (NMIM model)	918	53	88
On-road (MOVES model)	4,304	125	2
Marine Vessels, Aircraft and Locomotives (MAR)			
Control of Emissions of Air Pollution from Locomotive Engines and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder; Republication; Final Rule. (73 FR 37096)	933	37	152
Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder (75 FR 22895)	631	90	836
Totals	9,241	394	7,660

TABLE 11b—2008 TO 2025 EMISSION REDUCTIONS DUE TO CONTROL MEASURES FOR THE 2006 24-HOUR PM_{2.5} STANDARD

	NO _x	PM _{2.5}	SO ₂
EGUs			
DE Admin Code 1146 (Multi-Pollutant Regulation)	953.4	3.5	5,171.1
Non-EGUs			
Delaware City Refinery NO _x CAP (1650 tpy) post-2015	874.7	0.0	0.0
RICE MACT (76 FR 12863)	0.0	0.1	0.0
Chrysler Plant Shutdown/unit shutdown	8.4	0.7	6.0
Area			
RICE MACT	42.5	0.3	0.3
Woodstoves NSPS, 40 CFR part 60	4.9	74.1	0.8
Non-road (NMIM model)	840	45	25
On-road (MOVES model)	3,038	83	-3
Marine Vessels, Aircraft and Locomotives (MAR)			
Control of Emissions of Air Pollution from Locomotive Engines and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder; Republication; Final Rule. (73 FR 37096)	862.3	32.9	150.1
Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder (75 FR 22895)	597.3	90.7	850.7
Total	7,221	330	6,200

Delaware included Regulation 1142, Section 2.0, Control of Nitrogen Oxide (NO_x) Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, in that list. However, as explained above, Regulation 1142, Section 2.0 is the subject of a separate proposed rulemaking action, published

on February 22, 2013 (78 FR 12460). Therefore, EPA has conducted an analysis to determine if the area can demonstrate maintenance without emission reductions from that regulation.

Delaware has determined that Regulation 1142, Section 2.0, also

known as the Delaware City Refinery NO_x Cap, achieves 1,157.26 tons of NO_x reductions between 2007 and 2025, and 874.7 tons of NO_x reductions between 2008 and 2025. (See Tables 8–6 of Delaware's redesignation requests for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, respectively.)

TABLE 12—MAINTENANCE DEMONSTRATION, NOT CONSIDERING EMISSION REDUCTIONS FROM DELAWARE REGULATION 1142

1997 annual PM _{2.5} NAAQS NO _x (tons)		2006 24-hour PM _{2.5} NAAQS NO _x (tons)	
2025 Maintenance Year	81,868	2025 Maintenance Year	73,640
Plus Reductions from Regulation 1142, Section 2	1,157.26	Plus Reductions from Regulation 1142, Section 2	874.7
Adjusted 2025	83,025	Adjusted 2025	74,515
2007 Attainment Year	187,967	2008 Attainment Year	147,247

In both cases, the adjusted 2025 NO_x emissions are well below the attainment year emissions. Therefore, Regulation 1142, Section 2 is not needed for maintenance of either the 1997 annual or 2006 24-hour PM_{2.5} NAAQS. Therefore, EPA is not relying upon Regulation 1142, Section 2.0 in its evaluation of Delaware’s maintenance plans for the 1997 annual or 2006 24-hour PM_{2.5} NAAQS.

3. Monitoring Network

There are four PM_{2.5} monitors in the Delaware portion of the Philadelphia Area. Delaware’s maintenance plans include a commitment to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. DNREC will consult with EPA prior to making any necessary changes to the PM_{2.5} monitoring network and will continue to quality assure the monitoring data in accordance with the requirements of 40 CFR part 58.

4. Verification of Continued Attainment

Delaware will acquire ambient monitoring and source emission data to track attainment and maintenance. Delaware will also track the progress of the maintenance demonstration by periodically updating the emissions inventory as required by the Annual Air Emissions Reporting Requirements Rule (AERR), or as required by federal regulation during the maintenance plan period. This includes developing annual inventories for major point sources and a comprehensive periodic inventory covering all source categories every three years. Tracking will include the evaluation of annual and periodic evaluations for any significant emission increases above the 2007 and 2008 attainment year levels.

5. Contingency Measures

The contingency plan provisions are designed to promptly correct a violation of either the 1997 annual or the 2006 24-hour PM_{2.5} NAAQS that occurs in the Area after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to

ensure that Delaware will promptly correct a violation of either the 1997 annual or the 2006 24-hour PM_{2.5} NAAQS that occurs in the Area after redesignation. The maintenance plan should identify the events that would “trigger” the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

Delaware’s maintenance plans outline the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur. Delaware’s contingency measures include a warning level response and an action level response. An initial warning level response is triggered for the 1997 annual PM_{2.5} NAAQS when the PM_{2.5} average of the weighted annual mean for a single calendar year exceeds 15.1 µg/m³ at any monitor within the Philadelphia Area. An initial warning level response is triggered for the 2006 24-hour PM_{2.5} NAAQS when the 98th percentile 24-hour PM_{2.5} concentration for a single calendar year exceeds 35.5 µg/m³ within the Area. In addition, for both the 1997 annual and 2006 24-hour PM_{2.5}, a warning level response is also triggered if total PM_{2.5}, NO_x and SO₂ emissions in the Delaware portion of the Area increase more than 10% above attainment year levels.

For the 1997 annual PM_{2.5} NAAQS, the action level response will be prompted by any one of the following: (1) A two-year average of the weighted annual mean of 15.1 µg/m³ or greater occurs within the Area; or (2) a violation of the standard occurs in the Area (i.e. a three-year average of the weighted annual means of 15.1 µg/m³ or greater). For the 2006 24-hour PM_{2.5} NAAQS, the action level response will be prompted by any one of the following: (1) a two-year average of the 98th percentile of 35.5 µg/m³ or greater within the Area; or (2) a violation of the standard occurs in the Area (i.e. a three-year average of the 98th percentile of 35.5 µg/m³ or greater).

In order to select appropriate corrective measures for warning or action level triggers, DNREC will conduct a study to determine the causes of the violation and the control measures necessary to mitigate the problem. The study will evaluate whether the trend, if any, is likely to continue and if so, the control measures necessary to reverse the trend taking into consideration ease and timing for implementation as well as economic and social considerations. Based on the results of the analysis, contingency measures will be selected. However, if a new measure is already promulgated and scheduled to be implemented at the federal or state level at such time after the exceedance, and that measure or control is determined to be sufficient to address the upward trend in air quality, additional local measures may be unnecessary. Delaware will submit to EPA an analysis to demonstrate the proposed measures are adequate to return the area to attainment. Adoption of additional control measures is subject to necessary administrative and legal processes.

Should a warning level response be triggered, measures that can be implemented in a short time will be selected in order to be in place within 18 months from the close of the calendar year that prompted the warning level. Should an action level response be triggered, implementation of necessary control measures will take place as expeditiously as possible, but in no event later than 18 months after the DNREC makes a determination, based on quality-assured ambient data, that a violation of the NAAQS has occurred.

DNREC has indentified the following potential contingency measures for both the 1997 annual and 2006 24-hour maintenance plans.

- Lower particulate limits for No. 6 fuel oil-fired boilers.
- Working with the local metropolitan planning agencies to implement transportation control measures.
- Low-sulfur distillate and residual fuels.
- Additional PM_{2.5} controls for EGUs and large industrial boilers burning

fuels other than distillate fuel or natural gas.

- Vehicle inspection and maintenance program enhancements (increase weight limit, addition of diesel vehicles, etc.).
- Alternative fuel and additional diesel retrofit programs for fleet vehicle operations.
- Require NO_x or SO₂ emission offsets for new and modified major sources.
- Increase the ratio of emission offsets required for new sources.
- Require NO_x or SO₂ controls on new minor sources (less than 100 tons).
- Require increased recovery efficiency at sulfur recovery plants.
- Broader geographic applicability of existing measures.
- Fuel switching from coal to natural gas at the Calpine Edge Moor power plant (contingency measure only in the 24-hour PM_{2.5} NAAQS maintenance plan).

6. EPA’s Evaluation of VOC and Ammonia Precursors in Delaware’s Maintenance Plans

With regard to the redesignation of the Delaware portion of the Philadelphia Area in evaluating the effect of the Court’s remand of EPA’s 1997 PM_{2.5} Implementation Rule, which included presumptions against consideration of VOC and ammonia as PM_{2.5} precursors, EPA in this proposed rulemaking action is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the Area has attained both the 1997 annual and 2006 24-hour PM_{2.5} standard and that Delaware has shown that attainment of

these standards is due to permanent and enforceable emission reductions.

EPA proposes to determine that the Delaware’s maintenance plan shows continued maintenance of the 1997 annual and 2006 24-hour PM_{2.5} standards by tracking the levels of the precursors whose control brought about attainment of the standards in the Philadelphia Area. EPA, therefore, believes that the only additional consideration related to the maintenance plan requirements that results from the Court’s January 4, 2013 decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this Area. As explained subsequently, based upon documentation provided by the State and supporting information, EPA believes that the maintenance plans for the Delaware portion of the Area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS.

First, as noted previously in EPA’s discussion of section 189(e), VOC emission levels in the Philadelphia Area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Philadelphia Area are low, especially in comparison to the total amounts of SO₂, NO_x, and even direct PM_{2.5} emissions from sources in the Area.

In the Philadelphia Area, emissions of direct PM_{2.5}, NO_x, and SO₂ are projected to decrease by 9,055 tpy, 106,099 tpy, and 34,265 tpy, respectively, over the maintenance period for the 1997 annual PM_{2.5}

NAAQS and by 6,287 tpy, 73,606 tpy, and 29,990 tpy, respectively, over the maintenance period for the 2006 24-hour PM_{2.5} NAAQS. See Tables 5b through 10b. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 PM_{2.5} NAAQS¹² show that VOC and ammonia emissions are projected to decrease by 33,076 tpy and 611 tpy, respectively, between 2007 and 2020. See Table 13. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that this downward trend would not continue through 2025. Given that the Philadelphia Area is already attaining the 1997 annual and 2006 24-hour PM_{2.5} NAAQS even with the current level of emissions from sources in the area, the downward trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that the State is addressing for purposes of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS indicate that the area should continue to attain the NAAQS following the precursor control strategy that the state has already elected to pursue. Even if VOC and ammonia emissions were to increase unexpectedly between 2020 and 2025, the overall emissions reductions projected in direct PM_{2.5}, SO₂, and NO_x would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential PM_{2.5} precursors will not increase to the extent that they will cause monitored PM_{2.5} levels to violate the 1997 annual and 2006 24-hour PM_{2.5} standard during the maintenance period.

TABLE 13—COMPARISON OF 2007 AND 2020 EMISSIONS OF VOC AND AMMONIA FOR THE ENTIRE PHILADELPHIA AREA, IN TPY¹³

Sector	VOC			Ammonia		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Point	9,475	8,906	569	905	1,085	– 180
Area	71,981	72,537	– 556	4,821	5,001	– 180
Non-road	27,267	16,032	11,234	34	40	– 6
On-road	35,169	13,340	21,829	2,005	1,029	977
Fires	1,798	1,798	0	125	125	0
Total	145,689	112,613	33,076	7,890	7,279	611

In addition, available air quality modeling analyses show continued maintenance of the standard during the

maintenance period. The current annual design value for the Area is 13.7 µg/m³ and the current 24-hour design value is 33 µg/m³, based on 2010–2012 air

quality data, which are well below the levels of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. See Tables 1 and 2. Moreover, the modeling analysis

¹² Review of the NAAQS for Particulate Matter—Regulatory Impact Analysis.” Docket ID No. EPA–HQ–OAR–2010–0955.

¹³ These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 PM_{2.5} NAAQS.

conducted for the RIA for the 2012 PM_{2.5} NAAQS indicates that the design values for the Philadelphia Area are expected to continue to decline through 2020. In the RIA analysis, the 2020 modeled annual design value for the Area is 9.4 µg/m³ and the 2020 24-hour design value is 24 µg/m³.¹⁴ Given that most precursor emissions are projected to decrease through 2025, it is reasonable to conclude that monitored PM_{2.5} levels in the Area will also continue to decrease through 2025.

Thus, EPA believes that there is ample justification to conclude that the Delaware portion of the Philadelphia Area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to PM_{2.5}. After consideration of the D.C. Circuit's January 4, 2013 decision, and for the reasons set forth in this rulemaking action, EPA proposes to approve Delaware's maintenance plans and requests to redesignate its portion of the Philadelphia Area to attainment for the 1997 annual and 2006 24-hour PM_{2.5} standards. This proposed approval is based on a showing that Delaware's maintenance plans provides for maintenance of both the 1997 annual and 2006 24-hour PM_{2.5} standards for at least ten years after redesignation, throughout 2025, in accordance with section 175A.

C. Motor Vehicle Emissions Budgets

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, 2012, Delaware submitted a SIP revision that contains the PM_{2.5} and NO_x on-road mobile source budgets. In a separate and concurrent process, EPA is conducting a process to find adequate the MVEBs for New Castle County which are associated with the Delaware maintenance plan for the Philadelphia Area. Concurrently with EPA's proposal to approve the SIP, a notice will be posted on EPA's Web site at <http://www.epa.gov/otaq/stateresources/transconf/currsips.htm> for the purpose of opening a 30-day public comment period on the adequacy of the MVEBs for New Castle County in the maintenance plan for the Philadelphia Area. That notice will inform the public of the availability of the Delaware SIP revision on DNREC's Web site. Interested members of the public can access Delaware's December 12, 2012 SIP revision on line at www.regulations.gov, Docket No. EPA-R03-OAR-2014-0022. Following EPA's public comment period, responses to any comments received will be addressed. EPA has reviewed the MVEBs and found them consistent with the maintenance plan and that the budgets meet the criteria for adequacy and approval. Additional information pertaining to the review of the MVEBs can be found in the TSD in this docket titled *Adequacy Findings for the Motor Vehicle Emissions Budgets in the Maintenance Plan for the Delaware Portion of the Philadelphia-Wilmington PA-NJ-DE 1997 Fine Particulate (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) Nonattainment Area*.

VI. Proposed Actions

EPA is proposing to approve Delaware's requests to redesignate the Delaware portion of the Philadelphia Area from nonattainment to attainment for the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS. EPA has evaluated Delaware's redesignation requests and determined that upon approval of the 2008 comprehensive emissions inventory for the 2006 24-hour PM_{2.5} NAAQS proposed as part of this rulemaking action, it would meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for both standards. EPA believes that the monitoring data demonstrate that the Philadelphia Area is attaining and will continue to attain the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. EPA is also proposing to approve the associated maintenance plans for the Delaware portion of the Area as a revision to the Delaware SIP for the 1997 annual and 2006 24-hour PM_{2.5} standards because it meets the requirements of CAA section 175A for both standards. For

transportation conformity purposes, EPA is also proposing to approve MVEBs for both the 1997 annual and 2006 24-hour PM_{2.5} standards. Final approval of the redesignation requests would change the official designations of the Delaware portion of the Philadelphia Area for the 1997 annual and the 2006 24-hour PM_{2.5} NAAQS, respectively, found at 40 CFR part 81, from nonattainment to attainment, and would incorporate into the Delaware SIP the associated maintenance plans ensuring continued attainment of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS in the Delaware portion of the Area for the next 10 years, until 2025. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law and the CAA. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely

¹⁴ The 2020 projected PM_{2.5} design values are part of the RIA for the 2012 PM_{2.5} NAAQS.

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule, in which EPA is proposing approval of the redesignation requests and maintenance plans for the Delaware portion of the Philadelphia Area for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS and the 2008 comprehensive emissions inventory for the 2006 24-hour PM_{2.5} NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

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

Dated: April 2, 2014.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2014–08246 Filed 4–10–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140214138–4138–01]

RIN 0648–XD139

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2014 Atlantic Bluefish Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes specifications for the 2014 Atlantic bluefish fishery, including an annual catch limit, total allowable landings, a commercial quota and recreational harvest limit, and a recreational possession limit. The intent of this action is to establish the allowable 2014 harvest levels and other management measures to achieve the target fishing mortality rate, consistent with the Atlantic Bluefish Fishery Management Plan.

DATES: Comments must be received on or before April 28, 2014.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2014–0026, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0026, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to John Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publically accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in

Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the specifications document, including the supplemental Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at: <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281–9224.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic bluefish fishery is managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish specified in the Atlantic Bluefish Fishery Management Plan (FMP) is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. The regulations requiring annual specifications are found at § 648.162.

The FMP requires the Council to recommend, on an annual basis, the annual catch limit (ACL), annual catch target (ACT), and total allowable landings (TAL) that will control fishing mortality (F). An estimate of annual discards is deducted from the ACT to calculate the TAL that can be harvested during the year by the commercial and recreational fishing sectors. The FMP requires that 17 percent of the ACT be allocated to the commercial fishery, with the remaining 83 percent allocated to the recreational fishery. The Council may also recommend a research set-aside (RSA) quota, which is deducted from the bluefish TAL (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors.

The annual review process for bluefish requires that the Council’s Bluefish Monitoring Committee and Scientific and Statistical Committee (SSC) review and make recommendations based on the best available scientific information, including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the