

## VI. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; 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 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 26, 2012.

**Judith Enck,**

*Regional Administrator, Region 2.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R03-OAR-2012-0368; FRL-9761-6]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revision submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) is requesting that the West Virginia portion of the Wheeling, WV-OH fine particulate matter (PM<sub>2.5</sub>) nonattainment area ("Wheeling Area" or "Area") be redesignated as attainment for the 1997 annual PM<sub>2.5</sub> national ambient air quality standard (NAAQS). The Wheeling Area is comprised of Marshall and Ohio Counties in West Virginia and Belmont County in Ohio. In conjunction with its redesignation request, West Virginia submitted a SIP revision consisting of a maintenance plan for the West Virginia portion of the Area that provides for continued attainment of the 1997 annual PM<sub>2.5</sub> NAAQS for at least 10 years after redesignation. The maintenance plan includes the 2005 base year emissions inventory that EPA is proposing to approve in this rulemaking in accordance with the requirements of the Clean Air Act (CAA). The maintenance plan also includes an insignificance determination for the onroad motor

vehicle contribution of PM<sub>2.5</sub>, nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) for the West Virginia portion of the Area. It should be noted that EPA has already initiated a comment period on the proposed insignificance determination for the West Virginia portion of the Area on the Web site for the Office of Transportation and Air Quality (OTAQ) to allow for a 30-day review of this proposed insignificance determination in conjunction with this proposed rulemaking.<sup>1</sup> EPA is proposing to find that West Virginia's insignificance determination for transportation conformity is adequate. EPA previously determined that the West Virginia portion of the Wheeling Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS, and EPA is proposing to find that the Area continues to attain the standard. This action to propose approval of the 1997 annual PM<sub>2.5</sub> NAAQS redesignation request, the maintenance plan, the 2005 base year emissions inventory, and insignificance determination for transportation conformity for the West Virginia portion of the Area is based on EPA's determination that the Area has met the criteria for redesignation to attainment specified in the CAA. EPA is taking separate action to propose redesignation for the Ohio portion of the Wheeling Area.

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

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2012-0368 by one of the following methods:

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

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

C. *Mail:* EPA-R03-OAR-2012-0368, Donna Mastro, Acting Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2012-0368. EPA's policy is that all comments

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

received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 24304.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by email at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Summary of Actions**

On March 8, 2012, the State of West Virginia through WVEP formally submitted a request to redesignate the West Virginia portion of the Area from nonattainment to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS. Concurrently, WVDEP submitted a maintenance plan for the Area as a SIP revision to ensure continued attainment throughout the Area over the next 10 years.

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

EPA is also proposing to approve the maintenance plan for the West Virginia portion of the Area as a revision to the West Virginia SIP. Such approval is one of the CAA criteria for redesignation of an area to attainment. The maintenance plan is designed to ensure continued attainment in the West Virginia portion of the Area for 10 years after redesignation. The maintenance plan includes an insignificance determination for the onroad motor vehicle contribution for PM<sub>2.5</sub>, SO<sub>2</sub> and NO<sub>x</sub> in the West Virginia portion of the Area for transportation conformity purposes. EPA has determined that the onroad motor vehicle insignificance finding that is included as part of West Virginia's maintenance plan for the 1997 annual PM<sub>2.5</sub> NAAQS is adequate, and is proposing to approve the insignificance determination. Furthermore, under section 172(c)(3) of the CAA, EPA is proposing to approve the 2005 base year emissions inventory for the West Virginia portion of the Area as part of West Virginia's maintenance plan for the 1997 annual PM<sub>2.5</sub> NAAQS.

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

**II. Background**

*A. General*

The first air quality standards for PM<sub>2.5</sub> were established on July 18, 1997 (62 FR 38652). EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>), based on a three-year average of annual mean PM<sub>2.5</sub> concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 µg/m<sup>3</sup> based on a three-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006 (71 FR 61144), EPA retained the annual average standard at 15 µg/m<sup>3</sup> but revised the 24-hour standard to 35 µg/m<sup>3</sup>, based again on the three-year average of the 98th percentile of the 24-hour concentrations.

On January 5, 2005 (70 FR 944), as supplemented on April 14, 2005 (70 FR 19844), EPA designated the Wheeling Area as nonattainment for the 1997 PM<sub>2.5</sub> NAAQS. The Wheeling Area is comprised of Marshall and Ohio Counties in West Virginia and Belmont County in Ohio. On November 13, 2009 (74 FR 58688), EPA promulgated designations for the 24-hour standard established in 2006, designating the Wheeling Area as attaining this standard. In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Wheeling Area remained designated nonattainment for the 1997 annual PM<sub>2.5</sub> NAAQS, but was designated attainment for the 1997 24-hour NAAQS. Today's action therefore, does not address attainment of either the 1997 or the 2006 24-hour PM<sub>2.5</sub> NAAQS.

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

In the final rulemaking action dated December 2, 2011 (76 FR 75464), EPA determined, pursuant to CAA section 179(c), that the entire Wheeling Area is attaining the 1997 annual PM<sub>2.5</sub> NAAQS. This determination of attainment was based upon complete, quality-assured and certified ambient air quality monitoring data for the period of 2007–2009 showing that the Area had attained the 1997 annual PM<sub>2.5</sub> NAAQS by its applicable attainment date of April 5, 2010.

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

On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of SO<sub>2</sub> and NO<sub>x</sub> from electric generating units (EGUs) to limit the interstate transport of these pollutants and the ozone and PM<sub>2.5</sub> they form in the atmosphere. See 70 FR 25162. The Court initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the Court's decision, EPA issued the Transport Rule, also known as CSAPR, to address interstate transport of NO<sub>x</sub> and SO<sub>2</sub> in the eastern United States. See 76 FR 48208 (August 8, 2011). On August 21, 2012, the Court issued a decision to vacate the Transport Rule. In that decision, it also ordered EPA to continue administering CAIR “pending the promulgation of a valid replacement.” *EME Homer City Generation, L.P. v. EPA*, No. 11–1302 (D.C. Cir., August 21, 2012).<sup>2</sup>

In light of these unique circumstances and for the reasons explained below, EPA proposes to approve the redesignation request and the related SIP revision for Marshall and Ohio Counties in West Virginia, including West Virginia's plan for maintaining attainment of the 1997 annual PM<sub>2.5</sub> NAAQS for the West Virginia portion of the Area. The air quality modeling analysis conducted for the Transport Rule demonstrates that the Wheeling Area would be able to attain the 1997 annual PM<sub>2.5</sub> NAAQS even in the absence of either CAIR or the Transport Rule. See “*Air Quality Modeling Final Rule Technical Support Document*,” Appendix B, B–115–B–134. This modeling is available in the docket for the Transport Rule rulemaking. See

Docket ID. No. EPA–HQ–OAR–2009–0491. Nothing in the Court's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based.

In addition, CAIR remains in place and enforceable until substituted by a “valid” replacement rule. West Virginia's SIP revision lists CAIR as a control measure that became state-effective May 1, 2008 and was approved by EPA on August 4, 2009 (74 FR 38536) for the purpose of reducing SO<sub>2</sub> and NO<sub>x</sub> emissions. The monitoring data used to demonstrate the Area's attainment of the 1997 annual PM<sub>2.5</sub> NAAQS by the April 2010 attainment deadline was also impacted by CAIR. To the extent that West Virginia is relying on CAIR in its maintenance plan, the recent directive from the Court in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule, and the opinion makes clear that after promulgating that new rule, EPA must provide states an opportunity to draft and submit SIPs to implement that rule. CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. These steps alone will take many years, even with EPA and the states acting expeditiously. The Court's clear instruction to EPA that it must continue to administer CAIR until a “valid replacement” exists provides an additional backstop; by definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate significant downwind contributions.

Further, in vacating the Transport Rule and requiring EPA to continue administering CAIR, the Court emphasized that the consequences of vacating CAIR “might be more severe now in light of the reliance interests accumulated over the intervening four years.” *EME Homer City*, slip op. at 60. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant

reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable pending a valid replacement rule for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

**III. Criteria for Redesignation to Attainment**

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

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

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

2. “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and

3. “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary

<sup>2</sup>The Court's judgment is not final, as of November 16, 2012, as the mandate has not yet been issued.

D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

**IV. Reasons for Proposing These Actions**

On March 8, 2012, the WVDEP requested redesignation of the West Virginia portion of the Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. As part of the redesignation request, WVDEP submitted a maintenance plan for the West Virginia portion of the Area as a SIP revision, to ensure continued attainment of the 1997 annual PM<sub>2.5</sub> NAAQS over the next 10 years until 2022. EPA has determined that the Wheeling Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS and has met the requirements set forth in CAA section 107(d)(3)(E) for redesignation of the West Virginia portion of the Area.

**V. Effects of EPA’s Proposed Actions**

Final approval of the redesignation request would change the official designation of the West Virginia portion of Area for the 1997 annual PM<sub>2.5</sub> NAAQS, found at 40 CFR part 81, from nonattainment to attainment. It would incorporate into the West Virginia SIP a maintenance plan ensuring continued attainment of the 1997 annual PM<sub>2.5</sub> NAAQS in the Area for the next 10 years until 2022. The maintenance plan includes, among other components, contingency measures to remedy any future violations of the 1997 annual PM<sub>2.5</sub> NAAQS (should they occur).

Approval of the maintenance plan would also result in approval of the insignificance determination for PM<sub>2.5</sub>, SO<sub>2</sub> and NO<sub>x</sub> for transportation conformity purposes for the years 2015 and 2022 in the West Virginia portion of the Area. Approval of the 2005 base year emissions inventory, which is part of the maintenance plan, will satisfy the inventory requirements under section 172(c)(3) of the CAA.

**VI. Analysis of West Virginia’s Redesignation Request**

EPA proposes to redesignate the West Virginia portion of the Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS and to approve into the West Virginia SIP the 1997 annual PM<sub>2.5</sub> NAAQS maintenance plan for the West Virginia portion of the Area. These actions are based upon EPA’s determination that the Area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS and that all other redesignation criteria have been met for the West Virginia portion of the Area, provided EPA approves the 2005 base year emissions inventory that is being proposed in this rulemaking. The following is a description of how the WVDEP March 8, 2012 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

*1. Attainment*

As noted above, in a final rulemaking action dated December 2, 2011 (76 FR

75464), EPA determined, pursuant to CAA section 179(c), that the entire Wheeling Area was attaining the 1997 annual PM<sub>2.5</sub> NAAQS. This determination of attainment was based upon complete, quality-assured and certified ambient air quality monitoring data for the period of 2007–2009 showing that the Area had attained the NAAQS by its applicable attainment date of April 5, 2010. Further discussion of pertinent air quality issues underlying this determination was provided in the notice of proposed rulemaking for EPA’s determination of attainment for this Area, published on July 21, 2011 (76 FR 43634). EPA has reviewed more recent data in its Air Quality System (AQS) database, including certified, quality-assured data for the period from 2008–2010 and 2009–2011. This data shown in Table 1, shows that the Wheeling Area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS. In addition, as discussed below with respect to the maintenance plan, WVDEP has committed to continue monitoring air quality in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by West Virginia, as well as data taken from AQS, indicate that the Wheeling Area has attained and continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS.

**TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE WEST VIRGINIA PORTION OF THE WHEELING AREA FOR THE 1997 ANNUAL PM<sub>2.5</sub> NAAQS (µG/M<sup>3</sup>) FOR 2008–2010 AND 2009–2011**

County	Monitor ID	3-Year Annual Design Values	
		2008–2010	2009–2011
Marshall, WV .....	54–051–1002	13.1	13.0
Ohio, WV .....	54–069–0010	12.4	11.9

**Note:** There is no monitor in Belmont County, Ohio.

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

EPA has determined that the West Virginia portion of the Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that, upon final approval of the 2005 base year emissions inventory, as discussed below in this proposed rulemaking, it will have met all applicable SIP requirements under part D of Title I of the CAA, in accordance with CAA section 107(d)(3)(E)(v). In addition, EPA

is proposing to find that all applicable requirements of the West Virginia SIP for purposes of redesignation have been approved in accordance with CAA section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which SIP requirements are applicable for purposes of redesignation of this Area, and concluded that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. EPA notes that SIPs must be fully approved only with respect to applicable requirements.

**a. 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 CAA section 110(a)(2) include, but are not limited to the following:

- Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing;

- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirements (Prevention of Significant Deterioration (PSD));

- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;

- Provisions for air pollution modeling; and

- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants in accordance with the NO<sub>x</sub> SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO<sub>x</sub> SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and CAIR, May 12, 2005 (70 FR 25162). However, the CAA section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other CAA section 110(a)(2) elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Area will still be subject to these requirements after it is redesignated. EPA concludes that the CAA section 110(a)(2) and Part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request, and that CAA section 110(a)(2) elements not linked in 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, Pennsylvania redesignation (66 FR at 53099, October 19, 2001).

EPA has reviewed the West Virginia SIP and has concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of West Virginia's SIP addressing CAA section 110(a)(2) requirements, including provisions addressing PM<sub>2.5</sub>. *See* 76 FR 47062 (August 4, 2011). These requirements are, however, statewide requirements that are not linked to the PM<sub>2.5</sub> nonattainment status of the Wheeling Area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of West Virginia's PM<sub>2.5</sub> redesignation request.

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

Subpart 1 of part D, sections 172 to 175 of the CAA, sets forth the basic nonattainment plan requirements applicable to PM<sub>2.5</sub> nonattainment areas. Under CAA section 172, states with nonattainment areas must submit plans providing for timely attainment and meet a variety of other requirements. On November 20, 2009 (74 FR 60199), EPA made a determination that the Wheeling Area is attaining the 1997 annual PM<sub>2.5</sub> NAAQS. This determination was based upon complete, quality-assured, quality controlled, and certified ambient air monitoring data that show that the area monitored attainment of the 1997 annual PM<sub>2.5</sub> NAAQS during the 2006–2008 monitoring period. Available monitoring data for 2009, 2010 and 2011 are consistent with continued attainment of the standard. Pursuant to 40 CFR 51.2004(c), upon determination by EPA that an area designated nonattainment of the PM<sub>2.5</sub> NAAQS has attained the standard, the requirement for such an area to submit an attainment demonstration and associated reasonably achievable control technology (RACT)/reasonably achievable control measures (RACM), a reasonable further progress (RFP), contingency measures, and other planning SIPs related to the attainment of the PM<sub>2.5</sub> NAAQS are suspended until the area is redesignated to

attainment or EPA determines that the area has again violated the PM<sub>2.5</sub> NAAQS, at which time such plans are required to be submitted. As a result of the determination of attainment, the only remaining requirement under CAA section 172 to be considered is the emissions inventory required under CAA section 172(c)(3).

In this rulemaking action, EPA is proposing to approve West Virginia's 2005 base year emissions inventory in accordance with section 172(c)(3) of the CAA. Final approval of the 2005 base year emissions inventory will satisfy the emissions inventory requirement under section 172(c)(3) of the CAA.

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

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

Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. As part of the maintenance plan submitted by WVDEP, West Virginia submitted a 2005 base year emissions inventory that meets this requirement. The 2005 base year emissions inventory compiled by WVDEP for the West Virginia portion of the Area contains PM<sub>2.5</sub> (including condensables), SO<sub>2</sub> and NO<sub>x</sub> emissions. The emissions cover the general source categories of point sources, area sources, onroad mobile sources and nonroad mobile sources. The proposed approval of the 2005 base year emissions inventory in this rulemaking action will, when finalized, meet the requirements of CAA section 172(c)(3). For more information on the evaluation and EPA's analysis of the 2005 base year emissions inventory, *see* Appendix B of the State submittal and the emissions inventory technical support document (TSD) dated May 18, 2012, available on

line at [www.regulations.gov](http://www.regulations.gov), Docket ID No. EPA-OAR-R03-2012-0368. A summary of the 2005 base year

emissions inventory is shown in Tables 2 and 3.

TABLE 2—MARSHALL COUNTY, WEST VIRGINIA, SUMMARY OF 2005 BASE YEAR EMISSIONS INVENTORY IN TONS PER YEAR (TPY)

	SO <sub>2</sub>	NO <sub>x</sub>	PM <sub>2.5</sub>
Point (EGU) .....	96,378	31,541	3,826
Non EGU .....	19,110	3,131	525
Area .....	102	184	316
Locomotive & Marine (LM) .....	31	671	25
Nonroad .....	10	113	12
Onroad .....	9	735	26
<b>Total .....</b>	<b>115,641</b>	<b>36,375</b>	<b>4,731</b>

TABLE 3—OHIO COUNTY, WEST VIRGINIA, SUMMARY OF 2005 BASE YEAR EMISSIONS INVENTORY IN TPY

	SO <sub>2</sub>	NO <sub>x</sub>	PM <sub>2.5</sub>
Point (EGU) .....	0	0	0
Non EGU .....	1	6	11
Area .....	232	613	263
Locomotive & Marine (LM) .....	44	972	38
Nonroad .....	15	170	21
Onroad .....	16	1230	40
<b>Total .....</b>	<b>308</b>	<b>2991</b>	<b>372</b>

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and CAA section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since the PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994 entitled, “*Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.*” Nevertheless, West Virginia currently has an approved NSR program, codified in 45 CFR 19. See 71 FR 64468 (November 2, 2006) (approving NSR program into the SIP). See also 77 FR 63736 (October 17, 2012) (approving revisions to West Virginia’s PSD program). However, West Virginia’s PSD program for the 1997 annual PM<sub>2.5</sub> NAAQS will become effective in the Wheeling Area upon redesignation to attainment.

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

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

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability which EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements as not applying for purposes of evaluating the redesignation

request under CAA section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F.3d 426, (6th Cir. 2001) (upholding this interpretation). See also 60 FR 62748 (December 7, 1995) (discussing Tampa, Florida). Thus, EPA determines that the Wheeling Area has satisfied all applicable requirements for purposes of redesignation under CAA section 110, and upon final approval of the 2005 base year emissions inventory, will have satisfied all applicable requirements under part D of Title I of the CAA.

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

Upon final approval of the 2005 base year emissions inventory, EPA will have fully approved the West Virginia portion of the Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. As noted above, in this rulemaking action, EPA is proposing to approve the West Virginia portion of the Area’s 2005 base year emissions inventory (submitted as part of its maintenance plan) as meeting the requirement of section 172(c)(3) of the CAA for the 1997 annual PM<sub>2.5</sub> NAAQS. Therefore, upon final approval of the 2005 base year emissions inventory,

EPA will have satisfied all applicable requirements under part D of Title I of the CAA for the West Virginia portion of the Area.

*3. The Air Quality Improvement in the West Virginia Portion of the Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions*

For redesignating a nonattainment area to attainment, CAA section 107(d)(3)(E)(iii) requires EPA to

determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions. EPA believes that West Virginia has demonstrated that the observed air quality improvement in the West Virginia portion of the Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-

adopted measures. In making this demonstration, West Virginia has calculated the change in emissions between 2005, one of the years used to designate the Wheeling Area as nonattainment, and 2008, one of the years the Wheeling Area monitored attainment. See Table 4 below. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Wheeling Area and contributing areas have implemented in recent years.

TABLE 4—COMPARISON OF 2005 BASE YEAR AND 2008 ATTAINMENT YEAR REDUCTIONS IN TPY IN THE WHEELING AREA

	2005	2008	Decrease
EGU NO <sub>x</sub> .....	35,691	27,437	8,254
EGU PM <sub>2.5</sub> .....	3,920	4,510	(590)
EGU SO <sub>2</sub> .....	133,708	50,200	83,508
Onroad NO <sub>x</sub> .....	5,145	4,272	873
Onroad PM <sub>2.5</sub> .....	172	145	27
Onroad SO <sub>2</sub> .....	56	18	38
Nonroad NO <sub>x</sub> .....	505	463	42
Nonroad PM <sub>2.5</sub> .....	60	54	6
Nonroad SO <sub>2</sub> .....	47	13	34

a. Federal Measures Implemented

Reductions in PM<sub>2.5</sub> precursor emissions have occurred statewide and in upwind states as a result of Federal emission control measures with additional emission reductions expected to occur in the future. Federal emission control measures include the following:

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

These emission control requirements result in lower NO<sub>x</sub> and SO<sub>2</sub> emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. EPA has estimated that, after phasing in the new requirements, new vehicles emit less NO<sub>x</sub> in the following percentages: Passenger cars (light duty vehicles)—77 percent; light duty trucks, minivans, and sports utility vehicles—86 percent; and larger sports utility vehicles, vans, and heavier trucks—69–95 percent. EPA expects fleet wide average emissions to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006, which reflects up to a 90 percent reduction in sulfur content.

(2) Heavy-Duty Diesel Engine Rule

EPA issued this rule in July 2000. This rule includes standards limiting

the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced PM<sub>2.5</sub> emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to achieve a 90 percent reduction in direct PM<sub>2.5</sub> emissions and a 95 percent reduction in NO<sub>x</sub> emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur diesel fuel. The reduction in fuel sulfur content also yielded an immediate reduction in particulate sulfate emissions from all diesel vehicles.

(3) Nonroad Diesel Rule

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

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

The Area’s air quality is strongly affected by regulation of SO<sub>2</sub> and NO<sub>x</sub> from power plants. EPA promulgated the NO<sub>x</sub> SIP Call, CAIR and CASPR to address SO<sub>2</sub> and NO<sub>x</sub> emissions from

EGUs and certain non-EGUs across the eastern United States. The affected EGUs in the Wheeling Area are located at the Ohio Power Mitchell Plant and the Ohio Power Kammer Plant in Marshall County which are both owned and/or operated by American Electric Power (AEP).

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

EPA issued the NO<sub>x</sub> SIP Call in 1998 pursuant to the CAA to require 22 states and the District of Columbia to reduce NO<sub>x</sub> emissions from large EGUs and large non-EGUs such as industrial boilers, internal combustion engines, and cement kilns. (63 FR 57356, October 27, 1998). EPA approved West Virginia’s Phase I NO<sub>x</sub> SIP Call rule in 2002 and Phase II rule in 2006. Emission reductions resulting from regulations developed in response to the NO<sub>x</sub> SIP Call are permanent and enforceable.

(2) CAIR and CSAPR

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

As previously discussed, the Court’s 2008 remand of CAIR left the rule in place to “temporarily preserve the environmental values covered by CAIR” until EPA replaced it with a rule consistent with the Court’s opinion, and



the Court's August 2012 decision on the Transport Rule also left CAIR in effect until the legal challenges to the Transport Rule are resolved. As noted, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable pending a valid replacement rule, for purposes such as redesignation.

Furthermore, as previously discussed, the air quality modeling analysis conducted for the Transport Rule demonstrates that the Wheeling Area would be able to attain the 1997 annual PM<sub>2.5</sub> NAAQS even in the absence of either CAIR or the Transport Rule. EPA's modeling projections show that all ambient monitors in the Area are expected to continue to maintain compliance in the 2012 and 2014 "no CAIR" base cases. Therefore, none of the ambient monitoring sites in the Wheeling Area are "receptors" that EPA projects will have future nonattainment problems or difficulty maintaining the NAAQS.

#### c. Federal Consent Decrees

EGUs in this Area are subject to Federal consent decrees that have reduced emissions of NO<sub>x</sub> and SO<sub>2</sub> in the Area. There are two EGUs in Marshall County, the partial county portion of the West Virginia portion of the Area. These are the Ohio Power Kammer Plant and Ohio Power Mitchell Plant in Marshall County which are owned and/or operated by AEP. As part of a Federally enforceable consent decree with AEP, the Mitchell Plant was required, starting in January 2009, to operate selective catalytic reduction (SCR) continuously to control emissions of NO<sub>x</sub> and to operate continuously its Flue Gas Desulfurization (FGD) to reduce SO<sub>2</sub> emissions starting in December 2007.

#### d. Controls on PM<sub>2.5</sub> Precursors From EGUs in the Area

Since 2008, additional controls have and will be installed on EGUs within the West Virginia portion of the Area and the State of Ohio, which will continue to contribute to the reductions in precursor pollutants for PM<sub>2.5</sub>. The Mitchell Plant installed and began operation of SCR to control NO<sub>x</sub> emissions on Units 1 and 2 starting in January 2009, and the Kammer Plant may be required to retire, retrofit, or repower Units 1–3 by December 31, 2018. EGUs in Belmont County, Ohio have installed controls as a result of a Federally enforceable consent decree. In 2008, two units, #4 and #5 at the R.E. Burger First Energy station installed selective non-catalytic reduction (SNCR)

to reduce NO<sub>x</sub> emissions. Both units are required by 2012 to operate the SNCR continuously to reduce NO<sub>x</sub> emissions.

#### e. Controls on PM<sub>2.5</sub> Precursors From EGUs in Contributing States

Because PM<sub>2.5</sub> concentrations in the Wheeling Area are impacted by the transport of sulfates and nitrates, the Area's air quality is strongly affected by regulation of SO<sub>2</sub> and NO<sub>x</sub> emissions from EGUs in states in the region that significantly contribute to the Area. EPA reviewed SO<sub>2</sub> and NO<sub>x</sub> emissions from EGUs in states that contribute to the Area, and the data show that SO<sub>2</sub> and NO<sub>x</sub> emissions have been decreasing. See EPA's Air Markets Program Database (AMPD)<sup>3</sup> (<http://ampd.epa.gov/ampd>).

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

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

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

#### a. Requirements of a Maintenance Plan

Section 175 of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under CAA section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, West Virginia must submit a revised maintenance plan demonstrating that attainment will

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

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 1997 annual PM<sub>2.5</sub> violations. The Calcagni Memorandum dated September 4, 1992 provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum states that a PM<sub>2.5</sub> maintenance plan should address the following provisions: (1) An attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and (5) a contingency plan to prevent or correct future violations of the NAAQS.

#### b. Analysis of the Maintenance Plan

##### (1) Attainment Emissions Inventory

An attainment inventory is comprised of the emissions during the time period associated with the monitoring data showing attainment. WVDEP developed emissions inventories for NO<sub>x</sub>, direct PM<sub>2.5</sub>, and SO<sub>2</sub> for 2008, one of the years in the period during which the Wheeling Area monitored attainment of the 1997 annual PM<sub>2.5</sub> standard, as described previously. The 2008 point source inventory contained emissions for EGUs and non-EGU sources in Marshall and Ohio Counties in West Virginia. WVDEP used the 2008 annual emissions inventory submitted to EPA's National Emissions Inventory (NEI) database and EPA's AMPD database to compile their inventory. For the 2008 area source emissions, WVDEP used the 2008 NEI v1.5 data developed by EPA. For the 2008 nonroad mobile sources, WVDEP generated the emissions using EPA's NONROAD model. The 2008 onroad mobile source inventory was developed using the most current version of EPA's highway mobile source emissions model MOVES2010a. WVDEP used the Kentucky, Ohio, and West Virginia (KYOVA) Travel Demand Model, which is the most recent travel demand model provided by the KYOVA Interstate Planning Commission that covers the nonattainment counties in West Virginia. Information from the travel demand model combined with Highway Performance Monitoring Systems (HPMS) county-level data from each area were used in the emissions analysis.

Additional data needed for input into the MOVES2010a model was provided by the Ohio Department of



Transportation (ODOT), Ohio EPA, West Virginia Department of Transportation (WVDOT), WVDEP, Kentucky Transportation Cabinet (KYTC), and the Kentucky Division of Air Quality (KDAQ).

(2) Maintenance Demonstration

On March 8, 2012, WVDEP submitted its maintenance plan for the West Virginia portion of the Area as required by section 175A of the CAA. WVDEP uses projection inventories to show that the Area will remain in attainment and developed projection inventories for an interim year of 2015 and a maintenance plan end year of 2022 to show that future emissions of NO<sub>x</sub>, SO<sub>2</sub>, and direct PM<sub>2.5</sub> will remain at or below the attainment year 2008 emissions levels throughout the West Virginia portion of the Area through the year 2022. A maintenance demonstration need not be based on modeling. See *Wall v. EPA, supra*; *Sierra Club v. EPA, supra*. See also 66 FR at 53099–53100; 68 FR at 25430–32. The projection inventories for the 2015 and 2022 point, area, and nonroad sources were based on the 2012 and 2018 Visibility Improvement State and Tribal Association of the Southeast (VISTAS)/Association of Southeastern Integrated Planning (ASIP) modeling inventory.

West Virginia developed the 2015 point source inventory by interpolation between VISTAS/ASIP 2012 and 2018

modeling inventory. The 2022 EGU inventory for PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub> was kept the same as the VISTAS/ASIP 2018 inventory. The 2022 non-EGU inventory was extrapolated from the 2012 and 2018 inventory. Point source emissions for 2012 and 2018 were developed for EGUs and non-EGUs. For EGUs, WVDEP used the projection inventory developed by VISTAS/ASIP. VISTAS/ASIP analysis was based on EPA's Integrated Planning Model (IPM). The VISTAS/ASIP analysis projected future year emissions for EGUs under several scenarios based on the best information available at the time of the analysis. WVDEP used the "on the way" (OTW) projections, which took into account the reductions required by CAIR, as a basis for 2012 and 2018 EGU emissions. VISTAS/ASIP used EPA's Economic Growth Analysis System (EGAS), Version 4.0 to make the projections for non-EGUs, incorporating the growth factors suggested in the reports entitled, "Development of Growth Factors for Future Year Modeling Inventories (April 30, 2004)" and "CAIR Emission Inventory Overview (July 23, 2004)." EPA has reviewed the documentation provided by WVDEP and found the methodologies acceptable.

Area source emissions for 2015 were interpolated from the VISTAS/ASIP 2012 and 2018 inventories. The 2022 emissions were extrapolated from the

VISTAS/ASIP 2012 and 2018 inventories. Growth and controls for emissions were based on the methodologies applied by EPA for the CAIR analysis. Nonroad source emissions, including aircraft, locomotives, and commercial marine vessels (CMV) for 2015 were interpolated from the VISTAS/ASIP 2012 and 2018 inventories. CMV source emissions from SO<sub>2</sub> included in the 2022 inventory were held constant at 2018 levels because no further reduction in fuel sulfur content is expected. All other nonroad source emissions for 2022 were extrapolated from the VISTAS/ASIP 2012 and 2018 inventories. The 2015 and 2022 onroad mobile source emissions were prepared using MOVES2010a following the same procedure as the 2008 inventory as described previously.

EPA has determined that the emissions inventories discussed above as provided by WVDEP are approvable. For more information on EPA's evaluation and analysis of the emissions inventory, see Appendix B of the State submittal and the May 18, 2012 TSD, available on line at [www.regulations.gov](http://www.regulations.gov), Docket ID No. EPA-OAR-R03-2012-0368. Table 5 below shows the inventories for the 2008 attainment year, the 2015 interim year, and the 2022 maintenance plan end year for the entire Area.

TABLE 5—COMPARISON OF 2008, 2015, AND 2022 SO<sub>2</sub>, NO<sub>x</sub>, AND DIRECT PM<sub>2.5</sub> EMISSION TOTALS FOR THE WHEELING NONATTAINMENT AREA WV-OH (in Tpy)

	SO <sub>2</sub>	NO <sub>x</sub>	PM <sub>2.5</sub>
2008 (attainment) .....	67,103	35,971	6,001
2015 (interim) .....	36,843	16,204	3,436
2015 (projected decrease) .....	30,260	19,767	2,565
2022 (maintenance) .....	31,487	15,390	3,472
2022 (projected decrease) .....	35,616	20,581	2,529

Table 5 shows that between 2008 and 2015, the entire Wheeling Area is projected to reduce SO<sub>2</sub> emissions by 30,260 tpy, NO<sub>x</sub> emissions by 19,767 tpy, and direct PM<sub>2.5</sub> emissions by 2,565 tpy. Between 2008 and 2022, the Area is projected to reduce SO<sub>2</sub> emissions by 35,616 tpy, NO<sub>x</sub> emissions by 20,581 tpy, and direct PM<sub>2.5</sub> emissions by 2,529 tpy. Thus, the projected emissions inventories show that the Area will continue to maintain the 1997 annual PM<sub>2.5</sub> NAAQS during the 10 year maintenance period.

(3) Maintenance Demonstration Through 2023

As noted in Section VI.4.a of this document, CAA section 175A requires a

state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area "for at least 10 years after the redesignation." EPA has interpreted this as a showing of maintenance "for a period of 10 years following redesignation." September 4, 1992 Calcagni Memorandum at p.9. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. See Calcagni Memorandum at pp.9–10.

As discussed in detail above, the State's maintenance plan submission expressly documents that the Area's

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

- Significant emissions controls will remain in place and will continue to provide reductions that will keep the Area in attainment. As part of a Federally enforceable consent decree with AEP, the Ohio Power Mitchell Plant in Marshall County was required starting in January 2009 to operate its SCR continuously to control emissions of NO<sub>x</sub> and to operate continuously its

FDG to reduce SO<sub>2</sub> starting in December 2007. In addition, AEP is required by the Federally enforceable consent decree to retire, retrofit, or repower additional units such as Kammer Units 1–3 by the end of December 2018.

- West Virginia has committed to maintain all of the control measures upon which West Virginia relies in its March 8, 2012 submittal and will submit any changes to EPA for approval as a SIP revision.

- Emissions inventory levels for SO<sub>2</sub> and NO<sub>x</sub> in 2022 are well below the attainment year inventory levels (*see* Table 5), and EPA believes that it is highly improbable that sudden increases would occur that could exceed the attainment year inventory levels in 2023.

- The mobile source contribution has been determined to be insignificant and is expected to remain insignificant in 2023 with fleet turnover in upcoming years that will result in cleaner vehicles and cleaner fuels.

- Air quality concentrations which are well below the standard, coupled with the emissions inventory projections through 2022, demonstrate that it would be very unlikely for a violation to occur in 2023. The 2009–2011 design value of 13.0 µg/m<sup>3</sup> provides a sufficient margin in the event of any emissions increase, and the design value reflects a continued downward trend in monitored data in the Area for the last several years.

Thus, even if EPA finalizes its proposed approval of the redesignation request and maintenance plan in 2013, EPA's approval is based on a showing, in accordance with CAA section 175A, that West Virginia's maintenance plan provides for maintenance for at least 10 years after redesignation and clearly into 2023.

#### (4) Monitoring Network

EPA has determined that West Virginia's maintenance plan includes a commitment to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. West Virginia currently operates two PM<sub>2.5</sub> monitors in the Wheeling Area. One is located in Marshall County, and the other one is in Ohio County. In its March 8, 2012 submittal, West Virginia stated that it will consult with EPA prior to making any necessary changes to the network and will continue to quality assure the monitoring data in accordance with the requirements of 40 CFR part 58.

#### (5) Verification of Continued Attainment

To provide for tracking of the emission levels in the Area, WVDEP requires major point sources to submit air emissions information annually and prepares a new periodic inventory for all PM<sub>2.5</sub> precursors every three years in accordance with EPA's Air Emissions Reporting Requirements (AERR). EPA has determined that WVDEP will continue to compare emissions information to the attainment year inventory to assure continued attainment with the 1997 annual PM<sub>2.5</sub> NAAQS and that WVDEP will use this information to assess emissions trends, as necessary.

#### (6) The Maintenance Plan's Contingency Measures

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

The ability of the West Virginia portion of the Area to stay in compliance with the 1997 annual PM<sub>2.5</sub> NAAQS after redesignation depends upon NO<sub>x</sub> and SO<sub>2</sub> emissions in the Wheeling Area remaining at or below 2008 levels. West Virginia's maintenance plan projects NO<sub>x</sub> and SO<sub>2</sub> emissions to decrease and stay below 2008 levels through at least the year 2022. West Virginia's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

West Virginia's contingency measures include a Warning Level Response and an Action Level Response. An initial Warning Level Response is triggered when the average weighted annual mean for a single calendar year exceeds 15.5 µg/m<sup>3</sup> within the maintenance area. In that case, a study will be conducted to determine if the emissions trends show increases; if action is necessary to reverse emissions increases, West Virginia will follow the same procedures for control selection and

implementation as for an Action Level Response, and implementation of necessary controls will take place as expeditiously as possible, but no later than 12 months from the end of the most recent calendar year.

The Action Level Response will be prompted by any one of the following: A Warning Level Response study that shows emissions increases; a weighted annual mean over a two-year average that exceeds the standard; or a violation of the standard in the maintenance area. If an Action Level Response is triggered, West Virginia will adopt and implement appropriate control measures within 18 months from the end of the year in which monitored air quality triggering a response occurs. West Virginia will also consider whether additional regulations that are not a part of the maintenance plan can be implemented in a timely manner to respond to the trigger.

West Virginia's candidate contingency measures include the following: (1) Diesel reduction emission strategies, (2) alternative fuels and diesel retrofit programs for fleet vehicle operations, (3) PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> emissions offsets for new and modified major sources, (4) concrete manufacturing controls, and (5) additional NO<sub>x</sub> reductions. Additionally, West Virginia has identified a list of sources that could potentially be controlled. These include: Industrial, commercial and institutional (ICI) Boilers for SO<sub>2</sub> and NO<sub>x</sub> controls, EGUs, process heaters, internal combustion engines, combustion turbines, other sources greater than 100 tpy, fleet vehicles, concrete manufacturers, and aggregate processing plants. EPA finds that the West Virginia maintenance plan for the Wheeling Area includes appropriate contingency measures as necessary to ensure West Virginia will promptly correct any violation of the NAAQS that occurs after redesignation. For all of the reasons discussed above, EPA is proposing to approve West Virginia's 1997 annual PM<sub>2.5</sub> maintenance plan for the West Virginia portion of the Area as meeting the requirements of section 175A of the CAA.

#### VII. Analysis of West Virginia's Transportation Conformity Insignificance Determination for the Wheeling Area

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from mobile sources. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen

existing violations, or delay timely attainment of a NAAQS or an interim milestone. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (MVEBs) contained in a SIP. If a transportation plan does not “conform,” most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of such transportation activities to a SIP.

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

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

In West Virginia’s March 8, 2012 submittal, the State provided information that projects that onroad mobile source NO<sub>x</sub> constitutes less than 12 and a half percent of the Area’s total NO<sub>x</sub> emissions in 2015 and 2022 due to continuing fleet turnover and that onroad mobile source PM<sub>2.5</sub> emissions constitute less than two and a half percent of the Area’s total PM<sub>2.5</sub> emissions. Both projections took into consideration future vehicle miles traveled (VMT) growth. In addition, neither EPA nor the State has made any findings that volatile organic compounds (VOCs), SO<sub>2</sub>, or ammonia (NH<sub>3</sub>) are a significant contributor to PM<sub>2.5</sub> mobile emissions. Therefore, the March 8, 2012 submittal meets the criteria in the relevant portions of 40 CFR 93.102 and 93.118 for an insignificance finding, and EPA agrees with the determination of insignificance for SO<sub>2</sub>, NO<sub>x</sub> and PM<sub>2.5</sub> for the West Virginia portion of the Area. As previously discussed, EPA already initiated a comment period on November 5, 2012 on the proposed insignificance determination for the West Virginia portion of the Area on the OTAQ Web site to allow for a 30-day review of this proposed insignificance determination in conjunction with this proposed rulemaking. EPA is proposing to find that West Virginia’s insignificance determination for transportation conformity is adequate. For more information on EPA’s insignificance findings, see the TSD dated June 5, 2012, available on line at [www.regulations.gov](http://www.regulations.gov), Docket ID No. EPA-OAR-R03-2012-0368.

#### VIII. Proposed Actions

EPA is proposing to approve the redesignation of the West Virginia portion of the Area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. EPA has evaluated West Virginia’s redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the monitoring data demonstrate that the Wheeling Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS and will continue to attain the standard. Final approval of this redesignation request would change the designation of the West Virginia portion of the Area from nonattainment to attainment for the 1997 p.m.<sub>2.5</sub> annual NAAQS. EPA is also proposing to approve the associated maintenance plan for the West Virginia portion of the Area submitted on March 8, 2012, as a revision to the West Virginia SIP because it meets the requirements of section 175A of the CAA as described previously in this

notice. EPA is also proposing to approve the insignificance determination for onroad motor vehicle contribution of PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>2</sub> submitted by the West Virginia portion of the Area in conjunction with West Virginia’s redesignation request. As noted previously, EPA had already initiated a comment period on the proposed insignificance determination for the West Virginia portion of the Area in the OTAQ Web site (<http://www.epa.gov/otaq/stateresources/transconf/cursips.htm>) to allow for a 30-day review of this proposed determination in conjunction with this proposed rulemaking. The 30-day comment period started on November 5, 2012 and will end on December 5, 2012. In addition, as part of the maintenance plan, EPA is proposing to approve the 2005 base year emissions inventory as meeting the requirement in section 172(c)(3) of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### IX. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

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

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

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

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

In addition, this rule proposing to approve West Virginia's redesignation request, maintenance plan, 2005 base year emissions inventory, and transportation conformity insignificance determination for the Wheeling Area for the 1997 annual PM<sub>2.5</sub> NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, PM<sub>2.5</sub>, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: November 21, 2012.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2012-29866 Filed 12-10-12; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WC Docket No. 10-90; WT Docket No. 10-208; DA 12-1853]

### Further Inquiry Into Issues Related to Mobility Fund Phase II

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Wireless Telecommunications Bureau and Wireline Competition Bureau (collectively, the Bureaus) seek further comment on specific issues relating to the implementation of Phase II of the Mobility Fund. The Bureaus also seek to develop a more comprehensive record on certain issues relating to the award of ongoing support for advanced mobile services.

**DATES:** Comments are due on or before December 21, 2012, and reply comments are due on or before January 7, 2013.

**ADDRESSES:** All filings in response to this public notice must refer to Docket Numbers 10-90 and 10-208. The Bureaus strongly encourage interested parties to file comments electronically. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

**FOR FURTHER INFORMATION CONTACT:** Sue McNeil, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Commission's Further*

*Inquiry Into Issues Related to Mobility Fund Phase II (Mobility Fund Phase II Public Notice)* released on November 27, 2012. The complete text of the *Mobility Fund Phase II Public Notice*, as well as related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The *Mobility Fund Phase II Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 12-1853.

## I. Introduction

1. The Bureaus seek further comment on a limited number of specific issues relating to the implementation of Phase II of the Mobility Fund. As established in the *USF/ICC Transformation Order and FNPRM*, 76 FC 78383, December 16, 2011, in Mobility Fund Phase II the Commission will award \$500 million annually to ensure the availability of mobile broadband and high quality voice services in certain areas. Building on the comments previously filed in response to the *USF/ICC Transformation Order and FNPRM* and the Bureaus' experience in implementing a reverse auction to award one-time Phase I support, the Bureaus seek to develop a more comprehensive record on certain issues related to the award of ongoing support for advanced mobile services. In considering the issues related to Mobility Fund Phase II, the Bureaus ask commenters keep in mind that Phase II support is not one-time support, but is ongoing support aimed at expanding and sustaining mobile services.

## II. Background

2. In the *USF/ICC Transformation Order and FNPRM*, the Commission comprehensively reformed and modernized the universal service high-cost program. Among other things, for the first time, the Commission explicitly recognized the important benefits of and demand for mobile services through the creation of a two-phase Mobility Fund within the high-cost program.

3. For Phase I, the Commission allocated \$300 million in one-time