

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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- 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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practical and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will

submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 3, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

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

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

Dated: February 23, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

#### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(497)(i)(C)(1)(ii), (c)(500)(ii)(A)(2), and (c)(553) to read as follows:

#### § 52.220 Identification of plan—in part.

\* \* \* \* \*

(c) \* \* \*

(497) \* \* \*

(i) \* \* \*

(C) \* \* \*

(1) \* \* \*

(ii) Previously approved on March 5, 2018 at (c)(497)(i)(C)(1)(i) of this section

and now deleted with replacement at (c)(553)(i)(B)(1)(i), Ordinance No. 344, Portola Municipal Code, Chapter 15.10, “Wood Stove and Fireplace Ordinance,” adopted June 22, 2016.

\* \* \* \* \*

(500) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(2) The “Portola Fine Particulate Matter (PM<sub>2.5</sub>) Attainment Plan,” adopted January 23, 2017, subchapter VI.B (“Contingency Measure”), as supplemented and revised October 26, 2020.

\* \* \* \* \*

(553) The following additional materials were submitted on December 29, 2020, by the Governor’s designee as an attachment to a letter dated December 28, 2020.

(i) *Incorporation by reference.* (A) Northern Sierra Air Quality Management District.

(1) City of Portola.

(i) Ordinance No. 359, Portola Municipal Code, Chapter 15.10, “Wood Stove and Fireplace Ordinance and the Prohibition of the Open Burning of Yard Waste,” adopted September 9, 2020, except paragraph 15.10.060 B., section 15.10.100, and section 15.10.110.

(ii) [Reserved]

(B) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board.

(1) Resolution 20–26, “Proposed Portola PM<sub>2.5</sub> Plan Contingency Measure State Implementation Plan Submittal,” adopted November 19, 2020.

(2) [Reserved]

(B) Northern Sierra Air Quality Management District.

(1) Northern Sierra Air Quality Management District Resolution 2020–09, adopted October 26, 2020.

(2) [Reserved]

[FR Doc. 2021–04351 Filed 3–2–21; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R03–OAR–2020–0196; FRL–10020–45–Region 3]

**Air Plan Approval; West Virginia; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the West Virginia Portion of the Huntington-Ashland, WV-KY Area Comprising Cabell and Wayne Counties**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the West Virginia Department of Environmental Protection (WVDEP) on behalf of the State of West Virginia (WV). This revision pertains to West Virginia's plan for maintaining the 1997 8-hour ozone national ambient air quality standard (NAAQS) for the West Virginia portion of the Huntington-Ashland, WV-KY area (Huntington Area), comprising Cabell and Wayne Counties. The EPA is approving these revisions to the West Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on April 2, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0196. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Keila M. Pagán-Incle, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2926. Ms. Pagán-Incle can also be reached via electronic mail at [pagan-incle.keila@epa.gov](mailto:pagan-incle.keila@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On June 29, 2020 (85 FR 38825), EPA published a notice of proposed rulemaking (NPRM) for the State of West Virginia. In the NPRM, EPA proposed approval of West Virginia's plan for maintaining the 1997 8-hour ozone NAAQS through October 16, 2026, in accordance with CAA section 175A. The formal SIP revision was submitted by WVDEP on December 10, 2019.

**II. Summary of SIP Revision and EPA Analysis**

On September 15, 2006 (71 FR 54421, effective October 16, 2006), EPA approved a redesignation request (and maintenance plan) from WVDEP for the Huntington Area. Per CAA section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years, and in *South Coast Air Quality Management District v. EPA*,<sup>1</sup> the D.C. Circuit held that this requirement cannot be waived for areas, like the Huntington Area, that had been redesignated to attainment for the 1997 8-hour ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.<sup>2</sup> WVDEP's December 10, 2019 SIP submittal fulfills West Virginia's obligation to submit a second maintenance plan and addresses each of the five necessary elements.

As discussed in the June 29, 2020 NPRM, consistent with longstanding EPA's guidance,<sup>3</sup> areas that meet certain criteria may be eligible to submit a limited maintenance plan (LMP) to satisfy one of the requirements of CAA section 175A. Specifically, states may meet CAA section 175A's requirements to "provide for maintenance" by demonstrating that the area's design value<sup>4</sup> are well below the NAAQS and

<sup>1</sup> 882 F.3d 1138 (D.C. Cir. 2018).

<sup>2</sup> "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

<sup>3</sup> See "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate PM<sub>10</sub> Nonattainment Areas" from Lydia Wegman, OAQPS, dated August 9, 2001.

<sup>4</sup> The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area

that it has had historical stability attaining the NAAQS. EPA evaluated WVDEP's December 10, 2019 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the Huntington Area, comprising Cabell and Wayne Counties as a revision to the West Virginia SIP. The effect of this action makes certain commitments related to the maintenance of the 1997 8-hour ozone NAAQS federally enforceable as part of the West Virginia SIP.

Other specific requirements of WVDEP's December 10, 2019 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

**III. EPA's Response to Comments Received**

EPA received four sets of relevant comments on the June 29, 2020 NPRM. Comments 2 and 3 raised concerns about EPA's reliance on the Air Quality Modeling Technical Support Document (TSD) and are summarized and addressed together under Comment 2. All comments received are in the docket for this rulemaking action. A summary of the comments and EPA's responses are provided herein.

*Comment 1:* The commenter contends that the LMP should not be approved because it is not based on the "the best available science." The commenter asserts that the second maintenance plan does not provide information regarding the prevention and reduction of future impacts of "oil and gas development activity," and does not take into consideration impacts of "installation of oil and gas pipelines in the area." Additionally, the commenter asserts that the LMP "does not have adequate funding to cover the costs and does not comply with other provisions of state policy that make it impossible for it to meet the EPA standards."

Further, the commenter claims that the second maintenance plan failed to consider "potential emissions from oil and gas pipelines" including "spills and releases," and these emissions need to be included and mitigated.

*Response 1:* Commenter contends that EPA's proposed approval of West Virginia's second maintenance plan is not based on "the best available science," but provides no support for its contention. EPA disagrees with the commenter that West Virginia's second maintenance plan is not based on "the

is the highest design value of any monitoring site in the area.

best available science.” As EPA laid out in the NPRM, EPA has interpreted the provision in CAA section 175A that requires states to “provide for maintenance” of the NAAQS to be satisfied when the design values are consistently below 85% of the relevant standard, which in this case means at or below 0.071 parts per million (ppm). At the time of submission, on December 10, 2019, the Huntington Area’s 2016 to 2018 design value was at 0.064 ppm. The 2017 to 2019 period design value fell to 0.062 ppm. As EPA noted in the NPRM the area has maintained design values below 0.065 ppm since 2014. The commenter did not identify what science might provide a better basis for demonstrating maintenance with the ozone NAAQS than what West Virginia relied upon in the second maintenance plan, or that EPA should consider in its evaluation of the plan. The commenter had provided EPA with no basis to change its conclusion that the data and analysis of the data provided by West Virginia in support of the second maintenance plan will result in maintenance of the NAAQS for the remainder of the second maintenance period. See, e.g., *International Fabricare Institute v. E.P.A.*, 972 F.2d 384, 391 (D.C. Cir. 1992). (The Administrative Procedures Act does not require that EPA change its decision based on “comments consisting of little more than assertions that in the opinions of the commenters the agency got it wrong,” when submitted with no accompanying data.)

The commenter further asserts that: (1) The plan did not provide information about prevention and reduction of future impacts of “oil and gas development activity;” (2) the plan did not take into consideration future installation of oil and gas pipelines in the area; and (3) the plan failed to consider “potential emissions from oil and gas pipeline.” We do not agree with the commenter that a demonstration of maintenance under CAA section 175A is required to “prevent” potential future emissions activities in the area, or to consider potential future emissions from sources that do not yet exist. As noted above and in the proposal, under the LMP option, states may demonstrate that areas will maintain the NAAQS by showing that design values in the area in question are stably and significantly below the level of the NAAQS. In this case, the Huntington Area’s most recent design value<sup>5</sup> is below 0.065 ppm and

<sup>5</sup> The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area

has been since 2014. The design values for the Huntington Area, that includes Cabell County in West Virginia and Boyd County in Kentucky (KY), consistently have been below 0.071 ppm since 2013 through 2019, the last year for which EPA has data.<sup>6</sup> See Table 1 of this preamble for the design value data in ppm for both counties. Based on these trends, EPA has a high degree of confidence that the Area will be able to continue to maintain the NAAQS.

TABLE 1—REPORTED DESIGN VALUE DATA BETWEEN 2006 AND 2019 FOR CABELL COUNTY, WV AND BOYD COUNTY, KY<sup>7</sup>

Year	Design value (ppm)	
	Cabell County, WV	Boyd County, KY
2006	0.076	0.076
2007	0.084	0.077
2008	0.080	0.074
2009	0.073	0.070
2010	0.066	0.070
2011	0.067	0.069
2012	0.072	0.072
2013	0.069	0.069
2014	0.065	0.068
2015	0.062	0.066
2016	0.064	0.066
2017	0.064	0.065
2018	0.064	0.064
2019	0.062	0.062

Moreover, in addition to demonstrating maintenance via the LMP option, West Virginia also pointed to EPA’s Air Quality Modeling TSD which projects future design values, including the Huntington Area, in 2023. This modeling takes into consideration all on-the-books control measures and any known future planned projects and sources. The Air Quality Modeling TSD projects that the average design value for the area in 2023 to be 0.058 ppm. This value is so far below the level of the 1997 8-hour ozone NAAQS that even if additional oil and gas sources

is the highest design value of any monitoring site in the area.

<sup>6</sup> Design values for 2020 are not expected to be available before May 1, 2021. Design values are calculated for the year after states, locals and/or tribes certify their data on May 1st of the following year. Typically, design values are not finalized and posted until July of the following year. Design values are published annually by EPA and currently available through calendar year 2019. For more information on air quality design values visit: <https://www.epa.gov/air-trends/air-quality-design-values>.

<sup>7</sup> See “EPA Air Quality System—Huntington WV Design Value Report” of WVDEP’s December 10, 2019 submittal, which includes details about the design values from the Huntington Area in WV from 2006 until 2019. Air quality data is also available at: <https://www.epa.gov/outdoor-air-quality-data>.

were to be sited in the Huntington Area (any of which would be subject to applicable CAA controls such as Prevention of Significant Deterioration [PSD]), those emissions increases would be unlikely to cause the area to violate the 1997 8-hour ozone NAAQS. Any emissions increases above the trigger levels specified in the LMP, whatever the cause, will result in West Virginia having to implement contingency measures as described in the NPRM. Moreover, as stated in the NPRM, if there is indeed a violation and the design value exceeds the NAAQS, the contingency plan will be “triggered,” based on the following schedule: (1) Quality assurance procedures must confirm the monitored violation within 45 days of occurrence; (2) a draft rule would be developed by WVDEP for any regulation chosen; (3) WVDEP will adopt the selected control measure(s) as emergency rule(s) which will be implemented within six months after adoption and will file the rule(s) as legislative rule(s) for permanent authorization by the legislature; and (4) for each voluntary measure selected, WVDEP will initiate program development with local governments within the area by the start of the following ozone season. These measures are part of the CAA section 175A requirements for an approvable LMP and West Virginia’s second maintenance plan meets these requirements.

The commenter also contends that the LMP does not present “adequate funding to cover the costs” and fails to “comply with other provisions of state policy,” but provides no further details or explanation. Similar to the comment regarding the alleged failure of West Virginia to use “the best available science,” the commenter has made an allegation without providing any support. The commenter provides no basis for EPA to be able to evaluate whether or not a funding issue exists. With respect to an alleged failure to comply with state policy, no specific policies that “make it impossible for it to meet the EPA standards” are cited by the commenter. Even had the commenter cited specific policies, “[C]omments consisting of little more than assertions that in the opinions of the commenters the agency got it wrong,” when submitted with no accompanying data do not provide sufficient ground for EPA to change its evaluation of a plan that on its face comports with EPA’s governing law and with the Agency’s consistent and long-standing policies for LMPs. See *International Fabricare* at 391. Furthermore, CAA section 175A does

not require that maintenance plans identify or provide funding for any costs associated with implementation of the plan. EPA has set forth in the NPRM the criteria relevant to approvability of the LMP. EPA has determined that the December 10, 2019 SIP revision includes adequate information to support approval of West Virginia's LMP. As set forth in the NPRM, EPA has determined that the State provided sufficient assurances in the LMP for EPA to approve West Virginia's 1997 8-hour ozone second maintenance plan for the Huntington Area. EPA's evaluation of the West Virginia's December 10, 2019 SIP revision and the rationale for taking rulemaking action on this submission was discussed in detail in the NPRM. This comment gives EPA no reason to believe that the criteria it applied in the NPRM are either incorrect, incomplete or have been misapplied.

*Comment 2:* Two commenters assert that the LMP should not be approved because of EPA's reliance on the Air Quality Modeling TSD that was developed for EPA's regional transport rulemaking.

One of the commenters alleged that the TSD does not consider newer EPA policies (*i.e.*, "repealing the MATS rule or removing California's ability to regulate cars, or even the repeal of the Clean Power Plan and replacement with the ACE rule").

Both commenters contend that: (1) The TSD shows maintenance of the area for three years and not 10 years; (2) the modeling was performed for transport purposes across state lines and not to show maintenance of the NAAQS; (3) the modeling was performed for the 2008 and 2015 ozone NAAQS and not the 1997 ozone NAAQS; and (4) the TSD has been "highly contested" by environmental groups, "incorrectly uses assumptions disputed by multiple non-governmental and governmental organizations" and "other states contend EPA's modeling as flawed."

Further, one commenter contends that the TSD does not address a recent court decision that "threw out" EPA's modeling "because it modeled to the wrong attainment year. . . ." Both commenters assert that the TSD is not being used for its intended purpose and EPA should disapprove the LMP due to EPA's reliance on the TSD in the NPRM.

*Response 2:* EPA does not agree with the commenters that approval of West Virginia's second maintenance plan is not appropriate. The commenters raise concerns about West Virginia and EPA's citation of the Air Quality Modeling TSD, but the commenters ignore that EPA's primary basis for finding that

West Virginia has provided for maintenance of the 1997 8-hour ozone NAAQS in the Huntington Area is the State's demonstration that the criteria for a LMP has been met. See 85 FR 38825, June 29, 2020. Specifically, as stated in the NPRM, for decades EPA has interpreted the provision in CAA section 175A that requires states to "provide for maintenance" of the NAAQS to be satisfied where areas demonstrate that design values are and have been stable and well below the NAAQS—*e.g.*, at 85% of the standard, or in this case at or below 0.071 ppm. EPA calls such demonstration a "limited maintenance plan." The Air Quality Modeling TSD referenced by West Virginia merely provides additional support for the area's continued maintenance of the 1997 8-hour ozone NAAQS.

EPA disagrees that it must disapprove the LMP because the Air Quality Modeling TSD does not consider newer EPA policies like "repealing the MATS (Mercury and Air Toxics Standards) rule, or California's ability to regulate cars, or even the repeal of the Clean Power Plan and replacement with the ACE (Affordable Clean Energy) rule." First, MATS was not repealed. All emission reductions required under MATS remain. See 85 FR 31286, 31312 (May 22, 2020). Second, the 2023 Air Quality Modeling TSD cited by West Virginia in their second maintenance plan submission does not include emission reductions associated with the Clean Power Plan.<sup>8</sup> (EPA's actions with respect to regulating automobile emissions in California are not relevant to this action).

The modeling cited by the commenters was referenced in West Virginia's submission and as part of EPA's proposed approval as supplementary supporting information, and we do not agree that the commenters' concerns about relying on that modeling are warranted. The commenters contend that the modeling only goes out three years (to 2023) and it needs to go out to 10 years, and therefore may not be relied upon.

<sup>8</sup> See Technical Support Document (TSD), Additional Updates to Emissions Inventories for the Version 6.3, 2011 Emissions Modeling Platform for the Year 2023, available at [https://www.epa.gov/sites/production/files/2017-11/documents/2011v6.3\\_2023en\\_update\\_emismod\\_tsd\\_oct2017.pdf](https://www.epa.gov/sites/production/files/2017-11/documents/2011v6.3_2023en_update_emismod_tsd_oct2017.pdf), at 92 ("The projected EGU emissions for 2023el included the Final Mercury and Air Toxics (MATS) rule announced on December 21, 2011, the Cross-State Air Pollution Rule (CSAPR) issued July 6, 2011, the CSAPR Update Rule issued October 26, 2016 and the Clean Power Plan (CPP), while the 2023en emissions [*i.e.*, the emissions inventory used in the updated 2023 modeling] include the other rules but do not include the CPP.")

However, the Air Quality Modeling TSD was only relied upon by EPA to provide additional support to indicate that the area is expected to continue to attain the NAAQS during the relevant period. As noted above, West Virginia primarily met the requirement to demonstrate maintenance of the NAAQS by showing that they met the criteria for an LMP, rather than by modeling or projecting emissions inventories out to a future year. We also do not agree that the State is required to demonstrate maintenance for 10 years; CAA section 175A requires the State to demonstrate maintenance through the 20th year after the area is redesignated, which in this case is 2026.

We also disagree with the commenters' contention that because the Air Quality Modeling TSD was performed to analyze the transport of pollution across state lines with respect to other ozone NAAQS, it cannot be relied upon in this action. We acknowledge that the Air Quality Modeling TSD at issue was performed as part of EPA's efforts to address interstate transport pollution under CAA section 110(a)(2)(D)(i)(I). However, the purpose of the Air Quality Modeling TSD is fully in keeping with the question of whether the Huntington Area is expected to maintain the NAAQS. The Air Quality Modeling TSD projected ozone concentrations at every air quality monitor in the contiguous United States in 2023 in order to identify which monitors might have problems attaining or maintaining the 2008 and 2015 NAAQS for ozone in 2023. Because the Air Quality Modeling TSD results simply provide projected ozone concentration design values, which are expressed as three-year averages of the annual fourth high 8-hour daily maximum ozone concentrations, the modeling results are useful for analyzing attainment and maintenance of any of the ozone NAAQS that are measured using this averaging time; in this case, the 1997, 2008 and 2015 ozone NAAQS. The only difference between the three standards is stringency. Taking the Huntington Area's most recent certified design value as part of the proposal (*i.e.*, for the years 2016–2018), the area's design value was 0.064 ppm. What we can discern from this is that the area is meeting the 1997 ozone NAAQS of 0.080 ppm, the 2008 ozone NAAQS of 0.075 ppm, and the 2015 ozone NAAQS of 0.070 ppm. The same principle applies to projected design values from the Air Quality Modeling TSD. In this case, the interstate transport modeling indicated that in 2023, the Huntington Area's design value is projected to be 0.058

ppm,<sup>9</sup> which is again, well below all three standards. The fact that the Air Quality Modeling TSD was performed to indicate whether the area will have problems attaining or maintaining the 2015 ozone NAAQS (*i.e.*, 0.070 ppm) does not make the modeling less useful for determining whether the area will also meet the less stringent revoked 1997 standard (*i.e.*, 0.080 ppm).

The commenters' assert that many groups have criticized EPA's transport modeling, alleging that the agency used improper emissions inventories, incorrect contribution thresholds, wrong modeling years, or that EPA has not accounted for local situations or reductions that occurred after the inventories were established. The commenters' also allege that EPA should not rely on its modeling because it "have now been outlawed by multiple courts" and "fails to stand up to the recent court decisions," citing the *Wisconsin v. EPA* D.C. Circuit decision.<sup>10</sup> EPA disagrees that the existence of criticisms of the agency's Air Quality Modeling TSD render it unreliable, and we also do not agree that anything in recent court decisions, including *Wisconsin v. EPA*, suggests that EPA's Air Quality Modeling TSD is technically flawed. We acknowledge that the source apportionment Air Quality Modeling TSD runs cited by the commenters have been at issue in various legal challenges to EPA actions, including the *Wisconsin v. EPA* case. However, in that case, the *only* flaw in EPA's Air Quality Modeling TSD identified by the D.C. Circuit was the fact that its analytic year did not align with the attainment date found in CAA section 181.<sup>11</sup> Contrary to the commenters' suggestion, the D.C. Circuit *upheld* EPA's Air Quality Modeling TSD with respect to the many technical challenges raised by petitioners in the *Wisconsin* case.<sup>12</sup> We therefore think reliance on the interstate transport Air Quality Modeling TSD as supplemental support for showing that the Huntington Area will maintain the 1997 8-hour ozone NAAQS through the end of its 20th year maintenance period is appropriate.

<sup>9</sup> The June 29, 2020 NPRM for this action recited 0.060 ppm as the Projected 2023 design value in Table 2—Huntington Area 8-hour Ozone Design Value in Parts Per Million. Through this final action we clarify that the correct Projected 2023 design value that was included in the State's submission, is 0.058 ppm. The inclusion of the slightly higher but incorrect figure in the NPRM is a harmless error that does not alter EPA's proposal to approve this LMP.

<sup>10</sup> *Wisconsin*, 938 F.3d 303 (D.C. Cir. 2019).

<sup>11</sup> *Wisconsin*, 938 F.3d at 313.

<sup>12</sup> *Wisconsin*, 938 F.3d at 323–331.

*Comment 3:* The commenter asserts that EPA should disapprove this maintenance plan because EPA should not allow states to rely on emission programs such as the Cross-State Air Pollution rule (CSAPR) to demonstrate maintenance for the 1997 ozone NAAQS. The commenter alleges that "the CSAP and CSAP Update and CSAP Close-out rules were vacated entirely" by multiple courts and "are now illegal programs providing no legally enforceable emission reductions to any states formerly covered by the rules." The commenter also asserts that nothing restricts "big coal and gas power plants from emitting way beyond there (sic) restricted amounts." The commenter does allow that "If EPA can show that continued maintenance without these rules is possible for the next 10 years then that would be OK but as the plan stands it relies on these reductions and must be disapproved."

*Response 3:* The commenter has misapprehended the factual circumstances regarding these interstate transport rules. Every rule cited by the commenter that achieves emission reductions from electric generating units (EGUs or power plants)—*i.e.*, the Cross-State Air Pollution Rule and the CSAPR Update—remains in place and continues to ensure emission reductions of nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>). CSAPR began implementation in 2015 (after it was largely upheld by the Supreme Court) and the CSAPR Update began implementation in 2017. The latter rule was remanded to EPA to address the analytic year issues discussed in the prior comment and response, but the rule remains fully in effect. The commenter is correct that the D.C. Circuit vacated the CSAPR close-out, but we note that that rule was only a determination that no further emission reductions were required to address interstate transport obligations for the 2008 ozone NAAQS; the rule did not itself establish any emission reductions. We therefore disagree that the legal status of these rules presents any obstacle to EPA's approval of West Virginia's submission.

#### IV. Final Action

EPA is approving the 1997 8-hour ozone NAAQS limited maintenance plan for the Huntington Area, comprising Cabell and Wayne Counties as a revision to the West Virginia SIP.

#### V. Statutory and Executive Order Reviews

##### A. General Requirements

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 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
  - Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
  - 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 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.

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 3, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to West Virginia’s limited maintenance plan for the Huntington Area, comprising Cabell and Wayne Counties may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: February 18, 2021.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart XX—West Virginia**

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding an entry for “1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the West Virginia Portion of the Huntington-Ashland, WV-KY Area Comprising Cabell and Wayne Counties” at the end of the table to read as follows:

**§ 52.2520 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the West Virginia Portion of the Huntington-Ashland, WV-KY Area Comprising Cabell and Wayne Counties.	Huntington-Ashland WV-KY, West Virginia Area Comprising Cabell and Wayne Counties.	12/10/19	3/3/21, [insert <b>Federal Register</b> citation].	

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BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2020-0388; FRL-10020-89-Region 5]

**Air Plan Approval; Ohio; Base Year Emission Inventories and Emissions Statement Rule Certification for the 2015 Ozone Standard**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), a revision to the State Implementation Plan (SIP) submitted by the Ohio Environmental Protection Agency on July 24, 2020. The

CAA establishes emission inventory requirements for all ozone nonattainment areas. The revision addresses the emission inventory requirements for the Cleveland, Ohio (OH) ozone nonattainment area and the Ohio portion of the Cincinnati, Ohio-Kentucky (Cincinnati) ozone nonattainment area, as designated under the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard). EPA is also confirming that Ohio’s stationary annual emissions statement regulation, which has been previously approved by EPA under a prior ozone standard, satisfies the CAA emissions statement rule requirement for the Cleveland and Cincinnati nonattainment areas under the 2015 ozone NAAQS.

**DATES:** This final rule is effective on April 2, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2020-0388. All

documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (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 through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886-6031 before visiting the Region 5 office.