

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

[WV061–6031a; FRL–7549–1]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the Follansbee PM<sub>10</sub> Nonattainment Area To Attainment and Approval of the Associated Maintenance Plan****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a request from the State of West Virginia to redesignate the Follansbee area of Brooke County, West Virginia (Follansbee area) from nonattainment to attainment for the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM<sub>10</sub>). EPA is also approving the plan for maintaining the PM<sub>10</sub> standard in the Follansbee area and contingency measures as revisions to the West Virginia State Implementation Plan (SIP). Approval of the maintenance plan will put a plan in place for maintaining the PM<sub>10</sub> standard for the next ten years in the Follansbee area. EPA is approving the redesignation request, the maintenance plan and the contingency measures in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on October 27, 2003 without further notice, unless EPA receives adverse written comment by September 26, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part V of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division,

U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304–2943.

**FOR FURTHER INFORMATION CONTACT:** Ruth Knapp, (215) 814–2191, or by e-mail at [knapp.ruth@epa.gov](mailto:knapp.ruth@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used we mean EPA.

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**Introduction**

Under the CAA, EPA may redesignate areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3) of the Act. This includes full approval of a maintenance plan for the area. EPA may approve a maintenance plan which meets the requirements of section 175A of the CAA. On May 12, 2003, the State of West Virginia submitted a redesignation

request and maintenance plan for the Follansbee PM<sub>10</sub> moderate nonattainment area. When approved, the section 175A maintenance plan will become a Federally enforceable part of the West Virginia SIP for this area.

**I. Area Designated Nonattainment for PM<sub>10</sub>**

On November 15, 1990, the Clean Air Act (CAA) amendments were enacted. Pursuant to section 107(d)(4)(B), the Follansbee area in Brooke County, West Virginia was designated nonattainment by operation of law. The nonattainment classification and designation of Follansbee as a moderate PM<sub>10</sub> area was codified in 40 CFR part 81 on November 6, 1991 (56 FR 56848). Prior to enactment of the CAA amendments this area along with a portion of Jefferson County, Ohio near Steubenville was classified as a single Group I PM<sub>10</sub> nonattainment area. Under the 1990 CAA amendments, these two adjacent areas were each designated by operation of law as nonattainment areas. Although the State of West Virginia and the State of Ohio worked together to provide an attainment demonstration for both the Follansbee, West Virginia nonattainment area and the Jefferson County, Ohio nonattainment area, each area is treated separately for purposes of redesignation. Specific information on the Jefferson County, Ohio area's redesignation to attainment can be found in EPA's approval of the State of Ohio's redesignation request and maintenance plan for Jefferson County. (See December 11, 2000, 65 FR 77308).

**II. Geographic Boundaries of the PM<sub>10</sub> Nonattainment Area**

The Follansbee PM<sub>10</sub> nonattainment area in Brooke County, West Virginia is bounded on the north by the Market Street Bridge, on the east by West Virginia Route 2, on the south by the extension of the southern boundary of Steubenville Township in Jefferson County, Ohio, and on the west by the Ohio/West Virginia border.

The adjacent Jefferson County, Ohio area is bounded by Market Street (State Route 43) from the West Virginia /Ohio border west to Sunset Boulevard (U.S. Route 22), Sunset Boulevard west to the Steubenville Township /Cross Creek Township boundary, the Township boundary south to the Steubenville Corporation limit, the corporation boundary east to State Route 7, State Route 7 South to the Steubenville Township /Wells Township boundary, the Township boundary east to the West Virginia Ohio border, and North on the border to Market Street.

### III. Criteria for Redesignation

Section 107(d)(3)(E) of the CAA specifies five requirements that must be met to redesignate an area from nonattainment to attainment as follows:

1. The area has attained the applicable NAAQS;
2. The area has a fully approved SIP under section 110(k);
3. The air quality improvement is permanent and enforceable;
4. The area has a fully approved maintenance plan pursuant to section 175A; and
5. The area has met all relevant requirements under section 110 and part D of the Act.

### IV. Analysis of How the State Met the Criteria for Redesignation

The EPA has reviewed the redesignation request submitted by West Virginia for the Follansbee nonattainment area and finds that the request meets the five requirements of section 107(d)(3)(E).

#### *A. Data Shows Attainment of the PM<sub>10</sub> NAAQS in the Follansbee Area*

For purposes of assessing air quality, monitoring data in both West Virginia and Ohio was reviewed. The monitor in Brooke County, West Virginia has always been located outside the boundary of the nonattainment area but is included in the review to provide an overall picture of air quality in the area. Three monitors are currently operating in the Jefferson County, Ohio area previously described in section II entitled, Geographic Boundaries. The redesignation request is based upon the three most recent years of quality-assured PM<sub>10</sub> air monitoring data (1999–2001) available during preparation of the May 12, 2003 submittal. The PM<sub>10</sub> NAAQS includes both a daily and an annual standard. An area is attaining the daily and annual NAAQS if there are no violations, as determined in accordance with 40 CFR 50.6 and appendix K, based upon three complete consecutive calendar years of quality assured monitoring data. The daily standard is met if the expected frequency of values above 150 ug/m<sup>3</sup> is 1.0 or less. The data must be collected and quality assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS) now known as the Air Quality System (AQS).

West Virginia's formal submittal included data from 1990 through 2002. This data shows that the area has not recorded any exceedances of the daily NAAQS in the past decade. The formal redesignation request is based upon data from 1999 through 2001. This data has been quality assured and recorded in

AQS. During the 1999 through 2001 time period, there were no actual exceedances of the daily standard, and the average number of expected exceedances is less than 1.0 for the same time period. During 2002, no exceedances were recorded. Therefore, the area has attained and continues to attain the daily NAAQS. During 1999 through 2002 the maximum annual average recorded at these sites was 35 ug/m<sup>3</sup>. As the annual standard is based on the average annual mean over three years, the area has attained and continues to attain the annual PM<sub>10</sub> standard. Since the area has attained the daily and annual NAAQS based upon the most recent three years of quality-assured data available during preparation of the May 12, 2003 submittal, and continues to attain the NAAQS, the first criterion of section 107(d)(3)(E) has been satisfied. West Virginia has committed to continue monitoring in Brooke County in accordance with 40 CFR parts 53 and 58.

#### *B. Fully Approved SIP Under Section 110(k) of the CAA*

##### 1. Section 110 Requirements

On November 15, 1991, West Virginia submitted an attainment plan to EPA consisting of an attainment demonstration and control measures for the Follansbee area. On July 25, 1994 (59 FR 37696) EPA took a limited approval/limited disapproval action on the submittal. EPA fully approved the control measures portion of the plan, but disapproved the attainment demonstration and took no action on the contingency measures with specific regard to section 172(c)(9) of the CAA. On November 22, 1995, West Virginia submitted a revised attainment demonstration, and EPA approved that attainment demonstration on November 15, 1996 (61 FR 58481) but did not take action on the contingency measures. In this rulemaking, EPA is approving the contingency measures submitted on November 15, 1991 as fulfilling the requirements of section 172(c)(9). Therefore, EPA fully approved all applicable requirements of section 110(a)(2)(I) of the Act, including all applicable requirements of part D (relating to nonattainment), which were due prior to the time of the redesignation request.

##### 2. Part D Requirements

Part D of the CAA contains general provisions that apply to all nonattainment plans and certain sections that apply to specific pollutants. Before EPA may redesignate

the Follansbee PM<sub>10</sub> nonattainment area to attainment, the SIP must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. EPA designated the Follansbee area of Brooke County as a moderate PM<sub>10</sub> nonattainment area on November 6, 1991 (codified at 40 CFR 81.339). Therefore, to be redesignated to attainment, the area must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176. Section 189(a) of subpart 4 of the CAA also must be met.

##### a. Subparts 1 and 4 of Part D—Sections 172(c) and 189(a) Provisions

Subpart 1 of part D addresses nonattainment areas in general and subpart 4 addresses PM<sub>10</sub> nonattainment areas specifically. Except for contingency measures, all the relevant SIP elements required under sections 172(c) and 189(a) including an emissions inventory, Reasonably Available Control Measures (RACM); and an attainment demonstration were approved by EPA on July 25, 1994 (59 FR 37696) and, November 15, 1996 (61 FR 58481). Although contingency measures were contained in consent orders that were fully approved and incorporated into the West Virginia SIP by EPA on July 25, 1994 (59 FR 37696), our approval did not specifically take action to approve them as contingency measures pursuant to section 172(c)(9) at that time. However, as the consent orders' requirements were made part of the Federally approved SIP, if the area had not reached attainment, the additional reductions from these measures would have been implemented. Within 365 days of receiving notice that attainment had not been achieved, the following sources would have implemented additional PM<sub>10</sub> emission reductions: Follansbee Steel would have obtained additional PM<sub>10</sub> actual reductions of 0.22 lbs/hr and 0.96 tpy; Wheeling Pittsburgh Steel would have achieved additional actual reductions of 6.5 lbs/hr and 28.5 tpy; International Mill Services would have obtained actual reductions of 0.1 lbs/hr and 0.4 tpy; and Koppers Industries would add additional dust control on access roads. Since the area did attain the standard, these measures were not triggered. Given that the Follansbee area did attain the standard and is being redesignated to attainment, it may be argued that the need for EPA to approve these SIP-approved measures as contingency measures specifically

pursuant to section 172(c)(9) is moot. Nonetheless, EPA is now approving these measures as meeting the criteria of section 172(c)(9) for contingency measures in order to be clear that the area has a full approved plan for all applicable Part D requirements. The Federal requirements for new source review (NSR) in nonattainment areas are contained in section 172(c)(5). EPA guidance indicates the requirements of the part D NSR program will be replaced by the prevention of significant deterioration (PSD) program when an area has reached attainment and been redesignated, provided there are assurances that PSD will become fully effective immediately upon redesignation. Regulations for the Prevention of Significant Deterioration of Air Quality were approved into the West Virginia SIP on April 11, 1986 (51 FR 12518). Therefore, the PSD program will become fully effective in the Follansbee area immediately upon redesignation.

**b. Subpart 1 of Part D—Section 176 Conformity Provisions**

The Follansbee area was not required to have a transportation conformity budget for PM<sub>10</sub>. The most significant causes of nonattainment in this area were emissions from steel and industrial facilities in the area and not mobile source emissions. PM<sub>10</sub> emissions from public roads contributed 5% or less to the ambient impacts of PM<sub>10</sub> in the Follansbee area. Because the PM<sub>10</sub> violations had been caused by stationary sources and motor vehicles were not an important contributor to the nonattainment problem, no additional quantitative analysis for transportation related PM<sub>10</sub> impacts are required for conformity purposes. While section 176 provides that a State's conformity revisions must be consistent with Federal Conformity regulations promulgated by EPA, given the nature of the area's former nonattainment problem, it is reasonable to interpret those conformity requirements as not applying for purposes of evaluating the redesignation request.

**C. The Improvement in Air Quality Due to Permanent and Enforceable Measures**

In order to redesignate an area, EPA must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations and other permanent and enforceable reductions. The State's approved 1991 PM<sub>10</sub> SIP for the Follansbee area identified the measures to bring the area into

attainment. These measures included emission standards and operating restrictions for various sources of PM<sub>10</sub>. The facilities that were required to implement additional controls were Follansbee Steel Corporation, International Mill Services, Koppers Industries, Standard Lafarge, Starvaggi Industries Incorporated, and Wheeling Pittsburgh Steel Corporation. All of these facilities received reduced allowable emission rates for PM<sub>10</sub>. All of these sources except for Follansbee Steel Corporation were required to implement new or improved dust control measures. Both Follansbee Steel and Koppers Industries were required to implement "add-on" control equipment to reduce process PM<sub>10</sub> emissions.

In addition to these emission reductions, other reductions have occurred since the attainment demonstration inventory was prepared and the modeled demonstration of attainment was performed. The sinter plant at Wheeling Pittsburgh Steel shutdown in 1999 and operations at International Mill Services have also shutdown. The additional emission reductions resulting from these shutdowns are permanent and enforceable given that any reactivation of these facilities would be subject to applicable new source review requirements.

The May 12, 2003 redesignation request demonstrates that actual enforceable emission reductions are responsible for the air quality improvements in the Follansbee area. EPA finds that emission reductions due to the control measures and emission limitations imposed by the SIP-approved 1991 attainment plan and emission reductions due to permanent and enforceable shutdowns have reduced the ambient PM<sub>10</sub> levels such that the Follansbee area attained the NAAQS and continues to attain the NAAQS.

**D. The Maintenance Plan Under Section 175A**

Section 175A of the Act sets forth the necessary elements of a maintenance plan needed for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after the redesignation, West Virginia must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency

measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. Under section 175A(d), contingency provisions must include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area. EPA is approving the maintenance plan for the Follansbee nonattainment area because EPA finds that the submittal meets the requirements of section 175A. The details of the maintenance plan requirements and how the submittal meets these requirements are detailed in the following paragraphs. A maintenance plan must contain the following elements.

(1) An emissions inventory reflective of PM<sub>10</sub> emissions in the monitored attainment years;

(2) A maintenance demonstration which is expected to provide adequate assurance of maintenance over the initial 10-year period;

(3) A commitment to continue monitoring in the area;

(4) A method for verifying continued attainment; and

(5) A contingency plan with specific indicators or triggers for implementation of the plan.

**1. Maintenance Plan Requirements**

**a. Emissions inventory**

The maintenance plan indicates that the attainment inventory is the emission inventory used to perform the modeling demonstration of attainment and provides updates to that inventory for 2001 for sources in the Follansbee nonattainment area. Emissions have declined somewhat in the area due to the previously described shutdowns. Any future increases in emissions and/or significant changes to the stack configurations/parameters from those modeled in the attainment demonstration due to new or modifying stationary sources would be subject to new source review requirements including a demonstration that the NAAQS is protected.

**b. Maintenance demonstration**

Steel and industrial facilities were the main cause of nonattainment in the area. The attainment demonstration was based upon allowable emission levels for stationary sources impacting the nonattainment area. PM<sub>10</sub> emissions from public on-road sources did not play a significant role in nonattainment and their impacts were less than 5% of the PM<sub>10</sub> concentrations. Therefore, no conformity budgets are required for Brooke County. Population in the

incorporated area of Follansbee (which is larger than the nonattainment area) has increased slightly since 1990 and may experience a minor increase in population over the next ten years. However, population in Brooke County has been decreasing since 1990 and is expected to continue to decline over the next ten years. Manufacturing employment in the metropolitan area which includes Follansbee has been decreasing since 1994, and this decline in manufacturing is expected to continue for the next 10 years. As a result of these factors, PM<sub>10</sub> emissions are expected to remain at or below the emission levels used to demonstrate attainment for the next 10 years. The area, therefore, is expected to maintain the PM<sub>10</sub> NAAQS for the next 10 years as it has for the past 10 years. Moreover as noted previously, any future increases in emissions and/or significant changes to the stack configurations/parameters from those modeled in the attainment demonstration due to new or modifying stationary sources would be subject to new source review requirements including a demonstration that the NAAQS is protected.

c. Commitment to continue monitoring air quality

The maintenance plan includes commitments to continue to operate and maintain the monitor located in Follansbee, Brooke County in accordance with 40 CFR parts 53 and 58. Information regarding the State of Ohio's monitoring commitment can be found in EPA's notice approving the maintenance plan for Jefferson County on December 11, 2000 (65 FR 77308).

d. Verification of continued attainment

In addition to reviewing ambient monitoring data in the Follansbee area on annual basis to verify continued attainment, the State of West Virginia will continue to examine the air quality impact of any major new sources or modifications through its approved PSD program. New minor sources will also be evaluated to assure maintenance of the area. In addition the State will review their PM<sub>10</sub> inventory every three years.

e. Contingency plan

The maintenance plan contingency measures consist of control measures on source material handling operations and/or potential fuel switching at fuel burning units. The State will track air quality data in the Follansbee area. Upon a determination that three exceedances of the PM<sub>10</sub> standard have occurred within a three-year period, the

State will notify subject companies that the potential for a violation exists. The companies must then prepare detailed action plans containing specific measures selected from the contingency measures for implementation in the event of a violation. These plans must be submitted to the West Virginia Department of Environmental Protection (WVDEP) within 6 months of notification that the potential for a violation exists, and the plan shall include an implementation timeline such that the final milestone of the plan calls for implementation of the measures no later than 18 months after the company is notified that a violation has occurred. Within 6 months of a violation, the State will enter into consent orders or a legislative rule to incorporate the specific measures and compliance deadlines in the action plans and these measures will be made federally enforceable.

2. Commitment To Submit Subsequent Maintenance Plan Revisions

A new maintenance plan must be submitted to EPA within eight years of the redesignation of the nonattainment area, as required by section 175(A)(b). This subsequent maintenance plan must constitute a SIP revision and provide for the maintenance of the PM<sub>10</sub> NAAQS for a period of 10 years after the expiration of the initial 10 year maintenance period. The State commits to submit a SIP revision as required by section 175(A)(b).

*E. The Submittal Meets the Applicable Requirements of Section 110 and Part D*

General SIP elements are delineated in section 110(a)(2) of Title I, part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the state after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, and provisions for public and local agency participation. For the purposes of redesignation, the West Virginia SIP was reviewed to ensure that all requirements under the amended CAA were satisfied through approved SIP provisions for the Follansbee nonattainment area. EPA has concluded that the Commonwealth's SIP for the Follansbee nonattainment area satisfies

all of the section 110 SIP requirements of the CAA and that all applicable requirements of part D have been satisfied.

**V. Final Action**

EPA is approving West Virginia's request to redesignate the Follansbee PM<sub>10</sub> nonattainment area to attainment because the State has complied with the requirements of section 107(d)(3)(E) of the CAA. In addition, EPA is approving the West Virginia's maintenance plan for the Follansbee area as a SIP revision because it meets the requirements of section 175A. Lastly, we are approving the contingency measures submitted in the November 15, 1991 submittal as meeting the criteria of section 172(c)(9). EPA has prepared a Technical Support Document (TSD) in support of this rulemaking. Copies are available upon request, from the person identified in the **FOR FURTHER INFORMATION CONTACT** section. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on October 27, 2003 without further notice unless EPA receives adverse comment by September 26, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number WV061-6031a in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

*A. Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you

include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

1. *E-mail.* Comments may be sent by electronic mail (e-mail) to [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov), attention WV-061-6031a. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through [Regulations.gov](http://www.regulations.gov), EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

2. *Regulations.gov.* Your use of [Regulations.gov](http://www.regulations.gov) is an alternative method of submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

3. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

B. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document. For public commenters, it is

important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

#### Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

#### VI. Statutory and Executive Order Reviews

##### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997),

because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### *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 rule 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**. This rule 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2003.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, redesignating the Follansbee, Brooke County, West Virginia PM<sub>10</sub> area to attainment and approval of the area's maintenance plan and contingency measures, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects**

##### *40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

##### *40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

Dated: August 18, 2003.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ 40 CFR Parts 52 and 81 are amended as follows:

#### **PART 52—[AMENDED]**

■ 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. Section 52.2520 is amended by adding paragraph (c)(54) to read as follows:

##### **§ 52.2520 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(54) The PM<sub>10</sub> Redesignation and Maintenance Plan for the Follansbee, West Virginia nonattainment area

submitted by the West Virginia Department of Environmental Protection on May 12, 2003.

(i) Incorporation by reference.

(A) Letter of May 12, 2003 from the West Virginia Department of Environmental Protection transmitting the redesignation request and maintenance plan for the PM<sub>10</sub> nonattainment area in the Follansbee area of Brooke County.

(B) Maintenance Plan for the Follansbee PM<sub>10</sub> nonattainment area, effective April 28, 2003.

(ii) *Additional Material.*—Remainder of the May 12, 2003 State submittal pertaining to the revisions listed in paragraph (c)(54)(i) of this section.

#### **§ 52.2522 [Amended]**

■ 3. In § 52.2522 (Approval status), paragraph (d) is removed and reserved.  
■ 4. Section 52.2526 is added to read as follows:

#### **§ 52.2526 Control strategy: Particulate matter.**

EPA approves West Virginia's November 15, 1991 SIP submittal for fulfilling the PM<sub>10</sub>-specific requirement of part D for contingency measures required under section 172(c)(9) of the Clean Air Act applicable to the Follansbee, West Virginia PM<sub>10</sub> nonattainment area.

#### **PART 81—[AMENDED]**

#### **Subpart C—Section 107 Attainment Status Designations**

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.349, the table for "West Virginia—PM<sub>10</sub>" is amended by revising the entry for the Follansbee Area of Brooke County to read as follows:

#### **§ 81.349 West Virginia.**

\* \* \* \* \*

#### **WEST VIRGINIA—PM<sub>10</sub>**

Designated area	Designation		Classification	
	Date	Type	Date	Type
Brooke Follansbee area bounded on the north by the Market Street Bridge, on the east by West Virginia Route 2, on the south by the extension of the southern boundary of Steubenville Township in Jefferson County, Ohio, and on the west by the Ohio/West Virginia border.	October 27, 2003..	Attainment.		
* * * * *				

\* \* \* \* \*

[FR Doc. 03-21910 Filed 8-26-03; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[OPP-2003-0253; FRL-7319-4]

**Flumioxazin; Pesticide Tolerances for Emergency Exemptions****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of flumioxazin in or on sweet potato, roots in connection with a crisis exemption declared by the State of Louisiana. This regulation establishes a maximum permissible level for residues of flumioxazin in this food commodity. The tolerance will expire and is revoked on June 30, 2006.

**DATES:** This regulation is effective August 27, 2003. Objections and requests for hearings, identified by docket ID number OPP-2003-0253, must be received on or before October 27, 2003.

**ADDRESSES:** Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9364; e-mail address: [pemberton.libby@epa.gov](mailto:pemberton.libby@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you a Federal or State government agency involved in administration of environmental quality programs. Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0253. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html), a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select “search,” then key in the appropriate docket ID number.

**II. Background and Statutory Findings**

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of

the herbicide flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1H-isoindole-1,3(2H)-dione, in or on sweet potato, roots at 0.02 parts per million (ppm). This tolerance will expire and is revoked on June 30, 2006. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of the FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .”

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that “emergency conditions exist which require such exemption.” This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.