That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule proposing to approve the redesignation of the Reading Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year inventory, and the MVEBs identified in the maintenance plan does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: May 22, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–10356 Filed 5–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0174; FRL–8320–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Attainment Determination, Redesignation of the Franklin County Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Franklin County ozone nonattainment area (Franklin County Area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the ozone redesignation request for Franklin County Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for Franklin County Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the Franklin County Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2003–2005. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Franklin County Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). In addition, PADEP submitted a 2002 base year inventory for the Franklin County Area which EPA is proposing to approve as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Franklin County Area maintenance plan for purposes of transportation conformity, which EPA is also proposing to approve. EPA is proposing approval of the redesignation request, and the maintenance plan and the 2002 base year inventory SIP revisions in accordance with the requirements of the CAA. EPA is also proposing to issue a determination that the area has attained the 1-hour ozone NAAQS, and to find that the requirements of section 172(c)(1) concerning the submission of the ozone attainment demonstration and reasonably available control measure requirements, the requirements of section 172(c)(2) concerning reasonable further progress (RFP), and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment do not apply to the area for so long as it continues to attain the 1-hour NAAQS for ozone.

DATES: Written comments must be received on or before June 29, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0174 by one of the following methods:

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

B. E-mail: *miller.linda@epa.gov.*

C. Mail: EPA–R03–OAR–2007–0174, Linda Miller, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, 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–2007–0174. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'', ''us'', or ''our'' is used, we mean EPA.

Table of Contents

I. What Actions Are EPA Proposing To Take?

On December 14, 2006, PADEP formally submitted a request to redesignate the Franklin County Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, on December 14, 2006, PADEP submitted a maintenance plan for the Franklin County Area as a SIP revision to ensure continued attainment for at least 10 years after redesignation. PADEP also submitted a 2002 base year inventory as a SIP revision on December 14, 2006. The Franklin County Area is currently designated as a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the Franklin County Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Franklin County Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Franklin County Area maintenance plan as a SIP revision, such approval being one of the CAA criteria for redesignation to attainment status. The maintenance plan is designed to ensure continued attainment in the Franklin County Area for the next ten years. EPA is also proposing to approve the 2002 base year inventory for the Franklin County Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Franklin County Area maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for transportation conformity purposes. EPA is also proposing to issue a determination that the area has attained the 1-hour ozone NAAQS, and to find that the requirements of section 172(c)(1) concerning the submission of the ozone attainment demonstration and reasonably available control measure requirements, the requirements of section 172(c)(2) concerning reasonable further progress (RFP), and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment do not apply to the area for so long as it continues to attain the 1-hour NAAQS for ozone.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Franklin County Area was designated as basic 8-hour ozone nonattainment status in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003. On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the Franklin County Area (as well as most other areas of the country) effective June 15, 2005. *See* 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); and *see* 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour

Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C.Cir. 2006) (hereafter ''*South Coast.*''). The Court held that certain provisions of EPA's Phase 1 Rule were inconsistent with the requirements of the Clean Air Act. The Court rejected EPA's reasons for implementing the 8-hour standard in nonattainment areas under subpart 1 in lieu of subpart 2 of Title I, part D of the Act. The Court also held that EPA improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) the certain conformity requirements for certain types of federal actions. The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions. Elsewhere in this document, mainly in section VI. B. ''The Franklin County 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 discusses its rationale why the decision in South Coast is not an impediment to redesignating the Franklin County Area to attainment of the 8-hour ozone NAAQS.

The CAA, Title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the CAA for subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004, Franklin County Area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and therefore, is subject to the requirements of subpart 1 of Part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). *See* 69 FR 23857, (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data from the 3-year period of 2003–2005 indicates that the Franklin County Area has a design value of 0.075 ppm. Therefore, the ambient ozone data for the Franklin County Area indicates no violations of the 8-hour ozone standard.

B. The Franklin County Area

The Franklin County Area consists solely of Franklin County, Pennsylvania and was designated as basic 8-hour ozone nonattainment status in an April 30, 2004 Final Rule (69 FR 23857). Prior to its designation as an 8-hour basic ozone nonattainment area, the Franklin County Area was designated an incomplete data nonattainment area for the 1-hour standard. *See* 56 FR 56694 at 56822, November 6, 1991.

On December 14, 2006, PADEP requested that the Franklin County Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2003–2005, indicating that the 8-hour NAAQS for ozone had been achieved in the Franklin County Area. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and Part D.

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

- ''Ozone and Carbon Monoxide Design Value Calculations'', Memorandum from Bill Laxton, June 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni Director, Air Quality Management Division, October 28, 1992;

• ''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

• ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

• Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;

• ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

• ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On December 14, 2006, PADEP requested redesignation of the Franklin County Area to attainment for the 8-hour ozone standard. On December 14, PADEP submitted a maintenance plan for the Franklin County Area as a SIP revision to assure continued attainment at least 10 years after redesignation. EPA has determined that the Franklin County Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the designation of the Franklin County Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Franklin County Area for the next 10 years. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the MVEBs for NO_X and VOC for transportation conformity purposes for the years 2004, 2009 and 2018. These motor vehicle emissions (2004) and MVEBs (2009 and 2018) are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY—ROUNDED UPWARD TO ONE DECIMAL PLACE

Year	NO_X	VOC
2009	12.7	7.3
2018	6.7	5.1

VI. What Is EPA's Analysis of the State's Request?

EPA is proposing to determine that Franklin County Area has attained the 8-hour ozone standard and the 1-hour standard if that standard is reinstated and that all other redesignation criteria have been met. The following is a description of how PADEP's December 14, 2006, submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. The Franklin County Area Has Attained the Ozone NAAQS

EPA is proposing to determine that the Franklin County Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete and consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the design value, which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations, measured at each monitor within the area over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Franklin County Area, there is one monitor that measures air quality with respect to ozone. As part of its redesignation request, Pennsylvania submitted ozone monitoring data for the years 2003–2005 (the most recent three years of data available as of the time of the redesignation request) for the Franklin County Area. This data has been quality assured and is recorded in AQS. PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. The fourth-high 8-hour daily maximum concentrations, along with the three-year average, are summarized in Table 2A.

TABLE 2A.—FRANKLIN COUNTY NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; FRANKLIN COUNTY MONITOR, AQS ID 42–055–0001

Year	Annual 4th High Reading (ppm)
2003	0.080
2004	0.071
2005	0.074
2006	0.066
The average for the 3-year period 2003 through 2005 is 0.075 ppm.	
The average for the 3-year period 2004 through 2006 is 0.070 ppm.	

The air quality data for 2003–2005 show that the Franklin County Area has attained the standard with a design value of 0.075 ppm. The data collected at the Franklin County Area monitor satisfies the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. EPA believes this conclusion remains valid that after review of the available 2006 data because the fourth-highest daily maximum 8-hour average ozone concentration was 0.066 ppm which equates to a design value 0.070 ppm for the period 2004–2006. PADEP's request for redesignation for the Franklin County Area indicates that the data was quality assured in accordance with 40 CFR part 58. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Pennsylvania and taken from AQS indicates that Franklin County Area has attained the 8-hour ozone NAAQS.

Based upon the ozone monitoring data for the years 1996–1998, EPA believes that the Franklin County Area attained the 1-hour ozone NAAQS and continued to attain the 1-hour NAAQS to present. For the 1-hour ozone standard, an area may be considered to

be attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and Appendix H of part 50, based on three complete and consecutive calendar years of quality-assured air quality monitoring data. Compliance is determined on a monitor-by-monitor basis within the area. To demonstrate attainment, i.e., compliance with this standard, the annual average of the number of expected exceedances of the 1-hour standard over a 3-year period must be less than or equal to 1. (To account for missing data, adjustment of the actual number of monitored exceedances of the standard yields the annual expected number of exceedances at an air quality monitoring site.) Table 2B provides a summary of the number of expected exceedances for each of the years 1996 through 2006.

TABLE 2B.—FRANKLIN COUNTY AREA NUMBER OF EXPECTED EXCEEDANCES OF THE 1-HOUR OZONE STANDARD; FRANKLIN COUNTY MONITOR, AQS ID 42–117–4000

Year	Number of expected exceedances
1996	0.0
1997	0.0
1998	0.0
1999	0.0
2000	0.0
2001	0.0
2002	0.0
2003	0.0
2004	0.0
2005	0.0
2006	0.0
The average number of expected exceedances for any three-year period to date is 0.0.	

In summary, EPA has determined that the data submitted by Pennsylvania and taken from AQS indicates that Franklin County Area is maintaining air quality that conforms to the 1-hour ozone NAAQS.

The EPA is proposing to issue a determination that the Franklin County Area has attained the 1-hour NAAQS for ozone. This proposed determination is based upon the 1996 through 2006 air quality data. While section 181(b)(2)(A) specifies that EPA is to make the statutorily required determinations of attainment using the 1-hour ozone ''design value,'' EPA ''has interpreted this provision generally to refer to EPA's methodology for determining attainment status.'' *See* 60 FR 3349 at 3350, January 17, 1995. As noted previously, EPA determines the attainment status under the 1-hour ozone standard on the basis of the annual average number of expected exceedances.

B. The Franklin County 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 Franklin County Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to the area, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. *See also,* Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66, (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also,* 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This section also sets forth EPA's views on the potential effect of the Court's ruling in *South Coast* on this redesignation action. For the reasons set forth below, EPA does not believe that the Court's ruling alters any requirements relevant to this redesignation action so as to preclude redesignation, and does not prevent EPA from finalizing this redesignation. EPA believes that the Court's decision, as it currently stands or as it may be modified based upon any petition for rehearing that has been filed, imposes no impediment to moving forward with redesignation of this area to attainment, because in either circumstance redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (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) 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 transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However, the 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, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 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 Franklin County Area will still be subject to these requirements after it is redesignated. The section 110 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. This policy 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 53174–53176, October 10, 1996), (62 FR 24816, 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 redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 50399, October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an 'applicable requirement' for purposes of section 110(l) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request.

Because the Pennsylvania SIP satisfies all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that Pennsylvania has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

2. Part D Nonattainment Area Requirements Under the 8-Hour Standard

Pursuant to an April 30, 2004, final rule (69 FR 23951), the Franklin County Area was designated a basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification. With respect to the 8-hour standard, the court's ruling rejected EPA's reasons for classifying areas under Subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under Subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating redesignation requests in accordance with the requirements due at the time the request is submitted; and, (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Franklin County Area was classified under Subpart 1 and was obligated to meet Subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. *See* September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). *See also,* Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation; 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit has recognized the inequity in such retroactive rulemaking, see *Sierra Club* v. *Whitman,* 285 F. 3d 63 (D.C. Cir. 2002), in which the D.C. Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' Id. at 68. Similarly here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under Subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to subpart 2 requirements, if the Franklin County Area initially had been classified under subpart 2 the first two part D subpart 2 requirements applicable to the Franklin County Area under section 182(a) of the CAA would be: A base-year inventory requirement pursuant to section 182(a)(1) of the CAA, and, the emissions statement requirement pursuant to section 182(a)(3)(B) of the CAA.

As we have stated previously in this document, these requirements are not yet due for purpose of redesignation of the Franklin County Area, but nevertheless, Pennsylvania already has in its approved SIP an emissions statement rule for the 1-hour standard that covers all portions of the designated 8-hour nonattainment area, and that satisfies the emissions statement requirement for the 8-hour standard. See 25 Pa. Code 135.21(a)(1) codified at 40 CFR 52.2020; 60 FR 2881, January 12, 1995. With respect to the base year inventory requirement, in this notice of proposed rulemaking, EPA is proposing to approve the 2002 base-year inventory for the Franklin County Area, which was submitted on December 14, 2006, concurrently with its maintenance plan, into the Pennsylvania SIP. EPA is proposing to approve the 2002 base year inventory as fulfilling the requirements, if necessary, of both section 182(a)(1) and section 172(c)(3) of the CAA. A detailed evaluation of Pennsylvania's 2002 base-year inventory for the Franklin County Area can be found in a Technical Support Document (TSD) prepared by EPA for this rulemaking.

EPA has determined that the emission inventory and emissions statement requirements for the Franklin County Area have been satisfied.

In addition to the fact that part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, 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 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required EPA to promulgate. EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since 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, 438–440 (6th Cir. 2001), upholding this interpretation. *See also,* 60 FR 62748 (December 7, 1995).

In the case of the Franklin County Area, EPA has also determined that before being redesignated, the Franklin County Area need not comply with the requirement that a NSR program be approved prior to redesignation. EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D NSR Requirements or Areas Requesting Redesignation to Attainment.'' Normally, State's Prevention of Significant Deterioration (PSD) program will become effective in the area immediately upon redesignation to attainment. *See* the more detailed explanations in the following redesignation rulemakings: Detroit, MI (60 FR 12467–12468 (March 7, 1995); Cleveland-Akron-Lorrain, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, 53669, October 23, 2001); Grand Rapids, MI (61 FR 31831, 31836–31837, June 21, 1996). In the case of the Franklin County Area, the Chapter 127 Part D NSR regulations in the Pennsylvania SIP (codified at 40 CFR 52.2020(c)(1)) explicitly apply the requirements for NSR in section 184 of the CAA to ozone attainment areas within the OTR. The OTR NSR requirements are more stringent than that required for a basic 8-hour ozone nonattainment area. On October 19, 2001 (66 FR 53094), EPA fully approved Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the Franklin County Area.

EPA has also interpreted the section 184 OTR requirements, including the NSR program, as not being applicable for purposes of redesignation. The rational for this is based on two factors. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the Franklin County Area by virtue of the area's designation and classification. Rather, section 184 measures are required in the Franklin County Area because it is located in the OTR. *See* 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–32 (May 7, 1997).

3. Part D Nonattainment Area Requirements Under the 1-Hour Standard

Prior to its designation as an 8-hour ozone nonattainment area, the Franklin County Area was designated an incomplete data nonattainment area for the 1-hour standard. *See* 56 FR 56694 at 56822, November 6, 1991.

In its December 22, 2006 decision in *South Coast,* the Court addressed EPA's revocation of the 1-hour ozone standard. The current status of the revocation and associated anti-backsliding rules is dependent on whether the Court's decision stands as originally issued or is modified in response to any petition for rehearing or request for clarification that has been filed. As described more fully below, EPA believes that the area has attained the 1-hour standard and has met all of the requirements applicable for redesignation under the 1-hour standard that would apply even if the 1-hour standard is deemed to be reinstated and those requirements are viewed as applying under the statute itself. Thus, the Court's decision, as it currently stands, imposes no impediment to moving forward with redesignation of the area to attainment. Further, even if the Court's decision were modified based upon any petition for rehearing that has been filed, such that the ultimate decision requires something less than compliance with all applicable 1-hour requirements, because the area meets all such requirements, as explained below, it would certainly meet any lesser requirements and thus redesignation could proceed.

The conformity portion of the Court's ruling does not impact the redesignation request for the Franklin County Area because there are no conformity requirements that are relevant to redesignation request for any standard, including the requirement to submit a transportation conformity SIP.[1] As we have previously stated in this document, EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved.

With respect to other requirements under the 1-hour standard, in our April 16, 1992 General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 at 13524–13527) EPA concluded that the Clean Air Act provides no specific guidance concerning applicable requirements for certain unclassifiable nonattainment areas including incomplete data areas. We observed that subpart 1 contains general SIP planning requirements, and, we concluded that subpart 2 is not applicable to incomplete data areas.

Under the approach laid out in our April 16, 1992 General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 at 13524–13527) EPA concluded that because incomplete areas are designated nonattainment some aspects of Subpart 1 necessarily apply. *See* 57 FR 13498 at 13525 (April 16, 1992). With regard to RACT/Reasonably available control measures (RACM),

[1] Clean Air Act section 176(c)(4)(E) currently requires States to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emissions budgets that are established in control strategy SIPs and maintenance plans.

EPA's position is that requiring all RACT corrections for incomplete data areas is unreasonable, but we required that incomplete data areas must correct any RACT deficiencies regarding enforceability of existing rules in order to be redesignated to attainment. *Id.* at 13525. With regard to the emission inventory requirement, EPA believes that because an emissions inventory is specifically required under section 172(c)(3) and is not tied to an area's proximity to attainment an incomplete data area was required to develop such an inventory even if only to develop an approvable maintenance plan under section 175A. *Id.* at 13525.

Furthermore, with respect to the attainment demonstration and RACM, RFP, and contingency measure requirements of part D, under EPA's Clean Data Policy, as embodied in 40 CFR 51.918, upon a finding that the area is attaining the standard, requirements for SIP submissions linked to attainment demonstrations, reasonable further progress (RFP) and contingency measures are suspended for so long as the area is attaining the standard. EPA described its interpretation in a May 10, 1995 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone Ambient Air Quality Standard.'' *See also,* the discussion and rulemakings cited in EPA's Final Rule to Implement the 8-Hour Ozone NAAQS—Phase 2, 70 FR 71612, 71644–71646 (November 29, 2005). The Tenth, Seventh and Ninth Circuits have upheld EPA rulemakings applying the Clean Data Policy. *See Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) and *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005) memorandum opinion.

We are proposing to find that the Franklin County Area has met the 1-hour ozone standard, and thus the requirements of section 172(c)(1) concerning the submission of the ozone attainment demonstration and reasonably available control measure requirements, the requirements of section 172(c)(2) concerning RFP, and section 172(c)(9) contingency measures under the 1-hour standard are not applicable for purposes of redesignation.[2]

[2] We note, however, that the maintenance plan contains contingency measures required under section 175A of the Clean Air Act.

If, while this proposal is pending, the 1-hour ozone standard is reinstated and a violation of the 1-hour ozone NAAQS is monitored (consistent with the requirements contained in 40 CFR part 58 and recorded in AQS) in this nonattainment area the EPA would not issue a final determination of attainment for the affected area. If the area remains in attainment and EPA issues a final determination of attainment, a subsequent monitored violation prior to redesignation to attainment of the 1-hour ozone NAAQS would also mean that the area would thereafter have to address the requirements of sections 172(c)(1), 172(c)(2) and 172(c)(9), since the basis for the determination that they do not apply would no longer exist. This proposal does not revoke the 1-hour NAAQS for ozone in the Franklin County Area.

With respect to NSR, EPA has determined that areas being redesignated need not have an approved New Source Review program for the same reasons discussed previously with respect to the applicable part D requirements for the 8-hour standard.

Therefore, the only 1-hour Part D elements currently applicable to the Franklin County Area by virtue of its designation and classification as an incomplete data nonattainment area under the 1-hour ozone NAAQS were the corrections of any RACT deficiencies regarding enforceability of existing rules in order to be redesignated to attainment, and the emission inventory requirement. On December 22, 1994, EPA fully approved into the Pennsylvania SIP all corrections required under section 182(a)(2)(A) of the CAA (59 FR 65971, December 22, 1994). EPA believes that this requirement applies only to incomplete data and subpart 2 areas under the 1-hour NAAQS pursuant to the 1990 amendments to the CAA; therefore, this is a one-time requirement. After an area has fulfilled the section 182(a)(2)(A) requirement for the 1-hour NAAQS, there is no requirement under the 8-hour NAAQS.

Section 173(c)(3) provided for the submission of a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3), in accordance with guidance provided by the Administrator. In this proposed rule, EPA is proposing to approve a 2002 base year emissions inventory for the Franklin County Area as meeting the requirements of section 172(c)(3) as well as section 182(a)(1). While EPA generally required that the base year inventory for the 1-hour standard be for calendar year 1990, EPA believes that Pennsylvania's 2002 inventory fulfills this requirement because it meets EPA's guidance and because it is more current than 1990. EPA also proposes to determine that, if the 1-hour standard is deemed to be reinstated, the 2002 base year inventory for the 8-hour standard will provide an acceptable substitute for the base year inventory for the 1-hour standard.

4. Transport Region Requirements

All areas in the Ozone Transport Region (OTR), both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include (RACT), NSR, enhanced vehicle inspection and maintenance, and Stage II vapor recovery or a comparable measure.

In the case of the Franklin County Area, which is located in the OTR, nonattainment NSR will be applicable after redesignation. As discussed previously, EPA has fully approved Pennsylvania's NSR SIP revision which applies the requirements for NSR of section 184 of the CAA to attainment areas within the OTR.

EPA has also interpreted the section 184 OTR requirements, including NSR, as not being applicable for purposes of redesignation. *See* 61 FR 53174, October 10, 1996 and 62 FR 24826, May 7, 1997 (Reading, Pennsylvania Redesignation). The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, and I/M even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the area by virtue of the area's nonattainment designation and classification, and thus are properly considered not relevant to an action changing an area's designation. *See* 61 FR 53174 at 53175–53176 (October 10, 1996) and 62 FR 24826 at 24830–24832 (May 7, 1997).

5. The Franklin County Area Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the Pennsylvania SIP for the purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA,* 265 F.3d

426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR at 25425 (May 12, 2003) and citations therein. The Franklin County Area was a 1-hour incomplete data area at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004 (69 FR 23857). Because the Franklin County Area was a 1-hour incomplete data area, the only previous part D SIP submittal requirement was the RACT corrections due under section 182(a)(2)(A) and the comprehensive emissions inventory due under section 172(c)(3) for the 1-hour standard. The RACT corrections are fully approved (59 FR 65971, December 22, 1994), and, EPA is proposing to approve a comprehensive inventory for the area in this notice of proposed rulemaking. No other Part D submittal requirements have come due prior to the submittal of the 8-hour maintenance plan for the area. Therefore, all Part D submittal requirements have been fulfilled. Because there are no outstanding SIP submission requirements applicable for the purposes of redesignation of the Franklin County Area, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation have yet become due for the Franklin County Area, and therefore they need not be approved into the SIP prior to redesignation.

C. The Air Quality Improvement in the Franklin County 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 the Commonwealth has demonstrated that the observed air quality improvement in the Franklin County Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004 IN TONS PER DAY (TPD)

Year	Point	Area	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002	0.7	7.8	2.6	9.7	20.8
Year 2004	0.8	7.8	2.6	8.6	19.8
Difference (02–04)	−0.1	0.0	0.0	1.1	1.0
Nitrogen Oxides (NO_X)					
Year 2002	0.4	0.7	4.2	18.3	23.6
Year 2004	0.6	0.7	4.0	16.5	21.8
Difference (02–04)	−0.2	0.0	0.2	1.8	1.8

Between 2002 and 2004, VOC emissions were reduced by 1.1 tpd, and NO_X emissions were reduced by 1.8 tpd, due to the following permanent and enforceable measures implemented or in the process of being implemented in the Franklin County Area:

1. Stationary Point Sources

Interstate Pollution Transport Reduction (66 FR 43795, August 21, 2001).

2. Stationary Area Sources

Solvent Cleaning (68 FR 2206, January 16, 2003).

Portable Fuel Containers (69 FR 70893, December 8, 2004).

3. Highway Vehicle Sources

Federal Motor Vehicle Control Programs (FMVCP).

—Tier 1 (56 FR 25724, June 5, 1991).

—Tier 2 (65 FR 6698, February 10, 2000).

Heavy Duty Engines and Vehicles Standards (62 FR 54694, October 21, 1997 and 65 FR 59896, October 6, 2000).

National Low Emission Vehicle (NLEV) (64 FR 72564, December 28, 1999).

Vehicle Safety Inspection Program (70 FR 58313, October 6, 2005).

4. Nonroad Sources

Nonroad Diesel Engine and Fuel (69 FR 38958, June 29, 2004).

EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the area achieving attainment of the 8-hour ozone standard.

D. The Franklin County Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Franklin County Area to attainment of the 8-hour ozone NAAQS, Pennsylvania submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Franklin County Area for at least 10 years after redesignation. Pennsylvania is requesting that EPA approve this SIP revision as meeting the requirement of section 175A of the CAA. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for the Franklin County Area meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

1. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period 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 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(1) An attainment emissions inventory;
(2) A maintenance demonstration;
(3) A monitoring network;
(4) Verification of continued attainment; and
(5) A contingency plan.

2. Analysis of the Franklin County Area Maintenance Plan

(a) Attainment Inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment year of 2004 was used for the Franklin County Area since it is a reasonable year within the 3-year block of 2002–2004 and accounts for reductions attributable to implementation of the CAA requirements to date.

PADEP prepared comprehensive VOC and NO_X emissions inventories for the Franklin County Area, including point, area, mobile on-road, and mobile non-road sources for a base year of 2002.

To develop the NO_X and VOC base year emissions inventories, PADEP used the following approaches and sources of data:

(i) *Point source emissions*—Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data System and EPA's publication series AP–42 and are based on Source Classification Code (SCC). Each process has at least one SCC assigned to it. If the owners and operators of facilities provide more accurate emission data based upon other factors, these emission estimates supersede those calculated using SCC codes.

(ii) *Area source emissions*—Area source emissions are generally estimated by multiplying an emission factor by some known indicator or collective activity for each area source category at the county level. Pennsylvania estimates emissions from area sources using emission factors and SCC codes in a method similar to that used for stationary point sources. Emission factors may also be derived from research and guidance documents if those documents are more accurate than FIRE and AP–42 factors. Throughput estimates are derived from county-level activity data, by apportioning national and statewide activity data to counties, from census numbers, and from county employee numbers. County employee numbers are based upon North American Industry Classification System (NAICS) codes to establish that those numbers are specific to the industry covered.

(iii) *On-road mobile sources*—PADEP employs an emissions estimation methodology that uses current EPA-approved highway vehicle emission model, MOBILE 6.2, to estimate highway vehicle emissions. The Franklin County Area highway vehicle emissions in 2004 were estimated using MOBILE 6.2 and PENNDOT estimates of vehicles miles traveled (VMT) by vehicle type and roadway type.

(iv) *Mobile nonroad emissions*—The 2002 emissions for the majority of nonroad emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model estimates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled nonroad equipment types and includes growth factors. The NONROAD model does not estimate emissions from aircraft or locomotives. For 2002 locomotive emissions, PADEP projected emissions from a 1999 survey using national fuel information and EPA emission and conversion factors. There are no commercial aircraft operations in the Franklin County Area. For 2002 aircraft emissions, PADEP estimated emissions using small aircraft operation statistics from *http://www.airnav.com,* and emission factors and operational characteristics in the EPA-approved model, Emissions and Dispersion Modeling System (EDMS).

The 2004 attainment year VOC and NO_X emissions for the Franklin County Area are summarized along with the 2009 and 2018 projected emissions for this area in Tables 4 and 5, which cover the demonstration of maintenance for this area. EPA has concluded that Pennsylvania has adequately derived and documented the 2004 attainment year VOC and NO_X emissions for this area.

(b) Maintenance Demonstration—On December 14, 2006, PADEP submitted a SIP revision to supplement its December 14, 2006, redesignation request. The submittal by PADEP consists of the maintenance plan as required by section 175A of the CAA. The Franklin County Area plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment year 2004 emissions levels throughout the Franklin County Area through the year 2018. The Franklin County Area 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.

Tables 4 and 5 specify the VOC and NO_X emissions for the Franklin County Area for 2004, 2009, and 2018. PADEP chose 2009 as an interim year in the 10-year maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2004 attainment level during the time of the 10-year maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018 (TPD)

Source category	2004 VOC Emissions	2009 VOC Emissions	2018 VOC Emissions
Mobile*	8.6	7.3	5.1
Nonroad	2.6	2.2	1.8
Area	7.8	7.8	8.0
Point	0.8	0.6	0.8
Total	19.8	17.9	15.7

* Includes safety margin for 2009 and 2018 identified in the motor vehicle emission budgets for transportation conformity.

TABLE 5.—TOTAL NO_X EMISSIONS 2004–2018 (TPD)

Source category	2004 NO_X Emissions	2009 NO_X Emissions	2018 NO_X Emissions
Mobile*	16.5	12.7	6.7
Nonroad	4.0	3.4	2.2
Area	0.7	0.7	0.8
Point	0.6	0.3	0.3
Total	21.8	17.0	9.9

* Includes safety margin for 2009 and 2018 identified in the motor vehicle emission budgets for transportation conformity.

The following are permanent and enforceable control measures to ensure emissions during the maintenance period are equal to or less than the emissions in the attainment year:

1. Pennsylvania's Portable Fuel Containers (December 8, 2004, 69 FR 70893);

2. Pennsylvania's Consumer Products (December 8, 2004, 69 FR 70895); and

3. Pennsylvania's Architectural and Industrial Maintenance (AIM) Coatings (November 23, 2004, 69 FR 68080).

Additionally, the following mobile programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

1. FMVCP for passenger vehicles and light-duty trucks and cleaner gasoline (2009 and 2018 fleet)—Tier 1 and Tier 2;

2. NLEV Program, which includes the Pennsylvania's Clean Vehicle Program for passenger vehicles and light-duty trucks (69 FR 72564, December 28, 1999);

3. Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006) (66 FR 5002, January 18, 2001); and

4. Non-road emissions standards (2008) and off-road diesel fuel (2007/2010) (69 FR 38958, June 29, 2004).

In addition to the permanent and enforceable measures, the Clean Air Interstate Rule (CAIR), promulgated May 12, 2005 (70 FR 25162) should have positive impacts on Pennsylvania's air quality. CAIR, which will be implemented in the eastern portion of the country in two phases (2009 and 2015) should reduce long range transport of ozone precursors, which will have a beneficial effect on the air quality in the Franklin County Area.

Pennsylvania and other nearby states are required to adopt a regulation implementing the requirements of CAIR or an equivalent program. On April 28, 2006 (71 FR 25328), EPA promulgated Federal Implementation Plans (FIPs) to reduce the interstate transport of NO_X and sulfur dioxides that contribute significantly to nonattainment and maintenance 8-hour ozone and $PM_{2.5}$ NAAQS. Because Pennsylvania will not adopt its own CAIR requirements and obtain approval of the required SIP revision by September 2006, the FIP will become operative, imposing the Federal program upon CAIR-affected electric generating units in Pennsylvania. Therefore, allowances for CAIR-related sources will be limited to no more than the allowances issued pursuant to the FIP. The Franklin County Area has no sources that are directly regulated by CAIR, and therefore is not showing an emission reduction from this regulation. However, the quality of air transported from upwind sources into the county would be improved.

Based upon the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that PADEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the Franklin County Area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the Franklin County Area. Pennsylvania will continue to operate its current air quality monitor in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—The Commonwealth will track the attainment status of the ozone NAAQS in the Franklin County Area by reviewing air quality and emissions during the maintenance period. The Commonwealth will perform an annual evaluation of two key factors, VMT data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR 51 Subpart A) to see if the area exceed the attainment year inventory (2004) by more than 10 percent. Based on these evaluations, the Commonwealth will consider whether any further emission control measures should be implemented.

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions 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 the 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 Franklin County Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in the area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest eight-hour ozone concentrations at the Franklin County Area monitor are above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will analyze the conditions leading to the excessive ozone levels and evaluate what measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, state and local measure that have been adopted but no yet implemented at the time of excessive

ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will be considered in the event that a violation of the 8-hour ozone standard occurs at the Franklin County, Pennsylvania monitor. In the event of a violation of the 8-hour ozone standard, contingency measures will be adopted in order to return the area to attainment with the standard. Contingency measures to be considered for the Franklin County Area will include, but not limited to the following:

Regulatory measures:

—Additional controls on consumer products
—Additional control on portable fuel containers

Non-regulatory measures:

—Voluntary diesel engine ''chip reflash''—installation software to correct the defeat device option on certain heavy duty diesel engines.
—Diesel retrofit, including replacement, repowering or alternative fuel use, for public or private local onroad or offroad fleets.
—Idling reduction technology for Class 2 yard locomotives.
—Idling reduction technologies or strategies for truck stops, warehouses and other freight-handling facilities.
—Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
—Additional promotion of alternative fuel (e.g., biodiesel) for home heating and agricultural use.

The following schedule applies to the implementation of the regulatory contingency measures:

—Within 1 month of the trigger, submit request to begin regulatory development process.
—Within 3 months of the trigger, review of regulation by Air Quality Technical Advisory Committee (AQTAC), Citizens Advisory Council (CAC) and other advisory committees as appropriate.
—Within 6 months of the trigger, Environmental Quality Board (EQB) meeting/action.
—Within 8 months of the trigger, publish in the Pennsylvania Bulletin for comment as proposed rulemaking.
—Within 10 months of the trigger, public hearing takes place and comment period on proposed rule closes.
—Within 11 months of the trigger, House and Senate Standing Committees and Independent Regulatory Review Commission (IRRC) comment on proposed rule.
—Within 13 months of the trigger, AQTAC, CAC and other committees review responses to comments and draft final rulemaking.
—Within 16 months of the trigger, EQB meeting/action.
—Within 17 months of the trigger, IRRC action on rulemaking.
—Within 18 months of the trigger, Attorney General's review/action.
—Within 19 months of the trigger, publication in the Pennsylvania Bulletin as a final rulemaking and submit to EPA as a SIP revision. The regulation would become effective upon publication in the Pennsylvania Bulletin.

The following schedule applies to the implementation of non-regulatory contingency measures:

—Within 2 months of the trigger: Identify stakeholders for potential non-regulatory measures.
—Within 3 months of the trigger, if funding is necessary, identify potential sources of funding and the timeframe under which funds would be available. In addition to non-Title V Clean Air funds, the following program may be able to provide funding: For transportation projects, the Federal Highway Administration, as allocated to the Northern Tier Rural Planning Organization; for projects which will also have an energy efficient co-benefit, the Pennsylvania Energy Harvest program; for projects which would be under taken by small business and are pollution prevention projects, the Small Business Advantage Grant and Small Business Pollution Prevention Loan programs; for projects which will involve alternative fuels for vehicles/refueling operations, the Alternative Fuel Incentive Grant program; for projects involving diesel emissions, Federal Energy Policy Act diesel reduction funds allocated to Pennsylvania or for which Pennsylvania or project sponsors may apply under a competitive process.
—Within 9 months of the trigger, enter into agreements with implementing organizations if state loans or grants are involved. Quantify projected emission benefits.
—Within 12months of the trigger, submit a revised SIP to EPA.
—Within 12–24 months of the trigger, implement strategies and projects.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Franklin County Area Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e. RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. A MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. A MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

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 cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. 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 assuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB 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. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The MVEBs for the Franklin County Area are listed in Table 1 of this document for the 2009, and 2018 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs. These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: The Franklin County Area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for the Franklin County Area.

The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 19.8 tpd of VOC and 21.8 tpd of NO_X. PADEP projected emissions out to the year 2018 and projected a total of 15.7 tpd of VOC and 9.9 tpd of NO_X from all sources in the Franklin County Area. The safety margin for Franklin for 2018 would be the difference between these amounts. This difference is 4.1 tpd of VOC and 11.9 tpd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6 shows the safety margins for the 2009 and 2018 years.

TABLE 6.— 2009 AND 2018 SAFETY MARGINS FOR THE FRANKLIN COUNTY AREA

Inventory year	VOC Emissions (tpd)	NO_X Emissions (tpd)
2004 Attainment	19.8	21.8
2009 Interim	17.9	17.0
2009 Safety Margin	1.9	4.8
2004 Attainment	19.8	21.8
2018 Final	15.7	9.9
2018 Safety Margin	4.1	11.9

PADEP allocated 0.7 tpd of VOC and 0.4 tpd of NO_X emissions to the 2009 VOC projected on-road mobile source emissions projection and the 2009 NO_X projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs the PADEP allocated 1.0 tpd of VOC and 0.7 tpd of NO_X from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 7 shows the final 2009 and 2018 MVEBS for the Franklin County Area.

TABLE 7.—2009 AND 2018 FINAL MVEBS FOR THE FRANKLIN COUNTY AREA IN TONS PER DAY ROUNDED UP TO NEAREST 0.1 TONS PER DAY

Inventory year	VOC Emissions (tpd)	NO_X Emissions (tpd)
2009 projected on-road mobile source projected emissions	6.6	12.3
2009 Safety Margin Allocated to MVEBs	0.7	0.4
2009 MVEBs	7.3	12.7
2018 projected on-road mobile source projected emissions	4.1	6.0
2018 Safety Margin Allocated to MVEBs	1.0	0.7
2018 MVEBs	5.1	6.7

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for the Franklin County Area are approvable because the MVEBs for NO_X and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the Franklin County Area Maintenance Plan?

The MVEBs for the Franklin County Area maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for

transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Franklin County Area MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Franklin County Area MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov/oms/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

VIII. Proposed Actions

EPA is proposing to determine that the Franklin County Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the Commonwealth's December 14, 2006, request for the Franklin County Area to be designated to attainment of the 8-hour NAAQS for ozone. EPA has evaluated Pennsylvania'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 redesignation request and monitoring data demonstrate that the area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Franklin County Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan and the 2002 base year inventory for the Franklin County Area, submitted on December 14, 2006, as revisions to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the Franklin County Area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the MVEBs submitted by Pennsylvania for the Franklin County Area in conjunction with its redesignation request. EPA is also proposing to issue a determination pursuant to section 181(b)(2) that the area has attained the 1-hour ozone NAAQS and to find that the requirements of section 172(c)(1) concerning the submission of the ozone attainment demonstration and reasonably available control measure requirements, the requirements of section 172(c)(2) concerning reasonable further progress (RFP), and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment do not apply to the area for so long as it continues to attain the 1-hour NAAQS for ozone 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 Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule proposing to approve the redesignation of the Franklin County Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: May 22, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–10351 Filed 5–29–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[WT Docket No. 99–217; CC Docket No. 96–98; DA 07–1485]

Parties Asked To Refresh Record Regarding Promotion of Competitive Networks in Local Telecommunications Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document invites interested parties to update the record pertaining to issues raised in the Commission's Competitive Networks proceeding in light of marketplace and industry developments.

DATES: Comments due on or before July 30, 2007, reply comments due on or before August 28, 2007.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Marlene H. Dortch , Office of the Secretary, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC. Comments may be submitted, identified by WT Docket No. 99–217 and CC Docket No. 96–98, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.fcc.gov.* Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS): *http://www.fcc.gov/cgb/ecfs/.*
- *E-mail:* To *jeremy.miller@fcc.gov.* Include WT Docket No. 99–217 and CC Docket No. 96–98 in the subject line of the message.
- *Fax:* To the attention of Jeremy Miller at 202–418–1413. Include WT Docket No. 99–217 and CC Docket No. 96–98 on the cover page.
- *Mail:* Parties should send a copy of their filings to Jeremy Miller, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–B145, 445 12th Street, SW., Washington, DC 20554.
- *Public inspection, purchase, or download:* The full text of the document summarized here is available for inspection and copying during normal business hours in the FCC Reference Center, Portals II, 225 12th Street, SW., Room CY–A257, Washington, DC 20504. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, and may also be downloaded at: *http://www.fcc.gov.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comment Filing Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Wireline Competition Bureau, Competition Policy Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in WT Docket No. 99–217 and CC Docket No. 96–98, DA No. 07–1485, released March 28, 2007. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* By this document, the Commission establishes comment and reply comment filing dates for receiving updated comments and refreshing the record on a Further Notice of Proposed Rulemaking addressing the status of the market for the provision of telecommunications services in Multiple Tenant Environments (MTEs), and on whether the prohibition on exclusive access contracts in commercial MTEs should be extended to residential MTEs. The filing dates established replace filing dates previously established in the Competitive Networks Further Notice of Proposed Rulemaking, DA 01–750, 66 FR 2322, January 11, 2001, released by the Commission on October 25, 2000. The proceeding for which the Commission seeks to refresh the record is intended to enable the Commission to undertake appropriate review of the status of the deployment of competitive and advanced telecommunications services in MTEs, and to determine whether additional action is necessary to address the ability of premises owners to discriminate unreasonably among competing telecommunications service providers.

Interested parties may file comments on or before July 30, 2007 and reply comments on or before August 28, 2007. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, WT Docket No. 99–217 and CC Docket No. 96–98. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.