Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

Subpart B—[Amended]

2. Revise § 801.20(b) to read as follows:

§ 801.20 Label to bear a unique device identifier (UDI).

* * * * *

(b) *Effective dates.* The requirements of paragraph (a) of this section become effective:

(1) If the device is a class III medical device or is a device licensed under section 351 of the Public Health Service Act, as amended, 5 U.S.C. 262, [A DATE WILL BE ADDED THAT IS 1 YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**];

(2) If the device is an implantable, life-supporting, or life-sustaining device, and is not a class III device or a device licensed under section 351 of the Public Health Service Act, as amended, 5 U.S.C. 262, [A DATE WILL BE ADDED THAT IS 2 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**];

(3) If the device is a class II medical device not covered by paragraph (2), [A DATE WILL BE ADDED THAT IS 3 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**];

(4) If the device is a class I medical device not covered by paragraph (2), [A DATE WILL BE ADDED THAT IS 5 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**];

(5) If the device is not classified into class I, II, or III, [A DATE WILL BE ADDED THAT IS 5 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

* * * * *

3. Revise § 801.50(d) to read as follows:

§ 801.50 Devices that must be directly marked with a unique device identifier.

* * * * *

(d) *Effective dates.* The requirements of this section apply to a device that is an implantable, life-supporting, or life-sustaining device [A DATE WILL BE ADDED THAT IS 2 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], and to any other device 2 years after the date that applies to the device under § 801.20(b).

* * * * *

Dated: November 14, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–28015 Filed 11–16–12; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0141; FRL–9752–8]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Attainment Plan for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware 1997 Fine Particulate Matter Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by Delaware on April 3, 2008, as amended on April 25, 2012. The SIP revision demonstrates attainment of the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware (PA–NJ–DE) nonattainment area (Philadelphia Area). This Delaware SIP revision (herein called the ''attainment plan'') includes the Philadelphia Area's attainment demonstration and motor vehicle emission budgets (MVEBs) used for transportation conformity purposes for New Castle County in Delaware. The attainment plan also includes an analysis of reasonably available control measures (RACM) and reasonably available control technology (RACT), a base year emissions inventory, and contingency measures. The April 25, 2012 submittal is a SIP revision that replaces the MVEBs in the April 3, 2008 submittal with a budget that is based on the Motor Vehicle Emissions Simulator (MOVES) model. In a separate and concurrent process, EPA is conducting a procedure to find adequate the MVEBs for New Castle County. Furthermore, EPA has determined that a reasonable further progress (RFP) plan is not required because Delaware projected that attainment of the 1997 annual $PM_{2.5}$ NAAQS occurred in the Philadelphia Area by the attainment date of April 2010. This action is being taken in accordance with the Clean Air Act (CAA) and the Clean Air Fine Particulate Implementation Rule ($PM_{2.5}$ Implementation Rule) published on April 25, 2007.

DATES: Written comments must be received on or before December 19, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0141 by one of the following methods:

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

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

C. *Mail:* EPA–R03–OAR–2010–0141, Donna Mastro, Acting Associate Director, Office of Air Planning Program, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0141. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is

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

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

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. The following is provided to aid in locating information in this preamble.

I. Summary of Action

EPA is proposing to approve Delaware's SIP revision which was submitted by the State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) to EPA on April 3, 2008, as amended on April 25, 2012, which demonstrates attainment of the 1997 annual $PM_{2.5}$ NAAQS for the Philadelphia Area. This $PM_{2.5}$ attainment plan includes Delaware's attainment demonstration and MVEBs used for transportation conformity purposes for New Castle County in Delaware. The April 25, 2012 SIP revision submittal (1) replaced the onroad emissions budget in the April 3, 2008 submittal with a budget that is based on a new onroad mobile emissions model—MOVES model; (2) demonstrated that the MOVES based mobile source budget is consistent with attainment of the $PM_{2.5}$ NAAQS by 2010; and (3) demonstrated that the contingency requirements of the CAA are met. The April 25, 2012 submittal only impacts $PM_{2.5}$ and nitrogen oxide (NO_X) emissions and calculations.

The attainment plan also includes a base year emissions inventory, an analysis of RACM/RACT, and contingency measures. EPA has determined that a RFP plan is not required because Delaware demonstrated that attainment with the 1997 annual $PM_{2.5}$ NAAQS occurred in the Philadelphia Area by the attainment date of April 2010.

In a separate and concurrent process, EPA is conducting a process to find adequate the MVEBs for New Castle County which are associated with the Delaware attainment demonstration for the Philadelphia Area. Concurrently with EPA's proposal to approve the SIP, a notice will be posted on EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm* for the purpose of opening a 30-day public comment period on the adequacy of the MVEBs for New Castle County in the April 25, 2012 SIP revision's attainment demonstration for the Philadelphia Area. That notice will inform the public of the availability of the Delaware SIP revision on DNREC's Web site. Interested members of the public could access Delaware's April 25, 2012 SIP revision on line at *www.regulations.gov,* Docket No. EPA–R03–OAR–2010–0141. Following EPA's public comment period, responses to any comments received will be addressed. EPA has reviewed the revised MVEBs developed with MOVES and found them consistent with the attainment demonstration and found that the budgets meet the criteria for adequacy and approval.

EPA has determined that Delaware's $PM_{2.5}$ attainment plan meets the applicable requirements of the CAA, as described in the $PM_{2.5}$ Implementation Rule published on April 25, 2007 (72 FR 20586). EPA's analysis and findings are discussed in this proposed rulemaking. In addition, technical support documents (TSDs) for this proposal are available on line at *www.regulations.gov,* Docket No. EPA–R03–OAR–2010–0141. These TSDs provide additional explanation of EPA's analysis supporting this proposal.

II. Background

A. Designation History

On July 16, 1997, EPA established the 1997 $PM_{2.5}$ NAAQS, including an annual standard of 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations and a 24-hour (or daily) standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. *See* 62 FR 38652 (July 18, 1997). EPA established these standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. In 1999, EPA and state air quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS and by January 2001, established a complete set of air quality monitors. On January 5, 2005 (70 FR 944), EPA promulgated initial air quality designations for the 1997 $PM_{2.5}$ NAAQS, which became effective on April 5, 2005, based on air quality monitoring data for calendar years 2001–2003.

On April 14, 2005 (70 FR 19844), EPA promulgated a supplemental rule amending EPA's initial designations, with the same effective date (April 5, 2005) as 70 FR 944. As a result of this supplemental rule, $PM_{2.5}$ nonattainment designations are in effect for 39 areas, comprising 208 counties within 20 states (and the District of Columbia) nationwide, with a combined population of about 88 million. The Philadelphia Area which includes New Castle County in Delaware is in the list of areas not attaining the 1997 annual $PM_{2.5}$ NAAQS.

It should be noted that on November 13, 2009 (74 FR 58688), EPA relabeled the existing designation tables in 40 CFR 81.308 to clarify the 1997 designations for the 24-hour $PM_{2.5}$ NAAQS. The designation for New Castle County was clarified as unclassifiable/attainment for the 1997 24-hour $PM_{2.5}$ NAAQS.

B. Clean Air Fine Particle Implementation Rule

The $PM_{2.5}$ Implementation Rule describes the CAA framework and requirements for developing SIPs for areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. An attainment plan must include a demonstration that a nonattainment area will meet the applicable NAAQS within the

timeframe provided in the statute. This demonstration must include modeling (40 CFR 51.1007) that is performed in accordance with EPA modeling guidance (EPA–454/B–07–002, April 2007). It must also include supporting technical analyses and descriptions of all relevant adopted Federal, state, and local regulations and control measures that have been adopted in order to provide attainment of the 1997 $PM_{2.5}$ NAAQS by the proposed attainment date.

For the 1997 $PM_{2.5}$ NAAQS, an attainment plan must show that a nonattainment area will attain the 1997 $PM_{2.5}$ NAAQS as expeditiously as practicable, but within five years of designation (i.e. attainment date of April 2010 based on air quality data for 2007–2009). If the area is not expected to meet the NAAQS by April 2010, a state may request to extend the attainment date by one to five years based upon the severity of the nonattainment problem or the feasibility of implementing control measures (section 172(a)(2) of the CAA) in the specific area.

For each nonattainment area, the state must demonstrate that it has adopted all RACM, including all RACT for the appropriate emissions sources, needed to provide for attainment of the $PM_{2.5}$ standards in the specific nonattainment area ''as expeditiously as practicable.'' The $PM_{2.5}$ Implementation Rule provided guidance for making these RACM/RACT determinations (*see* section IV.A.4 of this notice). Any measures that are necessary to meet these requirements that are not already Federally promulgated or in an EPA-approved part of the state's SIP must be submitted as part of a state's attainment plan. Any state measures must meet the applicable statutory and regulatory requirements, and in particular, must be enforceable.

The $PM_{2.5}$ Implementation Rule also included guidance on pollutants that states must address in their attainment plans. Section 302(g) of the CAA authorizes EPA to regulate criteria pollutants and their precursors. In the case of $PM_{2.5}$, the main chemical precursors are sulfur dioxide (SO_2), NO_X, ammonia (NH_3), and volatile organic compounds (VOCs). The effect of reducing emissions of precursor pollutants that contribute to $PM_{2.5}$ concentrations varies by area, however, depending on $PM_{2.5}$ composition, emission levels, and other area-specific factors. For this reason, the $PM_{2.5}$ Implementation Rule provided guidance recommending that states elect to control direct $PM_{2.5}$ emissions and the precursor or precursors that would be most effective for attaining the NAAQS within the specific area, based upon an appropriate technical demonstration.

In accordance with the $PM_{2.5}$ Implementation Rule, direct $PM_{2.5}$ emissions means ''solid particles emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct $PM_{2.5}$ emissions include elemental carbon, directly emitted organic carbon (OC), directly emitted sulfate (SO_4), directly emitted nitrate (NO_3), and other inorganic particles (including but not limited to crustal material, metals, and sea salt).''

The $PM_{2.5}$ Implementation Rule requires all states to address SO_2 as a $PM_{2.5}$ precursor and to evaluate SO_2 for possible control measures in all $PM_{2.5}$ nonattainment areas. States are required to address NO_X as a $PM_{2.5}$ precursor and evaluate reasonable controls for NO_X in all $PM_{2.5}$ attainment plans, unless the state and EPA make a finding that NO_X emissions from sources in the state do not significantly contribute to $PM_{2.5}$ concentrations in the relevant nonattainment area.

Although current scientific information shows that certain VOC emissions are precursors to the formation of secondary organic aerosol, and significant progress has been made in understanding the role of gaseous organic material in the formation of organic particulate matter (PM), this relationship remains complex. Further research and technical tools are needed to better characterize emissions inventories for specific VOC compounds and to determine the extent of the contribution of specific VOC compounds to organic PM mass. Because of these factors, the $PM_{2.5}$ Implementation Rule did not require states to address VOCs as $PM_{2.5}$ attainment plan precursors and evaluate them for control measures, unless the state or EPA made a finding that VOCs significantly contribute to a $PM_{2.5}$ nonattainment problem in the specific area or to other downwind air quality concerns.

The $PM_{2.5}$ Implementation Rule also describes the formation of particles related to NH_3 emissions, which is a complex, nonlinear process. Though recent studies have improved our understanding of the role of NH_3 in aerosol formation, ongoing research is needed to better describe the relationships between NH_3 emissions, PM concentrations, and related impacts. Also, area-specific data is needed to evaluate the effectiveness of reducing NH_3 emissions on reducing $PM_{2.5}$ concentrations in different areas, and to determine where NH_3 decreases may increase the acidity of particles and precipitation. For these reasons, in the $PM_{2.5}$ Implementation Rule, NH_3 is presumed not to be a $PM_{2.5}$ attainment plan precursor, meaning that the state is not required to address NH_3 in its attainment plan or evaluate sources of NH_3 emissions for reduction measures, unless the state or EPA makes a finding that NH_3 significantly contributes to a $PM_{2.5}$ nonattainment problem in the area or to other downwind air quality concerns.

The presumptive inclusion of NO_X and the presumptive exclusion of VOC and NH_3 as precursors can be reversed based on an acceptable technical demonstration for a particular nonattainment area by the state or EPA. Such a demonstration should include information from multiple sources, including results of speciation data analyses, air quality modeling studies, chemical tracer studies, emission inventories, or special intensive measurement studies to evaluate specific atmospheric chemistry in an area. *See* the $PM_{2.5}$ Implementation Rule for more information.

The $PM_{2.5}$ Implementation Rule also provided guidance for the other elements of a state's attainment plan, including, but not limited to, emission inventories, contingency measures, and MVEBs used for transportation conformity purposes. There are, however, three aspects of the $PM_{2.5}$ Implementation Rule for which EPA received petitions requesting reconsideration. These pertain to the presumption or advance determination that compliance with the requirements of the Clean Air Interstate Rule (CAIR) automatically satisfies the requirements for RACT or RACM for NO_X or SO_2 emissions from electric generating unit (EGU) sources participating in regional cap and trade programs; the suggestion in the preamble that the economic feasibility element of a RACT determination for EGUs should include consideration of whether the cost of a measure is reasonable in light of the benefits; and the policy described in the preamble of allowing certain emissions reductions from outside the nonattainment area to be credited as meeting the RFP requirement. EPA has granted these petitions. The Delaware attainment plan for the Philadelphia Area does not rely on any of these aspects of the rule.[1]

[1] While Delaware listed CAIR as a control measure in its discussion of RACM/RACT, Delaware's determination of RACM/RACT did not solely depend on CAIR as RACT. *See* Appendix 7–1 of Delaware's April 3, 2008 Attainment Plan.

With regard to CAIR, EPA published this rule on May 12, 2005 (70 FR 25162) to address the interstate transport requirements of the CAA with respect to the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. As originally promulgated, CAIR required significant reductions in emissions of SO_2 and NO_X to limit the interstate transport of these pollutants. In 2008, however, the Court of Appeals for the District of Columbia Circuit (''the Court'') remanded CAIR back to EPA. *See North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008). The Court had previously found CAIR to be inconsistent with the requirements of the CAA, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur because it found that ''allowing CAIR to remain in effect until it is replaced by a rule consistent with [the Court's] opinion would at least temporarily preserve the environmental values covered by CAIR.'' *See North Carolina* v. *EPA,* 550 F.3d at 1178. CAIR thus remained in place following the remand, and was in place and enforceable through the April 5, 2010 attainment date.

In response to the Court's decision, EPA issued a new rule to address interstate transport of NO_X and SO_2 in the eastern United States (i.e., the Transport Rule, also known as the Cross-State Air Pollution Rule). *See* 76 FR 48208 (August 8, 2011). In the Transport Rule, EPA finalized regulatory changes to sunset (i.e., discontinue) CAIR and the CAIR Federal Implementation Plans (FIPs) for control periods in 2012 and beyond. *See* 76 FR 48322.

The recent Court decision on the Transport Rule, *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir., August 21, 2012) [2] does not disturb EPA's determination that it is appropriate to move forward with this proposed action. This action proposes to approve an attainment plan that demonstrated that the Philadelphia Area would attain the 1997 annual $PM_{2.5}$ NAAQS by 2010, which it did, as discussed in section II.C of this notice. The air quality analysis conducted for the Transport Rule demonstrates that the Philadelphia Area would be able to attain the 1997 annual $PM_{2.5}$ NAAQS even in the absence of CAIR or the Transport Rule. *See* Appendix B to the Air Quality Modeling Final Rule Technical Support Document for the Transport Rule. Nothing in the D.C. Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based. More importantly, the Transport Rule is not relevant to this action. The Transport Rule only addresses emissions in 2012 and beyond. As such, neither the Transport Rule itself, nor the vacatur of the Transport Rule, is relevant to the question addressed in this proposal notice. The purpose of this action is to determine whether the attainment plan submitted by Delaware is sufficient to bring the Philadelphia Area into attainment by the April 2010 attainment date, a date before the Transport Rule was even promulgated.

Similarly, the status of CAIR after the April 2010 attainment date is also not relevant to this action. While the air quality monitoring data that shows the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS by the April 2010 attainment deadline was impacted by CAIR, CAIR was in place and enforceable through the 2010 attainment date that is relevant to this attainment plan. CAIR was an enforceable control measure applicable to affected sources in the area, as well as sources throughout the Eastern United States. As such, the current status of CAIR is irrelevant to and does not impact our conclusion that the attainment plan should be approved. Moreover, in its August 2012 decision, the Court also ordered EPA to continue implementing CAIR. *See EME Homer City,* slip op. at 60. For these reasons, neither the current status of CAIR nor the current status of the Transport Rule affects any of the criteria for proposed approval of this SIP revision.

C. Determinations of Attainment

EPA makes two different types of attainment determinations for nonattainment areas. The first, a Determination of Attainment by the attainment date, is a determination of whether the area attained the NAAQS as of the area's applicable attainment deadline, which, for $PM_{2.5}$, is required by section 179(c) of the CAA. The second is a Determination of Attainment for purposes of suspending a state's obligation to submit certain attainment-related planning SIP requirements (i.e., the Clean Data Determinations for $PM_{2.5}$). *See* 40 CFR 51.1004(c). A Clean Data Determination and the suspension of the planning requirements continue for as long as the area continues to attain the NAAQS.

(1) Determination of Attainment by the Area's Attainment Date

In accordance with section 179(c) of the CAA, EPA determined on May 16, 2012 (77 FR 28782) that the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS by its required attainment date of April 5, 2010. This determination was based on complete, quality-assured, quality-controlled, and certified ambient air monitoring data for 2007–2009 as well as the 2008–2010 monitoring periods. *See* 40 CFR 51.1004(c).

(2) Clean Data Determination

On May 16, 2012 (77 FR 28782), EPA also determined that the Philadelphia Area has attained the 1997 annual $PM_{2.5}$ NAAQS and remains in attainment. The determination was based on complete, quality-assured, quality-controlled, and certified ambient air monitoring data for the 2007–2009 and the 2008–2010 monitoring periods. *See* 40 CFR 51.1004(c).

III. Description of the Delaware Attainment Plan

In accordance with section 172(c) of the CAA and the $PM_{2.5}$ Implementation Rule, the attainment plan submitted on April 3, 2008 and amended on April 25, 2012 by DNREC for the Philadelphia Area included Delaware's attainment demonstration, MVEBs used for transportation conformity purposes for New Castle County in Delaware, a base year emissions inventory, a RACM/RACT analysis and contingency measures.

To analyze future year emissions reductions and air quality improvements, Delaware used local, regional, and national modeling analyses that have been developed to support Federal and local emission reduction programs. This modeling was performed in accordance with EPA's ''*Guidance on the Use of Models and Other Analyses for Determining Attainment of Air Quality Goals for Ozone, $PM_{2.5,}$ and Regional Haze*'' (EPA–454/B–07–002, April 2007).

IV. EPA's Analysis

A. Attainment Demonstration

1. Pollutants Addressed

In accordance with policies described in the $PM_{2.5}$ Implementation Rule, Delaware's $PM_{2.5}$ attainment plan evaluates emissions of direct $PM_{2.5}$, SO_2, and NO_X in the Philadelphia Area. With regard to evaluation of $PM_{2.5}$ precursors, the $PM_{2.5}$ Implementation Rule requires that SO_2 be evaluated for controls in all nonattainment areas, and describes general presumptive policies for NO_X, NH_3, and VOCs. For NO_X, states are required to address NO_X as a $PM_{2.5}$ attainment plan precursor and evaluate reasonable controls for NO_X in $PM_{2.5}$ attainment plans, unless the state makes

[2] The Court's judgment is not final at this time as the mandate has not yet issued.

a finding that NO_X emissions in the state do not significantly contribute to $PM_{2.5}$ concentrations in the area. For NH_3, because of uncertainties regarding NH_3 emission inventories and the efficacy of ammonia control technologies, the final rule sets forth the presumption that NH_3 is not a $PM_{2.5}$ precursor and that states are not required to address NH_3 in their attainment plan. Similarly, VOC emissions are presumed not to be an attainment plan precursor because of uncertainties regarding the role of VOC in secondary organic aerosol formation. Delaware's attainment plan does not reverse any of these presumptions.

2. Emissions Inventory Requirements

States are required under section 172(c)(3) of the CAA to develop emissions inventories of point, area, onroad mobile, and nonroad mobile sources for their attainment demonstrations. These inventories provide a detailed accounting of all emissions and emission sources by precursor or pollutant. In addition, inventories are used to model air quality to demonstrate attainment of the 1997 $PM_{2.5}$ NAAQS as expeditiously as practicable, and, if an attainment extension beyond 2010 is needed, to support the need for such an extension. Emissions inventory guidance was provided in the April 1999 document ''*Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations,''* (EPA–454/R–99–006), which was updated in November 2005 (EPA–454/R–05–001). Emissions reporting requirements were provided in the 2002 Consolidated Emissions Reporting Rule (CERR) (67 FR 39602). On December 17, 2008 (73 FR 76539), EPA promulgated the Air Emissions Reporting Requirements (AERR) to update emissions reporting requirements in the CERR, and to harmonize, consolidate and simplify data reporting by states. In accordance with the AERR and the November 2005 guidance, the $PM_{2.5}$ Implementation Rule required states to submit inventory information on directly emitted $PM_{2.5}$ and $PM_{2.5}$ precursors and any additional inventory information needed to support an attainment demonstration.

$PM_{2.5}$ is comprised of filterable and condensable emissions. Condensable particulate matter (CPM) can comprise a significant percentage of direct $PM_{2.5}$ emissions from certain sources, and are required to be included in national emission inventories based on emission factors. Test Methods 201A and 202 are available for source-specific measurement of condensable emissions. However, the $PM_{2.5}$ Implementation Rule acknowledged that there were issues and concerns related to availability and implementation of these test methods as well as uncertainties in existing data for condensable $PM_{2.5}$. In recognition of these concerns, EPA established a transition period during which EPA could assess possible revisions to available test methods and allow time for states to update emissions inventories as needed to address direct $PM_{2.5}$, including condensable emissions. Because of the time required for this assessment, EPA recognized that states would be limited in how to effectively address CPM emissions, and established a period of transition, up to January 1, 2011, during which state attainment demonstration submissions for $PM_{2.5}$ were not required to address CPM emissions. Amendments to these test methods were proposed on March 25, 2009 (74 FR 12970), and finalized on December 21, 2010 (75 FR 80118). The amendments to Method 201A added a particle-sizing device for $PM_{2.5}$ sampling, and the amendments to Method 202 revised the sample collection and recovery procedures of the method to reduce the formation of reaction artifacts that could lead to inaccurate measurements of CPM emissions.

The period of transition for establishing emissions limits for condensable direct $PM_{2.5}$ ended on January 1, 2011. Attainment demonstration $PM_{2.5}$ submissions made during the transition period are not required to address CPM emissions; however, states must address the control of direct $PM_{2.5}$ emissions, including condensable emissions, with any new action taken after January 1, 2011. Delaware submitted the attainment plan prior to January 1, 2011 and therefore, did not consider condensables.

On June 25, 2007, EarthJustice filed a petition requesting reconsideration of EPA's transition period for CPM emissions provided in the $PM_{2.5}$ Implementation Rule. On April 25, 2011, EPA denied EarthJustice's petition for reconsideration which allowed states to continue to exclude CPM for Prevention of Significant Deterioration (PSD) permitting during the transition period. Today's action reflects a review of Delaware's submittal based on applicable EPA guidance as described in the $PM_{2.5}$ Implementation Rule.

The SIP base year inventory is the primary inventory from which other inventories (3-year cycle inventories, RFP inventories, modeling inventories) are derived. The CAA calls for state, local, and tribal agencies to ensure that the base year inventory is comprehensive, accurate, and current for all actual emissions (EPA–454/R–05–001). The base year inventory includes emissions estimates from stationary point and nonpoint sources, onroad mobile sources, and nonroad mobile sources. For the $PM_{2.5}$ NAAQS, the pollutants to be inventoried are primary emissions (including condensables [3]) of PM_{10} and $PM_{2.5}$, and emissions of SO_2, NH_3, VOC, and NO_X, and are reported as actual annual emissions. DNREC defines 2002 as the base year inventory consistent with the $PM_{2.5}$ Implementation Rule. The pollutants inventoried for Delaware include PM_{10}, $PM_{2.5}$, SO_2, NH_3, VOC, and NO_X. Information on the manmade sources of direct PM and its potential precursors, SO_2, NH_3, VOC, and NO_X, was compiled for point, area, onroad and nonroad sources.

The stationary point source inventory represents facility-specific data for Delaware's larger stationary sources. Point sources typically include large industrial, commercial, and institutional facilities. Manufacturing facilities, within the industrial sector, comprise the majority of all reporting point sources. The institutional sector includes hospitals, universities, prisons, military bases, landfills, and wastewater treatment plants. Point source emissions data are submitted to DNREC by the facilities using Terminal Server Satellite *i*-STEPS software. *i*-STEPS is the point source emission inventory electronic data management system.

Area sources represent a large and diverse set of individual emission source categories. Emissions from area sources were estimated at the county level. For the area sources, DNREC has provided an inventory that contains estimations of emissions by multiplying an emission factor by some known indicator or activity level for each category at the county level. These emissions are calculated on an annual basis. Various sources of emission factors or methodologies were used, including EPA's AP–42; the Factor Information Retrieval System (FIRE); EPA's Emissions Inventory Improvement Program, Volume III; documented projects performed by the California Air Resource Board; and projects performed by the Mid-Atlantic Regional Air Management Association (MARAMA). Area source estimates were provided by source classification code (SCC).

[3] Although the $PM_{2.5}$ Implementation Rule established a transition period for including condensables for attainment demonstration controls, reporting of condensables in the emission inventories is still required.

Highway vehicles, which include passenger cars and light-duty trucks, other trucks, buses, and motorcycles, are represented by an onroad mobile source emissions inventory that was developed using the MOVES model and link-level vehicle miles traveled (VMT) data for each county from the Delaware Department of Transportation (DelDOT). The emission factors developed using MOVES were by month, using monthly temperature and fuel property data. DNREC provided MOVES input and output files for review. DNREC provided annual mobile emissions values in tons per year (tpy).

Nonroad sources, which encompass a diverse collection of engines, including, but not limited to, outdoor power equipment, recreational vehicles, farm and construction machinery, lawn and garden equipment, industrial equipment, recreational marine vessels, commercial marine vessels, locomotives, ships, and aircraft were estimated using the EPA NONROAD 2005 model. The emissions inventory for the base year, 2002, was developed in accordance with EPA guidance, *''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards and Regional Haze Regulations,''* EPA–454/R–05–001, August 2005, updated November 2005. Tables 1, 2 and 3 summarize the emissions for 2002.

TABLE 1—2002 ANNUAL EMISSIONS BY COUNTY (TPY)

County	PM_{10}	$PM_{2.5}$	SO_2	NO_X	NH_3	VOC
Kent	3991	1097	4062	10314	2841	5296
New Castle	8604	3430	50237	30748	1384	18062
Sussex	6758	2575	25552	16060	10057	10251
Total	19353	7102	79852	57122	14284	33610

TABLE 2—2002 STATEWIDE ANNUAL EMISSIONS (TPY)

Source sector	PM_{10}	$PM_{2.5}$	SO_2	NO_X	NH_3	VOC
Point	3859	3161	73708	16372	179	4773
Area	13870	2580	1330	2427	13194	10254
Onroad	581	415	584	21341	903	10564
Nonroad	1043	946	4230	16982	8	8019
Total	19353	7102	79852	57122	14284	33610

TABLE 3—2002 NEW CASTLE COUNTY ANNUAL EMISSIONS (TPY)

Source sector	PM_{10}	$PM_{2.5}$	SO_2	NO_X	NH_3	VOC
Point	2168	1733	47070	9157	118	2687
Area	5674	1073	780	1513	710	6198
Onroad	304	209	326	11799	552	5762
Nonroad	458	415	2061	8279	4	3415
Total	8604	3430	50237	30748	1384	18062

The review and evaluation of the methods used for the emissions inventory submitted by Delaware are found in the attainment plan submittal (section 3) and a TSD entitled ''Technical Support Document for Emissions Inventories for the Delaware Nonattainment Area $PM_{2.5}$ SIP Base Year Inventory,'' dated June 16, 2010, available on line at *www.regulations.gov,* Docket No. EPA–R03–OAR–2010–0141. EPA is proposing to approve Delaware's 2002 base year emissions inventory for the Philadelphia Area as meeting the requirements of section 172(c)(3) of the CAA.

3. Modeling

All attainment demonstrations must include modeling that is performed in accordance with EPA's ''*Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*'' (EPA–454/B–07–002, April 2007). This includes the photochemical modeling guidance which is divided into two parts. One part describes how to use a photochemical grid model for ozone and $PM_{2.5}$, to assess whether an area will come into attainment of the air quality standard. A second part describes how the user should perform supplemental analyses, using various analytical methods, to determine if the model over predicts, under predicts, or accurately predicts the air quality improvement projected to occur by the attainment date. The guidance indicates that states should review these supplemental analyses, in combination with the modeling analysis, in a ''weight of evidence'' assessment to determine whether each area is likely to achieve timely attainment.

A description of how the attainment demonstration from the April 3, 2008 SIP revision addresses this EPA modeling guidance for a modeled attainment demonstration can be found in the TSD entitled, ''Technical Support Document for the Modeling and Weight of Evidence Potions of the Delaware SIP for Attainment of the $PM_{2.5}$ Annual NAAQS,'' dated June 15, 2010 (Attainment TSD), available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2010–0141 and section 6 of the April 3, 2008 SIP revision submittal.

In the April 3, 2008 SIP revision submittal, the photochemical grid model used projected emissions for 2009, including emission changes due to regulations Delaware and its neighboring states were planning to

implement and expected growth by 2009. Meteorological conditions from 2002, the same as the base year modeling, were used in the projection modeling for 2009. Using the base case meteorology allows the effect of changes in states' emissions to be determined without being influenced by yearly fluctuations in meteorology and is consistent with EPA guidance.

The conceptual model (describes how weather patterns affect the formation and transport of $PM_{2.5}$, accounting for emissions and photochemistry) for Delaware's attainment plan is described in a document prepared by the Northeast States for Coordinated Air-Use Management (NESCAUM) final report entitled, ''The Nature of the Fine Particle and Regional Haze Air Quality Problems in the MANE–VU Region: A Conceptual Description (2006).'' This document is consistent with EPA's guidance and was prepared for use by the Ozone Transport Commission (OTC) member states which provides the conceptual description of $PM_{2.5}$ issues in the OTC states. The OTC is a multi-state organization consisting of the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Northern Virginia. *See* section 184 of the CAA. By agreement of OTC, the New York State Department of Environmental Conversation (NYSEC) ran the Community Multi-scale Air Quality Model (CMAQ) for the states in the northeast Ozone Transport Region (OTR) which includes Delaware. The inputs of the model are described in section 6 of the April 3, 2008 SIP revision submittal.

The attainment test for $PM_{2.5}$ is referred to as the Speciated Modeled Attainment Test (SMAT). In the Delaware's April 3, 2008 SIP revision submittal, the SMAT results demonstrated that the projected annual arithmetic mean $PM_{2.5}$ concentration calculated at each Federal Reference Method (FRM) monitor attained the annual $PM_{2.5}$ NAAQS in 2009. Specifically, all calculations are less than 15μg/m^3.

In summary, the basic photochemical grid modeling, presented in the Delaware attainment plan, used the methods recommended in EPA's modeling guidance. When EPA's attainment test is applied to the modeling results, the 2009 annual-average $PM_{2.5}$ design value is predicted to be 13.3μg/m^3 in the Philadelphia Area. Therefore, based on EPA's modeled attainment test, the Philadelphia Area reached attainment of the annual average $PM_{2.5}$ standard in 2009 before the attainment date of April 5, 2010.

4. Reasonably Available Control Measures/Reasonably Available Control Technology

a. Requirements for RACM/RACT

CAA section 172(c)(1) requires that each attainment plan ''provide for the implementation of all RACM as expeditiously as practicable, including such reductions in emissions from the existing sources in the area as may be obtained through the adoption, at a minimum, of RACT, and shall provide for attainment of the national primary ambient air quality standards.'' EPA interprets RACM including RACT under section 172 as measures that a state finds are both reasonably available and contribute to attainment as expeditiously as practicable in the nonattainment area. Thus, what constitutes RACM or RACT in a $PM_{2.5}$ nonattainment area is closely tied to the expeditious attainment demonstration of the plan. *See* 40 CFR 51.1010; 72 FR 20586 at 20612.

States are required to evaluate RACM/RACT for direct $PM_{2.5}$ emissions and all of the area's attainment plan precursors. *See* 40 CFR 51.1002(c); 72 FR 20586 at 20589–97. Consistent with the guidance provided for the $PM_{2.5}$ Implementation Rule, a state initially must evaluate RACM/RACT for sources that emit direct $PM_{2.5}$, SO_2, and NO_X. A state may establish with an appropriate demonstration that it should not regulate NO_X in the specific nonattainment area, so it could thereby forgo evaluation of RACM/RACT for NO_X. Because EPA concluded that VOC and NH_3 are presumptively not regulatory precursors for $PM_{2.5}$, unless the state or EPA determines that it is necessary to regulate them in a specific nonattainment area, the state is not required to evaluate RACM/RACT for sources of VOC or NH_3 unless there is a determination supported by an appropriate demonstration that such emissions need to be regulated for expeditious attainment of the NAAQS in the specific area.

For $PM_{2.5}$ attainment plans, the $PM_{2.5}$ Implementation Rule requires a combined approach to RACM and RACT under subpart 1 of part D of the CAA. Subpart 1, unlike subparts 2 and 4, does not identify specific source categories for which EPA must issue control technique documents or guidelines, or identify specific source categories for state and EPA evaluation during attainment plan development. *See* 72 FR 20586 at 20610. Rather, under subpart 1, EPA considers RACT to be part of an area's overall RACM obligation consistent with the section 172 definition. Because of the variable nature of the $PM_{2.5}$ problem in different nonattainment areas which may require states to develop attainment plans that address widely disparate circumstances, EPA determined not only that states should have flexibility with respect to RACM/RACT controls, but also that in areas needing significant emission reductions, RACM/RACT controls on smaller sources may be necessary to reach attainment as expeditiously as practicable. *See* 72 FR 20586 at 20612, 20615. Thus, under the $PM_{2.5}$ Implementation Rule, RACM and RACT are those reasonably available measures that contribute to attainment as expeditiously as practicable in the specific nonattainment area. *See* 40 CFR 51.1010; 72 FR 20586 at 20612.

Specifically, the $PM_{2.5}$ Implementation Rule requires that attainment plans include the list of measures that a state considered and information sufficient to show that the state met all requirements for the determination of what constitutes RACM/RACT in a specific nonattainment area. *See* 40 CFR 51.1010(a). In addition, the $PM_{2.5}$ Implementation Rule requires that the state, in determining whether a particular emissions reduction measure or set of measures must be adopted as RACM/RACT, consider the cumulative impact of implementing the available measures and adopt as RACM/RACT any potential measures that are reasonably available considering technological and economic feasibility if, considered collectively, they would advance the attainment date by one year or more. If a measure or measures is not necessary for expeditious attainment of the NAAQS in the area, then by definition that measure is not RACM/RACT for purposes of the 1997 $PM_{2.5}$ NAAQS in that area. Any measures that are necessary to meet these requirements which are not already either Federally promulgated, part of the state's SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan for the area. *See* 72 FR 20586 at 20614.

Guidance provided in the $PM_{2.5}$ Implementation Rule for evaluating RACM/RACT level controls for an area also indicated that there could be flexibility with respect to those areas that were predicted to attain the 1997 $PM_{2.5}$ NAAQS within five years of designation as a result of existing national or local measures. *See* 72 FR 20586 at 20612. In such circumstances, EPA indicated that the state may

conduct a more limited RACM/RACT analysis that does not involve additional air quality modeling. Moreover, the RACM/RACT analysis for such area would focus on a review of reasonably available measures, the estimation of potential emissions reductions, and the evaluation of the time needed to implement the measures. Thus, the $PM_{2.5}$ Implementation Rule guidance recommended that not all areas would need to conduct as rigorous an analysis, and suggested that a less rigorous analysis would be needed for those areas expected to attain within the initial five years from designation as a nonattainment area for the 1997 $PM_{2.5}$ NAAQS. A more comprehensive discussion of the RACM/RACT requirement for $PM_{2.5}$ attainment plans and EPA's guidance for it can be found in the $PM_{2.5}$ Implementation Rule preamble. *See* 72 FR 20586 at 20609–20633.

b. Delaware's Analysis of Pollutants and Sources for the Delaware Portion of the Philadelphia Area

Based upon the emissions inventory for the area, Delaware determined that it would be appropriate to evaluate sources of $PM_{2.5}$, SO_2, and NO_X located in the nonattainment area for potential control as RACM/RACT. Delaware determined that controls of sources of VOC or NH_3 would not be necessary for expeditious attainment of the NAAQS in this area, nor does EPA believe that there is a need to do so. Delaware's determination with respect to which pollutants the plan should evaluate is found in Section 1.4 of the attainment plan submittal.

After evaluating which pollutants should be addressed in the attainment plan, Delaware identified all source categories of those emissions located within the nonattainment area to determine available controls that could advance the attainment date by one year or more. *See* Section 7 of the attainment plan submittal. For the primary $PM_{2.5}$ RACM, DNREC evaluated measures that are limited to the boundaries of the nonattainment area, i.e. New Castle County. However, because SO_2 and NO_X can be transported over considerable distances to form $PM_{2.5}$, SO_2 and NO_X were assessed on a statewide basis. *See* Appendix 7–1 of Delaware's attainment plan for ''EPA's List of Potential Control Measures.'' Although VOC is not a regulated $PM_{2.5}$ precursor for the Delaware portion of the Philadelphia area, VOC control measures approved by EPA are included in the modeling associated with this attainment plan.

In accordance with 40 CFR 51.1010, a SIP revision for a $PM_{2.5}$ nonattainment area is required to demonstrate that all RACM, including RACT for stationary sources, necessary to demonstrate attainment as expeditiously as practicable, have been adopted. The cumulative impact of implementing available measures must be considered in determining whether a particular emission reduction measure or set of measures is required to be adopted as RACM. Potential measures that are reasonably available considering technical and economic feasibility must be adopted as RACM if, considered collectively, they would advance the attainment date by one year or more. Since the Philadelphia Area attained at the end of 2009, any RACM measures needed to be in effect in 2008. Delaware determined that there were no additional control measures that could be adopted by January 1, 2008. In addition, existing measures and measures planned for implementation by 2009 enabled the Philadelphia Area to attain the 1997 annual $PM_{2.5}$ NAAQS. Therefore, Delaware determined no further actions on RACM or RACT were warranted.

c. Delaware's Evaluation of RACM/RACT Control Measures for the Delaware Portion of the Philadelphia Area

In accordance with section 172 of the CAA, Delaware determined it adopted all RACM, including RACT, needed to attain the standards ''as expeditiously as practicable.'' Delaware's demonstration for attaining the 1997 $PM_{2.5}$ NAAQS in the Philadelphia Area is based on the following Federally enforceable measures in Section 7 of the state's submittal and listed below. From the control measures listed below, EPA is proposing not to approve CAIR as RACM/RACT for EGUs in Delaware for the 1997 $PM_{2.5}$ NAAQS but proposes to approve as RACM/RACT the other control measures identified in Delaware's April 3, 2008 SIP submittal which were approved by EPA previously into the Delaware SIP (*see* 40 CFR 52.420(c)) or are otherwise Federally enforceable.

Section 7.2.1 Point Sources:

- 40 CFR parts 51, 72, et al. Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)
- ''Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule'' 71 FR 25288 (April 28, 2006)
- Consent Decree, Premcor Refinery, Delaware City (formerly Motiva Enterprises) New Castle County. Control of SO_2, and NO_X Emission from Boilers and Heaters
- Regulation 1146, EGUs, Electric Generating Unit (EGU) Multi-Pollutant Regulation, SO_2 and NO_X emission control (effective December 11, 2006)
- Regulation 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions, NO_X emission control
- Regulation 1144, Control of Stationary Generator Emissions, SO_2, PM, VOC and NO_X emission control
- Regulation 1142, Section 1.0, Control of NO_X Emissions from Industrial Boilers, NO_X emission control
- Regulation 1142, Section 2.0, Control of NO_X Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, NO_X emission control, New Castle County
- Regulation 1124, Section 46.0, Crude Oil Lightering Operations, VOC emission control
- Facility and Unit shutdowns (*see* Table 4–3 in the Delaware submittal)

Section 7.2.2 Non-Point Sources:

- Regulation 1124, Section 33.0, Solvent Cleaning and Drying, VOC emission control
- Regulation 1124, Section 11.0, Mobile Equipment Repair and Refinishing, VOC emission control
- Regulation 1141, Section 3.0, Portable Fuel Containers, VOC emission control
- Regulation 1141, Section 2.0, Consumer Products, VOC emission control
- Regulation 1141, Section 1.0, Architectural and Industrial Maintenance Coatings, VOC emission control
- Regulation 1124, Section 36.0, Stage II Vapor Recovery, VOC emission control
- Controls on Residential Woodstoves, 40 CFR Part 60 Subpart AAA—New Source Performance Standards (''NSPS'') for PM, VOC and NO_X emission control
- Regulation 1113, Open Burning Controls, PM, VOC and NO_X emission control

Section 7.2.3 Non-Road Sources:

- Phase I and Phase II Emissions Standards for Gasoline-Powered Non-Road Utility Engines, Federal Rule
- Emissions Standards for Diesel-Powered Non-Road Utility Engines of 50 or More Horsepower, Federal Rule
- Emissions Standards for Spark Ignition (SI) Marine Engines, Federal Rule
- Emissions Standards for Large Spark Ignition Engines, Federal Rule

- Reformulated Gasoline Use in Non-Road Motor Vehicles and Equipment, Federal Rule
- ''Control of Emissions from New Marine Compression-Ignition Engines at or above 30 liters per Cylinder; Final Rule,'' 68 FR 9746 (February 28, 2003), at pp. 9755–56 (hereinafter EPA C3 Rule)

Section 7.2.4 On-Road Mobile Sources:

- Regulation No. 31, Low Enhanced Inspection and Maintenance Program
- Regulation 1132, Transportation Conformity Regulation
- 40 CFR Parts 80, 85, and 86—Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements; Final Rule
- 40 CFR parts 69, 80, and 86 Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements; Final Rule
- Regulation 1145, Controls on Excessive Idling of Heavy Duty Vehicles
- Regulation 1140, National Low Emission Vehicle (NLEV) Program

Delaware has implemented other control measures for SO_2, NO_X, VOC, and $PM_{2.5}$ including mandatory episodic prohibition of lightering on ozone action days, and reduction of emissions from high electric demand day electric generation.

The above measures have been adopted by Delaware and approved by EPA as Federally enforceable measures in the Delaware SIP (*see* 40 CFR 52.420(c)) or are otherwise Federally enforceable.

In addition, other voluntary measures that are effective in 2010 include:

- Brandywine School District Bus Retrofits
- Delaware Ride Share
- Ozone Action Days (voluntary curtailment of activities that contribute to air pollution)
- Use of Biodiesel (B20) in state-run equipment
- Best Workplaces for Commuters and SmartWay Transport programs
- Implement anti-idling outreach programs for schools and school districts
- Clean State Program—focusing on greater use of alternative transportation fuels
- Installation of an E85 fueling station in Delaware
- Delaware continues to identify and implement energy efficiency programs for the residential and commercial sectors. Energy efficiency programs include:

—Energy efficiency/conservation education, outreach, technical assistance
—Energy An$wers Program
—Home Appliances
—Business
—Home Performance
—Energy Star Program
—Sustainable Energy Utility (SEU)

d. Proposed Action on RACM/RACT Demonstration and Control Strategy

EPA is proposing to approve Delaware's evaluation of RACM/RACT control measures for the Philadelphia Area, except for the reference to CAIR for EGUs which EPA is not proposing to approve as RACM/RACT. The monitoring data for this area indicates that it has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable date, and EPA made a determination of attainment on May 16, 2012 (77 FR 28782). EPA's guidance for the $PM_{2.5}$ Implementation Rule recommended that if an area was predicted through the attainment plan to attain the standard within five years after designation, then the state could submit a more limited RACM/RACT analysis and the state could elect not to do additional modeling.

Because the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date, and because EPA agrees with Delaware that no additional measures could be adopted that would advance the attainment date by one year, EPA proposes to determine that the Delaware attainment plan (except for CAIR for EGUs) meets the RACM/RACT requirements of the $PM_{2.5}$ Implementation Rule and that the Federally enforceable control measures identified in the Delaware attainment plan (other than CAIR for EGUs) constitute RACM/RACT for purposes of the 1997 annual $PM_{2.5}$ NAAQS. Because the $PM_{2.5}$ Implementation Rule defines RACM/RACT as that level of control that is necessary to bring the area into timely attainment, and because no additional measures could achieve attainment one year earlier, the level of Federally enforceable controls on sources located within the Philadelphia Area as of the end of the calendar year 2009 constitutes RACM/RACT for the Philadelphia Area for this purpose. EPA is proposing not to approve CAIR as RACM/RACT in Delaware for the 1997 $PM_{2.5}$ NAAQS for EGUs but proposes to approve as RACM/RACT the other control measures, including state controls on EGUs, identified in Delaware's April 3, 2008 SIP submittal, which were previously approved by EPA as part of the Delaware SIP (*see* 40 CFR 52.420(c)) or are otherwise Federally enforceable, because the Philadelphia Area has attained the 1997 $PM_{2.5}$ NAAQS by the attainment date.

5. Reasonable Further Progress

Section 172(c)(2) of the CAA requires that attainment plans include RFP to achieve steady progress toward meeting air quality standards by showing generally linear progress toward attainment. The $PM_{2.5}$ Implementation Rule set forth that an area that demonstrates attainment by 2010 will be considered to have satisfied the RFP requirement and need not submit any additional material to satisfy the RFP requirement. EPA views the attainment demonstration as also demonstrating that the area is making reasonable further progress toward attainment. A state is required to submit a separate RFP plan for any area for which the state seeks an extension of the attainment date beyond 2010. The RFP plan is required to provide emission reductions such that emissions in 2009 represent generally linear progress from the 2002 baseline year to the attainment year. The Philadelphia Area attained by 2010, and has therefore met the RFP requirements under the $PM_{2.5}$ Implementation Rule.

6. Contingency Measures

In accordance with section 172(c)(9) of the CAA, the $PM_{2.5}$ Implementation Rule requires that $PM_{2.5}$ attainment demonstrations include contingency measures. *See* 40 CFR 51.1012 and 72 FR at 20642–20646, April 25, 2007. Contingency measures are additional measures to be implemented in the event an area fails to meet RFP or fails to attain a standard by its attainment date. These measures must be fully adopted rules or control measures that can be implemented quickly and without significant further EPA or state action if the area fails to meet RFP or fails to attain by its attainment date, and should contain trigger mechanisms and an implementation schedule. In addition, they should be measures not already included in the SIP control strategy and should provide for emission reductions equivalent to one year of RFP.

Delaware submitted contingency measures as required by the $PM_{2.5}$ Implementation Rule that were fully adopted rules or control measures that were ready to be implemented quickly upon failure of the area to attain and were at the level of reductions equal to at least one's year worth of reductions

needed for attainment in the area. In accordance with section 110(k)(2) of the CAA, EPA must take action on the contingency measures that were submitted by Delaware. However, as noted in section II.C of this proposed rulemaking action, the Philadelphia Area, which consists of New Castle County in Delaware, has attained the 1997 annual $PM_{2.5}$ NAAQS and meets the attainment date of April 5, 2010, and continues to attain based on the most recent data available. Because EPA has determined that the area attained by its required attainment date, in accordance with section 179(c)(9), no contingency measures for failure to attain by this date need be implemented, and further EPA action is unnecessary. Furthermore, as set forth in the $PM_{2.5}$ Implementation Rule, areas that attained the NAAQS by the attainment date are considered to have satisfied the requirement to show RFP, and as such do not need to implement contingency measures to make further progress to attainment. EPA has determined that the Philadelphia Area has attained by the attainment date, therefore the contingency measures submitted by Delaware are no longer necessary for the Philadelphia Area to meet RFP requirements or attain the 1997 annual $PM_{2.5}$ NAAQS by the attainment date. Although the Philadelphia Area met the attainment date of April 5, 2010 and thus is not required to implement contingency measures, by relying on those contingency measures that were already in place, Delaware has effectively implemented its control measures in advance.

7. Attainment Date

Delaware provided a demonstration of attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Philadelphia Area by 2010.

B. Motor Vehicle Emissions Budgets (MVEBs)

Section 176(c) of the CAA requires Federal actions in nonattainment and maintenance areas to ''conform to'' the goals of SIPs. This means that such actions will not cause or contribute to violations of a NAAQS, worsen the severity of an existing violation, or delay timely attainment of any NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR Part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, and the FHWA and FTA to demonstrate that their long range transportation plans and transportation improvement programs (TIP) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the MVEBs contained in the SIP.

On April 25, 2012, Delaware submitted a SIP revision that is related to the $PM_{2.5}$ and NOx onroad mobile source budgets that were established in the April 3, 2008 submittal. The April 25, 2012 submittal replaces the MVEBs in the April 3, 2008 submittal with budgets based on the MOVES model.

In a separate and concurrent process, EPA is conducting a process to find adequate the MVEBs for New Castle County which are associated with the Delaware attainment demonstration for the Philadelphia Area. Concurrently with EPA's proposal to approve the SIP, a notice will be posted on EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm* for the purpose of opening a 30-day public comment period on the adequacy of the MVEBs for New Castle County in the April 25, 2012 SIP revision's attainment demonstration for the Philadelphia Area. That notice will inform the public of the availability of the Delaware SIP revision on DNREC's Web site. Interested members of the public could access Delaware's April 25, 2012 SIP revision on line at *www.regulations.gov,* Docket No. EPA–R03–OAR–2010–0141. Following EPA's public comment period, responses to any comments received will be addressed. EPA has reviewed the revised MVEBs developed and found them consistent with the attainment demonstration and that the budgets meet the criteria for adequacy and approval.

V. Proposed Action

EPA is proposing to approve the Delaware 1997 annual $PM_{2.5}$ NAAQS attainment plan for the Philadelphia Area that was submitted on April 3, 2008. EPA is also proposing to find adequate and approve the MVEBs revised with MOVES that were submitted on April 25, 2012 as a SIP revision. The attainment plan includes Delaware's attainment demonstration, an analysis of RACM/RACT, the 2002 base year emissions inventory, and contingency measures. EPA has determined that Delaware's attainment demonstration meets the applicable requirements of the CAA, as described in the $PM_{2.5}$ Implementation Rule. Specifically, EPA has determined that the Delaware SIP revision includes an attainment demonstration and adopted state regulations and programs needed to support a determination that the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS by the April 2010 deadline. EPA is specifically proposing however not to approve CAIR as RACM/RACT for Delaware's attainment plan for the Philadelphia Area. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

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

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

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

In addition, this proposed rule, pertaining to the Delaware 1997 annual $PM_{2.5}$ attainment plan for the Philadelphia Area, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: October 31, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–28091 Filed 11–16–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2012–0751; FRL–9751–8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Kentucky Portion of the Huntington-Ashland 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 12, 2012, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), submitted a request to redesignate the Kentucky portion of the tri-state Huntington-Ashland, West Virginia-Kentucky-Ohio fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as the ''Huntington-Ashland Area'' or ''Area'') to attainment for the 1997 Annual $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Kentucky portion of the Huntington-Ashland Area. The Huntington-Ashland Area is comprised of Boyd County and a portion of Lawrence County in Kentucky; Lawrence and Scioto Counties and portions of Adams and Gallia Counties in Ohio; and Cabell and Wayne Counties and a portion of Mason County in West Virginia. EPA is proposing to approve the redesignation request and the related SIP revision for Boyd and Lawrence Counties in Kentucky, including the Commonwealth's plan for maintaining attainment of the $PM_{2.5}$ standard in the Kentucky portion of the Huntington-Ashland Area. EPA is also proposing to approve the on-road motor vehicle insignificance finding for direct $PM_{2.5}$ and nitrogen oxides (NO_X) for the Kentucky portion of the Huntington-Ashland Area. On May 4, 2011, and June 30, 2011, respectively, Ohio and West Virginia submitted requests to redesignate their portions of the Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. EPA is taking action on the requests from Ohio and West Virginia separately from these proposed actions.

DATES: Comments must be received on or before December 10, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0751, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4–RDS@epa.gov*.
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2012–0751, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0751. 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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

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 at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey of the Regulatory Development Section, in the Air Planning Branch,