

Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, pertaining to the amendments to control VOC emissions from yeast manufacturing facilities in Maryland, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 20, 2004.  
**Thomas C. Voltaggio**,  
*Acting Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart V—Maryland**

■ 2. Section 52.1070 is amended by adding paragraph (c)(189) to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(189) Revisions to the Maryland Regulations on the Control of Volatile Organic Compound Emissions from Yeast Manufacturing submitted on July

12, 2004 by the Maryland Department of the Environment (MDE):

(i) Incorporation by reference.  
 (A) Letter of July 12, 2004 from the Maryland Department of the Environment transmitting the amendments to the control of VOC from yeast manufacturing.

(B) The following revisions to COMAR 26.11.19.17, Control of VOC Emissions from Yeast Manufacturing with an effective date of June 21, 2004.

(1) Addition of paragraphs .17A(3) and .17A(4) of existing paragraphs .17A(3) and .17A(4) to .17A(5) and .17A(6) respectively.

(2) Addition of paragraph .17B(2), replacing existing paragraph .17B(2).

(3) Revisions to paragraphs .17B(3), .17C(2), .17C(3), .17D (introductory sentence), .17D(1), and .17D(2).

(4) Addition of paragraph .17E; renumbering of existing paragraph .17E to .17F.

(5) Addition of paragraphs .17F(1) and .17F(2), replacing existing paragraphs .17E(1) and .17E(2).

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(191)(i) of this section.

[FR Doc. 04-23948 Filed 10-26-04; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[R03-OAR-2004-WV-0001; FRL-7821-4]

**Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Determination of Attainment and Redesignation of the City of Weirton PM<sub>10</sub> Nonattainment Area to Attainment and Approval of the Maintenance Plan**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is determining that the City of Weirton PM<sub>10</sub> nonattainment area (the Weirton area) has attained the National Ambient Air Quality Standard (NAAQS) for PM<sub>10</sub>. This determination is based on three years of complete, quality-assured, ambient air quality monitoring data for the years 2000-2002 which demonstrate that the NAAQS for PM<sub>10</sub> has been attained in the area. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements along with other related requirements of the Clean Air Act (CAA), are no applicable to the Weirton area. EPA is also approving the

West Virginia Department of Environmental Protection's (WVDEP) request to redesignate the Weirton area to attainment of the NAAQS for PM<sub>10</sub>. In conjunction with its approval of this redesignation request, EPA is also approving WVDEP's 10-year maintenance plan for the Weirton area as a revision to the West Virginia State Implementation Plan (SIP). EPA is taking these actions in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on December 27, 2004 without further notice, unless EPA receives adverse written comment by November 26, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2004-WV-0001 by one of the following methods:

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

B. Agency Web site: <http://www.docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: [Morris.makeba@epa.gov](mailto:Morris.makeba@epa.gov).

D. Mail: R03-OAR-2004-WV-0001, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. 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 RME ID No. R03-OAR-2004-WV-0001. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, 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 RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) Web sites are 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 RME or [regulations.gov](http://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 RME index at <http://www.docket.epa.gov/rmepub/>. 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 RME 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 material to be incorporated by reference are available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304-2943.

**FOR FURTHER INFORMATION CONTACT:** Linda Miller, (215) 814-2068, or by e-mail at [miller.linda@epa.gov](mailto:miller.linda@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Under the CAA, EPA may redesignate areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3) of the CAA. These criteria include full approval of a maintenance plan for the area. The requirements for a maintenance plan are found in section 175A of the CAA. The Weirton area, located in Hancock

County and Brooke County (part), was classified as an area likely to be in violation of the PM<sub>10</sub> NAAQS on August 7, 1987 (52 FR 29383). On August 14, 1989, the Oak Street monitoring site in the Weirton area recorded the fourth exceedance of the 24-hour PM<sub>10</sub> NAAQS in a three-year period. The Weirton area was designated by EPA as a moderate PM<sub>10</sub> nonattainment area on December 21, 1993 (58 FR 67334). The Weirton area has monitored attainment of the NAAQS for PM<sub>10</sub> since 1998.

##### **II. Summary of State Submittal**

On May 24, 2004, the WVDEP submitted a redesignation request and maintenance plan for the Weirton moderate PM<sub>10</sub> nonattainment area. West Virginia's May 24, 2004 submittal provides for the attainment and maintenance of the NAAQS for PM<sub>10</sub> in the Weirton area and satisfies the requirements of section 107(d)(3)(E) of the CAA, necessary for redesignation. When approved, the maintenance plan and its contingency measures submitted by the WVDEP for the Weirton area will become part of the West Virginia SIP.

The WVDEP's submittal includes an analysis of quality-assured, ambient air quality monitoring data documenting attainment of the NAAQS for PM<sub>10</sub> in the Weirton area and additional documentation to satisfy EPA's policy entitled "Reasonable Further Progress, Attainment demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" signed by John S. Seitz and dated May 10, 1995, commonly referred to as the Clean Data Policy (CDP). EPA is making a clean data determination under its May 10, 1995 CDP for the Weirton area thereby waiving certain part D requirements related to the attainment demonstration, reasonable further progress and their associated contingency measures for the Weirton area. Details of how West Virginia has satisfied the May 10, 1995 CDP are found in III.B.2. of this document.

##### **III. Description and Evaluation of the Redesignation and Maintenance Plan**

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the NAAQS; (2) The Administrator has fully approved the applicable implementation plan for the area under Section 110; (3) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions

resulting from implementation of the applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175(A); and, (5) The State containing such area has met all requirements applicable to the area under section 110 and part D. The EPA has reviewed the redesignation request submitted by the WVDEP on May 24, 2004 for the Weirton area and finds that it meets the five requirements for redesignation found in section 107(d)(3)(E) of the CAA.

#### *A. Weirton Area Has Data Showing Attainment of the NAAQS for PM<sub>10</sub>*

EPA's review of the monitoring data submitted by West Virginia indicates that the Weirton area has attained, and continues to attain, both the 24-hour and annual PM<sub>10</sub> standard. The PM<sub>10</sub> monitoring network in the Weirton area consists of four monitors within the nonattainment area. The three years of data used in the redesignation request are the years 2000–2002, inclusive. The maximum annual average for the 3-year period is 32 µg/m<sup>3</sup>. The maximum 24-hour value is 112 µg/m<sup>3</sup>. Although the May 24, 2004 formal redesignation request uses 2000–2002 monitoring data, the Weirton area has, in fact, monitored attainment from the years 1998 through 2003, and continues to monitor attainment of the NAAQS for PM<sub>10</sub>.

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

##### 1. Section 110 Requirements

General SIP elements are delineated in section 110(a)(2) of Title I, part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the state after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, and provisions for public and local agency participation. The May 24, 2004 SIP submittal provided documentation of that the West Virginia SIP satisfies all of the section 110 and part D

requirements of the CAA which apply to the Weirton area. EPA has concluded that the West Virginia SIP for the Weirton area satisfies all of the section 110 SIP requirements of the CAA.

##### 2. Part D Requirements

Before the Weirton area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D of the CAA. As stated previously, EPA had determined that certain part D requirements are no longer required to be met by the Weirton area under EPA's May 10, 1995 CDP. The clean data area approach applies the policy already in place for ozone nonattainment areas to selected PM<sub>10</sub> nonattainment areas. The CDP policy reduces the requirements for submittal of certain requirements in nonattainment areas which are demonstrating attainment with the NAAQS. For areas meeting the five criteria discussed in the CDP, states are not required to submit SIP revisions concerning reasonable further progress, attainment demonstration or their associated contingency measures. West Virginia has met the criteria of the CDP for the Weirton area as follows:

(a) The area must be attaining the PM<sub>10</sub> NAAQS with the three most recent years of quality assured air quality data. West Virginia has provided evidence of the Weirton area attaining the NAAQS for PM<sub>10</sub>. There are four PM<sub>10</sub> monitors within the Weirton area. There have been no exceedances of the 24-hour standard of 50 µg/m<sup>3</sup> during the past five years. The monitors have never recorded a violation of the annual PM<sub>10</sub> standard of 150 µg/m<sup>3</sup>. The Weirton area 24-hour value for calendar years 2000–2002, as found in EPA's Air Quality Subsystem (AQS), is 32 µg/m<sup>3</sup>. The annual value for the Weirton area during the same time period is 112 µg/m<sup>3</sup>.

(b) The State must continue to operate an appropriate PM<sub>10</sub> air quality monitoring network, in accordance with 40 CFR part 58, in order to verify the attainment status of the area. In the maintenance plan submitted on May 24, 2004, which EPA is approving as part of this rulemaking, the State of West Virginia has committed to continue to monitor the Weirton area.

(c) The control measures for the area, which were responsible for bringing the area into attainment, must be approved by EPA. In its May 24, 2004 submittal, the WVDEP provides details on the emission reductions responsible for bringing the area into attainment. The primary control measures to achieve attainment include making permanent and enforceable the shutdown of specified steel manufacturing and

processing facilities which occurred after the Weirton area was designated and classified nonattainment. The request for redesignation specifically cites to a Federally-enforceable consent order between State of West Virginia and the Weirton Steel Corporation. This consent order was approved as a revision to the West Virginia SIP on May 5, 2004 (69 FR 24986). The requirements of the consent order resulted in a permanent and enforceable reduction of 1345 tons per year of PM<sub>10</sub>.

(d) An emissions inventory must be completed for the area. An emission inventory for the Weirton area was completed and submitted as part of the maintenance plan which EPA is approving as part of this rulemaking.

(e) EPA must make a finding that the area attained the 24-hour and annual PM<sub>10</sub> NAAQS.

EPA published a notice in the **Federal Register** on May 16, 2001 announcing that the Weirton area had attained the NAAQS for PM<sub>10</sub> (66 FR 27034). Pursuant to the May 10, 1995 CDP, EPA, in this rulemaking, is again determining that the Weirton area has attained the NAAQS for PM<sub>10</sub>. This determination is based on three years of complete, quality-assured, ambient air quality monitoring data for the years 2000–2002. EPA has determined that West Virginia has met the requirements of the CDP. Therefore, the requirements under CAA section 172(c) for developing an attainment demonstration, RFP demonstration and their associated contingency measures are waived due to the fact that the Weirton area, by satisfying the criteria of the CDP, has been determined by EPA to have already attained the NAAQS for PM<sub>10</sub> and met RFP.

However, any requirements that are connected solely to designation or classification, such as new source review (NSR) and RACM/RACM, will remain in effect. Therefore, the consent order approved as a revision to the West Virginia SIP on May 5, 2004 (69 FR 24986) will remain in effect after the Weirton area is redesignated. The Federal requirements for new source review (NSR) in nonattainment areas are contained in section 172(c)(5). The CAA and EPA guidance provide that the requirements of the part D nonattainment area NSR program will be replaced by the state's prevention of significant deterioration (PSD) program when an area has reached attainment and been redesignated, provided there are assurances that PSD will become fully effective immediately upon redesignation. West Virginia's regulations for its PSD permitting program were approved into the West

Virginia SIP on April 11, 1986 (51 FR 12518). Under the West Virginia SIP, the state's PSD permitting program will become fully effective in the Weirton area immediately upon its redesignation to attainment.

*C. The Improvement in Air Quality in the Weirton Area Is Due to Permanent and Enforceable Measures*

The emission reductions responsible for bringing the Weirton area into attainment have been made permanent and enforceable by the consent order between the State of West Virginia and the Weirton Steel Corporation (CO-SIP-C-2003-28). As discussed above, this consent order was approved as a revision to the West Virginia SIP on May 5, 2004 (69 FR 24986). These emission reductions are permanent and enforceable. Should any of the shutdown operations or facilities made permanent and enforceable by the consent order seek to become operational, they would be subject to the West Virginia's SIP NSR requirements, including PSD once the Weirton area is redesignated.

*D. West Virginia Has Submitted a Maintenance Plan for the Weirton Area Pursuant to Section 175A of the CAA*

Section 175A of the CAA sets forth the necessary elements of a maintenance plan needed for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. If applicable, eight years after the redesignation, West Virginia must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measure with a schedule for implementation adequate to assure prompt correction of any air quality problems. The State of West Virginia submitted a PM<sub>10</sub> Maintenance Plan for the Weirton, West Virginia Area on May 24, 2004. The maintenance plan and associated contingency measures are being approved into the SIP as part of this rulemaking.

Details of the Weirton area maintenance plan and how it satisfies the requirements of 175A are provided in the following paragraphs.

*1. Emissions Inventory*—West Virginia has submitted an Emission Inventory of sources in the Weirton area for calendar year 2001. The year 2001 is representative of the emissions in the Weirton area during the years 2000–

2002, the three years for which quality assured ambient air quality data documenting attainment were submitted for Weirton area. By approving the maintenance plan, EPA is approving the emission inventory.

*2. Maintenance demonstration*—The maintenance plan includes an emission inventory of emission levels reflective of attainment in the Weirton area and limits emissions to those levels which ensure maintenance of the NAAQS for PM<sub>10</sub> in the Weirton area. The PSD review and permitting requirements for any future major source construction or modification and the permanent and enforceable control measures on existing sources are provided in the maintenance plan. Subsequent to redesignation, any major source construction or modification will be subject to the PSD requirements found in West Virginia's SIP, including a demonstration to ensure protection and maintenance of the NAAQS and applicable PSD increments. By approving the maintenance plan, EPA is approving the maintenance demonstration.

*3. Continuation of the monitoring network*—West Virginia has indicated in the May 24, 2004 maintenance plan that it will continue to monitor for PM<sub>10</sub> in the Weirton area in accordance with 40 CFR 53 and 58. By approving the maintenance plan, EPA is approving West Virginia's plan to continue to monitor for PM<sub>10</sub> in the Weirton area.

*4. Verification of Continued Attainment*—The maintenance plan states that the WVDEP will review the monitoring data annually to verify continued attainment. WVDEP will also assess compliance of local facilities. If still required by the CAA, the Weirton area maintenance plan will be reassessed not later than eight years after the area is redesignated to attainment.

*5. Contingency Plan*—The WVDEP has indicated in the maintenance plan that it will rely on ambient air monitored data to determine the need to implement contingency measures. In the event of an exceedance of the PM<sub>10</sub> standard, the WVDEP will review the monitored data, the local meteorology data, and the compliance of local facilities. If all facilities are in compliance with applicable SIP and permit emissions limits, the WVDEP will determine and impose additional control measures necessary to continue to maintain the NAAQS. Upon determination that three exceedances of the 24-hour PM<sub>10</sub> standard have occurred within a three-year period the WVDEP will notify companies with emission sources of PM<sub>10</sub> in the Weirton

area that there may be a need to reduce PM<sub>10</sub> emissions to address a potential violation of the NAAQS. Within six months of this notification, the companies must submit a detailed plan of action specifying additional control measures to reduce PM<sub>10</sub> emissions, to be implemented no later than 18 months after the notification of a violation of the NAAQS. The additional control measures necessary to ensure attainment will be imposed by WVDEP and submitted to EPA for approval and incorporation into the SIP.

In summary, EPA has determined that West Virginia's May 24, 2004 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA, and is redesignating the Weirton area to attainment for PM<sub>10</sub>. EPA is also approving the WVDEP's maintenance plan and its associated contingency measures for the Weirton area as a revision to the West Virginia SIP.

#### IV. Final Action

EPA is determining that the Weirton area has attained the NAAQS for PM<sub>10</sub> and has met the requirements of the May 10, 1995 CDP. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements, along with other related requirements of the CAA, are not applicable to the Weirton area. EPA is approving the State of West Virginia's May 24, 2004 request to redesignate the Weirton area to attainment for PM<sub>10</sub> and is approving the associated maintenance plan as a revision to the West Virginia SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment as there was opportunity for stakeholder input in the SIP development process. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 27, 2004 without further notice unless EPA receives adverse comment by November 26, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## V. Statutory and Executive Order Reviews

### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the

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

### B. Submission to Congress and the Comptroller General

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

### C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2004. Filing a petition for reconsideration by the Administrator of this final rule to redesignate the Weirton area to attainment for PM<sub>10</sub> and approve the maintenance plan for the area does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve West Virginia’s redesignation request and maintenance plan for the Weirton PM<sub>10</sub> area may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

### List of Subjects

#### 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

#### 40 CFR Part 81

Air Pollution Control, National parks, Wilderness areas.

Dated: September 20, 2004.

**Thomas C. Voltaggio,**  
*Acting Deputy Regional Administrator,*  
*Region III.*

■ 40 CFR part 52 is amended as follows:

### PART 52—[AMENDED]

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

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

#### Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by adding paragraph (c)(60) to read as follows:

#### § 52.2520 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(60) The PM<sub>10</sub> Maintenance Plan for the City of Weirton area submitted by the West Virginia Department of Environmental Protection on May 24, 2004.

(i) Incorporation by reference.

(A) Letter of May 24, 2004 from the West Virginia Department of Environmental Protection transmitting the redesignation request and maintenance plan for the City of Weirton PM<sub>10</sub> area in Hancock and Brooke Counties (part).

(B) PM<sub>10</sub> Maintenance Plan for the Weirton, West Virginia area, dated May 24, 2004.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(60)(i) of this section.

### PART 81—[AMENDED]

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

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

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

■ 2. In § 81.349, the table for “West Virginia—PM<sub>10</sub>” is amended by revising the entry for Hancock and Brooke Counties (part): The City of Weirton to read as follows:

#### § 81.349 West Virginia.

\* \* \* \* \*

WEST VIRGINIA—PM—10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Hancock and Brooke Counties (part): The City of Weirton ....	12/27/2004	Attainment.		

\* \* \* \* \*  
 [FR Doc. 04-23945 Filed 10-26-04; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-2004-0243; FRL-7371-6]

**L-Glutamic Acid and Gamma Aminobutyric Acid: Order Denying Objections to Issuance of Tolerance**

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

**ACTION:** Final Order.

**SUMMARY:** By this order, EPA denies the objections filed by the Truth In Labeling Campaign (TLC) and additional citizens to a final rule issued June 21, 2001. That rule exempts from the requirement of a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) use of L-glutamic acid (LGA) and gamma aminobutyric acid (GABA) on all food commodities when applied/used in accordance with good agricultural practices. EPA is denying the objections because the Agency has evaluated these products and believes them to meet the statutory requirement of reasonable certainty of no harm.

**DATES:** This order is effective October 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8810; fax number: (703) 308-7026; e-mail address: frazer.carol@epa.gov.

**ADDRESSES:** EPA has established a docket for this action under Docket identification number OPP-2004-0243. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. 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 EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

This action is directed to the public in general. However, this action is of particular interest to TLC, the major objector to the use of LGA as a pesticide product and to Lucinda Larson, the only objector who specifically added GABA to her objection as well as LGA. Several other objectors expressed an objection to the **Federal Register** notice exempting the two chemicals from the requirement of a tolerance, without specifying either one. This action is also of interest to Emerald BioAgriculture Corporation, the manufacturer of Auxigro™, the only pesticide product that uses LGA and GABA as active ingredients, as well as users of Auxigro™ products. Since various different entities may be interested in this action, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

**II. Background and Statutory Findings**

*A. What Action Is the Agency Taking?*

From June 28, 2001 through January 14, 2002, TLC and others filed a series of objections to EPA’s issuance of an exemption from the requirement of a tolerance under section 408 of the FFDCA for use of LGA and GABA on all food commodities when applied/used in accordance with good agricultural practices. EPA is denying the objections because it has reviewed all available data on these pesticides and maintains its conclusion that the uses of these pesticides are safe. None of the objectors filed a hearing request.

*B. What Is the Agency’s Authority for Taking This Action?*

Section 408 of the FFDCA authorizes the establishment by regulation of maximum permissible levels of pesticides in foods. Such regulations are commonly referred to as “tolerances.” Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is “adulterated” under section 402 of the FFDCA and may not be legally moved in interstate commerce. 21 U.S.C. 331, 342. Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes dietary exposure through food and drinking water and exposure other than dietary that occurs in non-occupational settings. In making safety determinations, EPA is required to consider, among other things, “available information concerning the cumulative effects of the pesticide chemical residue and other substances that have a