

show overhead slides or make computerized slide presentations unless we receive special requests in advance. Commenters should notify Ms. Crabtree if they will need specific audiovisual (AV) equipment. Commenters should also notify Ms. Crabtree if they need specific translation services for non-English speaking commenters. The EPA encourages commenters to provide written versions of their oral testimonies either electronically on computer disk or CD ROM or in paper copy.

The hearing schedules, including lists of speakers, will be posted on EPA's Web site for the proposal at <http://www.epa.gov/air/ozonepollution/actions.html> prior to the hearings. Verbatim transcripts of the hearings and written statements will be included in the rulemaking dockets.

#### How Can I Get Copies of This Document and Other Related Information?

The EPA has established the official public docket for the "National Ambient Air Quality Standards for Ozone" under Docket Number EPA-HQ-OAR-2005-0172. The EPA has also developed a Web site for the proposal at the address given above. Please refer to the proposal, published elsewhere in this **Federal Register**, for detailed information on accessing information related to the proposal.

Dated: July 5, 2007.

**Stephen D. Page,**

*Director, Office of Air Quality Planning and Standards.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R03-OAR-2007-0453; FRL-8336-8]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Pittsburgh-Beaver Valley 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base Year Inventory

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the

Pittsburgh-Beaver Valley, Pennsylvania ozone nonattainment area (Pittsburgh Area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the ozone redesignation request for Pittsburgh Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for Pittsburgh Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the Pittsburgh Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2003-2005. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Pittsburgh Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). In addition, PADEP submitted a 2002 base year inventory for the Pittsburgh Area which EPA is proposing to approve as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Pittsburgh Area maintenance plan for purposes of transportation conformity, which EPA is also proposing to approve. EPA is proposing approval of the redesignation request, and the maintenance plan and the 2002 base year inventory SIP revisions in accordance with the requirements of the CAA.

**DATES:** Written comments must be received on or before August 10, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-0453 by one of the following methods:

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

B. *E-mail:* [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov).

C. *Mail:* EPA-R03-OAR-2007-0453, Christopher Cripps, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2007-0453. 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.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 <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <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 [www.regulations.gov](http://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 <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, Harrisburg, Pennsylvania 17105.

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

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever

“we”, “us”, or “our” is used, we mean EPA.

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#### I. What are the Actions that EPA is Proposing To Take?

On April 26, 2007, PADEP formally submitted a request to redesignate the Pittsburgh Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, on April 26, 2007, PADEP submitted a maintenance plan for the Pittsburgh Area as a SIP revision to ensure continued attainment of the 8-hour NAAQS for at least 10 years after redesignation. PADEP also submitted a 2002 base year inventory as a SIP revision on April 26, 2007. The Pittsburgh Area is currently designated as a basic 8-hour ozone nonattainment area and is covered by a maintenance plan for the 1-hour NAAQS. EPA is proposing to determine that the Pittsburgh Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Pittsburgh Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Pittsburgh Area maintenance plan as a SIP revision, such approval being one of the CAA criteria for redesignation to attainment status. The maintenance plan is designed to ensure continued attainment in the Pittsburgh Area for the next ten years. EPA is also proposing to approve the 2002 base year inventory for the Pittsburgh Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Pittsburgh Area maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) for transportation conformity purposes.

#### II. What is the Background for These Proposed Actions?

##### A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO<sub>x</sub> and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO<sub>x</sub> and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

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

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA’s Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist. v. EPA*, Docket No. 04–1201 (hereafter “*South Coast*”), in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the Act as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8 decision left intact the Court’s rejection of EPA’s reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand

EPA’s revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area’s 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of federal actions. The June 8 decision clarified that the Court’s reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

Elsewhere in this document, mainly in section VI. B. “The Pittsburgh Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA,” EPA discusses its rationale why the decisions in *South Coast* are not an impediment to redesignating the Pittsburgh Area to attainment of the 8-hour ozone NAAQS.

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

Pittsburgh Area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and therefore, is subject to the requirements of subpart 1 of Part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). See 69 FR 23857, (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. Based upon ozone monitoring data for the period 2003 through 2006 (inclusive), the Pittsburgh Area has a design value of 0.084 ppm for the 3-year period 2003 through 2005 and has a design value of 0.083 ppm for the 3-year period 2004 through 2006. Therefore, the ambient ozone data for the Pittsburgh Area indicates no violations of the 8-hour ozone standard.

#### B. The Pittsburgh Area

The Pittsburgh Area is comprised of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties. Prior to its designation as an 8-hour ozone nonattainment area, the Pittsburgh Area had been designated and classified as a moderate ozone nonattainment area for the 1-hour standard. See 56 FR 56694 at 56822, November 6, 1991. On October 19, 2001 (66 FR 53094), EPA approved a request to redesignate the Pittsburgh Area to attainment of the 1-hour ozone standard and approved a maintenance plan SIP revision.

On April 26, 2007, PADEP requested that the Pittsburgh Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2003–2005, indicating that the 8-hour NAAQS for ozone had been achieved in the Pittsburgh Area. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete,

quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

#### III. What are the Criteria for Redesignation to Attainment?

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

- (1) EPA determines that the area has attained the applicable NAAQS;
- (2) EPA has fully approved the applicable implementation plan for the area under section 110(k);
- (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;
- (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and
- (5) The State containing such area has met all requirements applicable to the area under section 110 and Part D.

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

- “Ozone and Carbon Monoxide Design Value Calculations,” Memorandum from Bill Laxton, June 18, 1990;
- “Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- “Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,” Memorandum from John Calcagni, Director, Air

Quality Management Division, October 28, 1992;

- “Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, “Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,” dated November 30, 1993;
- “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

#### IV. Why Is EPA Taking These Actions?

On April 26, 2007, PADEP requested redesignation of the Pittsburgh Area to attainment for the 8-hour ozone standard. On April 26, 2007, PADEP submitted a maintenance plan for the Pittsburgh Area as a SIP revision to assure continued attainment at least 10 years after redesignation. EPA has determined that the Pittsburgh Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

#### V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the designation of the Pittsburgh Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Pittsburgh Area for the next 10 years. The maintenance plan includes

contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the MVEBs for NO<sub>x</sub> and VOC for transportation conformity purposes for the years 2009 and 2018. These MVEBs (2009 and 2018) are displayed in the following table:

**TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS**

[Tons per day (rounded to two decimal places)]

| Year       | VOC   | NO <sub>x</sub> |
|------------|-------|-----------------|
| 2009 ..... | 54.54 | 101.53          |
| 2018 ..... | 32.91 | 41.15           |

**VI. What is EPA’s Analysis of the State’s Request and SIP Revision?**

EPA is proposing to determine that Pittsburgh Area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how PADEP’s April 26, 2007, submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

*A. The Pittsburgh Area Has Attained the Ozone NAAQS*

In the Pittsburgh Area, there are currently thirteen monitors that measure air quality with respect to ozone. As part of its redesignation request, Pennsylvania submitted ozone monitoring data which included the years 2003 through 2006 (the most recent years of data available as of the time of the redesignation request) for the Pittsburgh Area. This data has been quality assured and is recorded in Air Quality System (AQS).

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

System (AQS). PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment. The fourth-high 8-hour daily maximum concentrations, along with the three-year average, are summarized in Table 2 for the four monitors with the highest 2005 and 2006 design values in the Pittsburgh area.

**TABLE 2.—PITTSBURGH NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR OZONE VALUES**

| Year  | Annual 4th High Reading (ppm) |
|---|-------------------------------|
| <b>Monitor: California &amp; 11th, Harrison Twp, Allegheny Co., AQS ID 42–003–1005</b>  |                               |
| 2003 .....  | 0.081                         |
| 2004 .....  | 0.076                         |
| 2005 .....  | 0.087                         |
| 2006 .....  | 0.088                         |
| The average for the 3-year period through 2005 is 0.081 ppm                             | 2003                          |
| The average for the 3-year period through 2006 is 0.083 ppm                             | 2004                          |
| <b>Monitor: Glade Dr. &amp; Nolte Rd. Kittanning, Armstrong Co., AQS ID 42–005–0001</b> |                               |
| 2003 .....  | 0.086                         |
| 2004 .....  | 0.082                         |
| 2005 .....  | 0.086                         |
| 2006 .....  | 0.080                         |
| The average for the 3-year period through 2005 is 0.084 ppm                             | 2003                          |
| The average for the 3-year period through 2006 is 0.082 ppm                             | 2004                          |
| <b>Monitor: Route 168 &amp; Tomlinson Road, Beaver Co., AQS ID 42–007–0002</b>          |                               |
| 2003 .....  | 0.087                         |
| 2004 .....  | 0.081                         |
| 2005 .....  | 0.086                         |
| 2006 .....  | 0.082                         |
| The average for the 3-year period through 2005 is 0.084 ppm                             | 2003                          |
| The average for the 3-year period through 2006 is 0.083 ppm                             | 2004                          |
| <b>Monitor: Carnegie Science Center, Allegheny Rd., Pittsburgh, AQS ID 42–003–0010</b>  |                               |
| 2003 .....  | 0.088                         |
| 2004 .....  | 0.072                         |
| 2005 .....  | 0.092                         |
| 2006 .....  | 0.078                         |
| The average for the 3-year period through 2005 is 0.084 ppm                             | 2003                          |
| The average for the 3-year period through 2006 is 0.080 ppm                             | 2004                          |

The air quality data show that the Pittsburgh Area has attained the

standard with a design value of 0.084 ppm for 2003 through 2005 and still is attaining the standard with a design value of 0.083 ppm at the monitors with the highest design value for 2004 through 2006. The data collected at the Pittsburgh Area monitor satisfies the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. PADEP’s request for redesignation for the Pittsburgh Area indicates that the data was quality assured in accordance with 40 CFR part 58. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58.

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

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

The September 4, 1992 Calcagni memorandum (“Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA’s interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66, (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area’s

submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See Section 175A(c) of the CAA. See *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This section also sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alters any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

#### 1. Section 110 General SIP Requirements

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

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this

provision, EPA has required certain States to establish programs to address transport of air pollutants in accordance with the NO<sub>x</sub> SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO<sub>x</sub> SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State. Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Pittsburgh Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. See Reading, Pennsylvania, proposed and final rulemakings, (61 FR 53174–53176, October 10, 1996), (62 FR 24816, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 50399, October 19, 2001). Similarly, with respect to the NO<sub>x</sub> SIP Call rule, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO<sub>x</sub> SIP Call rules are not "an 'applicable requirement' for purposes of section 110(l) because the NO<sub>x</sub> rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS." 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable

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

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

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

Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification.

Under an April 30, 2004, final rule (69 FR 23951), EPA classified the Pittsburgh Area as a subpart 1 nonattainment area under the 8-hour ozone standard. EPA believes that no subpart 1 requirements need to be approved prior to redesignation. Of the nonattainment plan provisions due under section 172, none were due prior to submission of the complete redesignation request because EPA's November 29, 2005 final rule (70 FR 71612) set the deadline for these requirements at 3 years after resignation, which for the Pittsburgh Area is June 15, 2007.

With respect to the 8-hour standard, the Court's rulings in *South Coast* rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Pittsburgh Area was classified under subpart 1 and was obligated to meet only subpart 1

requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. See September 4, 1992 Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division). See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–12466 (March 7, 1995) (Redesignation of Detroit-Ann Arbor); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation; and 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

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

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

As we have stated previously in this document, these requirements are not yet due for purpose of redesignation of

the Pittsburgh Area, but nevertheless, Pennsylvania already has in its approved SIP an emissions statement rule for the 1-hour standard which covers all portions of the Pittsburgh Area and which EPA believes satisfies the emissions statement requirement for the 8-hour standard under section 182(a)(3)(B). This regulation is codified at Section 135.21 "Emission statements" in Chapter 135 of 40 CFR 52.2020(c)(1); see also 60 FR 2881, January 12, 1995. With respect to the base year inventory requirement, in this notice of proposed rulemaking, EPA is proposing to approve the 2002 base year inventory SIP concurrently with the maintenance plan as fulfilling the requirements, if necessary, of both section 182(a)(1) and section 172(c)(3) of the CAA.

With respect to the 8-hour standard, EPA proposes to determine that Pennsylvania's SIP meets all applicable SIP requirements under Part D of the CAA. In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act ("transportation conformity") as well as to all other Federally supported or funded projects ("general conformity"). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required EPA to promulgate. EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. See *Wall v. EPA*, 265 F.3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (December 7, 1995).

In the case of the Pittsburgh Area, EPA has also determined that before being redesignated, the Pittsburgh Area need not comply with the requirement that a NSR program be approved prior

to redesignation. EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D NSR Requirements or Areas Requesting Redesignation to Attainment." See rulemakings for Detroit, Michigan (60 FR at 12467–12468); Cleveland-Akron-Lorain, Ohio (61 FR at 20458, 20469–20470); Louisville, Kentucky (66 FR 53665, 53669, October 23, 2001); Grand Rapids, Michigan (61 FR at 31831, 31834–31837, June 21, 1996). In the case of Pennsylvania, the Chapter 127 Part D NSR regulations in the Pennsylvania SIP (codified at 40 CFR 52.2020(c)(1)) explicitly apply the requirements for NSR in section 184 of the CAA to ozone attainment areas within the Ozone Transport Region (OTR). The OTR NSR requirements are more stringent than that required for a marginal area. Nevertheless, on October 19, 2001 (66 FR 53094), EPA fully approved Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the Pittsburgh Area.

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

As stated previously in this document, on October 19, 2001 (66 FR 53094), EPA approved a request to redesignate the Pittsburgh Area to attainment of the 1-hour ozone standard and approved a maintenance plan SIP revision.

With respect to the 1-hour standard requirements, the Pittsburgh Area was an Attainment area subject to a Clean Air Act section 175A maintenance plan under the 1-hour standard. The Court's decisions in *South Coast* do not impact redesignation requests for these types of areas, except to the extent that the Court in its June 8 decision clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour motor vehicle emissions budgets (MVEBs). To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93. As discussed elsewhere in this document,

EPA is proposing to approve 8-hour MVEBs for the Pittsburgh Area. Once these 8-hour MVEBs are approved the 1-hour budgets will no longer apply under anti-backsliding.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, the Pittsburgh Area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measures (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus the decision in *South Coast* should not alter any requirements that would preclude EPA from finalizing the redesignation of this area.

4. Transport Region Requirements

All areas in the Ozone Transport Region (OTR), both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include reasonably available control technology (RACT), NSR, enhanced vehicle inspection and maintenance (I/M), and Stage II vapor recovery or a comparable measure. In the case of the Pittsburgh Area, which is located in the OTR, nonattainment NSR will continue to be applicable after redesignation as discussed previously in this document.

EPA has also interpreted the section 184 OTR requirements, including NSR,

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

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

EPA has fully approved the Pennsylvania SIP for the purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F. 3d 984, 989-90 (6th Cir. 1998), *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR at 25425 (May 12, 2003) and citations therein. The Pittsburgh Area was a 1-hour maintenance area which had been a moderate nonattainment area at the

time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004 (69 FR 23857). No Part D submittal requirements have come due prior to the submittal of the 8-hour maintenance plan for the area. Therefore, all Part D submittal requirements have been fulfilled. Because there are no outstanding SIP submission requirements applicable for the purposes of redesignation of the Pittsburgh Area, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that Pennsylvania has fulfilled all 8-hour Part D requirements applicable for purposes of redesignation.

*C. The Air Quality Improvement in the Pittsburgh Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions*

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

TABLE 3.—TOTAL VOC AND NO<sub>x</sub> EMISSIONS FOR 2002 AND 2004  
[In tons per day (tpd)]

| Year                                    | Point | Area  | Nonroad | Mobile | Total |
|---|-------|-------|---------|--------|-------|
| <b>Volatile Organic Compounds (VOC)</b> |       |       |         |        |       |
| Year 2002 .....                         | 16.5  | 100.3 | 51.5    | 86.4   | 254.7 |
| Year 2004 .....                         | 15.5  | 98.1  | 48.8    | 73.3   | 235.7 |
| Diff. (02-04) .....                     | 1.0   | 2.2   | 2.7     | 13.1   | 19.0  |
| <b>Nitrogen Oxides (NO<sub>x</sub>)</b> |       |       |         |        |       |
| Year 2002 .....                         | 250.4 | 11.5  | 86.1    | 173.9  | 522.0 |
| Year 2004 .....                         | 202.8 | 11.7  | 81.5    | 148.8  | 444.8 |
| Diff. (02-04) .....                     | 47.6  | -0.2  | 4.6     | 25.1   | 77.2  |

Between 2002 and 2004, VOC emissions were reduced by 19.0 tpd, and NO<sub>x</sub> emissions were reduced by 77.2 tpd, due to the following permanent and enforceable measures implemented in the Pittsburgh Area:

(1) *Stationary Area Sources*

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

(b) *Portable Fuel Containers* (69 FR 70893, December 8, 2004);

(2) *Highway Vehicle Sources*

(a) Federal Motor Vehicle Control Program (FMVCP), Tier 1 (56 FR 25724,

June 5, 1991) and Tier 2 (65 FR 6698, February 10, 2000),

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

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

(d) Vehicle Emission Inspection/Maintenance (I/M) Program (64 FR 32411, June 17, 1999 and 70 FR 58313, October 6, 2005);

(3) *Nonroad Sources*—Federal Nonroad Engine and Fuels (40 CFR parts 89 to 91, and 1039, 1048 and 1051); and

(4) *Stationary Point Sources*—Pennsylvania's Interstate Pollution Transport Reduction Regulations (66 FR 43795, August 21, 2001; 71 FR 57428, September 29, 2006) (66 FR 43795, August 21, 2001 and 71 FR 57428, September 29, 2006).

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

#### *D. The Pittsburgh Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA*

In conjunction with its request to redesignate the Pittsburgh Area to attainment of the 8-hour ozone NAAQS, Pennsylvania submitted for approval under section 175A of the CAA the April 26, 2007, maintenance plan to fulfill section 175A(a) requirement for the 8-hour standard. Pennsylvania submitted this SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Pittsburgh Area for at least 10 years after redesignation. Once approved, the maintenance plan for the ozone NAAQS will ensure that the SIP for the Pittsburgh Area meets the requirements of the CAA regarding maintenance of the applicable ozone standards including the 8-hour standard.

#### 1. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A(a), the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Section 175A(b) requires that eight years after the redesignation the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule

for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

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

#### 2. Analysis of the Pittsburgh Area Maintenance Plan

(a) *Attainment Inventory*—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment year of 2004 was used for the Pittsburgh Area since it is a reasonable year within the 3-year attainment period of 2003–2005 and accounts for reductions attributable to implementation of the CAA requirements to date.

PADEP prepared comprehensive VOC and NO<sub>x</sub> emissions inventories for the Pittsburgh Area, including point, area, mobile on-road, and mobile non-road sources for a base year of 2002.

To develop the NO<sub>x</sub> and VOC base year emissions inventories, PADEP used the following approaches and sources of data:

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

(ii) *Area source emissions*—Area source emissions are generally estimated by multiplying an emission factor by some known indicator or collective activity for each area source category at the county level. Pennsylvania estimates emissions from area sources using emission factors and SCC codes in a method similar to that used for stationary point sources. Emission factors may also be derived

from research and guidance documents if those documents are more accurate than FIRE and AP-42 factors.

Throughput estimates are derived from county-level activity data, by apportioning national and statewide activity data to counties, from census numbers, and from county employee numbers. County employee numbers are based upon North American Industry Classification System (NAICS) codes to establish that those numbers are specific to the industry covered.

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

(iv) *Mobile nonroad emissions*—The 2002 emissions for the majority of nonroad emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model estimates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled nonroad equipment types and includes growth factors. The NONROAD model does not estimate emissions from aircraft or locomotives. For 2002 locomotive emissions, PADEP projected emissions from a 1999 survey using national fuel information and EPA emission and conversion factors. Commercial aircraft operations are significant in the Pittsburgh area. Pittsburgh International Airport (PIT) accounts for all commercial operations in the Pittsburgh area. PADEP quantified the emissions at PIT with the Emissions and Dispersion Modeling System (EDMS) that is an EPA-approved model. For other 2002 aircraft emissions, PADEP estimated emissions using small aircraft operation statistics from <http://www.airnav.com>, and emission factors and operational characteristics in EDMS. For PIT, growth was estimated using estimates of future operations at PIT from the FAA APO Terminal Area Forecast Detailed Report. For other aircraft operations, growth was calculated using estimates of small airport activity from the Federal Aviation Administration (FAA)'s APO terminal area forecast detailed report.

The 2004 attainment year VOC and NO<sub>x</sub> emissions for the Pittsburgh Area are summarized along with the 2009 and 2018 projected emissions for this area in Tables 4 and 5, which cover the demonstration of maintenance for this area. EPA has concluded that



Pennsylvania has adequately derived and documented the 2004 attainment year VOC and NO<sub>x</sub> emissions for this area.

(b) Maintenance Demonstration—On April 26, 2007, PADEP submitted a SIP revision to supplement its April 26, 2007, redesignation request. The submittal by PADEP consists of the maintenance plan as required by section 175A of the CAA. The Pittsburgh Area plan shows maintenance of the 8-hour

ozone NAAQS by demonstrating that current and future emissions of VOC and NO<sub>x</sub> remain at or below the attainment year 2004 emissions levels throughout the Pittsburgh Area through the year 2018. The Pittsburgh Area maintenance demonstration need not be based on modeling. See *Wall v. EPA, supra*; *Sierra Club v. EPA, supra*. See also, 66 FR at 53099–53100; 68 FR at 25430–25432.

Tables 4 and 5 specify the VOC and NO<sub>x</sub> emissions for the Pittsburgh Area for 2004, 2009, and 2018. PADEP chose 2009 as an interim year in the 10-year maintenance demonstration period to demonstrate that the VOC and NO<sub>x</sub> emissions are not projected to increase above the 2004 attainment level during the time of the 10-year maintenance period.

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

| Source category    | 2004 VOC emissions | 2009 VOC emissions | 2018 VOC emissions |
|--------------------|--------------------|--------------------|--------------------|
| Mobile* .....      | 73.3               | 54.54              | 32.91              |
| Nonroad .....      | 48.8               | 39.1               | 34.6               |
| Area .....         | 98.1               | 92.4               | 96.1               |
| Point .....        | 15.5               | 16.4               | 20.3               |
| <b>Total .....</b> | <b>235.7</b>       | <b>202.44</b>      | <b>183.91</b>      |

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

TABLE 5.—TOTAL NO<sub>x</sub> EMISSIONS 2004–2018 (TPD)

| Source category    | 2004 NO <sub>x</sub> emissions | 2009 NO <sub>x</sub> emissions | 2018 NO <sub>x</sub> emissions |
|--------------------|--------------------------------|--------------------------------|--------------------------------|
| Mobile* .....      | 148.8                          | 101.53                         | 41.15                          |
| Nonroad .....      | 81.5                           | 70.5                           | 55.6                           |
| Area .....         | 11.7                           | 12.1                           | 12.2                           |
| Point .....        | 202.8                          | 255.2                          | 273.6                          |
| <b>Total .....</b> | <b>444.8</b>                   | <b>439.33</b>                  | <b>382.55</b>                  |

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

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

- (1) Pennsylvania’s Portable Fuel Containers (December 8, 2004, 69 FR 70893);
- (2) Pennsylvania’s Consumer Products (December 8, 2004, 69 FR 70895);
- (3) Pennsylvania’s Architectural and Industrial Maintenance (AIM) Coatings (November 23, 2004, 69 FR 68080); and
- (4) Pennsylvania’s Interstate Pollution Transport Reduction Regulations (66 FR 43795, August 21, 2001; 71 FR 57428, September 29, 2006).

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

- (1) FMVCP for passenger vehicles and light-duty trucks and cleaner gasoline (2009 and 2018 fleet)—Tier 1 and Tier 2;
- (2) NLEV Program, which includes the Pennsylvania’s Clean Vehicle Program for passenger vehicles and

light-duty trucks (69 FR 72564, December 28, 1999);

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

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

(5) Pennsylvania’s vehicle emission inspection/maintenance program (October 6, 2005, 70 FR 58313).

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

Pennsylvania and other nearby states are required to adopt a regulation implementing the requirements of CAIR or an equivalent program. On April 28, 2006 (71 FR 25328), EPA promulgated Federal Implementation Plans (FIPs) to reduce the interstate transport of NO<sub>x</sub>

and sulfur dioxides that contribute significantly to nonattainment and maintenance 8-hour ozone and PM<sub>2.5</sub> NAAQS. If Pennsylvania has not adopted its own CAIR requirements and obtained EPA’s approval of the required SIP revision by September 2007, the FIP will impose the Federal program upon CAIR-affected electric generating units in Pennsylvania. The Pittsburgh Area does have several sources which are subject to regulation under CAIR. For the maintenance demonstration, Pennsylvania did not rely upon any reductions from CAIR from these facilities. However, the quality of air transported from upwind sources into the county would be improved.

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

(c) Monitoring Network—Currently there are thirteen monitors measuring ozone in the Pittsburgh Area. Pennsylvania will continue to operate

an air quality monitoring network in accordance with 40 CFR part 58.

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

(e) **The Maintenance Plan's Contingency Measures**—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would "trigger" the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the Pittsburgh Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO<sub>x</sub> emissions in the area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO<sub>x</sub> emissions to decrease and stay below 2004 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest eight-hour ozone concentrations at the Pittsburgh Area design monitor are above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate whether additional local emission control measures should be

implemented in order to prevent a violation of the air quality standard. PADEP will analyze the conditions leading to the excessive ozone levels and evaluate what measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, state and local measure that have been adopted but no yet implemented at the time of excessive ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

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

Regulatory measures:

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

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

- Within 1 month of the trigger, submit request to begin regulatory development process.
- Within 3 months of the trigger, review of regulation by Air Quality Technical Advisory Committee (AQTAC), Citizens Advisory Council (CAC) and other advisory committees as appropriate.
- Within 6 months of the trigger, Environmental Quality Board (EQB) meeting/action.

- Within 8 months of the trigger, publish in the Pennsylvania Bulletin for comment as proposed rulemaking.
- Within 10 months of the trigger, public hearing takes place and comment period on proposed rule closes.
- Within 11 months of the trigger, House and Senate Standing Committees and Independent Regulatory Review Commission (IRRC) comment on proposed rule.
- Within 13 months of the trigger, AQTAC, CAC and other committees review responses to comments and draft final rulemaking.
- Within 16 months of the trigger, EQB meeting/action.
- Within 17 months of the trigger, IRRC action on rulemaking.
- Within 18 months of the trigger, Attorney General's review/action.
- Within 19 months of the trigger, publication in the Pennsylvania Bulletin as a final rulemaking and submit to EPA as a SIP revision. The regulation would become effective upon publication in the Pennsylvania Bulletin.

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

- Within 2 months of the trigger: Identify stakeholders for potential non-regulatory measures.
- Within 3 months of the trigger, if funding is necessary, identify potential sources of funding and the timeframe under which funds would be available. In addition to non-Title V Clean Air funds, the following program may be able to provide funding: for transportation projects, the Federal Highway Administration, as allocated to the two municipal planning organizations in the Pittsburgh Area; for projects which will also have an energy efficient co-benefit, the Pennsylvania Energy Harvest program; for projects which would be undertaken by small business and are pollution prevention projects, the Small Business Advantage Grant and Small Business Pollution Prevention Loan programs; for projects which will involve alternative fuels for vehicles/refueling operations, the Alternative Fuel Incentive Grant program; for projects involving diesel emissions, Federal Energy Policy Act diesel reduction funds allocated to Pennsylvania or for which Pennsylvania or project sponsors may apply under a competitive process.
- Within 6 months of the trigger, work with the area planning commissions to identify land use planning

strategies and projects with quantifiable and timely emission benefits. Work with the Pennsylvania Department of Community and Economic Development and other State agencies to assist in these measures.

- Within 9 months of the trigger, enter into agreements with implementing organizations if state loans or grants are involved. Quantify projected emission benefits.
- Within 12 months of the trigger, submit a revised SIP to EPA.
- Within 12–24 months of the trigger, implement strategies and projects.

(g) Summary of EPA's Evaluation of the Maintenance Plan

EPA concludes that the April 26, 2007 maintenance plan meets the requirements of section 175A of the CAA.

### VII. Does the Maintenance Plan Establish and Identify Adequate and Approvable Motor Vehicle Emissions Budgets for the Pittsburgh Area?

#### A. What Are the Motor Vehicle Emissions Budgets?

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

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not "conform," most new projects that would expand the capacity

of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein "adequate" for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by State and Federal agencies in determining whether proposed transportation projects "conform" to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining "adequacy" of a MVEB are set out in 40 CFR 93.118(e)(4).

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

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

#### B. What Is a Safety Margin?

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

year to determine attainment levels of emissions for the Pittsburgh Area.

The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 were 235.7 tpd of VOC and 444.8 tpd of NO<sub>x</sub>. PADEP projected emissions out to the year 2018 and obtained totals of 183.91 tpd of VOC and 382.55 tpd of NO<sub>x</sub> from all sources in the Pittsburgh Area. The safety margin for the Pittsburgh Area for 2018 would be the difference between these amounts. This difference is 51.79 tpd of VOC and 62.25 tpd of NO<sub>x</sub>. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6 shows the safety margins for the 2009 and 2018 years.

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

| Inventory year           | VOC emissions (tpd) | NO <sub>x</sub> emissions (tpd) |
|--------------------------|---------------------|---------------------------------|
| 2004 Attainment .....    | 235.7               | 444.8                           |
| 2009 Interim ..          | 202.44              | 439.33                          |
| 2009 Safety Margin ..... | 33.26               | 5.47                            |
| 2004 Attainment .....    | 235.7               | 444.8                           |
| 2018 Final .....         | 183.91              | 382.55                          |
| 2018 Safety Margin ..... | 51.79               | 62.25                           |

PADEP allocated 3.58 tpd VOC to the 2009 interim VOC on-road mobile source emissions projection and 3.06 tpd NO<sub>x</sub> to the 2009 interim NO<sub>x</sub> on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs the PADEP allocated 4.60 tpd VOC and 3.32 tpd NO<sub>x</sub> from the 2018 safety margins to the 2018 on-road mobile source emissions projections to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 7 shows the final 2009 and 2018 MVEBS for the Pittsburgh Area.

TABLE 7.—2009 AND 2018 FINAL MVEBS FOR THE PITTSBURGH AREA TONS PER DAY

[Rounded to nearest 0.1 tpd]

| Inventory year                                       | VOC emissions | NO <sub>x</sub> emissions |
|--|---------------|---------------------------|
| 2009 on-road mobile source projected emissions ..... | 50.96         | 98.47                     |
| 2009 Safety Margin Allocated to MVEBs .....          | 3.58          | 3.06                      |
| 2009 MVEBs .....                                     | 54.54         | 101.53                    |
| 2018 on-road mobile source projected emissions ..... | 28.31         | 37.83                     |
| 2018 Safety Margin Allocated to MVEBs .....          | 4.60          | 3.32                      |
| 2018 MVEBs .....                                     | 32.91         | 41.15                     |

#### C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for the Pittsburgh Area are approvable because the MVEBs for NO<sub>x</sub> and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

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

The MVEBs for the Pittsburgh Area maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Pittsburgh Area MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the

Pittsburgh Area MVEBs will also be announced on EPA's conformity Web site: <http://www.epa.gov/oms/traq>, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

#### VIII. Proposed Actions

EPA is proposing to determine that the Pittsburgh Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the Commonwealth's April 26, 2007, request for the Pittsburgh Area to be designated to attainment of the 8-hour NAAQS for ozone. EPA has evaluated Pennsylvania's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Pittsburgh Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan and the 2002 base year inventory for Pittsburgh Area, submitted on April 26, 2007, as revisions to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the Pittsburgh Area because it meets the requirements of section 175A of the CAA as described previously in this notice. EPA is also proposing to approve the MVEBs submitted by Pennsylvania for the Pittsburgh Area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and

does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allows the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an

action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

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

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: June 28, 2007.

**W.C. Early,**

*Acting Regional Administrator.*

[FR Doc. 07-3325 Filed 7-10-07; 8:45 am]

**BILLING CODE** 6560-50-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List 12 Penguin Species as Threatened or Endangered under the Endangered Species Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list 12 penguin species: emperor penguin (*Aptenodytes forsteri*), southern rockhopper penguin (*Eudyptes chrysocome*), northern rockhopper penguin (*Eudyptes moseleyi* (*E. chrysocome moseleyi*)), fiordland crested penguin (*Eudyptes pachyrhynchus*), snares crested penguin (*Eudyptes robustus*), erect-crested penguin (*Eudyptes sclateri*), macaroni penguin (*Eudyptes chrysolophus*), royal penguin (*Eudyptes schlegeli*), white-flippered penguin (*Eudyptula albosignata* (*E. minor albosignata*)), yellow-eyed penguin (*Megadyptes antipodes*), African penguin (*Spheniscus demersus*), and Humboldt penguin (*Spheniscus humboldti*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing 10 species of penguins may be warranted. We, therefore, are initiating a status review of 10 species of penguins to determine if listing under the Act is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding these species. We find the petition does not provide substantial scientific or commercial information indicating that listing of two species may be warranted: snares crested penguin and royal penguin. Therefore, we will not be initiating a status review for these two species in response to this petition. However, we ask the public to submit to us any new information that becomes available concerning the status of these two species or threats to them or their habitat at any time.

**DATES:** We must receive your comments on or before September 10, 2007.

**ADDRESSES:** Submit any comments, information, and questions by any one of the following methods: By mail to the Special Assistant to the Deputy Assistant Director, International Affairs, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 760, Arlington, VA 22203; by fax to 703-358-2276; by e-mail to [DSAPenguins@fws.gov](mailto:DSAPenguins@fws.gov); or through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Dr. Peter O. Thomas at the above address, or by telephone, 703-358-1708; or e-mail, [DSAPenguins@fws.gov](mailto:DSAPenguins@fws.gov).

**SUPPLEMENTARY INFORMATION:** If you submit information or comments, please include "Attn: Penguins" in the beginning of your message. Electronic attachments in standard formats (such as .pdf or .doc) are acceptable, but please name the software necessary to open any attachments in formats other than those given above. Also, please include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above.

#### Public Comments Solicited

We intend that any final action resulting from this status review will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, concerned governmental agencies, the scientific community, industry, or any other interested party. We are opening a 60-day public comment period to allow all interested parties an opportunity to provide information on the statuses of 10 species of penguins: emperor penguin (*Aptenodytes forsteri*), southern rockhopper penguin (*Eudyptes chrysocome*), northern rockhopper penguin (*Eudyptes moseleyi* (*E. chrysocome moseleyi*)), fiordland crested penguin (*Eudyptes pachyrhynchus*), erect-crested penguin (*Eudyptes sclateri*), macaroni penguin (*Eudyptes chrysolophus*), white-flippered penguin (*Eudyptula albosignata* (*E. minor albosignata*)), yellow-eyed penguin (*Megadyptes antipodes*), African penguin (*Spheniscus demersus*), and Humboldt penguin (*Spheniscus humboldti*) throughout their range, including:

(1) Information on taxonomy, distribution, habitat selection and trends (especially breeding and foraging habitats), diet, and population abundance and trends (especially current recruitment data) on these species;

(2) Information on the effects of climate change and changing ocean or land or sea ice conditions on the distribution and abundance of these species and their principal prey species over the short and long term (especially information on known prey substitutions, and what their effects would be on these species);

(3) Information on the effects of other potential threat factors, including commercial fishing activities, contaminants, habitat loss, harvest, predation by other animals, and diseases of these species or their