

regulations for reporting Monthly and Annual Statements of Account for the making and distribution of phonorecords under a compulsory license.

DATES: Reply comments on the proposed regulation must be received in the Office of the General Counsel of the Copyright Office no later than 5 p.m. Eastern Daylight Time (EDT) on December 10, 2012.

ADDRESSES: The Copyright Office strongly prefers that reply comments be submitted electronically. A comment submission page is posted on the Copyright Office Web site at <http://www.copyright.gov/docs/section115/soa/comments/>. The Web site interface requires submitters to complete a form specifying name and other required information, and to upload comments as an attachment. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations if provided. If electronic submission of comments is not feasible, please contact the Copyright Office at (202) 707-8380 for special instructions.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Deputy General Counsel, or Stephen Ruwe, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: On July 27, 2012, the Copyright Office published a notice of proposed rulemaking and request for comments concerning a new regulation that would amend the regulations for reporting Monthly and Annual Statements of Account for the making and distribution of phonorecords under the compulsory license, 17 U.S.C. 115, to bring the regulations up-to-date to reflect recent and pending rate determinations by the Copyright Royalty Judges, which among other things provide new rates for limited downloads, interactive streaming and incidental digital phonorecord deliveries, and to harmonize these reporting requirements with the existing regulations for reporting the making and distribution of

physical phonorecords, permanent downloads and ringtones. The notice of proposed rulemaking stated that comments would be due no later than September 25, 2012 and that reply comments would be due October 25, 2012. Upon the request of several active institutional participants in the mechanical compulsory license system, the Copyright Office extended the comment deadline, making the comments due on October 25, 2012 and reply comments due on November 26, 2012. 77 FR 55783 (September 11, 2012). The Copyright Office posted all comments received by the October 25, 2012 deadline on the Copyright Office Web site at <http://www.copyright.gov/docs/docket2012-7/comments/initial/>.

On November 7, 2012, the Copyright Office received a joint motion filed on behalf of the Recording Industry Association of America, Inc., National Music Publishers Association, Digital Media Association, and Music Reports, Inc., (“Joint Requestors”) to extend the reply comment period by two weeks (*i.e.* until December 10, 2012). The Joint Requestors stated that they hope to be in a position to suggest specific certification language in their reply comments. However, they note that several key individuals involved in the Joint Requestors’ discussions were adversely affected by Hurricane Sandy, and that discussions have been disrupted for over a week. They stated that a two week extension would allow them to discuss consensus positions and prepare a written submission setting forth whatever consensus positions are able to be reached.

In the interest of giving the Joint Requestors, the necessary time to conclude the process of formulating consensus positions, the progress of which was interrupted by Hurricane Sandy, the Copyright Office has decided to grant the request and extend the reply comment period by two weeks, making the reply comments due on December 10, 2012).

Dated: November 8, 2012.

Maria Pallante,

Register of Copyrights.

[FR Doc. 2012-27774 Filed 11-14-12; 8:45 am]

BILLING CODE 1410-30-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2012-0174; FRL-9752-1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the West Virginia Portion of the Huntington-Ashland, WV-KY-OH 1997 Annual PM_{2.5} Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revision submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) is requesting that the West Virginia portion of the Huntington-Ashland, WV-KY-OH-fine particulate matter (PM_{2.5}) nonattainment area (“Huntington-Ashland Area” or “Area”) be redesignated as attainment for the 1997 annual PM_{2.5} national ambient air quality standard (NAAQS). The Huntington-Ashland Area is comprised of Cabell and Wayne Counties and a portion of Mason County in West Virginia (West Virginia portion of the Area); Boyd County and a portion of Lawrence County in Kentucky; and Lawrence and Scioto Counties and portions of Adams and Gallia Counties in Ohio. In this rulemaking action, EPA is proposing to approve the PM_{2.5} redesignation request for the West Virginia portion of the Area. EPA is also proposing to approve the maintenance plan SIP revision that the State submitted in conjunction with its redesignation request. The maintenance plan provides for continued attainment of the 1997 annual PM_{2.5} NAAQS for 10 years after redesignation of the West Virginia portion of the Area. The maintenance plan includes an insignificance determination for the on-road motor vehicle contribution of PM_{2.5}, nitrogen oxides (NO_x), and sulfur dioxide (SO₂) for the West Virginia portion of the Area for purposes of transportation conformity. EPA is proposing to find that West Virginia’s insignificance determination for transportation conformity is adequate.¹

¹ On November 5, 2012, EPA initiated the comment period for this proposed insignificance determination on the Office of Transportation and Air Quality (OTAQ) Web site (<http://www.epa.gov/otaq/stateresources/transconf/currsips>) in order to

EPA is also proposing to find that the Area continues to attain the standard. This action to propose approval of the 1997 annual PM_{2.5} NAAQS redesignation request, maintenance plan, and insignificance determination for transportation conformity for the West Virginia portion of the Area is based on EPA's determination that the Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is taking separate action to propose redesignation of the Kentucky and Ohio portions of the Huntington-Ashland Area.

DATES: Written comments must be received on or before December 6, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2012-0174 by one of the following methods:

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

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

C. *Mail: EPA-R03-OAR-2012-0174*, Donna Mastro, Acting Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2012-0174. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic

allow for a full 30 day public comment period in conjunction with this proposed rulemaking.

comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814-2308, or by e-mail at *powers.marilyn@epa.gov*

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

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I. Summary of Actions

On June 30, 2011, the State of West Virginia through WVDEP formally submitted a request to redesignate the West Virginia portion of the Area from nonattainment to attainment of the 1997 annual PM_{2.5} NAAQS. Concurrently, West Virginia submitted a maintenance plan for the Area as a SIP revision to ensure continued attainment throughout the Area over the next 10 years.

EPA is proposing to take several actions related to redesignation of the West Virginia portion of the Area to attainment for the 1997 annual PM_{2.5} NAAQS. EPA is proposing to find that the West Virginia portion of the Area meets the requirements for redesignation of the PM_{2.5} NAAQS under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve West Virginia's request to change the legal definition of the West Virginia portion of the Area from nonattainment to attainment for the 1997 annual PM_{2.5} NAAQS. This action does not impact the legal definition of the Kentucky or Ohio portions of the Area. EPA is taking separate action to redesignate these portions.

EPA is also proposing to approve the maintenance plan for the West Virginia portion of the Area as a revision to the West Virginia SIP. Such approval is one of the CAA criteria for redesignation of an area to attainment. The maintenance plan is designed to ensure continued attainment in the West Virginia portion of the Area for 10 years after redesignation. The maintenance plan includes an insignificance determination for the on-road motor vehicle contribution of PM_{2.5}, NO_x and SO₂ in the West Virginia portion of the Area for transportation conformity purposes. EPA has determined that the on-road motor vehicle insignificance finding that is included as part of West Virginia's maintenance plan for the 1997 annual PM_{2.5} NAAQS is adequate, and is proposing to approve the insignificance determination. EPA's analysis of these proposed actions is discussed in Sections VI and VII of today's proposed rulemaking action.

II. Background

A. General

The first air quality standards for PM_{2.5} were established on July 16, 1997. 62 FR 38652 (July 18, 1997). EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m³), based on a three-year average of annual mean PM_{2.5} concentrations. In the same rulemaking action, EPA promulgated a 24-hour standard of 65 µg/m³, based on a three-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual average standard at 15 µg/m³ but revised the 24-hour standard to 35 µg/m³, based again on the three-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005 at 70 FR 944, as supplemented on April 14, 2005 at 70 FR 19844, EPA designated the

Huntington-Ashland Area as nonattainment for the 1997 p.m.-2.5 air quality NAAQS. The Huntington-Ashland Area is comprised of Cabell and Wayne Counties and the Graham tax district in Mason County, West Virginia; Boyd County and the portion of Lawrence County described by U.S. Census 2000 block group identifier 21-127-9901-6 in Kentucky; and Lawrence and Scioto Counties, Monroe and Sprigg Townships in Adams County, and Addison and Cheshire Townships in Gallia County in Ohio. On November 13, 2009 at 74 FR 58688, EPA promulgated designations for the 24-hour standard set in 2006, designating the Huntington-Ashland Area as attaining this standard. In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Huntington-Ashland Area remained designated nonattainment for the 1997 annual PM_{2.5} standard, but was designated attainment for the 1997 24-hour standard. Today's action therefore does not address attainment of either the 1997 or the 2006 24-hour NAAQS.

In response to legal challenges of the annual standard promulgated in 2006, the DC Circuit remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (DC Cir. 2009). However, given that the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard. Since the Huntington-Ashland Area is designated nonattainment only for the annual standard promulgated in 1997, today's action addresses redesignation to attainment only for this standard.

In a final rulemaking action dated September 7, 2011 at 76 FR 55542, EPA determined, pursuant to 40 CFR 51.1004(c), that the entire Huntington-Ashland Area is attaining the 1997 annual PM_{2.5} NAAQS. This determination of attainment was based upon complete, quality-assured and certified ambient air quality monitoring data for the period of 2007-2009 showing that the Area had attained the NAAQS by its applicable attainment date of April 5, 2010.

B. Clean Air Interstate Rule (CAIR) and Cross State Air Pollution Rule (CSAPR or the Transport Rule)

On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of SO₂ and NO_x from electric generating units to limit the interstate transport of these pollutants and the ozone and fine

particulate matter they form in the atmosphere. See 70 FR 25162. The DC Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (DC Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (DC Cir. 2008). In response to the court's decision, EPA issued the Transport Rule, also known as CSAPR, to address interstate transport of NO_x and SO₂ in the eastern United States. See 76 FR 48208 (August 8, 2011). On August 21, 2012, the DC Circuit issued a decision to vacate the Transport Rule. In that decision, it also ordered EPA to continue administering CAIR "pending the promulgation of a valid replacement." *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (DC Cir., August 21, 2012).²

In light of the above and as explained below, EPA proposes to approve the redesignation request and the related SIP revision for Cabell and Wayne Counties and the Graham tax district in Mason County in West Virginia, including West Virginia's plan for maintaining attainment of the 1997 annual PM_{2.5} NAAQS standard in the West Virginia portion of the Area. The air quality modeling analysis conducted for the Transport Rule demonstrates that the Huntington-Ashland Area would be able to attain the 1997 annual PM_{2.5} NAAQS even in the absence of either CAIR or the Transport Rule. See "Air Quality Modeling Final Rule Technical Support Document," App. B, B-115 to B-134. This modeling is available in the docket for the Transport Rule rulemaking action. See Docket ID No. EPA-HQ-OAR-2009-0491. Nothing in the DC Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based.

In addition, CAIR remains in place and enforceable until substituted by a "valid" replacement rule. West Virginia's SIP revision lists CAIR as a control measure that became state-effective on May 1, 2008 and was approved by EPA on August 4, 2009 for the purpose of reducing SO₂ and NO_x emissions. The monitoring data used to demonstrate the Area's attainment of the 1997 annual PM_{2.5} NAAQS by the April 2010 attainment deadline was also impacted by CAIR. To the extent that the State is relying on CAIR in its maintenance plan, the recent directive from the DC Circuit in *EME Homer* ensures that the reductions associated

with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule, and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. These steps alone will take many years, even with EPA and the states acting expeditiously. The Court's clear instruction to EPA that it must continue to administer CAIR until a "valid replacement" exists provides an additional backstop; by definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to eliminate significant downwind contributions.

Further, in vacating the Transport Rule and requiring EPA to continue administering CAIR, the DC Circuit emphasized that the consequences of vacating CAIR "might be more severe now in light of the reliance interests accumulated over the intervening four years." *EME Homer*, slip op. at 60. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable pending a valid replacement rule for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

III. 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:

² The court's judgment is not final, as of November 7, 2012, as the mandate has not yet been issued.

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 CAA section 175A; and

5. The state containing such area has met all requirements applicable to the area under CAA section 110 and Part D.

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

1. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "Calcagni Memorandum");
2. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and
3. "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.

IV. Reasons for Proposing These Actions

On June 30, 2011, the WVDEP requested redesignation of the West

Virginia portion of the Area to attainment for the 1997 annual PM_{2.5} standard. As a part of the redesignation request, WVDEP submitted a maintenance plan for the West Virginia portion of the Area as a SIP revision, to ensure continued attainment of the 1997 annual PM_{2.5} NAAQS over the next 10 years until 2022. EPA has determined that the Huntington-Ashland Area has attained the 1997 annual PM_{2.5} standard and that West Virginia has met the requirements set forth in CAA section 107(d)(3)(E) for redesignation of the West Virginia portion of the Area.

V. Effects of These Proposed Actions

Final approval of the redesignation request would change the official designation of the West Virginia portion of the Area for the 1997 annual PM_{2.5} NAAQS, found at 40 CFR part 81, from nonattainment to attainment. It would incorporate into the West Virginia SIP a maintenance plan ensuring continued attainment of the 1997 annual PM_{2.5} NAAQS in the Area for the next 10 years until 2022. The maintenance plan includes, among other components, contingency measures to remedy any future violations of the 1997 annual PM_{2.5} NAAQS (should they occur). Approval of the maintenance plan would also result in approval of the insignificance determination for PM_{2.5}, NO_x, and SO₂ for transportation conformity purposes in the West Virginia portion of the Area.

VI. Analysis of West Virginia's Redesignation Request

EPA proposes to redesignate the West Virginia portion of the Area to attainment for the 1997 annual PM_{2.5} NAAQS and to approve into the West Virginia SIP the 1997 annual PM_{2.5} NAAQS maintenance plan for the West Virginia portion of the Area. These actions are based upon EPA's determination that the Area continues to attain the 1997 annual PM_{2.5} NAAQS and that all other redesignation criteria

have been met for the West Virginia portion of the Area, provided EPA approves the base year emissions inventory that has been proposed in a separate rulemaking action. See 77 FR 60085 (Oct. 2, 2012). The following is a description of how the WVDEP June 30, 2011 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

1. Attainment

As noted above, in a final rulemaking action dated September 7, 2011, at 76 FR 55542, EPA determined, pursuant to 40 CFR 51.1004(c), that the entire Huntington-Ashland Area is attaining the 1997 annual PM_{2.5} NAAQS. This determination of attainment was based upon complete, quality-assured and certified ambient air quality monitoring data for the period of 2007–2009 showing that the Area had attained the NAAQS by its applicable attainment date of April 5, 2010. Further discussion of pertinent air quality issues underlying this determination was provided in the notice of proposed rulemaking action for EPA's determination of attainment for this Area, published on May 11, 2011 (76 FR 27290). EPA has reviewed more recent data in its Air Quality System (AQS) database, including certified, quality-assured data for the periods from 2008–2010 and 2009–2011. This data, shown in Table 1, shows that the Huntington-Ashland Area continues to attain the 1997 annual PM_{2.5} NAAQS. In addition, as discussed below with respect to the maintenance plan, WVDEP has committed to continue monitoring air quality in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by West Virginia, as well as data taken from AQS, indicate that the Huntington-Ashland Area has attained and continues to attain the 1997 annual PM_{2.5} NAAQS.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE HUNTINGTON-ASHLAND AREA FOR THE 1997 ANNUAL PM_{2.5} NAAQS (µg/m³) FOR 2008–2010 AND 2009–2011

County	Monitor ID	3-Year annual design values	
		2008–2010	2009–2011
Cabell, WV	54–011–0006	13.1	12.3
Boyd, KY	21–019–0017	11.4	10.8
Scioto, OH	39–145–0013	11.6	10.9
Lawrence, OH	39–087–0012	12.2	11.4

Note: Monitor 39–087–0010 in Lawrence, Ohio was shut down in February 2008 due to demolition of the building. It was replaced by monitor 39–087–0012 located approximately one mile away and began monitoring in February 2008.

2. The 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 West Virginia portion of the Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that, upon final approval of the 2002 base year inventory as discussed in section VI, it will have met all applicable SIP requirements under Part D of Title I of the CAA, in accordance with CAA section 107(d)(3)(E)(v). In addition, EPA is proposing to find that all applicable requirements of the West Virginia SIP for purposes of redesignation have been approved in accordance with CAA section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which SIP requirements are applicable for purposes of redesignation of this area, and concluded that the applicable portions of the SIP meeting these requirements are fully approved under CAA section 110(k). We note that SIPs must be fully approved only with respect to applicable requirements.

a. CAA 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 CAA 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 requirements (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) of the CAA 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 for various NAAQS, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_x SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_x SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and CAIR, May 12, 2005 (70 FR 25162). However, the CAA 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 are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other CAA section 110(a)(2) 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 Area will still be subject to these requirements after it is redesignated. We conclude that the CAA section 110(a)(2) 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, and that CAA section 110(a)(2) elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. This approach 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, October 10, 1996), (62 FR 24826, 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 53099, October 19, 2001).

We have reviewed the West Virginia SIP and have concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously

approved provisions of West Virginia's SIP addressing CAA section 110(a)(2) requirements, including provisions addressing PM_{2.5}. See 76 FR 47062 (August 4, 2011). These requirements are, however, statewide requirements that are not linked to the PM_{2.5} nonattainment status of the Huntington-Ashland Area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the State's PM_{2.5} redesignation request.

b. Part D Nonattainment Requirements Under the Standard

Subpart 1 of part D, sections 172 to 175 of the CAA, sets forth the basic nonattainment plan requirements applicable to PM_{2.5} nonattainment areas. Under CAA section 172, states with nonattainment areas must submit plans providing for timely attainment and must meet a variety of other requirements. On May 28, 2009, WVDEP submitted an attainment plan and base year inventory for the West Virginia portion of the Area. On September 7, 2011 (76 FR 55542), EPA made a determination that the Huntington-Ashland Area is attaining the 1997 Annual PM_{2.5} NAAQS. Pursuant to 40 CFR 51.1004(c), upon a determination by EPA that an area designated nonattainment for the PM_{2.5} NAAQS has attained the standard, the requirement for such an area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress plan (RFP), contingency measures, and other planning SIPs related to the attainment of the PM_{2.5} NAAQS are suspended until the area is redesignated to attainment or EPA determines that the area has again violated the PM_{2.5} NAAQS, at which time such plans are required to be submitted. The May 28, 2009 submittal is relevant to this proposed action to redesignate the West Virginia portion of the Area only with respect to the base year inventory that was submitted with the attainment plan. In a separate rulemaking action, as detailed below, EPA has proposed approval of the base year inventory, which, upon final approval, will meet the requirements of CAA section 172(c)(3), one of the criteria for redesignation. See 77 FR 60085 (Oct. 2, 2012).

The General Preamble for Implementation of Title I also discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when

an area is attaining the standard. *See* General Preamble for Implementation of Title I (57 FR 13498 (April 16, 1992)).

Because attainment has been reached for the Area, no additional measures are needed to provide for attainment, and CAA section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the area continues to attain the standard until redesignation. *See* 40 CFR 51.1004(c). The RFP requirement under CAA section 172(c)(2) and contingency measures requirement under CAA section 172(c)(9) are similarly not relevant for purposes of redesignation.

Section 172(c)(3) of the CAA requires submission of a comprehensive, accurate, and current inventory of actual emissions. As part of West Virginia's attainment plan submittal, the State submitted a 2002 emissions inventory. As previously noted, on September 7, 2011 (76 FR 55542), EPA determined that the Huntington-Ashland Area attained the 1997 annual PM_{2.5} NAAQS, based on complete, quality-assured data for the period of 2007–2009. That rulemaking action suspended certain planning requirements related to attainment, including the RACT/RACM requirement of section 172(c)(1), the RFP requirement of CAA section 172(c)(2), the attainment demonstration requirement of CAA section 172(c)(3), and the requirement for contingency measures in CAA section 172(c)(9). As a result of the determination of attainment, the only remaining requirement under CAA section 172 to be considered for purposes of redesignation of the West Virginia portion of the Area is the emissions inventory required under CAA section 172(c)(3). On October 2, 2012 (77 FR 60085), EPA proposed approval of the base year inventory for the West Virginia portion of the Area for the 1997 annual PM_{2.5} NAAQS. An evaluation of West Virginia's 2002 base year inventory for the West Virginia portion of the Area is provided in the Technical Support Document (TSD) prepared by EPA for that rulemaking action. In that action, EPA determined that the emissions inventory and emissions statement requirements for the West Virginia portion of the Area have been satisfied, and proposed to approve the inventory as meeting the requirements of CAA section 172. Final approval of the emissions inventory in that action will satisfy the emissions inventory requirement for redesignation under CAA section 172(c)(3).

Section 172(c)(4) of the CAA requires the identification and quantification of

allowable emissions for major new and modified stationary sources in an area, and CAA section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since prevention of significant deterioration (PSD) requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment new source review (NSR) program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "*Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.*" Nevertheless, West Virginia currently has an approved NSR program, codified in 45 CSR 19. *See* 71 FR 64468 (November 2, 2006) (approving NSR program into the SIP) and 77 FR 63736 (October 17, 2012) (approving revisions to West Virginia's PSD program). However, the State's PSD program for annual PM_{2.5} will become effective in the Huntington-Ashland Area upon redesignation to attainment.

Section 172(c)(6) of the CAA requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached for the Area, no additional measures are needed to provide for attainment.

Section 172(c)(7) of the CAA requires the SIP to meet the applicable provisions of CAA section 110(a)(2). As noted previously, we believe the West Virginia SIP meets the requirements of CAA section 110(a)(2) that are applicable for purposes of redesignation.

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 that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability which

EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under CAA section 107(d) because 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 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (Dec. 7, 1995) (discussing Tampa, Florida). Thus, EPA determines that the Huntington-Ashland Area has satisfied all applicable requirements for purposes of redesignation under CAA section 110 and, upon final approval of the 2002 base year inventory proposed on October 2, 2012, will have satisfied all applicable requirements under part D of title I of the CAA.

c. The West Virginia Portion of the Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of the 2002 base year inventory, as proposed in the October 2, 2012 rulemaking action, EPA will have fully approved the West Virginia portion of the Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation to attainment for the 1997 annual PM_{2.5} standard. Therefore, upon final approval of the 2002 base year emissions inventory, EPA will have approved all part D subpart 1 requirements applicable for purposes of this redesignation.

3. The Air Quality Improvement in the West Virginia Portion of the 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

For redesignating a nonattainment area to attainment, CAA section 107(d)(3)(E)(iii) requires EPA to determine that the air quality improvement in the 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 West Virginia has demonstrated that the observed air quality improvement in the West Virginia portion of the Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other/state-adopted measures. In making this

demonstration, West Virginia has calculated the change in emissions between 2005, one of the years used to designate the Huntington-Ashland Area as nonattainment, and 2008, one of the years for which the Huntington-Ashland Area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Huntington-Ashland Area and contributing areas have implemented in recent years.

a. Federal Measures Implemented

Reductions in fine particulate precursor emissions have occurred statewide and in upwind states as a result of Federal emission control measures with additional emission reductions expected to occur in the future. Federal emission control measures include the following:

(1) Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards

These emission control requirements result in lower NO_x and SO₂ emissions from new cars and light duty trucks, including sport-utility vehicles. The Federal rules were phased in between 2004 and 2009. EPA has estimated that, after phasing in the new requirements, new vehicles emit less NO_x in the following percentages: Passenger cars (light duty vehicles—77%); light duty trucks, minivans, and sports utility vehicles—86%; and, larger sports utility vehicles, vans, and heavier trucks—69–95%. EPA expects fleet wide average emissions to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006, up to a 90 percent reduction.

(2) Heavy-Duty Diesel Engine Rule

EPA issued this rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced fine particulate emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to achieve a 90% reduction in direct PM_{2.5} emissions and a 95% reduction in NO_x emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur diesel fuel. The reduction in fuel sulfur content also yielded an immediate reduction in particulate sulfate emissions from all diesel vehicles.

(3) Nonroad Diesel Rule

In May 2004, EPA promulgated a new rule for large nonroad diesel engines, such as those used in construction, agriculture, and mining, to be phased in between 2008 and 2014. The rule also reduces the sulfur content in nonroad diesel fuel by over 99%. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. This rule limited nonroad diesel sulfur content to 500 ppm by 2006, with a further reduction to 15 ppm by 2010.

b. Controls on PM_{2.5} Precursors

The Area's air quality is strongly affected by regulation of SO₂ and NO_x from power plants. EPA promulgated the NO_x SIP Call, CAIR, and CSAPR to address SO₂ and NO_x emissions from EGUs and certain non-EGUs across the eastern United States. The affected EGUs in the West Virginia portion of the Area are two American Electric Power (AEP) generating stations in Mason County.

(1) NO_x SIP Call

EPA issued the NO_x SIP Call in 1998 to require 22 states and the District of Columbia to reduce NO_x emissions from large EGUs and large non-EGUs such as industrial boilers, internal combustion engines, and cement kilns. (63 FR 57356, October 27, 1998). EPA approved West Virginia's Phase I NO_x SIP Call rule in 2002 and its Phase II rule in 2006. Emission reductions resulting from regulations developed in response to the NO_x SIP Call are permanent and enforceable.

(2) CAIR and CSAPR

EPA approved West Virginia's CAIR rules in 2009 (74 FR 38536, August 4, 2009). The maintenance plan for the West Virginia portion of the Area thus lists CAIR as a control measure for the purpose of reducing SO₂ and NO_x emissions from EGUs. Because the Transport Rule had not been finalized and CAIR was in place when West Virginia submitted its redesignation request and maintenance plan, inclusion of CAIR as a control measure was consistent with EPA policy at that time.

As previously discussed, the D.C. Circuit's 2008 remand of CAIR left the rule in place to "temporarily preserve the environmental values covered by CAIR" until EPA replaced it with a rule consistent with the Court's opinion, and the court's August 2012 decision on the Transport Rule also left CAIR in effect until the legal challenges to the Transport Rule are resolved. As noted, EPA believes it is appropriate to allow states to rely on CAIR, and the existing

emissions reductions achieved by CAIR, as sufficiently permanent and enforceable pending a valid replacement rule, for purposes such as redesignation.

Furthermore, as previously discussed, the air quality modeling analysis conducted for the Transport Rule demonstrates that the Huntington-Ashland Area would be able to attain the 1997 annual PM_{2.5} NAAQS even in the absence of either CAIR or the Transport Rule. EPA's modeling projections show that all ambient monitors in the Area are expected to continue to maintain compliance in the 2012 and 2014 "no CAIR" base cases. Therefore, none of the ambient monitoring sites in the Huntington-Ashland Area are "receptors" that EPA projects will have future nonattainment problems or difficulty maintaining the NAAQS.

c. Federal Consent Decrees

EGUs in this Area are subject to Federal consent decrees that have reduced emissions of NO_x and SO₂ in the Area. There are two AEP EGUs in Mason County, the partial county portion of the West Virginia portion of the Area. These are the Mountaineer Power Station (Mountaineer) and the Philip Sporn Power Station (Philip Sporn). As part of a Federally enforceable consent decree, Mountaineer was required, starting in January 2008, to operate its selective catalytic reduction (SCR) continuously to control NO_x emissions, and to operate continuously its Flue Gas Desulfurization (FGD) to reduce SO₂ emissions starting in December 2007.

Since 2008, additional controls have or will be installed on EGUs within the West Virginia portion of the Area and in Kentucky and Ohio, which will continue to contribute to the reductions in precursor pollutants for PM_{2.5}. Pursuant to the Federally enforceable consent decree, Philip Sporn installed and began operation of selective non-catalytic reduction (SNCR) to control NO_x emissions on Units 3 and 4 starting in January 2009 and is required to retire, retrofit, or repower Unit 5 by December 31, 2013. Several EGUs in Gallia and Adams Counties in Ohio have installed controls as a result of Federally enforceable consent decrees. Two units at the General J. M. Gavin Station (owned or operated by AEP) in Gallia County, Ohio were required to continuously operate SNCR starting in December 2009, and five units at the Kyger Creek Station in Gallia County have installed and continuously operated SNCRs since January, 2009. Additionally, Kyger Creek Station plans to install and operate FGDs in 2012.

Also, four units at the J.M. Stuart DP&L Station in Adams County, Ohio have been operating year round SNCR since 2009, and one unit at Big Sandy Power Station (owned and/or operated by AEP) in Lawrence County, KY was required by consent decree to install and continuously operate SCR starting in

January 2009 and a FGD starting in December 2015.

A summary of the emissions reductions from 2005 to 2009 for the entire Huntington-Ashland Area is provided in Table 2 below. As discussed below, West Virginia's maintenance plan provides for verification of

continued attainment by performing triennial reviews of emissions inventories for all PM_{2.5} precursors, as well as contingency measures to ensure that the NAAQS is maintained into the future if monitored increases in ambient PM_{2.5} concentrations occur.

TABLE 2—ACTUAL EMISSION REDUCTIONS FROM COAL FIRED UTILITIES IN THE HUNTINGTON-ASHLAND AREA FOR THE PERIOD 2005–2009

Facility—county	Emission differences from 2005–2009 (tpy)			
	SO ₂	Percent reduction	NO _x	Percent reduction
Kentucky				
Big Sandy—Lawrence County	9,783	20	7,624	61
West Virginia				
Mountaineer—Mason County	40,214	94	10,073	79
Philip Sporn—Mason County	22,433	57	5,020	56
Ohio				
JM Stuart—Adams County	42,224	40	16,124	66
Killen Station—Adams County	17,592	90	3,083	52
Gen JM Gavin—Gallia County	1,701	6	31,800	82
Kyger Creek—Gallia County	16,032	22	15,209	82

Source: Clean Air Markets Data and Maps database (<http://camddataandmaps.epa.gov/>).

Based on the information summarized above, West Virginia has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions. The reductions result from Federal requirements, regulation of precursors under the NO_x SIP Call and CAIR, and Federal consent decrees affecting EGUs

in the Huntington-Ashland Area, which are permanent and enforceable.

Additionally, because PM_{2.5} concentrations in the Huntington-Ashland Area are impacted by the transport of sulfates and nitrates, as noted previously, the Area's air quality is strongly affected by regulation of SO₂ and NO_x emissions from EGUs in states

in the region that significantly contribute to the Area. Table 3 shows statewide EGU emissions data for the years 2002, 2008 and 2010 for the states that are significantly contributing to the air quality in the Huntington-Ashland Area. Emissions for 2008 and 2010 reflect the implementation of CAIR.

TABLE 3—COMPARISON OF 2002, 2008, AND 2010 EGU NO_x AND SO₂ EMISSIONS FOR STATES THAT CONTRIBUTE TO THE HUNTINGTON-ASHLAND AREA

State	NO _x (tpy)				SO ₂ (tpy)			
	2002	2008	2010	Net change 2002–2008 (percent)	2002	2008	2010	Net change 2002–2008 (percent)
Alabama	161,559	112,625	63,289	–30	448,248	357,546	204,189	–20
Georgia	146,456	105,894	60,521	–27	512,654	514,539	218,836	<1
Illinois	174,247	119,976	76,299	–31	353,699	257,431	220,092	–27
Indiana	281,146	196,580	120,924	–30	778,868	595,966	414,764	–23
Kentucky	198,599	157,847	91,824	–20	482,653	344,356	266,204	–22
Michigan	132,624	103,473	76,130	–20	342,999	326,501	242,188	–4
Missouri	139,799	88,600	58,364	–36	235,532	258,269	236,216	9
Ohio	370,497	235,018	104,839	–36	1,132,069	709,444	572,126	–37
Pennsylvania	200,909	175,219	125,486	–12	889,766	631,915	393,196	–28
Tennessee	155,996	85,543	31,073	–43	336,995	208,069	119,023	–38
West Virginia	225,371	97,331	51,393	–56	507,110	301,574	106,087	–40
Total	2,025,644	1,478,106	860,142	–27	5,785,061	4,505,610	2,992,921	–22

Source: Clean Air Markets Data and Maps database (<http://camddataandmaps.epa.gov/>).

Table 3 shows that the states impacting the Huntington-Ashland Area reduced NO_x and SO₂ emissions from EGUs by 547,538 tpy and 979,451 tpy, respectively, between 2002 and 2008. This table also includes emissions from the contributing states in 2010, which

shows the continuing, generally downward trend of NO_x and SO₂ emissions from these states.

4. The West Virginia Portion of the Area Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the West Virginia portion of the Area to attainment status, West

Virginia submitted a SIP revision to provide for maintenance of the 1997 annual PM_{2.5} NAAQS in the Area for at least 10 years after redesignation. West Virginia is requesting that EPA approve this SIP revision as meeting the requirement of CAA section 175A. Once approved, the maintenance plan for the West Virginia portion of the Area will ensure that the SIP for West Virginia meets the requirements of the CAA regarding maintenance of the 1997 annual PM_{2.5} NAAQS for this area.

a. Requirements of a Maintenance Plan

Section 175 of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under CAA section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, West Virginia must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years 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 PM_{2.5} violations. The John Calcagni memorandum entitled “*Procedures for Processing Requests to Redesignate Areas to Attainment*,” dated September 4, 1992, provides additional guidance on the content of a maintenance plan. The memorandum states that a PM_{2.5} maintenance plan should address the following provisions:

- (1) An attainment emissions inventory;
- (2) A maintenance demonstration showing maintenance for 10 years;
- (3) A commitment to maintain the existing monitoring network;
- (4) Verification of continued attainment; and
- (5) A contingency plan to prevent or correct future violations of the NAAQS.

b. Analysis of the Maintenance Plan

(1) Attainment Emissions Inventory

An attainment inventory is comprised of the emissions during the time period associated with the monitoring data showing attainment. WVDEP developed emissions inventories for NO_x, direct PM_{2.5}, and SO₂ for 2008, one of the years in the period during which the Huntington-Ashland Area monitored attainment of the 1997 annual PM_{2.5} standard, as described previously. The

2008 point source inventory contained emissions for EGUs and non-EGUs in Cabell and Wayne Counties. For the portion of Mason County that is part of this nonattainment area, the Mountaineer Plant, Sporn Plant, and New Haven Plant are included in the inventory. WVDEP used data from EPA’s CAMD database to compile the EGU and non-EGU inventory. For the 2008 Area and Nonroad Mobile source emissions, WVDEP used the 2008 National Emissions Inventory (NEI) version 1.5 data developed by EPA. The 2008 Onroad Mobile source inventory was developed using the most current version of EPA’s highway mobile source emissions model MOVES2010a. WVDEP used the Kentucky, Ohio, and West Virginia (KYOVA) Travel Demand Model, which is the most recent travel demand model provided by the KYOVA Interstate Planning Commission that covers the nonattainment counties in WV. Information from the travel demand models combined with Highway Performance Monitoring Systems (HPMS) county-level data from each area were used in the emissions analysis. Additional data needed for input into the MOVES2010a model was provided by the Ohio Department of Transportation (ODOT), Ohio EPA, West Virginia Department of Transportation (WVDOT), WVDEP, Kentucky Transportation Cabinet (KYTC) and the Kentucky Division of Air Quality (KDAQ).

(2) Maintenance Demonstration

On June 30, 2011, the WVDEP submitted a maintenance plan for the West Virginia portion of the Area as required by section 175A of the CAA. WVDEP uses projection inventories to show that the Area will remain in attainment and developed projection inventories for an interim year of 2015 and a maintenance plan end year of 2022 to show that future emissions of NO_x, SO₂, and direct PM_{2.5} will remain at or below the attainment year 2008 emissions levels throughout the West Virginia portion of the Area through the year 2022. A maintenance demonstration need not be based on modeling. *See Wall v. EPA, supra*; *Sierra Club v. EPA, supra*. *See also* 66 FR at 53099–53100; 68 FR at 25430–32. The projection inventories for the 2015 and 2022 point, area, and nonroad sources were based on the 2012 and 2018 Visibility Improvement State and Tribal Association of the Southeast (VISTAS)/Association of Southeastern Integrated Planning (ASIP) modeling inventory.

(a) Point Sources

West Virginia developed the 2015 point source inventory by interpolation between VISTAS/ASIP 2012 and 2018 modeling inventory. The 2022 EGU inventory for PM_{2.5}, NO_x, and SO₂ was kept the same as the VISTAS/ASIP 2018 inventory. The 2022 non-EGU inventory was extrapolated from the 2012 and 2018 inventory. Point source emissions for 2012 and 2018 were developed for EGUs and non-EGUs. For EGUs, WVDEP used the projection inventory developed by VISTAS/ASIP. VISTAS/ASIP analysis was based on EPA’s IPM model. The VISTAS/ASIP analysis projected future year emissions for EGUs under several scenarios based on the best information available at the time of the analysis. WVDEP used the “on the way” (OTW) projections, which took into account the reductions required by CAIR, as a basis for 2012 and 2018 EGU emissions. VISTAS/ASIP used EPA’s EGAS, Version 4.0 to make the projections for non-EGUs, incorporating the growth factors suggested in the reports entitled Development of Growth Factors for Future Year Modeling Inventories (April 30, 2004) and CAIR Emission Inventory Overview (July 23, 2004). EPA has reviewed the VISTAS documentation provided by WVDEP and found the methodologies acceptable.

(b) Area Sources

Area source emissions for 2015 were interpolated from the VISTAS/ASIP 2012 and 2018 inventories. The 2022 emissions were extrapolated from the VISTAS/ASIP 2012 and 2018 inventories. Growth and controls for emissions were based on the methodologies applied by EPA for the CAIR analysis.

(c) Nonroad Sources

Nonroad source emissions, including aircraft, locomotives, and commercial marine vessels (CMV) for 2015 were interpolated from the VISTAS/ASIP 2012 and 2018 inventories. CMV source emissions for SO₂ included in the 2022 inventory were held constant at 2018 levels because no further reduction in fuel sulfur content is expected. All other nonroad source emissions for 2022 were extrapolated from the VISTAS/ASIP 2012 and 2018 inventories.

(d) Onroad Mobile Sources

The 2015 and 2022 onroad mobile source emissions were prepared using MOVES2010a following the same procedure as the 2008 inventory as described previously.

EPA has determined that the emissions inventories provided by

WVDEP are approvable. For more information on EPA's analysis of the emissions inventories, see the TSD dated April 9, 2012, available in the

docket for this rulemaking action at www.regulations.gov. Table 4 shows the inventories for the 2008 attainment base year, the 2015 interim year, and the

2022 maintenance plan end year for the entire nonattainment area.

TABLE 4—COMPARISON OF 2008, 2015, 2022 SO₂, NO_x, AND DIRECT PM_{2.5} EMISSION TOTALS, IN TPY FOR THE ENTIRE HUNTINGTON-ASHLAND AREA WV-KY-OH

	2008	2015	2022	Decrease from 2008 to 2022
SO ₂ (tpy)	221,210	139,263	88,432	132,778
NO _x (tpy)	145,527	94,932	68,313	77,214
PM _{2.5} (tpy)	11,701	11,262	11,317	384

Table 4 shows that, between 2008 and 2015, the entire Huntington-Ashland Area is projected to reduce SO₂ emissions by 81,947 tpy, NO_x emissions by 50,595 tpy, and direct PM_{2.5} emissions by 439 tons. Between 2008 and 2022, the area is projected to reduce SO₂ emissions by 77,214 tpy, NO_x emissions by 132,778 tpy, and direct PM_{2.5} emissions by 384 tpy. Thus, the projected emissions inventories show that the area will continue to maintain the 1997 annual PM_{2.5} NAAQS during the 10 year maintenance period.

(3) Maintenance Demonstration Through 2023

As noted in section 4.a of this document, CAA section 175A requires a State seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area "for at least 10 years after the redesignation." EPA has interpreted this as a showing of maintenance "for a period of ten years following redesignation." September 4, 1992 Memorandum from John Calcagni, Director, AQMD, "Procedures for Processing Requests to Redesignate Areas to Attainment," p. 9. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni Memorandum, pp. 9–10.

As discussed in detail above, the State's maintenance plan submission expressly documents that the Area's emissions inventories will remain below the attainment year inventories through 2022. In addition, for the reasons set forth below, EPA believes that the State's submission, in conjunction with additional supporting information, further demonstrates that the Area will continue to maintain the 1997 annual PM_{2.5} NAAQS at least through 2023:

- Significant emissions controls remain in place, and will continue to provide reductions that keep the Area in attainment. The Mountaineer Power

Station was required by a permanent and enforceable consent decree to install SCR for NO_x in 2008 and to operate its FGD continuously for SO₂ in 2007. Philip Sporn Power Station installed SNCR to control NO_x in 2009, and must retire, retrofit, or repower Unit 5 by the end of 2013.

- West Virginia has committed to maintain all of the control measures that are relied on, and will submit any changes to EPA for approval as a SIP revision.

- Emissions inventory levels for SO₂ and NO_x in 2022 are well below the attainment year inventory levels (see Table 4), and it is highly improbable that sudden increases would occur that could exceed the attainment year inventory levels in 2023.

- The mobile source contribution has been determined to be insignificant, and is expected to remain insignificant in 2023 with fleet turnover in upcoming years that will result in cleaner vehicles and cleaner fuels.

- Air quality concentrations well below the standard, coupled with the emissions inventory projections through 2022 show that it would be very unlikely for a violation to occur in 2023. The 2009–2011 design value of 12.1 µg/m³ provides a sufficient margin in the event emissions increase, and continues the downward trend of monitored data in this Area for the last several years.

Thus, if EPA finalizes its proposed approval of the redesignation request and maintenance plans in 2013, it is based on a showing, in accordance with CAA section 175A, that the State's maintenance plan provides for maintenance for at least ten years after redesignation, and into 2023.

(4) Monitoring Network

West Virginia's maintenance plan includes a commitment to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. West Virginia currently operates a PM_{2.5} monitor in Cabell County. Two of the

remaining monitors are located in Ohio, and one monitor is located in Kentucky. West Virginia will consult with EPA prior to making any necessary changes to the network and will continue to quality assure the monitoring data in accordance with the requirements of 40 CFR part 58.

(5) Verification of Continued Attainment

To provide for tracking of the emission levels in the area, WVDEP requires major point sources to submit air emissions information annually and prepares a new periodic inventory for all PM_{2.5} precursors every three years in accordance with EPA's Air Emissions Reporting Requirements (AERR). Emissions information will be compared to the attainment year inventory to assure continued attainment with the 1997 annual PM_{2.5} NAAQS and will be used to assess emissions trends, as necessary.

(6) 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 West Virginia 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 West Virginia portion of the Area to stay in compliance with the 1997 annual PM_{2.5} NAAQS after redesignation depends upon NO_x and SO₂ emissions in the Huntington-Ashland Area remaining at

or below 2008 levels. West Virginia's maintenance plan projects NO_x and SO₂ emissions to decrease and stay below 2008 levels through at least the year 2022. West Virginia's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

West Virginia's contingency measures include a Warning Level Response and an Action Level response. An initial Warning Level Response is triggered when the average weighted annual mean for a single calendar year exceeds 15.5 ug/m³ within the maintenance area. In that case, a study will be conducted to determine if the emissions trends show increases; if action is necessary to reverse emissions increases, West Virginia will follow the same procedures for control selection and implementation as for an Action Level Response, and implementation of necessary controls will take place as expeditiously as possible, but no later than 12 months from the end of the most recent calendar year.

The Action Level Response will be prompted by any one of the following: A Warning Level Response study that shows emissions increases; a weighted annual mean over a two-year average that exceeds the standard; or a violation of the standard in the maintenance area. If an Action Level Response is triggered, West Virginia will adopt and implement appropriate control measures within 18 months from the end of the year in which monitored air quality triggering a response occurs. West Virginia will also consider whether additional regulations that are not a part of the maintenance plan can be implemented in a timely manner to respond to the trigger.

West Virginia's candidate contingency measures include the following: (1) Diesel reduction emission strategies, (2) alternative fuels and diesel retrofit programs for fleet vehicle operations, (3) PM_{2.5}, SO₂, and NO_x emissions offsets for new and modified major sources, (4) concrete manufacturing controls, and (5) additional NO_x reductions. Additionally, West Virginia has identified a list of sources that could potentially be controlled. These include: Industrial, commercial and institutional (ICI) boilers for SO₂ and NO_x controls, EGUs, process heaters, internal combustion engines, combustion turbines, other sources greater than 100 tons per year, fleet vehicles, and aggregate processing plants.

For all of the reasons discussed above, EPA is proposing to approve West Virginia's 1997 annual PM_{2.5} maintenance plan for the West Virginia

portion of the Area as meeting the requirements of CAA section 175A.

VII. Analysis of West Virginia's Transportation Conformity Insignificance Determination for the Huntington-Ashland Area

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 mobile sources. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of a NAAQS or an interim milestone. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (MVEBs) contained in a SIP. 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 ensuring conformity of such transportation activities to a SIP.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEBs contained therein "adequate" for use in determining transportation conformity. The process for determining adequacy is set forth in the guidance "*Transportation Conformity Rule Amendments for the New 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments; Response to Court Decision and Additional Rule Changes.*" 69 FR 40004 (July 1, 2004). After EPA affirmatively finds the submitted MVEBs are adequate for transportation conformity purposes, in accordance with the guidance, the MVEBs 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.

For budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria in 40 CFR 93.118(e)(4). However, the transportation conformity rule at 40 CFR 93.109(f) allows areas to forego establishment of MVEBs where it is demonstrated that the regional motor vehicle emissions for a particular pollutant or precursor are an insignificant contributor to the air quality problem in an area. EPA's

rationale for providing for insignificance determinations may be found in the July 1, 2004 revision to the Transportation Conformity Rule. The general criteria for insignificance determinations, per 40 CFR 93.109(f), are based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory; the current state of air quality as determined by monitoring data for the relevant NAAQS; the absence of SIP motor vehicle control measures; and the historical trends and future projections of the growth of motor vehicle emissions in the area.

In West Virginia's June 30, 2011 submittal, the State provided information that projects that onroad mobile source NO_x constitutes six percent or less of the Area's total NO_x emissions in 2015 and 2022 due to continuing fleet turnover and that onroad mobile source PM_{2.5} emissions constitute less than three percent of the Area's total PM_{2.5} emissions. Both projections took into consideration future vehicle miles traveled (VMT) growth. In addition, neither EPA nor the State has made any findings that volatile organic compounds (VOCs), SO₂, or ammonia (NH₃) are significant contributors to PM_{2.5} mobile emissions. The submittal meets the criteria in the relevant portions of 40 CFR 93.102 and 93.118 for an insignificance finding, and EPA agrees with the determination of insignificance for both NO_x and PM_{2.5} for the West Virginia portion of the Area. For more information on EPA's review of the determination of insignificance, see the TSD dated May 30, 2012, available in the docket for this rulemaking action at www.regulations.gov.

VIII. Proposed Actions

EPA is proposing to approve the redesignation of the West Virginia portion of the Area from nonattainment to attainment for the 1997 annual PM_{2.5} NAAQS. EPA has evaluated West Virginia's redesignation request and determined that, upon approval of the base year emissions inventory in the separate rulemaking action noted previously, it would meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the monitoring data demonstrate that the Huntington-Ashland Area has attained the 1997 annual PM_{2.5} NAAQS and will continue to attain the standard. Final approval of this redesignation request would change the designation of the West Virginia portion of the Area from nonattainment to attainment for the 1997 annual PM_{2.5} standard. EPA is also proposing to approve the associated

maintenance plan for the West Virginia portion of the Area, submitted on June 30, 2011, as a revision to the West Virginia SIP because it meets the requirements of CAA section 175A as described previously in this notice. EPA is also proposing to approve the insignificance determination for on-road motor vehicle contribution of PM_{2.5}, NO_x, and SO₂, submitted by West Virginia for the West Virginia portion of the Area in conjunction with its redesignation request. As noted previously, the 30 day public comment period for the proposed insignificance determination started on November 5, 2012 and will end on December 4, 2012. 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 the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule proposing approval of West Virginia's redesignation request, maintenance plan, and transportation conformity insignificance determination for the Huntington-Ashland Area for the 1997 annual PM_{2.5} NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, PM_{2.5}, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness Areas.

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

Dated: November 7, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012-27785 Filed 11-14-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R04-OAR-2012-0327; FRL-9751-9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; South Carolina; Redesignation of the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-Hour Ozone Moderate Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 1, 2011, the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), submitted a request for EPA to redesignate the portion of York County, South Carolina that is within the bi-state Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 8-hour ozone nonattainment area (hereafter referred to as the "bi-state Charlotte Area," or "Area") to attainment for the 1997 8-hour ozone national ambient air quality standards (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the South Carolina portion of the bi-state Charlotte Area (hereafter referred to as "the York County Area"). The bi-state Charlotte Area consists of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell County (Davidson and Coddle Creek Townships) in North Carolina; and a portion of York County in South Carolina (including the Catawba Indian Nation reservation lands). EPA is proposing to approve the redesignation request for the York County Area, along with the related SIP revision, including South Carolina's plan for maintaining attainment of the ozone standard in the York County Area. EPA is also proposing to approve the motor vehicle emission budgets (MVEB) for nitrogen oxides (NO_x) and volatile organic compounds (VOC) for the years 2013 and 2022 for the York County Area. Additionally, EPA is proposing that the 2022 MVEB are consistent with maintenance in 2023. These actions are being proposed pursuant to the Clean Air Act (CAA or Act) and its implementing regulations. EPA will take action on the North Carolina submission for the 1997 8-hour ozone redesignation request and maintenance plan for its portion of the bi-state Charlotte Area in a separate action.

DATES: Comments must be received on or before December 6, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2012-0327, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email:* R4-RDS@epa.gov.
3. *Fax:* (404) 562-9019.
4. *Mail:* EPA-R04-OAR-2012-0327, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,