



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R03-OAR-2012-0386; FRL-9829-5]

#### **Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the West Virginia Portion of the Parkersburg-Marietta, WV-OH 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan**

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

**ACTION:** Proposed rule; supplemental.

**SUMMARY:** EPA is issuing a supplement to its proposed approval of the State of West Virginia's request to redesignate the West Virginia portion of the Parkersburg-Marietta, WV-OH fine particulate matter (PM<sub>2.5</sub>) nonattainment area (Parkersburg-Marietta Area or Area) to attainment for the 1997 annual PM<sub>2.5</sub> national ambient air quality standard (NAAQS). This supplemental proposal revises and expands the basis for proposing approval of the State's request in light of developments since EPA issued its initial proposal on December 11, 2012. This supplemental proposal addresses the effects of two decisions of the United States Court of Appeals for the District of Columbia (D.C. Circuit Court): The D.C. Circuit Court's August 21, 2012 decision to vacate and remand to EPA the Cross-State Air Pollution Control Rule (CSAPR); and the D.C. Circuit Court's January 4, 2013 decision to remand to EPA two final rules implementing the PM<sub>2.5</sub> NAAQS. EPA is seeking comment only on the issues raised in this supplemental proposal and is not reopening for comment other issues raised in its prior proposal.

**DATES:** Written comments must be received on or before [insert date 30 days from date of publication].

**ADDRESSES:** Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2012-0386** by one of the following methods:

- A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- B. E-mail: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).
- C. Mail: EPA-R03-OAR-2012-0386, Cristina Fernandez, 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-2012-0386**. 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](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 [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](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 [www.regulations.gov](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 West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@epa.gov).

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**I. Background**

On March 5, 2012, the State of West Virginia through the West Virginia Department of Environmental Protection (WVDEP) formally submitted a request to redesignate the West Virginia portion of the Parkersburg-Marietta Area from nonattainment to attainment of the 1997 annual PM<sub>2.5</sub> 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.

On December 11, 2012 (77 FR 73560), EPA published a notice of proposed rulemaking (NPR or the December 11, 2012 NPR) determining that the Parkersburg-Marietta Area has attained the 1997 annual PM<sub>2.5</sub> NAAQS and that the Area has met the requirements for redesignation under

section 107(d)(3)(E) of the Clean Air Act (CAA) upon approval of the base year emissions inventory. On December 12, 2012 (77 FR 73924), EPA approved the base year emissions inventory which included emissions estimates that cover the general source categories of point, area, nonroad mobile, onroad mobile, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOCs), PM<sub>2.5</sub>, coarse particles (PM<sub>10</sub>), ammonia (NH<sub>3</sub>), and sulfur dioxide (SO<sub>2</sub>). This emissions inventory satisfies the requirement of section 172(c)(3) of the CAA, which requires states to submit a comprehensive, accurate, and current emissions inventory for a nonattainment area. For purposes of the PM<sub>2.5</sub> NAAQS, this emissions inventory addresses not only direct emissions of PM<sub>2.5</sub>, but also emissions of all precursors with the potential to participate in PM<sub>2.5</sub> formation, i.e., SO<sub>2</sub>, NO<sub>x</sub>, VOC and NH<sub>3</sub>.

In the December 11, 2012 NPR, EPA proposed several actions related to the redesignation of the Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. First, EPA proposed to approve West Virginia's request to change the legal definition of the West Virginia portion of the Parkersburg-Marietta Area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. Second, EPA proposed to approve the maintenance plan for the West Virginia portion of the Area as a revision to the West Virginia SIP because the plan meets the requirements of section 175A of the CAA. Third, EPA proposed to approve the insignificance determination for the onroad motor vehicle contribution of PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>2</sub> in the West Virginia portion of the Area for transportation conformity purposes. EPA received no comments in response to the December 11, 2012 NPR proposing approval of the above described redesignation request, maintenance plan and the insignificance determination. EPA is not reopening the public comment period to

submit comment on the issues addressed in the December 11, 2012 NPR.

EPA today is issuing a supplement to its December 11, 2012 NPR. This supplemental NPR addresses two recent decisions of the D.C. Circuit Court which affect the proposed redesignation and which have arisen since the issuance of the NPR: (1) The D.C. Circuit Court's August 21, 2012 decision to vacate and remand to EPA the CSAPR and (2) the D.C. Circuit Court's January 4, 2013 decision to remand to EPA two final rules implementing the PM<sub>2.5</sub> NAAQS. Therefore, EPA's supplemental proposal revises and expands the basis for EPA's proposed approval of West Virginia's request to designate the Parkersburg-Marietta Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS, in light of these developments since EPA's initial NPR.

## **II. Specific Issues on Which EPA is Taking Comments**

### **A. Effect of the August 21, 2012 D.C. Circuit Court Decision Regarding EPA's CSAPR**

#### **1. Background**

In its December 11, 2012 NPR to redesignate the Parkersburg-Marietta Area, EPA proposed to determine that the emission reduction requirements that contributed to attainment of the 1997 annual PM<sub>2.5</sub> standard in the nonattainment area could be considered permanent and enforceable. EPA recently promulgated CSAPR (76 FR 48208, August 8, 2011) to replace Clean Air Interstate Rule (CAIR), which has been in place since 2005. *See* 76 FR 59517. CAIR requires significant reductions in emissions of SO<sub>2</sub> and NO<sub>x</sub> from electric generating units to limit the interstate transport of these pollutants and the ozone and PM<sub>2.5</sub> they form in the atmosphere. *See* 76 FR 70093. The D.C. Circuit Court initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded that rule to EPA without vacatur to preserve the

environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

CSAPR included regulatory changes to sunset (i.e., discontinue) CAIR and the CAIR Federal Implementation Plans (FIPs) for control periods in 2012 and beyond. *See* 76 FR 48322.

Although West Virginia's redesignation request and maintenance plan relied on reductions associated with CAIR, EPA proposed to approve the request based in part on the fact that CAIR was to remain in force through the end of 2011 and CSAPR would achieve "similar or greater reductions in the relevant areas in 2012 and beyond." *See* 76 FR 59517.

On December 30, 2011, the D.C. Circuit Court issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the D.C. Circuit Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation, L.P. v. EPA* (No. 11-1302 and consolidated cases). The D.C. Circuit Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit Court issued the decision in *EME Homer City*, to vacate and remand CSAPR and ordered EPA to continue administering CAIR "pending . . . development of a valid replacement." *EME Homer City* at 38. The D.C. Circuit Court denied all petitions for rehearing on January 24, 2013. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court, but those petitions have not been acted on to date. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

## **2. Supplemental Proposal on This Issue**

In light of these unique circumstances and for the reasons explained below, EPA in this portion of its supplemental rule is seeking comment limited to the impact of the D.C. Circuit Court's decision in *EME Homer City* ruling on EPA's proposal to approve the redesignation request and the related SIP revisions for the Parkersburg-Marietta Area, including West Virginia's plan for maintaining attainment of the 1997 annual PM<sub>2.5</sub> standard in the Area. As explained in greater detail below, to the extent that attainment is due to emission reductions associated with CAIR, EPA is here determining that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A.

As directed by the D.C. Circuit Court, CAIR remains in place and enforceable until EPA promulgates a valid replacement rule to substitute for CAIR. West Virginia's SIP revision lists CAIR as a control measure that was adopted by the State in 2006 and required compliance by January 1, 2009. CAIR was thus in place and getting emission reductions when Parkersburg-Marietta began monitoring attainment of the 1997 annual PM<sub>2.5</sub> standard during the 2006-2008 time period. The quality-assured, certified monitoring data continues to show the area in attainment of the 1997 PM<sub>2.5</sub> standard through 2011.

To the extent that West Virginia is relying on CAIR in its maintenance plan to support continued attainment into the future, the recent directive from the D.C. Circuit Court in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the D.C. Circuit Court to develop a new rule to



address interstate transport to replace CSAPR, 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. Thus, CAIR will remain in place until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs in response to it, 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. The D.C. Circuit Court's clear instruction to EPA is that it must continue to administer CAIR until a valid replacement exists, and thus EPA believes that CAIR emission reductions may be relied upon until the necessary actions are taken by EPA and states to administer CAIR's replacement. Furthermore, the D.C. Circuit Court's instruction provides an additional backstop by definition, any rule that replaces CAIR and meets the D.C. Circuit Court's direction would require upwind states to have SIPs that eliminate any significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Moreover, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit Court 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 City*, 696 F.3d at 38. The accumulated reliance interests include the interests of states that 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 D.C. Circuit 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 for regulatory purposes such as redesignations. Following promulgation of the replacement rule for CSAPR, EPA will review existing SIPs as appropriate to identify whether there are any issues that need to be addressed.

## **B. Effect of the January 4, 2013 D.C. Circuit Court Decision Regarding the PM<sub>2.5</sub> Implementation Under Subpart 4**

### **1. Background**

On January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit Court remanded to EPA the “Final Clean Air Fine Particle Implementation Rule” (72 FR 20586, April 25, 2007) and the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)” final rule (73 FR 28321, May 16, 2008) (collectively, “1997 PM<sub>2.5</sub> Implementation Rule”). 706 F.3d 428 (D.C. Cir. 2013). The D.C. Circuit Court found that EPA erred in implementing the 1997 PM<sub>2.5</sub> NAAQS pursuant to the general implementation provisions of subpart 1 of Part D of Title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I.

### **2. Supplemental Proposal on This Issue**

In this portion of EPA’s supplemental proposal, EPA is soliciting comment on the limited issue of the effect of the D.C. Circuit Court’s January 4, 2013 ruling on the proposed redesignation. As explained below, EPA is proposing to determine that the D.C. Circuit Court’s January 4, 2013 decision does not prevent EPA from redesignating the Parkersburg-Marietta Area to

attainment. Even in light of the D.C. Circuit Court’s decision, redesignation for this Area is appropriate under the CAA and EPA’s longstanding interpretations of the CAA’s provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the Parkersburg-Marietta Area redesignation request and disregards the provisions of its 1997 PM<sub>2.5</sub> implementation rule recently remanded by the D.C. Circuit Court, the State’s request for redesignation of this Area still qualifies for approval. EPA’s discussion takes into account the effect of the D.C. Circuit Court’s ruling on the Area’s maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

**a. Applicable Requirements for Purposes of Evaluating the Redesignation Request**

With respect to the 1997 PM<sub>2.5</sub> Implementation Rule, the D.C. Circuit Court’s January 4, 2013 ruling rejected EPA’s reasons for implementing the PM<sub>2.5</sub> NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 PM<sub>2.5</sub> NAAQS under subpart 4 of Part D of the CAA, in addition to subpart 1. For the purposes of evaluating West Virginia’s redesignation request for the Parkersburg-Marietta Area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not “applicable” for the purposes of section 107(d)(3)(E) of the CAA, and thus EPA is not required to consider subpart 4 requirements with respect to the Parkersburg-Marietta Area redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted

section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are “applicable” and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state’s submittal of a complete redesignation request. *See* “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). *See also* “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 Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465-66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424-27, May 12, 2003); *Sierra Club v. EPA*, 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA’s redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club’s view that the meaning of “applicable” under the statute is “whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment”).<sup>1</sup> In this case, at the time that West Virginia submitted its redesignation request, requirements under subpart 4 were not due, and indeed, were not yet known to apply.

EPA’s view that, for purposes of evaluating the Parkersburg-Marietta Area redesignation, the subpart 4 requirements were not due at the time West Virginia submitted the redesignation

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<sup>1</sup> Applicable requirements of the CAA that come due subsequent to the area’s submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit Court's decision in *South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). In *South Coast*, the D.C. Circuit Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that "applicable requirements," for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.*, Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be "applicable" for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E) of the CAA.

EPA's interpretation derives from the provisions of section 107(d)(3) of the CAA. Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet "all requirements 'applicable' to the area under section 110 and part D." Section 107(d)(3)(E)(ii) provides that EPA must have fully approved the "applicable" SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of "applicable" as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or

impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If “applicable requirements” were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the CAA for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the D.C. Circuit Court's January 4, 2013 decision in *NRDC v. EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. West Virginia submitted its redesignation request on March 5, 2012, but the D.C. Circuit Court did not issue its decision remanding EPA's 1997 PM<sub>2.5</sub> implementation rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require West Virginia's fully-completed and pending redesignation request to comply now with requirements of subpart 4 that the D.C. Circuit Court announced only on January 4, 2013, would be to give retroactive effect to such requirements when the State had no notice that it was required to meet them. The D.C. Circuit Court recognized the inequity of this type of retroactive impact in *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002),<sup>2</sup> where it upheld the D.C. District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the D.C. Circuit Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The D.C. Circuit Court rejected this view, stating that applying it "would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time." *Id.* at 68. Similarly, it would be unreasonable to penalize West Virginia by rejecting its redesignation request for an area that is already attaining the 1997

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<sup>2</sup> *Sierra Club v. Whitman* was discussed and distinguished in a recent D.C. Circuit Court decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n v. EPA*. 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

PM<sub>2.5</sub> standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the D.C. Circuit Court in *Sierra Club v. Whitman*.

#### **b. Subpart 4 Requirements and Parkersburg-Marietta Area's Redesignation Request**

Even if EPA were to take the view that the D.C. Circuit Court's January 4, 2013 decision requires that, in the context of pending redesignations, subpart 4 requirements were due and in effect at the time the State submitted its redesignation request, EPA proposes to determine that the Parkersburg-Marietta Area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Parkersburg-Marietta Area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Parkersburg-Marietta Area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM<sub>10</sub><sup>3</sup> nonattainment areas, and under the D.C. Circuit Court's January 4, 2013 decision in *NRDC v. EPA*, these same statutory requirements also apply for PM<sub>2.5</sub> nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory

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<sup>3</sup> PM<sub>10</sub> refers to particulates nominally 10 micrometers in diameter or smaller.



requirements for SIPs for nonattainment areas. *See*, “State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990,” (57 FR 13498, April 16, 1992) (the “General Preamble”). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent “subsumed by, or integrally related to, the more specific PM<sub>10</sub> requirements.” (57 FR 13538, April 16, 1992). EPA’s December 11, 2012 NPR for this redesignation action addressed how the Parkersburg-Marietta Area meets the requirements for redesignation under subpart 1. These subpart 1 requirements include, among other things, provisions for attainment demonstrations, reasonably available control measures (RACM), reasonable further progress (RFP), emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, EPA is considering the Parkersburg-Marietta Area to be a “moderate” PM<sub>2.5</sub> nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as “moderate” nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a “serious” nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM

(section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM<sub>10</sub>, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.<sup>4</sup> In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A 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.” *See also* rulemakings for Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834-31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,<sup>5</sup> when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the PM<sub>2.5</sub> standard is viewed as having satisfied the attainment planning requirements for these

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<sup>4</sup> The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

<sup>5</sup> I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that: “The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.” *See* General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that: “[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.” *Id.* EPA similarly stated in its 1992 Calcagni memorandum that, “The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.”

It is evident that even if we were to consider the D.C. Circuit Court’s January 4, 2013 decision in *NRDC v. EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively<sup>6</sup> and thus are now past due, those requirements do not apply to an area that is attaining the 1997 PM<sub>2.5</sub> standard, for the purpose of evaluating a pending request to

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<sup>6</sup> As EPA has explained above, we do not believe that the D.C. Circuit Court’s January 4, 2013 decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club v. Whitman, supra.*

redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) of the CAA since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret "applicable requirements" in the redesignation context. *See Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior "Clean Data Policy" rulemakings for the PM<sub>10</sub> NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* "Determination of Attainment for Coso Junction Nonattainment Area," (75 FR 27944, May 19, 2010). *See also* Coso Junction proposed PM<sub>10</sub> redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47, October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

In its December 11, 2012 NPR for this action, EPA proposed to determine that the Parkersburg-Marietta Area has attained the 1997 PM<sub>2.5</sub> NAAQS and therefore meets the attainment-related plan requirements of subpart 1. Under its longstanding interpretation, EPA is proposing to determine here that the Area also meets the attainment-related plan requirements of subpart 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under sections 172(c)(1) and 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency requirements under section 172(c)(9) of the CAA are satisfied for purposes of evaluating the redesignation request.

#### **c. Subpart 4 and Control of PM<sub>2.5</sub> Precursors**

The D.C. Circuit Court in *NRDC v. EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the D.C. Circuit Court's opinion with respect to PM<sub>2.5</sub> precursors. While past implementation of subpart 4 for PM<sub>10</sub> has allowed for control of PM<sub>10</sub> precursors such as NO<sub>x</sub> from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, section 189(e) of the CAA specifically provides that control requirements for major stationary sources of direct PM<sub>10</sub> shall also apply to PM<sub>10</sub> precursors from those sources, except where EPA determines that major stationary sources of such precursors "do not contribute significantly to PM<sub>10</sub> levels which exceed the standard in the area."

EPA's 1997 PM<sub>2.5</sub> Implementation Rule, remanded by the D.C. Circuit Court, contained rebuttable presumptions concerning certain PM<sub>2.5</sub> precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was "not required to address VOC [and NH<sub>3</sub>] as . . . PM<sub>2.5</sub> attainment plan precursor[s] and to evaluate sources of VOC [and NH<sub>3</sub>] emissions in the State for control measures." EPA intended these to be rebuttable presumptions. EPA established these

presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing PM<sub>2.5</sub> concentrations. EPA also left open the possibility for such regulation of NH<sub>3</sub> and VOC in specific areas where that was necessary.

The D.C. Circuit Court in its January 4, 2013 decision made reference to both section 189(e) and 40 CFR 51.1002, and stated that, “In light of our disposition, we need not address the petitioners’ challenge to the presumptions in [40 CFR 51.1002] that NH<sub>3</sub> and VOCs are not PM<sub>2.5</sub> precursors, as subpart 4 expressly governs precursor presumptions.” *NRDC v. EPA*, at 27, n.10.

Elsewhere in the D.C. Circuit Court’s opinion, however, the Court observed: “NH<sub>3</sub> is a precursor to fine particulate matter, making it a precursor to both PM<sub>2.5</sub> and PM<sub>10</sub>. For a PM<sub>10</sub> nonattainment area governed by subpart 4, a precursor is presumptively regulated. *See* 42 U.S.C. § 7513a(e) [section 189(e)].” *Id.* at 21, n.7.

For a number of reasons, EPA believes that its proposed redesignation of the Parkersburg-Marietta Area is consistent with the D.C. Circuit Court’s decision on this aspect of subpart 4. First, while the D.C. Circuit Court, citing section 189(e), stated that “for a PM<sub>10</sub> area governed by subpart 4, a precursor is presumptively regulated,” the D.C. Circuit Court expressly declined to decide the specific challenge to EPA’s 1997 PM<sub>2.5</sub> implementation rule provisions regarding NH<sub>3</sub> and VOC as precursors. The D.C. Circuit Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular PM<sub>2.5</sub>

nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding NH<sub>3</sub> and VOC as PM<sub>2.5</sub> precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of Parkersburg-Marietta Area, EPA believes that doing so is consistent with proposing redesignation of the Area for the 1997 PM<sub>2.5</sub> standard. The Parkersburg-Marietta Area has attained the standard without any specific additional controls of NH<sub>3</sub> and VOC emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM<sub>10</sub> precursors.<sup>7</sup> Under subpart 1 and EPA's prior implementation rule, all major stationary sources of PM<sub>2.5</sub> precursors were subject to regulation, with the exception of NH<sub>3</sub> and VOC. Thus, we must address here whether additional controls of NH<sub>3</sub> and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the Parkersburg-Marietta Area for the 1997 annual PM<sub>2.5</sub> standard. As explained below, we do not believe that any additional controls of NH<sub>3</sub> and VOC are required in the context of this redesignation.

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<sup>7</sup> Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538-13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other CAA requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). *See* 57 FR 13542. EPA in this supplemental proposal proposes to determine that the West Virginia SIP has met the provisions of section 189(e) with respect to NH<sub>3</sub> and VOCs as precursors. This proposed supplemental determination is based on EPA's findings that (1) the Parkersburg-Marietta Area contains no major stationary sources of NH<sub>3</sub>, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.<sup>8</sup> In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the Parkersburg-Marietta Area, which is attaining the 1997 annual PM<sub>2.5</sub> standard, at present VOC and NH<sub>3</sub> precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 annual PM<sub>2.5</sub> standard in the Parkersburg-Marietta Area. *See* 57 FR 13539-42.

EPA notes that its 1997 PM<sub>2.5</sub> implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of PM<sub>2.5</sub> precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 PM<sub>2.5</sub> NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if EPA regards the D.C. Circuit

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<sup>8</sup> The Parkersburg-Marietta Area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology regulations (45CSR21) and various onroad and nonroad motor vehicle control programs.



Court's January 4, 2013 decision as calling for "presumptive regulation" of NH<sub>3</sub> and VOC for PM<sub>2.5</sub> under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring West Virginia to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM<sub>10</sub> contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.<sup>9</sup> Courts have upheld this approach to the requirements of subpart 4 for PM<sub>10</sub>.<sup>10</sup> EPA believes that application of this approach to PM<sub>2.5</sub> precursors under subpart 4 is reasonable. Because the Parkersburg-Marietta Area has already attained the 1997 annual PM<sub>2.5</sub> NAAQS with its current approach to regulation of PM<sub>2.5</sub> precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the D.C. Circuit Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of West Virginia's request for redesignation

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<sup>9</sup> See, e.g., "Approval and Promulgation of Implementation Plans for California – San Joaquin Valley PM<sub>10</sub> Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM<sub>10</sub> Standards," 69 FR 30006 (May 26, 2004) (approving a PM<sub>10</sub> attainment plan that impose controls on direct PM<sub>10</sub> and NO<sub>x</sub> emissions and did not impose controls on SO<sub>2</sub>, VOC, or NH<sub>3</sub> emissions).

<sup>10</sup> See, e.g., *Assoc. of Irrigated Residents v. EPA et al.*, 423 F.3d 989 (9<sup>th</sup> Cir. 2005).

of the Parkersburg-Marietta Area. In the context of a redesignation, the Area has shown that it has attained the standard. Moreover, the State has shown and EPA has proposed to determine that attainment in this Area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013 decision of the D.C. Circuit Court as precluding redesignation of the Parkersburg-Marietta Area to attainment for the 1997 PM<sub>2.5</sub> NAAQS at this time.

In summary, even if West Virginia were required to address precursors for the Parkersburg-Marietta Area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded PM<sub>2.5</sub> implementation rule, EPA would still conclude that the Area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) and (v) of the CAA.

#### **d. Maintenance Plan and Evaluation of Precursors**

With regard to the redesignation of West Virginia, in evaluating the effect of the D.C. Circuit Court's remand of EPA's implementation rule, which included presumptions against consideration of NH<sub>3</sub> and VOC as PM<sub>2.5</sub> precursors, EPA in this supplemental proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv) of the CAA. To begin with, EPA notes that the Parkersburg-Marietta Area has attained the 1997 annual PM<sub>2.5</sub> standard and that the State has shown that attainment of that standard is due to permanent and enforceable emission reductions.

In the December 11, 2012 NPR, EPA proposed to determine that the State's maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 1997 annual PM<sub>2.5</sub> standard in the Parkersburg-Marietta Area. EPA therefore, believes that the only additional consideration related to the maintenance plan requirements that results from the D.C. Circuit Court's January 4, 2013 decision, is that of assessing the potential role of NH<sub>3</sub> and VOCs in demonstrating continued maintenance in this Area. As explained below, based upon documentation provided by the State and supporting information, EPA believes that the maintenance plan for the Parkersburg-Marietta Area need not include any additional emission reductions of NH<sub>3</sub> or VOCs in order to provide for continued maintenance of the standard.

First, as noted above in EPA's discussion of section 189(e), VOC emission levels in this Area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total NH<sub>3</sub> emissions throughout the Parkersburg-Marietta Area are very low, estimated to be less than 2,000 tons per year. *See* Table 2 below. This amount of NH<sub>3</sub> emissions appears especially small in comparison to the total amounts of SO<sub>2</sub>, NO<sub>x</sub>, and even direct PM<sub>2.5</sub> emissions from sources in the Area. Third, as described below, available information shows that no precursor, including NH<sub>3</sub> and VOCs, is expected to increase over the maintenance period so as to interfere with or undermine the State's maintenance demonstration.

West Virginia's maintenance plan shows that emissions of direct PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> are projected to decrease by 130 tons per year (tpy), 111,095 tpy, and 22,456 tpy, respectively, over the maintenance period. *See* Table 1 below. In addition, emissions inventories used in the

regulatory impact analysis (RIA) for the 2012 PM<sub>2.5</sub> NAAQS show that VOC emissions are projected to decrease by 2,424 tpy between 2007 and 2020. NH<sub>3</sub> emissions are projected to increase by 130 tpy between 2007 and 2020. *See* Table 2 below. Given that the Parkersburg-Marietta Area is already attaining the 1997 annual PM<sub>2.5</sub> NAAQS even with the current level of emissions from sources in the Area, the downward trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that the State is addressing for purposes of the 1997 annual PM<sub>2.5</sub> NAAQS indicate that the Area should continue to attain the NAAQS following the precursor control strategy that the State has already elected to pursue. Even if NH<sub>3</sub> and VOC emissions were to increase unexpectedly between 2015 and 2022, the overall emissions reductions projected in direct PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential PM<sub>2.5</sub> precursors will not increase to the extent that they will cause monitored PM<sub>2.5</sub> levels to violate the 1997 PM<sub>2.5</sub> standard during the maintenance period.

**Table 1. Comparison of 2008, 2015, 2022 SO<sub>2</sub>, NO<sub>x</sub>, and Direct PM<sub>2.5</sub> Emission Totals in tons per year (tpy) for the Parkersburg-Marietta Nonattainment Area**

	SO <sub>2</sub>	NO <sub>x</sub>	PM <sub>2.5</sub>
2008	159,535	35,412	3,686
2015	77,294	18,509	3,648
2022	48,439	12,985	3,557
<b>Decrease from 2008 to 2022</b>	<b>111,095</b>	<b>22,426</b>	<b>130</b>

**Table 2. Comparison of 2007 and 2020 VOC and Ammonia Emission Totals by Source Sector (tpy) for the Parkersburg-Marietta Nonattainment Area<sup>11</sup>**

Sector	VOC			NH <sub>3</sub>		
	2007	2020	Net Change 2007-2020	2007	2020	Net Change 2007-2020
<b>Point</b>	1,526	1,529	3	601	759	158
<b>Area</b>	2,180	2,157	-23	774	793	19
<b>Nonroad</b>	1,452	763	-689	2	2	0
<b>On-road</b>	2,471	755	-1,716	89	42	-47
<b>Fires</b>	257	257	0	18	18	0
<b>Total</b>	<b>7,885</b>	<b>5,461</b>	<b>-2,424</b>	<b>1,484</b>	<b>1,614</b>	<b>130</b>

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The current air quality design value for the Area is 12.3 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) (based on 2009-2011 air quality data), which is well below the 1997 annual  $\text{PM}_{2.5}$  NAAQS of 15  $\mu\text{g}/\text{m}^3$ . Moreover, the modeling analysis conducted for the RIA for the 2012  $\text{PM}_{2.5}$  indicates that the design value for this Area is expected to continue to decline through 2020. In the RIA analysis, the 2020 modeled design value for the Parkersburg-Marietta Area is 9.2  $\mu\text{g}/\text{m}^3$ . Given that precursor emissions are projected to decrease through 2020, it is reasonable to conclude that monitored  $\text{PM}_{2.5}$  levels in this Area will also continue to decrease in 2020.

Thus, EPA believes that there is ample justification to conclude that the Parkersburg-Marietta Area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to  $\text{PM}_{2.5}$ . After consideration of the D.C. Circuit Court's January 4, 2013 decision, and for the reasons set forth in this supplemental notice, EPA continues to propose

<sup>11</sup> These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012  $\text{PM}_{2.5}$  NAAQS.  $\text{NH}_3$  increases are due to some (~5%) increase in fertilizer application, but mostly from electric generating unit (EGU), and with huge  $\text{SO}_2$  (point) reductions (213,738 in 2007 and 16,881 in 2020) would offset any increases.

approval of West Virginia's maintenance plan and its request to redesignate the Parkersburg-Marietta Area to attainment for the 1997 annual PM<sub>2.5</sub> standard.

### **III. Proposed Action**

After fully considering the D.C. Circuit Court's decisions in *EME Homer City* on EPA's CSAPR rule and *NRDC v. EPA* on EPA's 1997 PM<sub>2.5</sub> Implementation rule, EPA in this supplemental notice is proposing to proceed with approval of the request to redesignate the Parkesburg-Marietta Area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS, the associated maintenance plan, and the insignificance determination for onroad motor vehicle contribution of PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>2</sub>. EPA is seeking comment only on the issues raised in its supplemental proposal, and is not reopening comment on other issues addressed in its prior proposal.

### **IV. 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 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule pertaining to the redesignation of the West Virginia portion of the Parkersburg-Marietta WV-OH 1997 annual PM<sub>2.5</sub> nonattainment area, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

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

**List of Subject in 40 CFR Part 81**

Air pollution control, National parks, Wilderness Areas.

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

Dated: June 13, 2013

W. C. Early, Acting  
Regional Administrator,  
Region III.

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