6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2018-0215; FRL-9981-75-Region 3]

Air Plan Approval; District of Columbia, Maryland, and Virginia; Maryland and Virginia Redesignation Requests and District of Columbia, Maryland, and Virginia Maintenance Plan for the Washington, DC-MD-VA 2008 Ozone Standard Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the requests from the State of Maryland (Maryland) and the Commonwealth of Virginia (Virginia) to redesignate to attainment their respective portions of the Washington, DC-MD-VA nonattainment area (hereafter "the Washington Area" or "the Area") for the 2008 8-hour ozone national ambient air quality standard (NAAQS or standard) (also referred to as the 2008 ozone NAAQS). EPA is not proposing to approve the redesignation request for the District of Columbia (the District) for its portion of the Area; EPA will address the District's redesignation request for its portion of the Area in a separate rulemaking action. EPA is also proposing to approve, as a revision to the District's, Maryland's, and Virginia's state implementation plans (SIPs), the joint maintenance plan submitted by the District, Maryland, and Virginia. The joint maintenance plan demonstrates maintenance of the 2008 ozone NAAQS through 2030 in the Washington Area. Approval of a maintenance plan is among the CAA criteria for redesignation to attainment, as discussed in more detail in this notice. The Washington Area maintenance plan includes motor vehicle emissions budgets (MVEBs) for the 2008 ozone NAAQS for nitrogen oxides (NO_x) and volatile organic compounds (VOCs), which are precursors to ozone. EPA has found the MVEBs adequate and is proposing to approve, as a SIP revision, these 2014, 2025, and

2030 NO_x and VOC MVEBs for the Washington Area.

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2018-0215 at https://www.regulations.gov, or via email to spielberger.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit https://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, (215) 814-2043, or by e-mail at calcinore.sara@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Are the Actions EPA Is Proposing?

I. What are the actions EPA is proposing?

On March 12, 2018, January 29, 2018, and January 3, 2018, the District, Maryland, and Virginia, respectively, formally submitted a request to redesignate their portions of the Washington Area

from marginal nonattainment to attainment for the 2008 ozone NAAQS. Concurrently, the District, Maryland, and Virginia formally submitted, as a revision to their respective SIPs, a joint maintenance plan for the Washington Area to ensure continued attainment for at least 10 years following redesignation. The maintenance plan includes MVEBs for NO_x and VOC for the years 2014, 2025, and 2030. Pursuant to CAA section 107(d)(3), in this rulemaking action, EPA is proposing to approve the redesignation requests submitted by Maryland and Virginia for their portions of the Washington Area. EPA is not proposing to approve (at this time) the redesignation request from the District and will act on the District's redesignation request for its portion of the Area in a separate action. EPA is also proposing to approve, as revisions to the District's, Maryland's, and Virginia's SIPs, the joint maintenance plan submitted by the District, Maryland, and Virginia.

EPA is proposing to take several related actions. EPA is proposing to determine that Maryland and Virginia have met the requirements for redesignation for their respective portions of the Washington Area pursuant to section 107(d)(3)(E) of the CAA. EPA is therefore proposing to approve Maryland's and Virginia's redesignation requests and change the designation of their respective portions of the Washington Area from marginal nonattainment to attainment for the 2008 ozone NAAQS. EPA is also proposing to approve, as revisions to the District's, Maryland's, and Virginia's SIPs, the joint Washington Area maintenance plan that was prepared by the Metropolitan Washington Council of Governments (MWCOG) and jointly submitted by the District, Maryland, and Virginia. The maintenance plan is designed to ensure continued attainment in the Washington Area for the next ten years. Additionally, EPA has found the submitted MVEBs adequate and is proposing to approve, as revisions to the District's, Maryland's, and Virginia's SIPs, the 2014, 2025, and 2030 MVEBs for NO_x and VOC for the

Washington Area that are identified in the Washington Area maintenance plan. The adequacy comment period for the MVEBs began on May 21, 2018, with EPA's posting of the availability of the District's, Maryland's, and Virginia's maintenance plan submittal on EPA's Adequacy Website (at https://www.epa.gov/state-and-local-transportation). The adequacy comment period for these MVEBs ended on June 20, 2018. EPA did not receive any adverse comments on this submittal during the adequacy comment period. In letters dated July 24, 2018, EPA informed the District, Maryland, and Virginia that the 2014, 2025, and 2030 MVEBs are adequate for use in transportation conformity analyses.[1] Please see section V.B., "What Is the Status of EPA's Adequacy Determination for the Proposed NO_x and VOC MVEBs for the Washington Area?", of this rulemaking for further explanation of this process.

II. What Is the Background for These Proposed Actions?

Under the CAA, EPA establishes NAAQS for criteria pollutants in order to protect human health and the environment. In response to scientific evidence linking ozone exposure to adverse health effects, EPA promulgated the first ozone NAAQS, the 0.12 part per million (ppm) 1-hour ozone NAAQS, in 1979. *See* 44 FR 8202 (February 8, 1979). The CAA requires EPA to review and reevaluate the NAAQS every 5 years in order to consider updated information regarding the effects of the criteria pollutants on human health and the environment. On July 18, 1997, EPA promulgated a revised ozone NAAQS, referred to as the 1997 ozone NAAQS, of 0.08 ppm averaged over eight hours. 62 FR 38855. This 8-hour ozone NAAQS was determined to be more protective of public health than the previous 1979 1-hour ozone NAAQS. In 2008, EPA strengthened the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. The 0.075 ppm standard is

[1] EPA originally informed the District, Maryland, and Virginia that the 2014, 2025, and 2030 MVEBs were adequate for use in transportation conformity analyses in letters dated July 18, 2018. EPA revised language in these letters and sent the revised letters to the District, Maryland, and Virginia on July 24, 2018. The original and revised letters are available online at https://www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0215.

referred to as the 2008 ozone NAAQS. *See* 73 FR 16436 (March 27, 2008).

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS based on the most recent three years of quality-assured ozone monitoring data. On May 21, 2012 and June 11, 2012, EPA designated nonattainment areas for the 2008 ozone NAAQS. 77 FR 30088 and 77 FR 34221. Effective July 20, 2012, the Washington Area was designated as marginal nonattainment for the 2008 ozone NAAQS. The Washington Area consists of the Counties of Calvert, Charles, Frederick, Montgomery, and Prince George's in Maryland, the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park Cities in Virginia, and the District of Columbia. *See* 40 CFR 81.309, 81.321, and 81.347.

As stated previously, on March 12, 2018, January 29, 2018, and January 3, 2018, the District, Maryland, and Virginia, respectively, formally submitted requests to redesignate their respective portions of the Washington Area from marginal nonattainment to attainment for the 2008 ozone NAAQS. The District, Maryland, and Virginia concurrently submitted, as revisions to their SIPs, a maintenance plan for the Washington Area to ensure continued attainment for at least 10 years following redesignation. In this rulemaking action, EPA is proposing to approve the redesignation requests submitted by Maryland and Virginia for their respective portions of the Area. EPA is not proposing to approve the redesignation request for the District for its portion and will act on the redesignation request for the District in a separate action. EPA is also proposing to approve, as revisions to the District's, Maryland's, and Virginia's SIPs, the maintenance plan jointly submitted by the District, Maryland, and Virginia.

III. What Are the Criteria for Redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the State containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

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

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;

2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1,

1992;

4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the "Calcagni memorandum");

5. "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;

6. "Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

7. "State Implementation Plan (SIP) requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 (the "Shapiro memorandum");

8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

9. "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,"

Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What Is EPA's Analysis of Maryland's and Virginia's Redesignation Requests for the Washington Area?

A. *Has the Washington Area Attained the 2008 Ozone NAAQS?*

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS. *See* CAA section 107(d)(3)(E)(i). An area is attaining the 2008 ozone NAAQS if it meets the 2008 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations, referred to as ozone design values, at each monitor must not exceed 0.075 ppm.[2] The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90 percent of the days within the ozone monitoring season,[3] on average, for the three-year period, with a minimum data completeness of 75 percent during the ozone monitoring season of any year during the three-year period. *See* section 2.3 of appendix P to 40 CFR part 50.

As part of the final rule, "Implementation of the 2008 National Ambient Air Quality Standards

[2] The rounding convention under 40 CFR part 50, appendix P dictates that concentrations shall be reported in ppm to the third decimal place, with additional digits to the right of the third decimal place truncated. Thus, a computed three-year average ozone concentration of 0.0759 ppm or lower would meet the standard, but 0.0760 ppm or higher would be over the standard.

[3] The ozone season is defined by state in 40 CFR 58 appendix D. For the 2013-2015 time period, the ozone season was April-October for the states in the Area. Beginning in 2016, the ozone season is March-October for the states in the Washington Area. *See* 80 FR 65292, 65466-67 (October 26, 2015).

for Ozone: State Implementation Plan (SIP) Requirements," for the 2008 ozone NAAQS (80 FR 12264, March 6, 2015) (hereinafter, SIP Requirements Rule), EPA modified the maximum attainment dates for all nonattainment areas for the 2008 ozone NAAQS to be consistent with the United States Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) decision in *NRDC* v. *EPA*, 777 F .3d 456, 464-69 (D.C. Cir. 2014).[4] The SIP Requirements Rule established a maximum deadline for marginal nonattainment areas to attain the 2008 ozone NAAQS of three years from the effective date of designation, or July 20, 2015. *See* 80 FR at 12268; 40 CFR 51.1103.[5]

In a final rulemaking action published on May 4, 2016, EPA determined that the Washington Area did not attain the 2008 ozone NAAQS by its July 20, 2015 attainment date, based on ambient air quality monitoring data for the 2012-2014 monitoring period. In that same action, EPA determined that the Washington Area qualified for a 1-year extension of its attainment date, as provided in section 181(a)(5) of the CAA and interpreted by regulation at 40 CFR 51.1107.

[4] In a final rule published on May 21, 2012 and effective July 20, 2012, EPA established the air quality thresholds that define the classification assigned to all nonattainment areas for the 2008 ozone NAAQS (the Classifications Rule). *See* 77 FR 30160. This rulemaking also established December 31 of each relevant calendar year as the attainment date for all nonattainment area classification categories. Section 181 of the CAA provides that the attainment deadline for ozone nonattainment area is "as expeditiously as practicable" but no later than the prescribed dates that are provided in Table 1 of that section. In the Classifications Rule, EPA translated the deadlines in Table 1 of CAA section 181 for purposes of the 2008 standard by measuring those deadlines from the effective date of the new designations, but extended those deadlines by several months to December 31 of the corresponding calendar year. Pursuant to a challenge of EPA's interpretation of the attainment deadlines, on December 23, 2014, the D.C. Circuit issued a decision rejecting, among other things, the Classifications Rule's attainment deadlines for the 2008 ozone nonattainment areas, finding that EPA did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. *NRDC* v. *EPA, 777* F .3d 456, 464-69 (D.C. Cir. 2014).

[5] On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir. Court) issued an opinion on the SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist. v. EPA*, No. 15-1115 (D.C. Cir. Feb. 16, 2018). The D.C. Cir. Court found certain provisions from the SIP Requirements Rule unreasonable including EPA's provision for a "redesignation substitute." The D. C. Cir. Court vacated these provisions and found redesignations must comply with all required elements in CAA section 107(d)(3) and thus found the "redesignation substitute" which did not require all items in CAA section 107(d)(3)(E) violated the CAA and was thus unreasonable. The D.C. Cir. Court also vacated other provisions relating to anti-backsliding in the SIP Requirements Rule as the Court found them unreasonable. *Id.* The D.C. Circuit found other parts of the 2008 Ozone SIP Requirements Rule unrelated to anti-backsliding and this action reasonable and denied the petition for appeal on those. *Id.*

With that final rulemaking action, the new attainment date for the Washington Area was July 20, 2016. *See* 81 FR 26697 (May 4, 2016).

On November 14, 2017 (82 FR 52651), in accordance with section 181(b)(2)(A) of the CAA and Provisions for Implementation of the 2008 Ozone NAAQS (40 CFR part 51, subpart AA), EPA made a determination that the Washington Area attained the 2008 ozone NAAQS by the July 20, 2016 attainment date. EPA's determination was based upon three years of complete, certified, and quality-assured data for the 2013-2015 monitoring period.

In addition, EPA has reviewed the most recent ambient air quality monitoring data for ozone in the Area, including preliminary 2017 design values, as submitted by the District, Maryland, and Virginia and recorded in EPA's AQS. The quality-assured, quality-controlled, and state-certified 2014 to 2016 ozone air quality data shows that the Washington Area continues to attain the 2008 ozone NAAQS. This data, as well as the preliminary design values for 2017, are summarized in Table 1 and are also included in the docket for this rulemaking available online at http://www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0215.

Table 1. Washington Area 2014-2016 and Preliminary 2015-2017 Ozone Design Values

AQS Site ID	Site Description	Jurisdiction	Annual 4th Highest Reading (ppm)				2014-2016 Design Value (ppm)	2015-2017 Design Value (ppm) [6]
			2014	2015	2016	2017		
11-001-0041[7]	420 34th Street N.E., Washington,	District of Columbia	-	-	0.065	0.056	0.056	0.060

[6] As noted previously, the 2017 design values are preliminary.

[7] The 2014 and 2015 data at monitoring site 11-001-0041 (also referred to as "the River Terrace monitor") is incomplete. Therefore, the 2016 and 2017 design values are invalid. The River Terrace monitor was temporarily shut down in March 2014 due to renovations at the monitoring site. The River Terrace monitor was reinstated in 2016, and began operation in May 2016. The temporary shutdown of the River Terrace monitor is discussed in more detail in the TSD for this rulemaking action available online at https://www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0215.

	DC 20019							
11-001-0043	2500 1st Street, N.W. Washington, DC	District of Columbia	0.068	0.072	0.072	0.071	0.070	0.071
11-001-0050	300 Van Buren Street, N.W. Washington, DC 20012	District of Columbia	0.069	0.72	0.071	0.067	0.070	0.070
24-009-0011	350 Stafford Road	Maryland	0.070	0.067	0.070	0.066	0.069	0.067
24-017-0010	14320 Oaks Road	Maryland	0.070	0.068	0.073	0.068	0.070	0.069
24-021-0037	Frederick County Airport	Maryland	0.063	0.070	0.070	0.067	0.067	0.069
24-031-3001	Lathrop E. Smith Environmental Education Center	Maryland	0.064	0.072	0.068	0.065	0.068	0.068
24-033-0030	Howard University's Beltsville Laboratory	Maryland	0.065	0.072	0.070	0.069	0.069	0.070
24-033-8003	PG County Equestrian Center	Maryland	0.069	0.069	0.073	0.072	0.070	0.071
24-033-9991	Powder Mill Rd Laurel, MD 20708	Maryland	0.069	0.067	0.070	0.070	0.068	0.069
51-013-0020	S 18th and Hayes St.	Virginia	0.071	0.073	0.072	0.070	0.072	0.071
51-059-0030	STA. 46-B9, Lee Park, Telegraph Road	Virginia	0.065	0.072	0.073	0.068	0.070	0.071
51-107-1005	38-I, Broad Run High School, Ashburn	Virginia	0.063	0.071	0.068	0.066	0.067	0.068
51-153-0009	James S. Long Park	Virginia	0.062	0.067	0.067	0.065	0.065	0.066

The Washington Area's most recent monitoring data supports EPA's previous determination that the Area has attained, and continues to attain, the 2008 ozone NAAQS. In addition, as discussed subsequently with respect to the maintenance plan for the Washington Area, Maryland and Virginia have committed to continue monitoring ambient ozone concentrations in accordance with 40 CFR part 58. Therefore, EPA is proposing to determine that the Washington Area continues to attain the 2008 8-hour ozone NAAQS, which is required by CAA section 107(d)(3)(E)(i) for redesignation of a nonattainment area to attainment.

B. *Have Maryland and Virginia Met All Applicable Requirements of Section 110 and Part D of the CAA for the Washington Area and Does the Washington Area Have a Fully Approved SIP Under Section 110(k) of the CAA?*

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

The September 4, 1992 Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality

Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. *See also* Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465-12466, (March 7, 1995) (redesignation of Detroit-Ann Arbor).[8] 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. *Sierra Club* v. *EPA*, 375 F .3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

1. Maryland and Virginia Have Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Washington Area for Purposes of Redesignation

a. Section 110 General Requirements for SIPs

Section 110(a)(2) of Title I of the CAA contains the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following: (1) Submit a SIP that has been adopted by the state after reasonable public notice and hearing; (2) include enforceable emission limitations and other control measures, means, or techniques necessary to meet the requirements of the CAA; (3) provide for establishment and operation of

[8] The Calcagni memorandum and Shapiro memorandum are included in the docket for this rulemaking available online at http://www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0215.

appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (4) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (5) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (6) include provisions for stationary source emission control measures, monitoring, and reporting; (7) include provisions for air quality modeling; and, (8) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants, in accordance with the NO_x SIP Call,[9] amendments to the NO_x SIP Call, May 14, 1999 (64 FR 26298), and March 2, 2000 (65 FR 11222), and the Cross-State Air Pollution Rule (CSAPR) Update, October 26, 2016 (81 FR 74504). However, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with an area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of

[9] On October 27, 1998 (63 FR 57356), EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone" –commonly called the NO_x SIP Call. The NO_x SIP call requires the District of Columbia and 22 states to reduce emissions of NO_x in order to reduce the transport of ozone and ozone precursors. EPA developed the NO_x Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO_x SIP Call. The NO_x Budget Trading Program allowed electric generating units (EGUs) greater than 25 megawatts and industrial non-electric generating units, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr), referred to as "large non-EGUs", to participate in a regional NO_x cap and trade program. The NO_x SIP call also established reduction requirements for other non-EGUs, including cement kilns and stationary internal combustion (IC) engines.

the designation (or redesignation) of any one particular area within the state. Thus, these requirements are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), and 68 FR 25418, 25426-25427 (May 13, 2003).

Similarly, other section 110 elements that are neither connected with attainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. An area that is redesignated from nonattainment to attainment will remain subject to these statewide requirements after the area is redesignated to attainment of the 2008 ozone NAAQS. The section 110(a)(2) requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. The 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 (*e.g.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport region (OTR) requirements. *See, e.g.*, Reading, Pennsylvania, proposed and final rulemakings for redesignation, 61 FR 53174-53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking for redesignation, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking for redesignation, 60 FR 62748 (December 7, 1995). For further information and analysis, see the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

EPA has reviewed Maryland's and Virginia's SIPs and concludes that they meet the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for

purposes of redesignation. On November 17, 2014 (79 FR 62010) and March 27, 2014 (79 FR 17043), EPA approved elements of the SIPs submitted by Maryland and Virginia, respectively, which, with the exception of interstate transport, meet the requirements of CAA section 110(a)(2), for the 2008 ozone NAAQS. As explained previously, the general requirements of section 110(a)(2) are statewide requirements that are not linked to the 2008 8-hour ozone nonattainment status of the Washington Area and are therefore not "applicable requirements" for purpose of the review of Maryland's and Virginia's 2008 ozone NAAQS redesignation requests. Because Maryland's and Virginia's SIPs satisfy all of the general SIP elements and requirements set forth in CAA section 110(a)(2) applicable to and necessary for redesignation, EPA concludes that Maryland and Virginia have satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the CAA.

b. Part D Requirements

Areas designated nonattainment for the ozone NAAQS are subject to the applicable nonattainment area and ozone-specific planning requirements of part D of the CAA. Sections 172-176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements for all nonattainment areas. Section 172(c), under part D of the CAA, sets forth the basic requirements of air quality plans for states with nonattainment areas for all pollutants that are required to submit plans pursuant to section 172(b). Section 182 of the CAA, found in subpart 2 of part D, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.[10] The Washington Area was classified as marginal under subpart 2 of part D of the CAA for the 2008 ozone NAAQS. As such, the Area is subject to the

[10] Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's "design value," which represents air quality in the area for the most recent 3 years). The possible classifications for ozone nonattainment areas are Marginal, Moderate, Serious, Severe, and Extreme. *See* CAA section 181(a)(1).

subpart 1 requirements contained in CAA sections 172(c) and 176. The Area is also subject to the subpart 2 requirements contained in CAA section 182(a) (marginal nonattainment area requirements), which include, but are not limited to, submitting a baseline emissions inventory, adopting a SIP requiring emissions statements from stationary sources, and implementing a nonattainment NSR (NNSR) program for the relevant ozone standard. A thorough discussion of the requirements contained in CAA sections 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

Additionally, states located in the OTR, which includes Maryland and portions of Virginia,[11] are also subject to the requirements of CAA section 184. All areas located in the OTR, both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include reasonably available control technology (RACT), NSR, enhanced vehicle inspection and maintenance (I/M), and Stage II vapor recovery or a comparable measure relating to gasoline dispensing facilities.

EPA has interpreted the section 184 OTR requirements, including the NSR program, as not being applicable for purposes of redesignation. The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR even after redesignation to attainment. Therefore, states remain obligated to have NSR, as well as RACT, and I/M programs, even after redesignation. Second, the section

[11] The OTR is comprised of the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and the Consolidated Metropolitan Statistical Area, which includes the District of Columbia and portions of Virginia. The areas designated as in the Virginia portion of the OTR are as follows: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City. *See*, e.g. "Approval and Promulgation of Air Quality Implementation Plans; Virginia; NSR in the Ozone Transport Region", 71 FR 39570 (July 13, 2006) and 71 FR 890 (January 6, 2006).

184 control measures are region-wide requirements and do not apply to the area by virtue of the area's designation and classification, and thus are properly considered not relevant to an action changing an area's designation. *See* 61 FR 53174, 53175-53176 (October 10, 1996) and 62 FR 24826, 24830-24832 (May 7, 1997).

i. CAA Section 172 Requirements

As provided in CAA part D, subpart 2, for marginal ozone nonattainment areas such as the Washington Area, the ozone specific requirements of section 182(a) supersede (where overlapping) the attainment planning requirements that would otherwise apply under section 172(c), including the attainment demonstration and reasonably available control measures (RACM) under section 172(c)(1), reasonable further progress (RFP) under section 172(c)(2), and contingency measures under section 172(c)(9). 42 U.S.C. 7511a(a).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. This requirement is superseded by the inventory requirement in section 182(a)(1) discussed later in this notice.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area (NNSR). As explained previously, the Washington Area is included in the OTR established by Congress in section 184 of the CAA. Therefore, sources located in Maryland and the portions of Virginia included in the OTR will remain subject to the part D NNSR requirements even after the Washington Area is redesignated to attainment. Since the part D NNSR requirements apply to the Washington Area regardless of its attainment status, they

are not considered to be relevant for purposes of redesignation. Regardless, Maryland and Virginia both have an approved NNSR program. *See* 82 FR 45475 (September 29, 2017) and 64 FR 51047 (September 21, 1999).

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

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted previously, Maryland's and Virginia's SIPs meet the applicable requirements of section 110(a)(2) for purposes of redesignation.

ii. CAA Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects 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 that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements[12] as not applicable for purposes of evaluating a

[12] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of Motor Vehicle Emission Budgets (MVEBs), such as control strategy SIPs and maintenance plans.

redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state conformity rules have not been approved. *See Wall* v. *EPA*, 265 F .3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).

iii. Section 182 Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of NO_x and VOC emitted within the boundaries of the ozone nonattainment area. On July 17, 2014, the District and Virginia submitted a joint 2011 base year emissions inventory addressing NO_x and VOC emissions, as well as carbon monoxide (CO) emissions, for the Washington Area. On August 4, 2014, Maryland submitted its 2011 base year emissions inventory for the Washington Area, which also addressed NO_x, VOC, and CO. EPA approved the District's, Maryland's, and Virginia's base year emissions inventories for NO_x and VOC for the 2008 ozone NAAQS on May 13, 2015 (80 FR 27255). On July 23, 2015 (80 FR 43625), EPA approved the District's, Maryland's, and Virginia's base year emission inventories for CO.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing RACT rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. EPA approved Maryland's and Virginia's SIP revisions satisfying the section 182(a)(2) RACT "fix-up" requirement on March 31, 1994 (59 FR 15117) and November 29, 1994 (59 FR 60908).

Section 182(c)(3) of the CAA requires areas classified as serious and above to adopt and

implement an enhanced I/M program. The Washington Area was classified as severe for the 1979 1-hour ozone NAAQS, and therefore enhanced I/M was required. In addition, section 184(b)(1)(a) of the CAA requires areas located in the OTR that are a metropolitan statistical area, or part thereof, with a population of 100,000 or more to meet the enhanced I/M program requirements of CAA section 182(c)(3). EPA approved Maryland's enhanced I/M program into Maryland's SIP on October 29, 1999 (64 FR 58340). EPA approved Virginia's enhanced I/M program on September 1, 1999 (64 FR 47670), as revised April 22, 2008 (73 FR 21540).

CAA section 182(a)(2)(C) and section 182(a)(4) contain source permitting and offset requirements (known as NNSR). As discussed previously, part D NNSR will continue to apply to the Washington Area, regardless of attainment status, due to the Washington Area being part of the OTR. Therefore, EPA concludes that Maryland and Virginia need not have a fully approved part D NSR program prior to approval of the redesignation request. As stated previously, however, Maryland and Virginia both have an approved NNSR program. *See* 82 FR 45475 (September 29, 2017) for Maryland and 64 FR 51047 (September 21, 1999) for Virginia. On January 29, 2018 (83 FR 3982), EPA approved Maryland's May 8, 2017 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS and certifying that Maryland's existing NNSR program covering Maryland's portion of the Washington Area is at least as stringent as the requirements at 40 CFR 51.165, as amended by the SIP Requirements Rule. On May 11, 2017, Virginia formally submitted a SIP revision to address the specific NNSR requirements for the 2008 ozone NAAQS, located in 40 CFR 51.160-165. In Virginia's SIP revision, Virginia is certifying that its existing NNSR program covering Virginia's portion of the Washington Area is at least as stringent as the requirements at 40 CFR 51.165, as amended by the SIP Requirements Rule. EPA proposed approval of Virginia's May 11, 2017 SIP revision

addressing the NNSR requirements for the 2008 ozone NAAQS on April 4, 2018 (83 FR 14386).[13]

Section 182(a)(3) requires states to submit periodic emission inventories and a revision to the SIP to require the owners or operators of stationary sources to annually submit emission statements documenting actual NO_x and VOC emissions. Maryland and Virginia submit periodic emission inventories as required by CAA section 182(a)(3). As stated above, EPA approved the District's, Maryland's, and Virginia's base year emissions inventories for NO_x and VOC for the 2008 ozone NAAQS on May 13, 2015 (80 FR 27255). With regard to stationary source emission statements, EPA approved Maryland's and Virginia's emission statement rules on October 12, 1994 (59 FR 51517) and May 2, 1995 (60 FR 21451), respectively, which satisfied the requirements of CAA section 182(a)(3)(B). Maryland's and Virginia's emission statement rules require certain sources in ozone nonattainment areas and the OTR to report annual NO_x and VOC emissions. EPA approved Maryland's and Virginia's emission statement certification SIPs (finding Maryland and Virginia had an emission statement program meeting section 182(a)(3) requirements for the 2008 ozone NAAQS) on July 16, 2018 (83 FR 32796) and June 1, 2018 (83 FR 25378), respectively.

Therefore, Maryland and Virginia have satisfied all applicable SIP requirements under section 110 and part D of title I of the CAA for purposes of redesignation of their respective portions of the Washington Area. As noted previously, EPA will act on the District's redesignation request for its portion of the Washington Area in a separate rulemaking.

2. Maryland and Virginia Have Fully Approved SIPs for Purposes of Redesignation Under

[13] While not prejudging the outcome of EPA's rulemaking on Virginia's May 11, 2017 SIP revision, EPA expects to finalize rulemaking on that NNSR SIP revision before taking final action on this redesignation action.

Section 110(k) of the CAA

At various times, Maryland and Virginia have adopted and submitted, and EPA has approved, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed previously, EPA has fully approved Maryland's and Virginia's SIPs for the Washington Area under section 110(k) for all requirements applicable for purposes of redesignation under the 2008 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (*see* the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989-990 (6th Cir. 1998); *Wall* v. *EPA*, 265 F.3d 426), plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein).

C. *Are the Air Quality Improvements in the Washington Area Due to Permanent and Enforceable Emission Reductions?*

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable emission reductions. Maryland and Virginia have demonstrated that the observed ozone air quality improvement in the Washington Area is due to permanent and enforceable reductions in NO_x and VOC emissions resulting from Maryland and Virginia measures approved as part of the SIP as well as federal measures.

In making this demonstration, Maryland and Virginia have calculated the change in emissions between 2011 and 2014. The change in emissions is shown in Table 2. Maryland and Virginia

attribute the decrease in emissions and corresponding improvement in air quality during this time period to a number of regulatory control measures that have been implemented in the Washington Area and upwind areas in recent years. Based on the information summarized in the following sections, Maryland and Virginia have adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

1. Permanent and Enforceable Emission Controls Implemented

a. Federal Emission Control Measures

A variety of federal and state control programs have contributed to reduced on-road, point source, and nonroad emissions of NO_x and VOC in the Washington Area, with additional emission reductions expected to occur in the future as older equipment and vehicles are replaced with newer, compliant models. Federal emission control measures include the following:

Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements

On February 10, 2000 (65 FR 6698), EPA promulgated Tier 2 motor vehicle emission standards and gasoline sulfur control requirements. These emission control requirements result in lower NO_x and VOC emissions from new cars and light duty trucks, including sport utility vehicles. With respect to fuels, this rule required refiners and importers of gasoline to meet lower standards for sulfur in gasoline, which were phased in between 2004 and 2006. By 2006, refiners were required to meet a 30 ppm average sulfur level, with a maximum cap of 80 ppm. This reduction in fuel sulfur content ensures the effectiveness of low emission-control technologies. The Tier 2 tailpipe standards established in this rule were phased in for new vehicles between 2004 and 2009. EPA estimated in the final rule that this program will reduce annual NO_x emissions by about 2.2 million tons per year in 2020 and 2.8 million tons per year in 2030 after the program is fully implemented and non-compliant vehicles have all been retired.

Control of Emissions from Nonroad Spark-Ignition Engines and Equipment

On October 8, 2008 (73 FR 59034), EPA finalized emission standards for new nonroad spark-ignition engines. The exhaust emission standards applied beginning in 2010 for new marine spark-ignition engines and in 2011 and 2012 for different sizes of new land-based, spark-ignition engines at or below 19 kW (i.e. small engines used primarily in lawn and garden applications). In the October 8, 2008 final rule, EPA estimated that by 2030 the rule will result in annual nationwide reductions of 604,000 tons of volatile organic hydrocarbon emissions, 132,200 tons of NO_x emissions, and 5,500 tons of directly-emitted $PM_{2.5}$ emissions. These reductions correspond to significant reductions in the formation of ground-level ozone.

Nonroad Diesel Engines Tier 1 and Tier 2

On June 17, 1994 (59 FR 31306), EPA made an affirmative determination under section 213(a)(2) of the CAA that nonroad engines are significant contributors to ambient ozone or CO levels in more than one nonattainment area. In the same notice, EPA also made a determination under CAA section 213(a)(4) that other emissions from compression-ignition (CI) nonroad engines rated at or above 37 kilowatts (kW) cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In the June 17, 1994 final rule, EPA set a first phase of emission standards (Tier 1 standards) for nonroad diesel engines rated 37 kW and above. These standards apply to nonroad, compression-ignition (i.e. diesel-powered) utility engines including, but not limited to, farm, construction, and industrial equipment, rated at or above 37 kW. On October 23, 1998 (63 FR 56968), EPA finalized a second phase of emission standards (Tier 2 standards) for nonroad diesel engines rated under 37 kW. These emission standards have resulted in a decrease in NO_x emissions from the combustion of diesel fuel used to power this equipment. The Tier 1 and Tier 2 standards for nonroad diesel engines

will continue to result in emission reductions as older equipment is replaced with newer, compliant models.

Emissions Standards for Large Spark Ignition Engines

On November 8, 2002 (67 FR 68242), EPA established emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snow mobiles; and recreational marine diesel engines. These emission standards were phased in from model year 2004 through 2012. When the emission standards are fully implemented in 2030, EPA expects a national 75 percent reduction in hydrocarbon (HC) emissions, 82 percent reduction in NO_x emissions, 61 percent reduction in CO emissions, and a 60 percent reduction in direct particulate matter (PM) emissions from these engines, equipment, and vehicles compared to projected emissions if the standards were not implemented.

Standards for Reformulated and Conventional Gasoline

On February 16, 1994 (59 FR 7716), EPA finalized regulations requiring that gasoline in certain areas be reformulated to reduce vehicle emissions of toxic and ozone-forming compounds, including NO_x and VOC. Reformulated gasoline (RFG) is required in the Washington Area. The first phase of the RFG program (Phase I) began in 1995 and the second phase (Phase II) began in 2000. These standards affect various gasoline-powered non-road mobile sources, such as lawn equipment, generators, and compressors. EPA estimates that Phase I of the RFG program resulted in a 2 percent and 17 percent annual reduction in NO_x, and VOCs, respectively, from 1995 emission levels and prevented 64,000 tons of smog-forming pollutants, including NO_x and VOC, from being emitted into the air from 1995 to 2000. Phase II of the RFG program, which began in 2000, was expected to reduce emissions of NO_x and VOC by 7 percent and 27

percent, respectively, from 1995 emission levels and reduce emissions of smog-forming pollutants by an additional 41,000 tons.[14] The RFG program continues to provide emission reductions in the Washington Area as the use of RFG results in less vehicle emissions of NO_x and VOC compared to the use of conventional gasoline.

Emission Standards for Locomotives and Locomotive Engines

On April 16, 1998 (63 FR 18978), EPA established emission standards for NO_x, HC, CO, PM, and smoke from newly manufactured and remanufactured diesel-powered locomotives and locomotive engines. These emission standards were effective in 2000 and are expected to result in a more than 60 percent reduction in NO_x emissions from locomotives by 2040 compared to 1995 baseline levels.

b. Control Measures Specific to the Washington Area

Maryland Healthy Air Act

In addition to the measures referenced previously, a reduction of emission of ozone precursors can also be attributed to the Maryland Healthy Air Act (Annotated Code of Maryland Environment Title 2 Ambient Air Quality Control Subtitle 10 Healthy Air Act Sections 2-1001 to 2-1005, with implementing regulations at COMAR 26.11.27 Emission Limitations for Power Plants). The Maryland Health Air Act (HAA) was effective on July 16, 2007 and approved by EPA on September 4, 2008 (73 FR 51599). The HAA established limits on the amount of NO_x and SO_2 emissions affected facilities in Maryland could emit and required the installation of on-site pollution controls at 15 power plants in Maryland. The first phase of the HAA occurred between 2009 and 2010 and reduced NO_x emissions from affected sources by almost 70% compared to 2002 levels. The second phase of the HAA occurred between 2012 and 2013.

[14] *See* https://www.epa.gov/gasoline-standards/reformulated-gasoline for more information on the RFG program.

Maryland estimates that the HAA will reduce NO_x emissions by approximately 75% from 2002 levels.

Closure of GenOn Potomac River LLC Facility

The decrease in emissions of ozone precursors is also attributable to the closure of the GenOn Potomac River plant located in Alexandria, Virginia. This 482-megawatt electrical generating facility consisted of five coal-fired boilers and emitted 557.7 tons of NO_x annually and 2.7 tons of NO_x per ozone season day (tpd) in 2011. The plant ceased operations and signed a mutual determination letter on December 21, 2012, agreeing to the permanent shutdown of the source and revoking all permits for the facility.[15] Therefore, this closure is permanent and federally enforceable.

2. Emission Reductions

Maryland and Virginia calculated the change in emissions between 2011 and 2014 throughout the entire Washington Area to demonstrate that air quality has improved. The change in emissions is shown in Table 2. Maryland and Virginia used the 2011 base year emissions inventory for the Washington Area as the nonattainment year inventory because 2011 was one of the three years used to designate the area nonattainment for the 2008 ozone NAAQS. EPA approved the Washington Area 2011 base year inventory as meeting the requirements of CAA section 182(a)(1) on May 13, 2015 (80 FR 27276) for NO_x and VOC emissions and July 23, 2015 (80 FR 43625) for CO emissions. As explained later in this notice, 2014 was used as the attainment year inventory.

[15] *See* Mutual Determination Letter from Virginia Department of Environmental Quality to Mr. William Lee Davis, President, GenOn Potomac River, LLC, Subject: Mutual Determination of Permanent Shutdown of the Potomac River Generating Station, December 20, 2012 included in the docket for this rulemaking available online at http://www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0215.

Table 2. 2011- 2014 Emissions Reduction for the Washington, DC-MD-VA Area

2011	2014	Δ 2011 – 2014	% Reduction from 2011
VOC Emissions (tpd)			
295.0	259.4	35.6	12.1%
NO_x Emissions (tpd)			
436.5	296.9	139.6	32.0%
CO Emissions (tpd)			
1,800.8	1,617.9	182.9	10.2%
Note: 2011 emissions data is from the 2011 base year emissions inventory for the Washington, DC-MD-VA 2008 ozone NAAQS nonattainment area that was approved by EPA on May 13, 2015 (80 FR 27276) for NO_x and VOC emissions and July 23, 2015 (80 FR 43625) for CO emissions.			

Table 2 shows that emissions of NO_x and VOC in the Washington area were reduced by 139.6 tpd and 35.6 tpd, respectively, between 2011 and 2014. As discussed previously, Maryland and Virginia identified several federal and state rules approved into Maryland's and Virginia's SIPs that resulted in the reduction of NO_x and VOC emissions from 2011 to 2014. Therefore, Maryland and Virginia have shown that the air quality improvements in the Washington Area are due to permanent and enforceable emission reductions.

D. Do the District, Maryland, and Virginia Have Fully Approvable Ozone Maintenance Plans for the Washington Area?

As one of the criteria for redesignation to attainment, section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under CAA section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that

attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.

In conjunction with their requests to redesignate their respective portions of the Washington Area to attainment for the 2008 ozone NAAQS, the District, Maryland, and Virginia submitted, as a revision to their SIPs, a plan to provide for maintenance of the 2008 ozone NAAQS through 2030, which is more than 10 years after the expected effective date of the redesignation to attainment. EPA anticipates redesignating the entire Washington Area, including the District's portion, by 2019. As discussed in this notice, EPA is proposing to find that the District's, Maryland's, and Virginia's maintenance plan for the 2008 ozone NAAQS includes the necessary components per the CAA, including CAA section 175A and EPA guidance, and is proposing to approve the maintenance plan as revisions to the District's, Maryland's, and Virginia's SIPs.

1. Attainment Inventory

The Calcagni memorandum indicates that states requesting redesignation to attainment should develop an attainment emissions inventory in order to identify the level of emissions in the area which is sufficient to attain the NAAQS. The attainment inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the

time and should include the emissions during the time period associated with monitoring data showing attainment.

For the attainment inventory, the District, Maryland, and Virginia used the year 2014, which is one of the years during the three-year period associated with the monitoring data first showing attainment of the 2008 ozone NAAQS (i.e., 2013 to 2015). As previously mentioned, on November 14, 2017, EPA determined that the Washington Area attained the 2008 ozone NAAQS by the attainment date, based on 2013 to 2015 data. *See* 82 FR 52651. The attainment year inventory is summarized in Table 3. A detailed evaluation of the methodology used to develop the attainment year inventory (and EPA's rationale to approve the attainment inventory) is provided in the Emission Inventory Technical Support Document (EI TSD), which is included in the docket for this rulemaking available online at http://www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0215.

Table 3. 2014 Attainment Inventory for the Washington Area

Source Category	**NO_x (tpd)**	**VOC (tpd)**	**CO (tpd)**
Point	64.9	7.7	23.7
Non-Point (Area)	9.6	139.3	63.5
Marine, Air, Rail (MAR)	19.2	2.4	19.6
Nonroad Model	52	47.5	762.8
On-Road Mobile	136.8	61.3	744.1
Quasi-Point	14.4	1.2	4.2
Total	296.9	259.4	1617.9

2. Have the District, Maryland, and Virginia documented maintenance of the 2008 ozone NAAQS in the Washington Area?

a. Maintenance Emission Inventory for the Washington Area

The District, Maryland, and Virginia have demonstrated maintenance of the 2008 ozone standard through 2030 by the use of emission inventories showing that future emissions of NO_x and VOC

for the Washington Area will remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099-53100 (October 19, 2001) and 68 FR 25413, 25430-25432 (May 12, 2003).

The District, Maryland, and Virginia are using emissions inventories for the years 2025 and 2030 to demonstrate maintenance in the Washington Area. EPA anticipates redesignating the entire Washington Area, including the District's portion, in 2019. 2030 is more than 10 years after the expected effective date of the redesignation to attainment, and 2025 was selected to demonstrate that emissions are not expected to increase in the interim between the attainment year and the final maintenance year.

In order to develop the 2025 and 2030 inventories, the District, Maryland, and Virginia applied growth factors to the 2014 attainment year emissions inventory (shown in Table 3). A detailed evaluation of the methodology used to develop the maintenance inventory (and EPA's rational for approving the maintenance inventory as well as the growth factors used) is provided in EPA's EI TSD, which is included in the docket for this rulemaking available online at http://www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0215.

The maintenance inventory, provided in Table 4, shows the projected emissions of NO_x, VOC, and CO in the Washington Area for 2014 (the attainment year), 2025, and 2030 and demonstrates that future emissions of NO_x, VOC, and CO will not exceed the levels of the 2014 attainment year inventory for the Washington area for a minimum of 10 years following redesignation.

Table 4. 2014 to 2030 NO_x, VOC, and CO Maintenance Emissions Inventories for the Washington Area

Source Category	NO_x (tpd)			VOC (tpd)			CO (tpd)		
	2014	**2025**	**2030**	**2014**	**2025**	**2030**	**2014**	**2025**	**2030**
Point	64.9	66.0	68.5	7.7	8.8	9.4	23.7	25.1	26.2
Non-Point (Area)	9.6	9.9	10.0	139.3	153.7	160.3	63.6	64.9	65.5
Marine-Air-Rail (M-A-R)	19.2	21.4	22.4	2.4	2.6	2.6	19.6	19.9	20.7
Nonroad Mobile	52.0	29.6	27.8	47.5	44.9	47.2	762.8	845.8	898.8
On-Road Mobile	136.8	40.7	27.4	61.3	33.2	24.1	744.1	457.1	323.7
Quasi-Point	14.4	14.4	14.4	1.2	1.2	1.2	4.2	4.2	4.2
TOTAL	296.9	182.0	170.5	259.4	244.4	244.8	1618.0	1417.0	1339.1
Δ 2014-2025	114.9			15.0			201.0		
Δ 2014-2030	126.4			14.6			278.9		

In summary, EPA finds the maintenance inventory for the Washington Area provided in Table 4 shows maintenance of the 2008 ozone NAAQS by providing emissions information and reasonable growth factors to support the demonstration that future emissions of NO_x and VOC will remain at or below 2014 emission levels (an inventory year showing attainment of NAAQS) when taking into account both future source growth and implementation of future controls. Table 4 shows that NO_x and VOC emissions are projected to decrease by 126.4 tpd and 14.6 tpd, respectively, between 2014 and 2030. EPA finds that the District, Maryland, and Virginia have demonstrated maintenance of the 2008 ozone standard in the Washington Area through 2030.

b. Control Measures for Maintenance of Air Quality in the Washington Area

The point, nonroad, and on-road emission projections for 2025 and 2030 include a variety of control strategies that will reduce emissions of NO_x and VOC in future years.

i. Point Sector Controls

COMAR 26.11.38 Control of NO_x Emissions from Coal-Fired Electric Generating Units

COMAR 26.11.38 (also referred to as the Maryland NO_x Rule) established new NO_x emission standards and additional monitoring and reporting requirements for coal-fired EGUs in Maryland. COMAR 26.11.38 was approved by EPA into the SIP on May 30, 2017 (82 FR 24546). The coal-fired EGUs included in this rule account for more than 80 percent of the State of Maryland's NO_x emissions from power plants. These new NO_x emission standards have resulted in reductions in NO_x emissions.

ii. Nonroad Emission Controls

As discussed previously, a variety of federal and state control programs have contributed to reduced on-road, point source, and nonroad emissions of NO_x and VOC in the Washington Area, with additional emission reductions expected to occur in the future. These Federal measures include the following and are discussed in more detail in section IV.C.1.b. of this rulemaking: (1) Control of Emissions from Nonroad Spark-Ignition Engines and Equipment; (2) Nonroad Diesel Engines Tier 1 and Tier 2; (3) Emissions Standards for Large Spark Ignition Engines; (4) Standards for Reformulated and Conventional Gasoline; and, (5) Emission Standards for Locomotives and Locomotive Engines.

iii. On-Road Emission Controls

Tier 3 Vehicle Emissions and Fuel Standards Program

On April 28, 2014 (79 FR 23414), EPA established more stringent vehicle emissions standards. The vehicle emissions standards will reduce both tailpipe and evaporative emissions of the ozone precursors NO_x and VOC from passenger cars, light-duty trucks, medium-duty passenger

vehicles, and some heavy-duty vehicles. These standards will result in significant reductions in ozone concentrations due to the decrease in NO_x and VOC emissions. The Tier 3 standards include new light- and heavy-duty vehicle emission standards for exhaust emissions of VOC, NO_x, and PM, as well as new evaporative emissions standards. In the final rule, EPA estimates that in 2030, when Tier 3 vehicles will make up the majority of the fleet as well as vehicle miles traveled, NO_x and VOC emissions from on-highway vehicles will be reduced by about 21 percent compared to projected emission levels if the Tier 3 standards were not implemented.

Transportation Emission Reduction Measures

The National Capital Region Transportation Planning Board (TPB)[16] utilizes many strategies to reduce emissions from mobile sources by reducing the number of vehicle trips and/or vehicle miles traveled. Such strategies include, but are not limited to, ridesharing programs, telecommuting programs, improved transit and bicycling facilities, and clean fuel vehicle programs. A summary of these measures is provided by TPB in their transportation conformity analyses. The emission reductions from these strategies were not included in the 2025 and 2030 maintenance emissions inventories.

Inspection and Maintenance (I/M) Programs

The District, Maryland, and Virginia operate enhanced I/M programs to ensure that motorists are driving vehicles that meet federal emission requirements. Owners of vehicles that do not meet requirements, based on tail pipe or On-Board Diagnostic (OBD) testing, must repair the vehicles or show that the total costs of repair are more than waiver limitations. As noted previously, EPA approved Maryland's and Virginia's enhanced I/M program into Maryland's and Virginia's SIPs on October 29, 1999 (64 FR 58340) and September 1, 1999 (64 FR 47670), as revised April 22,

[16] The National Capital Region Transportation Planning Board (TPB) is the federally designated metropolitan planning organization (MPO) for metropolitan Washington.

2008 (73 FR 21540), respectively. EPA approved the District's enhanced I/M program into the District's SIP on June 11, 1999 (64 FR 31498).

3. Continued Air Quality Monitoring

The District, Maryland, and Virginia have committed, in their joint maintenance plan for the Washington Area, to continue to operate an appropriate air quality monitoring network in accordance with 40 CFR part 58. The District, Maryland, and Virginia also committed, in their redesignation requests, to continue to monitor ozone concentrations in the Washington Area in accordance with 40 CFR part 58 and EPA-approved annual monitoring plans, to quality-assure the monitoring data in accordance with 40 CFR part 58, and to enter all data into AQS in a timely fashion.

4. Verification of Continued Attainment

The District, Maryland, and Virginia state in their maintenance plan submittal that they have the legal authority to develop, implement, and enforce regulations regarding air pollution, including the requirements of the maintenance plan for the Washington Area. The District, Maryland, and Virginia cite the regulations and statutory provisions included in Table 5 below as providing them with the authority to develop, implement, and enforce the requirements of the maintenance plan for the Washington Area.

Table 5. Measures Cited as Providing the District, Maryland, and Virginia with the Authority to Develop, Implement, and Enforce the Requirements of the Maintenance Plan for the Washington Area

State	Citation	Description
Virginia	Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia)	Authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in

		order to protect public health and welfare.
Maryland	Annotated Code of Maryland, Section 2-103	Legal authority to implement and enforce.
Maryland	Annotated Code of Maryland, Environment Article, Section 2-302(a)-(d)	Authority for MDE to set emission standards and ambient air quality standards for each air quality control area in the state
Maryland	Annotated Code of Maryland, Environment Article, Section 2-601-614	Authority for MDE to enforce the standards and impose penalties.
District of Columbia	Air Pollution Control Act of 1984, as amended (D.C. Official Code Section 8-101.05-101.06)	Provides authority to "develop a comprehensive program for the control and prevention of air pollution in the District that provides for the administration and enforcement of the requirements of [the Act] and the regulations promulgated pursuant to [the Act]."
District of Columbia	20 DCMR Sections 101, 102, and 105	Authority for inspection, order for compliance, and penalty, respectively.

In their joint maintenance plan submittal, the District, Maryland, and Virginia also referenced several regulatory elements that each state will retain in order to maintain attainment of the 2008 ozone NAAQS. These regulatory elements are summarized in Table 6.

Table 6. Regulatory Measures Cited for Continued Attainment

State	Citation	Description
District of Columbia	20 DCMR 202 and 20 DCMR 303.8	Shutdown requirements
District of Columbia	20 DCMR Chapter 2 (General and Non-Attainment Area Permits) and 20 DCMR Chapter 3 (Operating Permits and Acid Rain Programs)	Permitting requirements
District of Columbia	20 DCMR 804, 805, 899 (NO_x), 20 DCMR Chapter 10 (NO_x Emissions Budget), and	Regulatory requirements

	20 DCMR Chapter 7 (Volatile Organic Compounds)	
District of Columbia	18 DCMR Chapters 4, 6, 7, 11, 26, and 99	I/M program requirements
District of Columbia	20 DCMR Chapter 5	Emission statement requirements
Maryland	COMAR 26.11.01.05-1	Emission statement requirements
Maryland	COMAR 11.14.08	I/M program requirements
Maryland	COMAR 26.11.02 and COMAR 26.11.03	Permitting requirements
Virginia	9VAC5-20-220	Shutdown requirements
Virginia	9VAC5-80	Permits for stationary sources
Virginia	9VAC5-91	I/M program requirements for Northern Virginia
Virginia	9VAC5-20-160.B.	Emission statement requirements

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. As stated above, the District, Maryland, and Virginia have committed, in their joint maintenance plan for the Washington Area, to continue to operate an appropriate air quality monitoring network in accordance with 40 CFR part 58. The District, Maryland, and Virginia also committed, in their redesignation requests, to continue to monitor ozone concentrations in the Washington Area in accordance with 40 CFR part 58 and EPA-approved annual monitoring plans, to quality-assure the monitoring data in accordance with 40 CFR part 58, and to enter all data into AQS in a timely fashion. The District, Maryland, and Virginia state in their joint maintenance plan that they will track attainment and maintenance using ambient and source emission data.

In addition, to track the progress of the maintenance demonstration, the District, Maryland, and Virginia state in their joint maintenance plan submittal that they will periodically update the emissions inventory. The District, Maryland, and Virginia also commit to an annual evaluation

consisting of a comparison of key emissions trend indicators, such as the annual emissions update of stationary sources and the Highway Performance Monitoring System (HPMS) vehicle miles traveled data reported to the Federal Highway Administration (FHWA), to the growth assumptions used in the plan. The District, Maryland, and Virginia also commit in their maintenance plan submittal to developing and submitting to EPA "comprehensive tracking inventories every three years or as required by federal regulation during the maintenance plan period." EPA notes that point source facilities covered by the District's, Maryland's, and Virginia's emission statement rules are required to submit NO_x and VOC emissions on an annual basis to address CAA requirements in CAA section 182.[17]

5. What is the contingency plan for the Washington Area?

Section 175A of the CAA requires that the state must adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after a redesignation of the area to attainment of the NAAQS. The maintenance plan must identify the contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and, a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented.

[17] In the District's May 25, 2018 emission statement certification SIP submittal for the 2008 ozone NAAQS, the District cites to section 20-500.9 of the District of Columbia Municipal Regulations (DCMR) (20 DCMR 500.9) as containing the District's emission statement rules. However, the District's emission statement rules were SIP-approved as 20 DCMR 500.7 (60 FR 27889, May 26, 1995). A recodification of 20 DCMR 500 caused the emission statement rules under 20 DCMR 500.7 to move to 20 DCMR 500.9. Despite the recodification, the District's emission statement rules continue to require applicable point sources in the District to submit information on NO_x and VOC emissions on an annual basis. EPA intends to propose conditional approval of the District's emission statement certification SIP for the 2008 ozone NAAQS, contingent on the District's submittal of a SIP revision updating the District's SIP to reflect the recodification of 20 DCMR 500.

As required by section 175A of the CAA, the District, Maryland, and Virginia have adopted a contingency plan for the Washington Area to address possible future ozone air quality problems as described herein and in the TSD for this rulemaking available online at http://www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0215. EPA's analysis of the contingency plan as addressing requirements in CAA section 175A is also in the TSD.

a. Contingency Measures

The District, Maryland, and Virginia included several measures as contingency measures in their joint maintenance plan submittal that EPA found to not be appropriate for use as contingency measures as discussed in detail in the TSD for this rulemaking. However, since emission reductions from these measures were not accounted for in the maintenance inventory or the MVEBs, it is expected that these measures will provide more emission reductions than what was projected in the maintenance inventory or the MVEBs. Thus, these measures will provide additional assurance that the 2008 ozone standard will be maintained in the Washington Area. A description of the District's, Maryland's, and Virginia's submitted contingency measures as well as EPA's evaluation of these measures and the contingency plan as a whole can be found in the TSD for this rulemaking available online at http://www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0215. Table 7 lists the measures that EPA finds appropriate to use as contingency measures for the Washington Area.

Table 7. Measures Found to Be Appropriate to Use As Contingency Measures for the Washington Area

Measure	State
Ozone Transport Commission (OTC) 2009-2014 model rule for VOC for consumer products[18]	Virginia

[18] The Model Rule for Consumer Products was developed by the OTC and establishes limits on VOC emissions from consumer products including, but not limited to, adhesives, air fresheners, general purpose cleaners, and hairsprays. *See* "2013 Consumer Product Update", May 21, 3013, available at

OTC 2009-2014 model rule for VOC for architectural and industrial maintenance coatings[19]	Virginia
Additional contingency measures as needed	District of Columbia, Maryland, and/or Virginia

b. Indicators

The District, Maryland, and Virginia include specific indicators, or "triggers", to be used to determine when the contingency measures need to be considered, adopted, and implemented. In the contingency measure implementation schedule included in the maintenance plan and discussed later in this notice, the District, Maryland, and Virginia state that the "schedule onset" for the implementation of any contingency measure will begin three months after quality assured data determine that an exceedance or violation of the 2008 ozone NAAQS occurred within the previous year or upon notification from EPA that a contingency measure must be implemented. Another trigger is if any future year emissions inventory indicates that the Washington Area's total emissions of NO_x or VOC exceeded the levels in the attainment year inventory. If an audit of the attainment year and future year inventories does not reconcile the original estimated emissions with the exceedances, then the District, Maryland, and Virginia commit to implementing one or more of the contingency measures to ensure that future total emissions of NO_x and VOC in the Washington Area do not exceed the levels in the attainment year inventory.

c. Schedule and Procedure for Adoption and Implementation of Contingency Measures

The District, Maryland, and Virginia have committed to implementing any contingency measure according to the following schedule: (1) Schedule onset: notification received from EPA that a

https://otcair.org/document.asp?Fview=modelrules.

[19] The Model Rule for Architectural and Industrial Maintenance (AIM) Coatings was developed by the OTC and establishes limits on VOC emissions from AIM coatings, including, but not limited to concrete/masonry sealer, driveway sealers, and wood coatings. *See* "Model Rule 2009-2014 – Architectural & Industrial Maintenance (AIM) Coatings", Updated October 13, 2014, available at https://otcair.org/document.asp?Fview=modelrules.

contingency measure must be implemented or three months after quality assured data determine that an exceedance or violation occurred within the previous year; (2) applicable regulation or program will be adopted six months following the schedule onset; (3) applicable regulation or program will be implemented six months following adoption; and, (4) compliance with regulation, or full program implementation, to be achieved within twelve months of adoption.

The District and Metropolitan Washington Air Quality Committee (MWAQC) will use their regional coordination process to determine the contingency measure to be implemented.

d. EPA's Evaluation of the Contingency Plan for the Washington Area

Based on EPA's evaluation of the District's, Maryland's, and Virginia's contingency plan for the Washington Area, which is provided in the TSD for this rulemaking available online at http://www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0215, EPA finds that the contingency plan includes the required elements for CAA section 175A and relevant EPA guidance and will promptly correct any violation of the NAAQS that occurs after the redesignation of the Washington Area.

EPA has concluded that the District's, Maryland's, and Virginia's joint maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Therefore, EPA concludes that the maintenance plan SIP revisions submitted by the District, Maryland, and Virginia meet the requirements of CAA section 175A. EPA is proposing to approve the maintenance plan as a revision to the District's, Maryland's, and Virginia's SIPs.

V. Have the District, Maryland, and Virginia Adopted Approvable MVEBs?

A. *What Are the MVEBs?*

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive federal funding or support, such as the construction of new highways, must "conform" (*i.e.*, be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas.[20]

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. *See* the SIP Requirements Rule. These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include MVEBs for criteria pollutants, including ozone, and their precursor pollutants (NO_x and VOC for ozone) to address pollution from on-road transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance of the NAAQS. *See* 40 CFR 93.101.

Under 40 CFR part 93, a MVEB for an area seeking redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt MVEBs

[20] Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but have been redesignated to attainment with an approved maintenance plan for the NAAQS.

for other years as well. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993 Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP. The most recently approved MVEBs for the Washington Area originate from the attainment plan for the 1997 ozone NAAQS, which EPA found adequate on February 7, 2013 (78 FR 9044).

B. *What Is the Status of EPA's Adequacy Determination for the Proposed 2025 and 2030 VOC and NO_x MVEBs for the Washington Area?*

When reviewing submitted control strategy SIPs or maintenance plans containing MVEBs, EPA must affirmatively find that the MVEBs contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, the MVEBs must be used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: (1) Public notification of a SIP submission, (2) provision for a public comment period, and (3) EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the adequacy process in the 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 Change," on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule titled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

The District's, Maryland's, and Virginia's maintenance plan includes NO_x and VOC MVEBs for the Washington Area for 2014 (the attainment year), 2025 (the intermediate year), and 2030 (the last year of the maintenance period). The District's, Maryland's, and Virginia's maintenance plan SIP submission, including the NO_x and VOC MVEBs for the Washington Area, was available for public comment on EPA's adequacy website on May 21, 2018 at https://www.epa.gov/state-and-local-transportation. The EPA public comment period on adequacy of the 2014, 2025, and 2030 MVEBs for the Washington Area closed on June 20, 2018. No comments on the submittal were received during the adequacy comment period. EPA reviewed the NO_x and VOC MVEBs in accordance with the adequacy process in 40 CFR Part 93 and found the MVEBs adequate. EPA anticipates it will publish a notice of adequacy for the 2014, 2025, and 2030 MVEBs for the Washington Area before taking final action on this redesignation of the Washington Area. In letters dated July 24, 2018, EPA informed the District, Maryland, and Virginia that the 2014, 2025, and 2030 MVEBs are adequate for use in transportation conformity analyses.[21] EPA's analysis of the MVEBs is included in the Notice of

[21] As stated previously, EPA originally informed the District, Maryland, and Virginia that the 2014, 2025, and 2030 MVEBs were adequate for use in transportation conformity analyses in letters dated July 18, 2018. EPA revised language in these letters and sent the revised letters to the District, Maryland, and Virginia on July 24, 2018. The original and revised letters are available online at http://www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0215.

Adequacy TSD, which is included in the docket for this rulemaking available online at http://www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0215.

The MVEBs were calculated using the most current USEPA Motor Vehicle Emissions Simulator (MOVES) model (MOVES2014a) and regional travel demand forecasting model at the time of the submittal. These MVEBs, when considered together with all other emissions sources, are consistent with maintenance of the 2008 ozone standard. The MVEBs are shown in Table 8.

Table 8. Washington, DC-MD-VA Maintenance Plan On-Road Mobile Source Emissions Budgets

Year	NOx On-Road Emissions (tpd)	VOC On-Road Emissions (tpd)
Attainment Year 2014 Emission and Budget	136.8	61.3
Intermediate Year 2025 Emission and Budget	40.7	33.2
Final Year 2030 Emission and Budget	27.4	24.1

C. What Is a Safety Margin and How Was It Allocated?

EPA's transportation conformity regulations allow for the use of a safety margin, also referred to as a "transportation buffer", in the development of MVEBs for maintenance plans. A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. All or a portion of these transportation buffers can be allotted to mobile source inventories to develop MVEBs.

Table 4 shows the difference in total emissions for NO_x and VOC from all sources between the attainment year (2014) and the intermediate year (2025) as well as the attainment year (2014) and the final maintenance year (2030). These differences in emissions provide estimates of the total available transportation buffers for NO_x and VOC in 2025 and 2030. The total available

transportation buffers for NO_x is 114.9 tpd in 2025 and 126.4 tpd in 2030 and for VOC the total available transportation buffer is 15.0 tpd in 2025 and 14.6 tpd in 2030. The District, Maryland, and Virginia used 20% of the total available transportation buffer to develop the second set of mobile budgets for 2025 and 2030 in the maintenance plan. The transportation buffers add 8.1 tpd of NO_x and 6.6 tpd of VOC to the 2025 emission inventories, and 5.5 tpd of NO_x and 4.8 tpd of VOC to the 2030 emission inventories. The MVEBs with the transportation buffers described previously for the Washington Area are shown in Table 9.

Table 9. Washington, DC-MD-VA Maintenance Plan On-Road Mobile Source Emissions Budgets with Transportation Buffers

Year	NO_x On-Road Emissions (tpd)	VOC On-Road Emissions (tpd)
Attainment Year 2014 Emissions & Budget	136.8	61.3
Predicted 2025 Emission	40.7	33.2
Transportation Buffer	8.1	6.6
Intermediate Year 2025 Budget	48.8	39.8
Predicted 2030 Emission	27.4	24.1
Transportation Buffer	5.5	4.8
Final Year 2030 Budget	32.9	28.9

These two sets of MVEBs (with and without transportation buffers) have been developed for both milestone years (2025 and 2030). As can be seen in Table 10, the MVEBs that include the transportation buffer (Table 9), remain below the emission levels of the maintenance inventory.

Table 10. Maintenance Inventory: NO_x and VOC Emissions in the Washington Area, Including MVEBs with Transportation Buffer, 2014 to 2030

Source Category	NO_x (tpd)			VOC (tpd)		
	2014	**2025**	**2030**	**2014**	**2025**	**2030**
Point	64.9	66.0	68.5	7.7	8.8	9.4
Non-Point (Area)	9.6	9.9	10.0	139.3	153.7	160.3
M-A-R	19.2	21.4	22.4	2.4	2.6	2.6
Nonroad Mobile	52.0	29.6	27.8	47.5	44.9	47.2
On-Road Mobile	136.8	48.8	32.9	61.3	39.8	28.9
Quasi-Point	14.4	14.4	14.4	1.2	1.2	1.2
TOTAL	296.9	190.1	176.0	259.4	251.0	249.6
Δ 2014-2025	106.8			8.4		

Δ 2014- 2030	120.9	9.8

The District, Maryland, and Virginia will only use the MVEBs with transportation buffers, shown in Table 9, as needed in situations where the conformity analysis must be based on different data, models, or planning assumptions, including, but not limited to, updates to demographic, land use, or project-related assumptions, than were used to create the first set of MVEBs in the maintenance plan. The technical analyses used to demonstrate compliance with the MVEBs and the need, if any, to use transportation buffers will be fully documented in the conformity analysis and follow the Transportation Planning Board's (TPB) interagency consultation procedures. Regulations governing the interagency consultation process adopted by the District, Maryland, Virginia, and the TPB are as follows:

1. District of Columbia: Title 20 Environment, Chapter 20-15 General and Transportation Conformity, Rule Numbers 20-1503, 20-1504, 20-1505, 20-1506, 20-1507

2. Maryland: Title 26 Department of Environment, Subtitle 11 Air Quality, Chapter 26 Conformity, Regulation Numbers 26.11.26.04, 26.11.26.05, 26.11.26.06, 26.11.26.07, 26.11.26.08

3. Virginia: 9VAC5 Chapter 151 Regulation for Transportation Conformity Section 70 Consultation (9VAC5-151-70)

4. Transportation Planning Board: Report titled "Transportation Planning Board Consultation Procedures with respect to Transportation Conformity Regulations Governing TPB Plans and Programs," May 20, 1998

EPA finds that the District, Maryland, and Virginia continue to demonstrate maintenance of the 2008 ozone standard with both sets of MVEBs, including the MVEBs with the transportation buffers. Therefore, EPA is proposing to approve, as revisions to the District's, Maryland's, and Virginia's SIPs, the MVEBs contained in this maintenance plan for the Washington Area.

VI. Proposed Action

EPA is proposing to approve the requests from Maryland and Virginia to redesignate to attainment their respective portions of the Washington Area for the 2008 ozone NAAQS. EPA is not proposing to approve the redesignation request from the District and will address the District's redesignation request in a separate rulemaking action. EPA is also proposing to approve, as a revision to the District's, Maryland's, and Virginia's SIPs, the joint maintenance plan submitted by the District, Maryland, and Virginia. The joint maintenance plan demonstrates maintenance of the 2008 ozone NAAQS through 2030 in the Washington Area and includes 2014, 2025, and 2030 MVEBs for NO_x and VOCs for the 2008 ozone NAAQS. Finally, EPA has found adequate and is proposing to approve these 2014, 2025, and 2030 NO_x and VOC MVEBs for the Washington Area. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for

violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by federal law," any person making a voluntary disclosure of information

to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VIII. Statutory and Executive Order Reviews

Under the CAA, the redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 approves 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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).

The action approving Maryland's and Virginia's redesignation request for their respective portions of the Washington Area for the 2008 ozone NAAQS as well as the District's, Maryland's, and Virginia's maintenance plan for the Washington Area, is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 24, 2018.

Cosmo Servidio,
Regional Administrator,
Region III.

[FR Doc. 2018-16882 Filed: 8/7/2018 8:45 am; Publication Date: 8/8/2018]