

US EPA ARCHIVE DOCUMENT

to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule proposing to approve the redesignation of the Wheeling area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: September 21, 2006.

William T. Wisniewski,

Acting Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2006-0692; FRL-8226-2]

Approval and Promulgation of Air Quality Implementation Plans; WV; Redesignation of the Weirton, WV Portion of the Steubenville-Weirton, OH-WV 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revision for the Weirton, West Virginia portion of the Steubenville-Weirton, OH-WV interstate area (herein referred to as the "Area") from nonattainment to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The West Virginia Department of Environmental Protection (WVDEP) is requesting that the Brooke and Hancock County, West Virginia (Weirton) portion of the area be redesignated as attainment for the 8-hour ozone NAAQS. The interstate 8-hour ozone nonattainment area is comprised of three counties (Brooke and Hancock Counties, West Virginia (Weirton) and Jefferson County, Ohio (Steubenville)). EPA is proposing to approve the ozone redesignation request for the Weirton portion of the area. In conjunction with its redesignation request, the WVDEP submitted a SIP revision consisting of a maintenance plan for Weirton that provides for continued attainment of the 8-hour ozone NAAQS for the next 12 years. EPA is proposing to make a determination that Weirton has attained the 8-hour ozone NAAQS based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2002-2004. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that Weirton has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Weirton maintenance plan for purposes of transportation conformity, and is also proposing to approve those MVEBs. EPA is proposing approval of the redesignation request and of the maintenance plan revision to the West

Virginia SIP in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before November 1, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2006-0692 by one of the following methods:

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

B. *E-mail:* morris.makeba@epa.gov.

C. *Mail:* EPA-R03-OAR-2006-0692, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2006-0692. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although

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

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814-2156, or by e-mail at caprio.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we”, “us”, or “our” is used, we mean EPA.

Table of Contents

- I. What Actions Are EPA Proposing To Take?
- II. What Is the Background for These Proposed Actions?
- III. What Are the Criteria for Redesignation to Attainment?
- IV. Why Is EPA Taking These Actions?
- V. What Would Be the Effect of These Actions?
- VI. What Is EPA’s Analysis of the State’s Request?
- VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Weirton Maintenance Plan Adequate and Approvable?
- VIII. Proposed Actions
- IX. Statutory and Executive Order Reviews

I. What Actions Are EPA Proposing To Take?

On August 3, 2006, WVDEP formally submitted a request to redesignate Weirton from nonattainment to attainment of the 8-hour NAAQS for ozone. On August 3, 2006, West Virginia submitted a maintenance plan for Weirton as a SIP revision, to ensure continued attainment over the next 12 years. Weirton is comprised of Brooke and Hancock Counties. Weirton is currently designated as a basic 8-hour ozone nonattainment area. EPA is proposing to determine that Weirton has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of Weirton from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also

proposing to approve the maintenance plan SIP revision for Weirton, such approval being one of the CAA requirements for approval of a redesignation request. The maintenance plan is designed to ensure continued attainment throughout Weirton for the next 12 years. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Weirton maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO_x) for transportation conformity purposes. These MVEBs are State MVEBs for the West Virginia portion of the Area. In a separate redesignation request, the State of Ohio is establishing MVEBs and requesting redesignation for the remainder of this area (*i.e.*, Jefferson County).

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_x and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_x and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

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

The CAA, Title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as “basic” nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as “classified” nonattainment) provides more specific requirements for

ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA’s 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the CAA for subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004, the Area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and is subject to the requirements of subpart 1.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). *See* 69 FR 23857 (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data indicates that Weirton has a design value of 0.083 ppm for the 3-year period of 2002–2004 and a design value of design value of 0.075 ppm for the 3-year period of 2003–2005. The ozone monitoring data also indicates that Steubenville has a design value of 0.081 ppm for the 3-year period of 2002–2004 and a design value of 0.077 ppm for the 3-year period of 2003–2005. Therefore, the ambient ozone data for the area indicates no violations of the 8-hour ozone standard. Monitoring data for 2005 indicates continued attainment of the 8-hour ozone standard in the area.

B. The Steubenville-Weirton, OH-WV Area

The Area consists of Brooke and Hancock Counties, West Virginia and Jefferson County, Ohio. Prior to its designation as an 8-hour ozone nonattainment area, the Area was an attainment/unclassifiable area for the 1-hour ozone nonattainment NAAQS. *See* 56 FR 56694 (November 6, 1991).

On August 3, 2006, the WVDEP requested that Weirton be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2002–2004, indicating that the 8-hour NAAQS for ozone had been achieved in the Area. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

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

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

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

- “Ozone and Carbon Monoxide Design Value Calculations”, Memorandum from Bill Laxton, June 18, 1990;
- “Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G.T. Helms, Chief,

Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

- “Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

- “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

- “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

- “Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

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

- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, “Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,” dated November 30, 1993;

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

- “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On August 3, 2006, the WVDEP requested redesignation of Weirton to attainment for the 8-hour ozone standard. On August 3, 2006, the WVDEP submitted a maintenance plan for Weirton as a SIP revision, to assure continued attainment over the next 12 years, until 2018. EPA has determined

that Weirton has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the designation of Weirton from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the West Virginia SIP a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in Weirton for the next 12 years, until 2018. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the MVEBs for NO_x and VOC for transportation conformity purposes for the years 2004 (attainment year mobile emissions), 2009 and 2018. These MVEBs are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)

Year	NO _x	VOC
2004	3.6	2.6
2009	2.8	2.0
2018	1.2	1.0

VI. What Is EPA's Analysis of the State's Request?

EPA is proposing to determine that Weirton has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how the WVDEP's August 3, 2006 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. The Steubenville-Weirton, OH-WV Area Has Attained the 8-Hour Ozone NAAQS

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

ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Area there are two ozone monitors, one located in Hancock County, West Virginia and one in Jefferson County, Ohio, that measure air quality with respect to ozone. As part of its redesignation request, West Virginia submitted ozone monitoring data for the years 2002–2005 for the area. This data has been quality assured and is recorded in AQS. The fourth high 8-hour daily maximum concentrations, along with the three-year averages, are summarized in Table 2.

TABLE 2.—WEIRTON, WV NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; HANCOCK MONITOR, AQS ID 54–029–1004

Year	Annual 4th high reading (ppm)
2002	0.100
2003	0.077
2004	0.073
2005	0.075

The average for the 3-year period 2002 through 2004 is 0.083 ppm.

The average for the 3-year period of 2003 through 2005 is 0.075 ppm.

Steubenville, OH Nonattainment Area Fourth Highest 8-Hour Average Values; Jefferson Monitor, AQS ID 39–081–0016

2002	0.093
2003	0.079
2004	0.071
2005	0.083

The average for the 3-year period 2002 through 2004 is 0.081 ppm.

The average for the 3-year period of 2003 through 2005 is 0.077 ppm.

The air quality data for 2002–2004 show that the entire area has attained the standard with a design value of 0.083 ppm in Weirton and a design value of 0.081 ppm in Steubenville. Also, the air quality data for 2003–2005 show that the entire area is still attaining the 8-hour standard with a design value of 0.075 ppm in Weirton and a design value of 0.077 ppm in Steubenville. The data collected at the Hancock County and Jefferson County monitors satisfies the CAA requirement

that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The WVDEP's request for redesignation for Weirton indicates that the data was quality assured in accordance with 40 CFR part 58. The WVDEP uses AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. In addition, as discussed below with respect to the maintenance plan, WVDEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by West Virginia and data taken from AQS indicates that the area has attained the 8-hour ozone NAAQS.

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

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

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

submittal of a complete redesignation request for an area 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 St. Louis).

1. Section 110 General SIP Requirements

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

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

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_x SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_x SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25161). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to

a State regardless of the designation of any one particular area in the State.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. West Virginia and Ohio will still be subject to these requirements after the Area is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (*i.e.*, for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings 61 FR 53174–53176 (October 10, 1996), 62 FR 24816 (May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking 61 FR 20458 (May 7, 1996); and Tampa, Florida, final rulemaking 60 FR 62748 (December 7, 1995). *See also* the discussion on this issue in the Cincinnati redesignation 65 FR 37890 (June 19, 2000), and in the Pittsburgh redesignation 66 FR 53090 (October 19, 2001). Similarly, with respect to the NO_x SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_x SIP Call rules are not “an ‘applicable requirement’ for purposes of section 110(l) because the NO_x rules apply regardless of an area's attainment or nonattainment status for the 8-hour NAAQS.” 69 FR 23951, 23983 (April 30, 2004).

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

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

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

The Area was designated a basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. As discussed previously, the Area was designated attainment/unclassifiable for the 1-hour standard, therefore, there are no outstanding Part D submittals under the 1-hour standard for the Area.

Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification. The Area was classified as a subpart 1 nonattainment area; therefore, no subpart 2 requirements apply to this area.

With respect to the 8-hour standard, EPA proposes to determine that West Virginia's SIP meets all applicable SIP requirements under Part D of the CAA, because no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of Weirton's redesignation request. Because the State submitted a complete redesignation request for Weirton prior to the deadline for any submissions required under the 8-hour standard, we have determined that the Part D requirements do not apply to Weirton for the purposes of redesignation.

In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires States to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (“transportation conformity”) as well as to all other federally supported or funded projects (“general conformity”). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See Wall v. EPA*, 265 F.3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. *See also* 60 FR 62748 (December 7, 1995).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect, because PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, “Part D NSR Requirements or Areas Requesting Redesignation to Attainment.” West Virginia has demonstrated that the area will be able to maintain the standard without Part D NSR in effect in Weirton, and therefore, West Virginia need not have a fully approved Part D NSR program prior to approval of the redesignation request. West Virginia's SIP-approved PSD program will become effective in Weirton upon redesignation to attainment. *See* rulemakings for Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

3. Weirton Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the West Virginia SIP for the purposes of this redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. *Calcagni Memo*, p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998), *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25425 (May 12, 2003) and citations therein. The Area was a 1-hour attainment/unclassifiable area at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004. Because the Area was never designated as a Part D nonattainment area, there were no previous Part D SIP submittal requirements for this Area. Nor for any Part D submittal requirements have come due prior to the

submittal of the 8-hour maintenance plan for the Area. Because there are no outstanding SIP submission requirements applicable for the purposes of redesignation of Weirton, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable

for purposes of redesignation have yet become due for the Area, and therefore they need not be approved into the SIP prior to redesignation.

4. The Air Quality Improvement in the Steubenville-Weirton, OH-WV Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting from Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the States have demonstrated that the observed air

quality improvement in the Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules in the Area are shown in Table 3.

TABLE 3.—WEIRTON TOTAL VOC AND NO_x EMISSIONS FOR 2002 AND 2004 (TPD)*

Year	Point	Area	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002	6.7	4.5	1.5	3.2	15.9
Year 2004	4.8	4.6	1.5	2.6	13.5
Diff. (02–04)	–1.9	+0.1	0	–0.6	–2.4
Nitrogen Oxides (NO_x)					
Year 2002	5.9	4.6	4.3	4.3	19.1
Year 2004	4.5	4.8	5.3	3.6	18.2
Diff. (02–04)	–1.4	+0.2	+1.0	–0.7	–0.9
Steubenville Total VOC and NO_x Emissions for 2002 and 2004 (tpd)					
Volatile Organic Compounds (VOC)					
Year 2002	1.1	3.1	1.0	4.2	9.4
Year 2004	1.2	3.1	0.9	3.6	8.8
Diff. (02–04)	+0.1	0	–0.1	–0.6	–0.6
Nitrogen Oxides (NO_x)					
Year 2002	190.0	0.2	2.4	6.3	198.9
Year 2004	154.7	0.2	2.3	5.4	162.6
Diff. (02–04)	–35.3	0	–0.1	–0.9	–36.3

* Numbers are not exact, due to rounding.

Between 2002 and 2004, VOC emissions were reduced by 2.4 tpd, and NO_x emissions were reduced by 0.9 tpd, due to the following permanent and enforceable measures implemented or in the process of being implemented in Weirton:

Programs Currently in Effect

(a) National Low Emission Vehicle (NLEV);

(b) Motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards; and,

(c) Clean Diesel Program.

West Virginia has demonstrated that the implementation of permanent enforceable emissions controls have reduced local NO_x emissions. The 0.6 tpd reductions in mobile VOCs are attributable to mobile source emission

controls such as federally mandated Tier 2 Vehicle and Gasoline Sulfur Program and the Clean Diesel Program.

Between 2002 and 2004, Steubenville shows a decrease in overall VOC emissions of 0.6 tpd and an overall decrease in emissions of NO_x of 36.3 tpd. This indicates that the Area has had an overall reduction in VOC and NO_x emissions.

Nearly all of the reductions in NO_x are attributable to the implementation of the NO_x SIP Call. West Virginia has indicated in its submittal that the implementation of the NO_x SIP Call, with its mandatory reductions in NO_x emissions from Electric Generating Units (EGUs) and large industrial boilers (non-EGUs), reduced NO_x emissions throughout the Area. While there are no EGU sources in Brooke or Hancock

Counties (Weirton) there are EGUs and non-EGUs located in adjacent counties such as Jefferson County (Steubenville) and Ohio County, West Virginia. Between 2002 and 2004, Steubenville had a 35.3 tpd reduction in NO_x emissions from EGU sources. Therefore, the NO_x SIP call has had an impact on the air quality in the entire Area. NO_x emissions from non-EGU sources in Weirton were reduced by 1.4 tpd between 2002 and 2004. The WVDEP believes that the improvement in ozone air quality from 2002 to 2004 was the result of identifiable, permanent and enforceable reductions in ozone precursor emissions for the same period.

Additionally, WVDEP has identified, but not quantified, additional reductions in VOC emissions that will

be achieved as a co-benefit of the reductions in the emission of hazardous air pollutants (HAPs) as a result of implementation of EPA's Maximum Achievable Control Technology (MACT) standards.

Other regulations, such as the non-road diesel, 69 FR 38958 (June 29, 2004), the heavy duty engine and vehicle standards, 66 FR 5002 (January 18, 2001) and the new Tier 2 tailpipe standards for automobiles, 65 FR 6698 (January 10, 2000), are also expected to greatly reduce emissions throughout the country and thereby reduce emissions impacting the Steubenville-Weirton, OH-WV monitors. The Tier 2 standards came into effect in 2004, and by 2030, EPA expects that the new Tier 2 standards will reduce NO_x emissions by about 74 percent nationally. EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the Area achieving attainment of the 8-hour ozone standard.

5. Weirton Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate Weirton to attainment status, West Virginia submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in Weirton for at least 12 years after redesignation. West Virginia is requesting that EPA approve this SIP revision as meeting the requirement of CAA 175A. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for Weirton meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

What Is Required in a Maintenance Plan?

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

any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

- (a) An attainment emissions inventory;
- (b) A maintenance demonstration;
- (c) A monitoring network;
- (d) Verification of continued attainment; and
- (e) A contingency plan.

Analysis of the Weirton Maintenance Plan

(a) *Attainment Inventory*—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment year of 2004 was used for Weirton since it is a reasonable year within the 3-year block of 2002–2004 and accounts for reductions attributable to implementation of the CAA requirements to date.

The WVDEP prepared comprehensive VOC and NO_x emissions inventories for Weirton, including point, area, mobile on-road, and mobile non-road sources for a base year of 2002. To develop the NO_x and VOC base year emissions inventories, WVDEP used the following approaches and sources of data:

(i) *Point source emissions*—West Virginia maintains its point source emissions inventory data on the i-STEPS database, which is commercial software. Facilities subject to emissions inventory reporting requirements were those operating point sources subject to Title V permitting requirements. Affected sources were identified from the WVDEP's Regulation 30 database, which is maintained by the WVDEP's Title V Permitting Group.

(ii) *Area source emissions*—In order to calculate the area source emissions inventory the WVDEP took the annual values from the VISTAS base year inventory and derived the typical ozone summer weekday, using procedures outlined in the EPA's Emissions Modeling Clearinghouse (EMCH) Memorandum, "Temporal Allocation of Annual Emissions Using EMCH Temporal Profiles, April 29, 2002." This enabled WVDEP to arrive at the "typical" summer day emissions.

(iii) *On-road mobile source emissions*—VISTAS developed 2002 on-road mobile (highway) emissions inventory data based on vehicle miles traveled (VMT) updates provided by

WVDEP. VISTAS also estimated future emissions based upon expected growth for the future years 2009 and 2018. However, Federal Transportation Conformity requirements dictate that the WVDEP consult with the Metropolitan Planning Organization (MPO) responsible for transportation planning in developing SIP revisions which may establish MVEBs. This applies to the maintenance plan submitted by WVDEP on August 3, 2006. Therefore, the WVDEP has consulted with the Weirton MPO, Brooke-Hancock-Jefferson Metropolitan Planning Commission (BHJ), as well as the West Virginia Department of Transportation (WVDOT) and the Ohio Department of Transportation (ODOT), to develop State MVEBs for the West Virginia portion of the nonattainment area. The Travel Demand Model (TDM) is maintained by ODOT for BHJ in cooperation with WVDOT.

The ODOT provides base year and projection emissions data consistent with their most recent available TDM results along with EPA's most recent emission factor model, MOBILE6.2. Those estimates included NO_x and VOC emissions for the following years, 2002, 2004, 2009, and 2018. The WVDEP also consulted with BHJ, WVDOT and ODOT to develop State MVEBs for VOC and NO_x.

The BHJ must evaluate future Long Range Transportation Plans (LRTP) and Transportation Improvement Programs (TIP) to ensure that the associated emissions are equal to or less than the final emissions budgets. The budgets are designed to facilitate a positive conformity determination while ensuring overall maintenance of the 8-hour NAAQS. It should be noted that the MVEBs and budgets only represent the Weirton (Brooke and Hancock Counties) portion of the nonattainment area.

(iv) *Mobile non-road emissions*—Emissions for the 2002 inventory from nonroad sources were estimated in two steps. First, emissions for nonroad source categories that are included in the NONROAD model were developed. Second, emissions from sources not included in the NONROAD model were estimated.

The 2002 mobile non-road emissions inventory was developed by WVDEP staff using the NONROAD2005b Model. NONROAD estimates fuel consumption and emissions of total hydrocarbons, carbon monoxide, nitrogen oxides, sulfur dioxide, and particulate matter for all nonroad mobile source categories except for aircraft, locomotives, and commercial marine vessels (CMV).

The 2004 attainment year VOC and NO_x emissions for the Area are summarized along with the 2009 and 2018 projected emissions for this area in table 4, which covers the demonstration of maintenance for this area. EPA has concluded that West Virginia has adequately derived and documented the 2004 attainment year VOC and NO_x emissions for this area.

(b) Maintenance Demonstration—On August 3, 2006, the WVDEP submitted a SIP revision to supplement its August 3, 2006 redesignation request. The

submittal by WVDEP consists of the maintenance plan as required by section 175A of the CAA. The Weirton plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_x remain at or below the attainment year 2004 emissions levels throughout Weirton through the year 2018. The Weirton 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), 68 FR 25430–32 (May 12, 2003).

Table 4 specifies the Steubenville-Weirton, OH–WV VOC and NO_x emissions for 2004, 2009, and 2018. The WVDEP and Ohio EPA chose 2009 as an interim year in the 12-year maintenance demonstration period to demonstrate that the VOC and NO_x emissions are not projected to increase above the 2004 attainment level during the time of the 12-year maintenance period.

TABLE 4.—STEUBENVILLE-WEIRTON, WV–OH NONATTAINMENT AREA SUMMARY OF EMISSIONS
[All emissions in tpd for an ozone season day]

	Emissions in tpd								
	2004			2009			2018		
	WV ¹	OH ²	Total	WV ¹	OH ²	Total	WV ¹	OH ²	Total
Point:									
NO _x	4.5	154.7	159.2	5.1	66.4	71.5	5.6	41.0	46.6
VOC	4.8	1.1	5.9	4.3	1.2	5.5	5.3	1.2	6.5
Area:									
NO _x	4.8	0.2	5.0	4.9	0.2	5.1	5.2	0.2	5.4
VOC	4.6	3.1	7.6	4.5	2.9	7.4	5.2	2.9	8.1
Nonroad ³ :									
NO _x	5.3	2.3	7.6	3.8	1.9	5.7	3.2	1.6	4.8
VOC	1.5	0.9	2.4	1.2	0.9	2.1	1.0	0.6	1.6
MVEBs ⁴ :									
NO _x	3.6	5.4	9.0	2.8	4.1	6.9	1.2	1.7	2.9
VOC	2.6	3.5	6.2	2.0	2.6	4.6	1.0	1.4	2.4
Total ⁵ :									
NO _x	18.2	162.6	180.7	16.6	72.6	89.2	15.2	49.9	65.1
VOC	13.5	8.7	22.2	12.0	7.6	19.6	12.5	6.1	18.6

¹ WV emissions are total emissions for Brooke and Hancock Counties in West Virginia.

² OH emissions are total emissions for Jefferson County in Ohio, as provided by Ohio EPA (see Appendix E of the State submittal).

³ Nonroad includes nonroad model results plus Commercial Marine Vessels, Railroad and Airports.

⁴ MVEBs for 2004 are actual; budgets established for 2009 and 2018 include 15% reallocation from the safety margin.

⁵ Sums may not total exactly due to rounding.

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

- Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006); 66 FR 2001 (January 18, 2001); and
- Non-road emissions standards (2008) and off-road diesel fuel (2007/2010); 69 FR 39858 (June 29, 2004).

In addition to the permanent and enforceable measures, CAIR, promulgated May 12, 2005 (70 FR 25161) should have positive impacts on West Virginia and Ohio's air quality. CAIR, which will be implemented in the eastern portion of the country in two phases (2009 and 2015), should reduce long range transport of ozone precursors, which will have a beneficial effect on air quality in the Area.

Currently, West Virginia is in the process of adopting rules to address CAIR through State rules 45CSR39,

45CSR40, and 45CSR41, which require annual and ozone season NO_x reductions from EGUs and ozone season NO_x reductions from non-EGUs. These rules were submitted to EPA as a SIP revision by September 11, 2006 as required in the May 12, 2005 (70 FR 25161) **Federal Register** publication.

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

(c) Monitoring Network—There are currently two monitors measuring ozone in the Area, one in Hancock County, West Virginia and one in Jefferson County, Ohio. West Virginia will continue to operate its current air quality monitor (located in Hancock County) in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—The State of West Virginia

has the legal authority to implement and enforce specified measures necessary to attain and maintain the NAAQS. Additionally, Federal programs such as Tier 2/Low Sulfur Gasoline Rule, 2007 On-Road Diesel Engine Rule, and Federal Non-road Engine/Equipment Rules will continue to be implemented on a national level. These programs help provide the reductions necessary for the Area to maintain attainment.

In addition to maintaining the key elements of its regulatory program, West Virginia requires ambient and source emissions data to track attainment and maintenance. The WVDEP proposes to fully update its point, area, and mobile emission inventories at 3-year intervals as required by the Consolidated Emissions Reporting Rule (CERR) to assure that its growth projections relative to emissions in these areas are sufficiently accurate to assure ongoing attainment with the NAAQS. The WVDEP will review stationary source

VOC and NO_x emissions by review of annual emissions statements and by update of its emissions inventories. The area source inventory will be updated using the same techniques as the 2002 ozone inventory. However, some source categories may be updated using historic activity levels determined from Bureau of Economic Analysis (BEA) data or West Virginia University/Regional Research Institute (WVU/RRI) population estimates. The mobile source inventory model will be updated by obtaining county-level VMT from the WVDOT for the subject year and calculating emissions using the latest approved MOBILE model. Alternatively, the motor vehicle emissions may be obtained in consultation with the MPO, BHJ, using methodology similar to that used for transportation conformity purposes. The WVDEP shall also continue to operate the existing ozone monitoring station in the areas pursuant to 40 CFR part 58 throughout the maintenance period and submit quality-assured ozone data to EPA through the AQS system.

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

The ability of Weirton to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_x emissions in Weirton remaining at or below 2004 levels. The State's maintenance plan projects VOC and NO_x emissions to decrease and stay below 2004 levels through the year 2018. The State's maintenance plan lays out two situations where the need to adopt and implement a contingency measure to further reduce emissions would be triggered. Those situations are as follows:

(i) *If the triennial inventories indicate significant emissions growth above the 2004 maintenance base-year inventory or if a monitored air quality exceedance pattern indicates that an ozone NAAQS*

violation may be imminent—Then WVDEP will evaluate existing control measures to ascertain if additional regulatory revisions are necessary to maintain the ozone standard. The maintenance plan also states that an exceedance pattern would include, but is not limited to, the measurement of five exceedances or more occurring at the same monitor during a calendar year.

(ii) *In the event that a violation of the 8-hour ozone standard occurs at the Hancock County, West Virginia or the Jefferson County, Ohio monitor*—The maintenance plan states that in the event that a violation of the ozone standard occurs at either the Hancock County, West Virginia or the Jefferson County, Ohio ozone monitor, the State of West Virginia will select and adopt one or more of the following measures to assure continued attainment:

- Extend the applicability of 45CSR21 (VOC/RACT rule) to include source categories previously excluded (e.g., waste water treatment facilities);
- Revised new source permitting requirements requiring more stringent emissions control technology and/or emissions offsets;
- NO_x RACT requirements;
- Regulations to establish plant-wide emissions caps (potentially with emissions trading provisions);
- Establish a Public Awareness/Ozone Action Day Program, a two pronged program focusing on increasing the public's understanding of air quality issues in the region and increasing support for actions to improve the air quality, resulting in reduced emissions on days when the ozone levels are likely to be high.

• Initiate one or more of the following voluntary local control measures:

(1) **Bicycle and Pedestrian Measures**—A series of measures designed to promote bicycling and walking including both promotional activities and enhancing the environment for these activities;

(2) **Reduce Engine Idling**—Voluntary programs to restrict heavy duty diesel engine idling times for both trucks and school buses;

(3) **Voluntary Partnership with Ground Freight Industry**—A voluntary program using incentives to encourage the ground freight industry to reduce emissions;

(4) **Increase Compliance with Open Burning Restrictions**—Increase public awareness of the existing open burning restrictions and work with communities to increase compliance; and

(5) **School Bus Engine Retrofit Program**—Have existing school bus engines retrofitted to lower emissions.

The following schedule for adoption, implementation and compliance applies to the contingency measures concerning the option of implementing regulatory requirements.

- Confirmation of the monitored violation within 45 days of occurrence;
- Measure to be selected within 3 months after verification of a monitored ozone standard violation;
- Develop rule within 6 months of selection of measure;
- File rule with State secretary (process takes up to 42 days);
- Applicable regulation to be fully implemented within 6 months after adoption.

The following schedule for adoption, implementation and compliance applies to the voluntary contingency measures.

- Confirmation of the monitored violation within 45 days of occurrence;
- Measure to be selected within 3 months after verification of a monitored ozone standard violation;
- Initiation of program development with local governments within Weirton by the start of the following ozone season.

(f) **An Additional Provision of the Maintenance Plan**—The State's maintenance plan for Weirton has an additional provision. That provision states that based on the 2002 inventory data and calculation methodology, it is expected that area and mobile source emissions will not exhibit substantial increases between consecutive periodic year inventories. Therefore, if significant unanticipated emissions growth occurs, it is expected that point sources would be the cause. 40 CFR part 51, the CERR (67 FR 39602) requires that States submit an annual inventory of criteria pollutants for large point sources with actual emissions greater than or equal to any of the emissions thresholds to EPA. Any significant increases that occur can be identified from these reports without waiting for a periodic inventory. This gives West Virginia the capability to identify needed regulations by source, source category and pollutant and to begin the rule promulgation process, if necessary, in an expeditious manner.

The 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. EPA believes that the maintenance plan SIP revision submitted by West Virginia for Weirton meets the requirements of section 175A of the Act.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Weirton Maintenance Plan Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets (MVEBs)?

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

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must “conform” to (*i.e.*, be consistent with) the part of the State’s air quality plan that addresses pollution from cars and trucks. “Conformity” to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the national ambient air quality standards. If a transportation plan does not “conform,” most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted “control strategy” SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein “adequate” for use in

determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by State and Federal agencies in determining whether proposed transportation projects “conform” to the State implementation plan as required by section 176(c) of the CAA. EPA’s substantive criteria for determining “adequacy” of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA’s process for determining “adequacy” consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA’s adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA’s May 14, 1999 guidance, “Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.” This guidance was finalized in the Transportation Conformity Rule Amendments for the “New 8-Hour Ozone and PM_{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). EPA follows this guidance and rulemaking in making its adequacy determinations.

The MVEBs for Weirton are listed in Table 1 of this document for the 2004, 2009, and 2018 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs (safety margin allocation for 2009 and 2018 only). These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A “safety margin” is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which Weirton met the NAAQS. The following example is for the 2018 safety margin: Weirton first attained the 8-hour ozone NAAQS

during the 2002 to 2004 time period. The State used 2004 as the year to determine attainment levels of emissions for Weirton. The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 13.5 tpd of VOC and 18.2 tpd of NO_x. The WVDEP projected emissions out to the year 2018 and projected a total of 12.4 tpd of VOC and 15.2 tpd of NO_x from all sources in Weirton. The safety margin for Weirton for 2018 would be the difference between these amounts, or 1.1 tpd of VOC and 3.0 tpd of NO_x. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area’s air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 5 shows the safety margins for the 2009 and 2018 years.

TABLE 5.—2009 AND 2018 SAFETY MARGINS FOR WEIRTON

Inventory year	VOC emissions (tpd)	NO _x emissions (tpd)
2004 Attainment	13.5	18.2
2009 Interim	11.9	16.6
2009 Safety Margin	1.6	1.6
2004 Attainment	13.5	18.2
2018 Final	12.4	15.2
2018 Safety Margin	1.1	3.0

The WVDEP allocated 0.37 tpd NO_x and 0.26 tpd VOC to the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO_x projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs the WVDEP allocated 0.15 tpd NO_x and 0.13 tpd VOC from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 6 shows the final 2009 and 2018 MVEBs for Weirton.

TABLE 6.—2009 AND 2018 FINAL MVEBS FOR WEIRTON, WEST VIRGINIA

Inventory year	VOC emissions (tpd)	NO _x emissions (tpd)
2009 projected on-road mobile source projected emissions	1.70	2.45
2009 Safety Margin Allocated to MVEBs	0.26	0.37
2009 MVEBs *	1.96	2.82

TABLE 6.—2009 AND 2018 FINAL MVEBS FOR WEIRTON, WEST VIRGINIA—Continued

Inventory year	VOC emissions (tpd)	NO _x emissions (tpd)
2018 projected on-road mobile source projected emissions	0.87	1.02
2018 Safety Margin Allocated to MVEBs	0.13	0.15
2018 MVEBs *	1.00	1.17

* Highway budgets are shown at a precision of two decimal places for conformity purposes.

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for Weirton are approvable because the MVEBs for NO_x and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the Weirton Maintenance Plan?

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

If EPA receives adverse written comments with respect to the proposed approval of the Weirton MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Weirton MVEBs will also be announced on EPA's conformity Web site: <http://www.epa.gov/oms/traq> (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

VIII. Proposed Actions

EPA is proposing to determine that the Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of the Weirton portion of the Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA has evaluated

West Virginia's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that Weirton has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of Weirton from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for Weirton, submitted on August 3, 2006, as a revision to the West Virginia SIP. EPA is proposing to approve the maintenance plan for Weirton because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the MVEBs submitted by West Virginia for Weirton in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

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

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

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

EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of

the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule proposing to approve the redesignation of the Weirton area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This rule proposing to approve the redesignation of Weirton to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions

of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: September 21, 2006.

William T. Wisniewski,
Acting Regional Administrator, Region III.
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