

US EPA ARCHIVE DOCUMENT

rule, entitled, "Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_x RACT Determinations for Seven Individual Sources," located in the Proposed Rules section of the May 4, 2006 **Federal Register** (71 FR 26297). EPA is withdrawing only the provisions for two individual sources, namely, Merck & Co., Inc., Northumberland County, Pennsylvania; and The Frog, Switch & Manufacturing Co., Cumberland County, Pennsylvania. The other actions in the May 4, 2006 **Federal Register** are not affected.

List of Subjects in 40 CFR Part 52

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

Dated: July 18, 2007.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. E7-14599 Filed 7-26-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2007-0344; FRL-8447-1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Mercer County Portion of the Youngstown-Warren-Sharon, OH-PA 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan and 2002 Base-Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Mercer County portion of the Youngstown-Warren-Sharon, OH-PA ozone nonattainment area ("Youngstown Area" or "Area") be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). The Area is comprised of Mercer County, Pennsylvania and Trumbull, Mahoning, and Columbiana Counties, Ohio. In this rulemaking action EPA is proposing to approve the ozone redesignation request, maintenance plan, and 2002 base year inventory for Mercer County. In a separate rulemaking

action (72 FR 19435, April 18, 2007) EPA proposed to approve the ozone redesignation request for Trumbull, Mahoning, and Columbiana Counties. In conjunction with its redesignation request, the Commonwealth submitted a SIP revision consisting of a maintenance plan for Mercer County that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that Mercer County has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality monitoring data for 2004-2006. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). In addition, the Commonwealth of Pennsylvania has also submitted a 2002 base-year inventory for Mercer County, and EPA is proposing to approve that inventory for Mercer County as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the maintenance plan for Mercer County for purposes of transportation conformity, and is also proposing to approve those MVEBs. Note that separate conformity budgets are being established by Ohio for Trumbull, Mahoning, and Columbiana Counties. EPA is proposing approval of the redesignation request and of the maintenance plan and 2002 base-year inventory SIP revisions in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before August 27, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-0344 by one of the following methods:

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

B. *E-mail:*

Cripps.Christopher@epa.gov.

C. *Mail:* EPA-R03-OAR-2007-0344, Christopher Cripps, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2007-0344. 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 Pennsylvania Department of Environmental Protection Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

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 Are the Actions EPA Is 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 Commonwealth's Request?
- VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for Mercer County Adequate and Approvable?
- VIII. Proposed Actions
- IX. Statutory and Executive Order Reviews

I. What Are the Actions EPA Is Proposing To Take?

On March 27, 2007, the PADEP formally submitted a request to redesignate Mercer County from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, Pennsylvania submitted a maintenance plan for Mercer County as a SIP revision to ensure continued attainment throughout the Youngstown Area over the next 11 years. PADEP also submitted a 2002 base-year inventory for Mercer County as a SIP revision. The Youngstown Area is comprised of Mercer County, Pennsylvania and Trumbull, Mahoning, and Columbiana Counties, Ohio. It is currently designated a basic 8-hour ozone nonattainment area. EPA is proposing to determine that Mercer County 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 Mercer County from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Mercer County maintenance plan as a SIP revision for Mercer County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to ensure continued attainment in Mercer County for the next 11 years. EPA is also proposing to approve the 2002 base-year inventory for Mercer County as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Mercer County maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOCs) and nitrogen oxides (NO_x) for Mercer

County for transportation conformity purposes. Note that in a separate rulemaking action (72 FR 19435, April 18, 2007) EPA is proposing to approve Trumbull, Mahoning, and Columbiana Counties, Ohio MVEBs.

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 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 Youngstown Area was designated a basic 8-hour ozone nonattainment area in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003.

On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the Youngstown Area (as well as most other areas of the country), effective June 15, 2005. *See*, 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); 70 FR 44470 (August 3, 2005).

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

needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under Subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of federal actions. The June 8 decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations. Elsewhere in this document, mainly in section VI.B. “Mercer County Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA,” EPA discusses its rationale why the decision in *South Coast* is not an impediment to redesignating Mercer County to attainment of the 8-hour ozone NAAQS.

The CAA, title I, part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as “basic” nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as “classified” nonattainment) provides more specific requirements for ozone nonattainment areas. In 2004, the Youngstown Area was classified a basic 8-hour ozone nonattainment area based on air quality monitoring data from 2001–2003. Therefore, the Youngstown Area is subject to the requirements of subpart 1 of Part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-

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

B. The Youngstown Area

The Youngstown Area consists of Mercer County, Pennsylvania and Mahoning, Trumbull, and Columbiana Counties, Ohio. Prior to its designation as an 8-hour ozone nonattainment area, the Youngstown Area was a marginal 1-hour ozone nonattainment area, and therefore, was subject to requirements for marginal nonattainment areas pursuant to section 182(a) of the CAA. See 56 FR 56694 (November 6, 1991). EPA determined that the Youngstown Area has attained the 1-hour ozone NAAQS by the November 15, 1993 attainment date (60 FR 3349, January 17, 1995). The Ohio counties were subsequently redesignated as attainment (Mahoning and Trumbull Counties on January 31, 1996 (61 FR 3319) and Columbiana County on February 8, 1995 (60 FR 7453)).

On March 27, 2007, the PADEP requested that Mercer County be redesignated to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2004–2006, indicating that the 8-hour NAAQS for ozone had been achieved in the Youngstown Area. The data satisfies the CAA requirements that 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), must be 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 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 redesignations 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 (TSDs) 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 March 27, 2007, the PADEP requested redesignation of Mercer County to attainment for the 8-hour ozone standard. On March 27, 2007, PADEP submitted a maintenance plan for Mercer County as a SIP revision, to ensure continued attainment of the 8-hour ozone NAAQS over the next 11 years, until 2018. PADEP also submitted a 2002 base-year inventory concurrently with its maintenance plan as a SIP revision. EPA has determined that Mercer County has attained the 8-hour ozone 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 official designation of Mercer County from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base-year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in Mercer County for the next 11 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 NO_x and VOC MVEBs (Mercer County only) for transportation conformity purposes for the years 2009 and 2018. These MVEBs are displayed in the following table:

TABLE 1.—MERCER COUNTY MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER SUMMER DAY (TPSD)

Year	VOC	NO _x
2009	4.2	11.2
2018	2.6	4.9

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

EPA is proposing to determine that Mercer County has attained the 8-hour ozone standard, and that all other redesignation criteria have been met. The following is a description of how the PADEP's March 27, 2007 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. Mercer County Has Attained the 8-Hour NAAQS

EPA is proposing to determine that Mercer County 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 design value, which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor, within the area, over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in 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 Youngstown Area, there are four ozone monitors, one located in Mahoning County, Ohio, two located in Trumbull County, Ohio and one in Mercer County, Pennsylvania that measure air quality with respect to ozone. As part of its redesignation request, Pennsylvania referenced ozone monitoring data for the years 2004–2006

for the Youngstown Area. This data has been quality assured and is recorded in the AQS. The PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. The fourth-high 8-hour daily maximum concentrations, along with the three-year average are summarized in Tables 2–5.

TABLE 2.—YOUNGSTOWN AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES MERCER COUNTY, PENNSYLVANIA MONITOR/AQS ID 42–085–0100

Year	Annual 4th highest reading (ppm)
2004	0.076
2005	0.087
2006	0.079

The average for the 3-year period 2004–2006 is 0.079 ppm

TABLE 3.—YOUNGSTOWN AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES MAHONING COUNTY, OHIO MONITOR/AQS ID 39–099–0013

Year	Annual 4th highest reading (ppm)
2004	0.074
2005	0.083
2006	0.076

The average for the 3-year period 2004–2006 is 0.077 ppm

TABLE 4.—YOUNGSTOWN AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES TRUMBULL COUNTY, OHIO MONITOR/AQS ID 39–155–0009

Year	Annual 4th highest reading (ppm)
2004	0.078
2005	0.083
2006	0.074

The average for the 3-year period 2004–2006 is 0.078 ppm

TABLE 5.—YOUNGSTOWN AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES TRUMBULL COUNTY, OHIO MONITOR/AQS ID 39–155–0011

Year	Annual 4th highest reading (ppm)
2004	0.080
2005	0.087
2006	0.082

The average for the 3-year period 2004–2006 is 0.083 ppm

The air quality data for 2004–2006 show that the Youngstown Area has attained the standard with a design value of 0.083 ppm. The data collected at the Youngstown Area monitors satisfy 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 PADEP's request for redesignation for Mercer County indicates that the data is complete and was quality assured in accordance with 40 CFR part 58. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Pennsylvania and data taken from AQS indicate that the Youngstown Area has attained the 8-hour ozone NAAQS.

B. Mercer County 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 Mercer County has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to Mercer County 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, 12465–12466 (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). *See also*, 68 FR at 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

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

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which includes 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 requirements (Prevention of Significant Deterioration (PSD));

- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) 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 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the State. Thus, we do not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996);

and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also*, the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 53099, October 19, 2001). 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(1) because the NO_x rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS." 69 FR 23951, 23983 (April 30, 2004).

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

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

Pursuant to an April 30, 2004, final rule (69 FR 23951), the Youngstown Area was designated a basic nonattainment area under subpart 1 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 applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification.

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

First, at the time the redesignation request was submitted, Mercer County was classified under subpart 1 and was obligated to meet only subpart 1 requirements. Under EPA's longstanding interpretation of section

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

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

With respect to 8-hour subpart 2 requirements, if Mercer County initially had been classified under subpart 2, the first two Part D subpart 2 requirements applicable to Mercer County under section 182(a) of the CAA would be: a base-year inventory requirement pursuant to section 182(a)(1) of the CAA, and, the emissions statement requirement pursuant to section 182(a)(3)(B).

As stated previously, these requirements are not yet due for purposes of redesignation of Mercer County, but nevertheless, Pennsylvania already has in its approved SIP, an emissions statement rule for the 1-hour

standard that covers all portions of the designated 8-hour nonattainment area and, that satisfies the emissions statement requirement for the 8-hour standard. *See*, 25 Pa. Code 135.21(a)(1), codified at 40 CFR 52.2020; 60 FR 2881, January 12, 1995. With respect to the base-year inventory requirement, in this notice of proposed rulemaking, EPA is proposing to approve the 2002 base-year inventory for Mercer County, which was submitted on March 27, 2007, concurrently with its maintenance plan, into the Pennsylvania SIP. EPA is proposing to approve the 2002 base-year inventory as fulfilling the requirements, if necessary, of both section 182(a)(1) and section 172(c)(3) of the CAA. A detailed evaluation of Pennsylvania’s 2002 base-year inventory for Mercer County can be found in a Technical Support Document (TSD) prepared by EPA for this rulemaking. EPA has determined that the emission inventory and emissions statement requirements for Mercer County have been satisfied.

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 that the general conformity and NSR requirements do not require 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).

In the case of Mercer County, EPA has also determined that before being redesignated, Mercer County need not

comply with the requirement that a NSR program be approved prior to redesignation. EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, “Part D NSR Requirements or Areas Requesting Redesignation to Attainment.” Normally, State’s Prevention of Significant Deterioration (PSD) program will become effective in the area immediately upon redesignation to attainment. *See* the more detailed explanations in the following redesignation rulemakings: Detroit, MI (60 FR 12467–12468 (March 7, 1995); Cleveland-Akron-Lorain, OH (61 FR 20458, 20469–20470, May 7, 1996); Louisville, KY (66 FR 53665, 53669, October 23, 2001); Grand Rapids, MI (61 FR 31831, 31836–31837, June 21, 1996). In the case of Mercer County the Chapter 127 Part D NSR regulations in the Pennsylvania SIP (codified at 40 CFR 52.2020(c)(1)) explicitly apply the requirements for NSR in section 184 of the CAA to ozone attainment areas within the OTR. The OTR NSR requirements are more stringent than that required for a marginal or basic ozone nonattainment area. On October 19, 2001 (66 FR 53094), EPA fully approved Pennsylvania’s NSR SIP revision consisting of Pennsylvania’s Chapter 127 Part D NSR regulations that cover Mercer County.

EPA has also 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 after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, and Vehicle Inspection and Maintenance (I/M) programs even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to Mercer County by virtue of the Area’s designation and classification. *See* 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–24832 (May 7, 1997).

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

In its June 8, 2007 decision the Court limited its vacatur so as to uphold those provisions of the anti-backsliding requirements that were not successfully challenged. Therefore the Area must meet the federal anti-backsliding requirements, *see* 40 CFR 51.900, *et seq.*; 70 FR 30592, 30604 (May 26, 2005) which apply by virtue of the area's classification for the 1-hour ozone NAAQS. As set forth in more detail below, the area must also address four additional anti-backsliding provisions identified by the Court in its decisions.

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe 1-hour ozone NAAQS requirements that continue to apply after revocation of the 1-hour ozone NAAQS to former 1-hour ozone nonattainment areas. Section 51.905(a)(1)(i) provides that:

The area remains subject to the obligation to adopt and implement the applicable requirements as defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of paragraph (b) of this section. * * *

Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), states that:

Applicable requirements means for an area the following requirements to the extent such requirements applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS.

- (1) Reasonably available control technology (RACT).
- (2) Inspection and maintenance programs (I/M).
- (3) Major source applicability cut-offs for purposes of RACT.
- (4) Rate of Progress (ROP) reductions.
- (5) Stage II vapor recovery.
- (6) Clean fuels fleet program under section 183(c)(4) of the CAA.
- (7) Clean fuels for boilers under section 182(e)(3) of the CAA.
- (8) Transportation Control Measures (TCMs) during heavy traffic hours as provided section 182(e)(4) of the CAA.
- (9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.
- (10) Transportation control measures (TCMs) under section 182(c)(5) of the CAA.
- (11) Vehicle miles traveled (VMT) provisions of section 182(d)(1) of the CAA.
- (12) NO_x requirements under section 182(f) of the CAA.
- (13) Attainment demonstration or alternative as provided under § 51.905(a)(1)(ii).

Pursuant to 40 CFR 51.905(c), the Area is subject to the obligations set forth in §§ 51.905(a) and 51.900(f).

Prior to its designation as an 8-hour ozone nonattainment area, the Youngstown Area was designated a marginal nonattainment area for the 1-

hour standard. With respect to the 1-hour standard, the applicable requirements under the anti-backsliding provisions at 40 CFR 51.905(a)(1) for the Youngstown Area are limited to RACT and I/M programs specified in section 182(a) of the CAA and are discussed in the following paragraphs:

Section 182(a)(2)(A) required SIP revisions to correct or amend RACT for sources in marginal areas, such as the Youngstown Area, that were subject to control technique guidelines (CTGs) issued before November 15, 1990 pursuant to CAA section 108. On December 22, 1994, EPA fully approved into the Pennsylvania SIP all corrections required under section 182(a)(2)(A) of the CAA (59 FR 65971, December 22, 1994) (this covers the Mercer County, PA portion of the Youngstown Area). EPA believes that this requirement applies only to marginal and higher classified areas under the 1-hour NAAQS pursuant to the 1990 amendments to the CAA; therefore, this is a one-time requirement. After an area has fulfilled the section 182(a)(2)(A) requirement for the 1-hour NAAQS, there is no requirement under the 8-hour NAAQS.

Section 182(a)(2)(B) relates to the savings clause for vehicle inspection and maintenance (I/M). It requires marginal areas to adopt vehicle I/M programs. This provision was not applicable to the Youngstown Area because this Area did not have and was not required to have an I/M program before November 15, 1990.

In addition the Court held that EPA should have retained four additional measures in its anti-backsliding provisions: (1) Nonattainment area NSR; (2) Section 185 penalty fees; (3) contingency measures under section 172(c)(9) or 182(c)(9) of the Act; and (4) 1-hour motor vehicle emission budgets that were yet not replaced by 8-hour emissions budgets. These requirements are addressed below:

With respect to NSR, EPA has determined that areas being redesignated need not have an approved nonattainment New Source Review program, for the same reasons discussed previously with respect to the applicable Part D requirement for the 8-hour standard.

The section 185 penalty fee requirement applies only in severe and extreme nonattainment areas, and therefore was never applicable in the Youngstown 1-hour marginal nonattainment area.

With respect to the requirement for submission of contingency measures for the 1-hour standard, section 182(a) does

not require contingency measures for marginal areas.

The conformity portion of the Court's ruling does not impact the redesignation request for Mercer County except to the extent that the Court in its June 8 decision clarified that for those areas with 1-hour MVEBs, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. There are no applicable 1-hour MVEBs for Mercer County. (As discussed elsewhere in this document, EPA is only proposing to approve 8-hour MVEBs for the Mercer County portion of the Youngstown Area.) To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93. The court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

Thus EPA has concluded that Mercer County has met all requirements applicable for redesignation under the 1-hour standard.

4. Transport Region Requirements

All areas in the Ozone Transport Region (OTR), both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include RACT, NSR, enhanced vehicle inspection and maintenance, and Stage II vapor recovery or a comparable measure.

In the case of Mercer County, which is located in the OTR, nonattainment NSR will continue to be applicable after redesignation. On October 19, 2001, EPA approved the 1-hour NSR SIP revision for the Area. *See* 66 FR 53094 (October 19, 2001).

EPA has also interpreted the section 184 OTR requirements, including NSR, as not being applicable for purposes of redesignation. Reading, PA Redesignation, 61 FR 53174, (October 10, 1996), 62 FR 24826 (May 7, 1997). The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, and I/M even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the area by virtue of the area's nonattainment designation and classification, and thus are properly

considered not relevant to an action changing an area's designation. See 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–24832 (May 7, 1997).

5. Mercer County Has a Fully Approved SIP for Purposes of Redesignation

EPA has fully approved the Pennsylvania 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 at 25425 (May 12, 2003) and citations therein.

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

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in Mercer County

is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 6.

TABLE 6.—TOTAL VOC AND NO_x EMISSIONS FOR 2002 AND 2004 IN TONS PER SUMMER DAY (TPSD)

Year	Pennsylvania	Ohio	Total
Volatile Organic Compounds (VOC)			
2002	20.8	70.5	91.3
2004	19.0	64.6	83.6
Difference (02–04)	– 1.8	– 5.9	– 7.7
Nitrogen Oxides (NO_x)			
2002	25.5	95.5	121.0
2004	22.4	82.5	104.9
Difference (02–04)	– 3.1	– 13.0	– 16.1

Between 2002 and 2004, VOC emissions throughout the Area decreased by 7.7 tpsd from 91.3 tpsd to 83.6 tpsd; NO_x emissions throughout the Area decreased by 16.1 tpsd from 121.0 tpsd to 104.9 tpsd. These reductions, and anticipated future reductions, are due to the following permanent and enforceable measures.

1. Stationary Point Sources

Federal NO_x SIP Call (66 FR 43795, August 21, 2001).

2. Stationary Area Sources

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

Portable Fuel Containers (69 FR 70893, December 8, 2004).

3. Highway Vehicle Sources

Federal Motor Vehicle Control Programs (FMVCP).

—Tier 1 (56 FR 25724, June 5, 1991).

—Tier 2 (65 FR 6698, February 10, 2000).

Heavy-duty Engine and Vehicle Standards (62 FR 54694, October 21, 1997, and 65 FR 59896, October 6, 2000).

National Low Emission Vehicle (NLEV) Program (PA) (64 FR 72564, December 28, 1999).

Vehicle Emission Inspection/Maintenance Program (70 FR 58313, October 6, 2005).

4. Non-Road Sources

Non-road Diesel (69 FR 38958, June 29, 2004).

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

D. Mercer County Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate Mercer County to attainment status, Pennsylvania submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Area for at least 11 years after redesignation. The Commonwealth 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 Mercer County meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

What Is Required in a Maintenance Plan?

Section 175 of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under 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 Commonwealth must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 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 Mercer County Maintenance Plan

(a) Attainment inventory—An attainment inventory includes the

emissions during the time period associated with the monitoring data showing attainment. PADEP determined that the appropriate attainment inventory year is 2004. That year establishes a reasonable year within the three-year block of 2004–2006 as a baseline and accounts for reductions attributable to implementation of the CAA requirements to date. The 2004 inventory is consistent with EPA guidance and is based on actual “typical summer day” emissions of VOC and NO_x during 2004 and consists of a list of sources and their associated emissions.

The 2002 and 2004 point source data was compiled from actual sources. Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data Systems and EPA’s publication series AP-42, and are based on Source Classification Codes (SCC). The 2002 area source data was compiled using county-level activity data, from census numbers, from county numbers, etc. The 2004 area source data was projected from the 2002 inventory using temporal allocations provided by the Mid-Atlantic Regional Air Management Association (MARAMA).

The on-road mobile source inventories for 2002 and 2004 were

compiled using MOBILE6.2 and Pennsylvania Department of Transportation (PENNDOT) estimates for VMT. The PADEP has provided detailed data summaries to document the calculations of mobile on-road VOC and NO_x emissions for 2002, as well as for the projection years of 2004, 2009, and 2018 (shown in Table 8 below). The 2002 and 2004 emissions for the majority of non-road emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model calculates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled non-road equipment types and includes growth factors. The NONROAD model does not estimate emissions from locomotives or aircraft. For 2002 and 2004 locomotive emissions, the PADEP projected emissions from a 1999 survey using national fuel consumption information and EPA emission and conversion factors. There are no significant commercial aircraft operations (aircraft that can seat over 60 passengers) in Mercer County. Mercer County airports do not support enough flights or the type of aircraft to create measurable emissions from these sources. Emissions from airport ground support equipment are considered to be zero. For 2002 and 2004 aircraft emissions, PADEP estimated emissions using small airport operations statistics

from <http://www.airnav.com>, and emission factors and operational characteristics in the EPA-approved model, Emissions and Dispersion Modeling System (EDMS).

More detailed information on the compilation of the 2002, 2004, 2009, and 2018 inventories can be found in the Technical Appendices, which are part of PADEP’s March 27, 2007 state submittal.

(b) Maintenance Demonstration—On March 27, 2007, the PADEP submitted a maintenance plan as required by section 175A of the CAA. The Mercer County maintenance 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 Mercer County through the year 2018. A maintenance demonstration need not be based on modeling. *See, Wall v. EPA, supra*; *Sierra Club v. EPA, supra*. *See also*, 66 FR at 53099–53100; 68 FR at 25430–25432.

Table 7 specifies the VOC and NO_x emissions for the Youngstown Area for 2004, 2009, and 2018. The PADEP chose 2009 as an interim year in the 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 maintenance period.

TABLE 7.—VOC AND NO_x EMISSIONS FOR THE YOUNGSTOWN AREA (TPSD); 2004, 2009, 2018

	2004			2009			2018		
	PA	OH	Total	PA	OH	Total	PA	OH	Total
Point.									
VOC	1.7	6.0	7.8	2.7	6.4	9.1	3.7	7.8	11.4
NO _x	2.9	20.3	23.2	4.3	8.3	12.6	5.5	12.7	18.2
Area.									
VOC	7.6	24.1	31.7	7.4	22.9	30.2	7.8	23.0	30.9
NO _x	0.8	2.5	3.3	0.9	2.8	3.7	0.9	3.0	3.9
Mobile.									
VOC	5.9	26.2	32.1	4.5	19.6	24.1	3.0	10.4	13.4
NO _x	15.8	43.5	59.3	11.6	33.7	45.3	5.3	13.3	18.5
Nonroad.									
VOC	3.8	8.3	12.1	3.4	6.5	9.9	2.6	5.2	7.8
NO _x	2.8	16.3	19.1	2.3	12.5	14.8	1.4	8.2	9.6
Total.									
VOC	19.1	64.6	83.6	18.0	55.4	73.4	17.1	46.3	63.4
NO _x	22.4	82.5	104.9	19.1	57.4	76.4	13.1	37.2	50.2

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

- The Clean Air Interstate Rule (CAIR) (71 FR 25328, April 28, 2006).
- The Federal NO_x SIP Call (66 FR 43795, August 21, 2001).

- Area VOC regulations concerning portable fuel containers (69 FR 70893, December 8, 2004), consumer products (69 FR 70895, December 8, 2004), and architectural and industrial maintenance coatings (AIM) (69 FR 68080, November 23, 2004).
- Federal Motor Vehicle Control Programs (light-duty) (Tier 1, Tier 2; 56

FR 25724, June 5, 1991; 65 FR 6698, February 10, 2000).

- Vehicle emission/inspection/maintenance program (70 FR 58313, October 6, 2005).
- Heavy duty diesel on-road (2004/2007) and low sulfur on-road (2006); 66 FR 5002 (January 18, 2001).

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

- NLEV/PA Clean Vehicle Program (54 FR 72564, December 28, 1999)—Pennsylvania will implement this program in car model year 2008 and beyond.

- Pennsylvania Heavy-Duty Diesel Emissions Control Program (May 10, 2002).

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

(c) Monitoring Network—There are four ozone monitors located throughout the Youngstown Area, one located in Mahoning County, Ohio, two located in Trumbull County, Ohio and one in Mercer County, Pennsylvania that measure air quality with respect to ozone, in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—In addition to maintaining the key elements of its regulatory program, the Commonwealth will track the attainment status of the ozone NAAQS in the Youngstown Area by reviewing air quality and emissions data during the maintenance period. The Commonwealth will perform an annual evaluation of Vehicle Miles Traveled (VMT) data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR part 51, subpart A) to see if they exceed the attainment year inventory (2004) by more than 10 percent. The PADEP will also continue to operate the existing ozone monitoring station in Mercer County pursuant to 40 CFR part 58 throughout the maintenance period and submit quality-assured ozone data to EPA through the AQS system. Section 175A(b) of the CAA states that eight years following redesignation of Mercer County, PADEP will be required to submit a second maintenance plan that will ensure attainment through 2028. PADEP has made the commitment to meet the requirement section 175A(b).

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan

include such contingency measures as EPA deems necessary to ensure that the Commonwealth 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 Mercer County to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_x emissions in the Youngstown Area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_x emissions to decrease and stay below 2004 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest 8-hour ozone concentrations at any of the Youngstown Area monitors are above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate, in cooperation with the Ohio Environmental Protection Agency, whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will also analyze the conditions leading to the excessive ozone levels and evaluate which measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, state (including states upwind of Pennsylvania), and local measures that have been adopted but not yet implemented at the time the excessive ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will also be considered in the event that a violation of the 8-hour ozone standard occurs at any of the Youngstown Area monitors. In the event of a violation of the 8-hour ozone standard, PADEP will adopt additional emissions reduction measures as expeditiously as practicable in accordance with the implementation schedule listed later in this notice and in the Pennsylvania Air Pollution Control Act in order to return the Youngstown Area to attainment with the standard. Contingency measures to

be considered for Mercer County will include, but not be limited to the following:

Regulatory measures:

- Additional controls on consumer products.
- Additional controls on portable fuel containers.

Non-Regulatory measures:

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

The plan lays out a process to have any regulatory contingency measures in effect within 19 months of the trigger. The plan also lays out a process to implement the non-regulatory contingency measures within 12–24 months of the trigger.

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

A. What are the Motor Vehicle Emissions Budgets?

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

how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

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

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

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

The MVEBs for Mercer County are listed in Table 1 of this document for 2009 and 2018, 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). Note that in a separate rulemaking action (72 FR 19435, April 18, 2007) EPA proposed approval of Trumbull, Mahoning, and Columbiana Counties, Ohio MVEBs. These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What is a Safety Margin?

A “safety margin” is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: Mercer County first attained the 8-hour ozone NAAQS during the 2004 to 2006 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for Mercer County. The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 19.0 tpsd of VOC and 22.4 tpsd of NO_x. The PADEP projected emissions out to the year 2018 and projected a total of 17.1 tpsd of VOC and 13.1 tpsd of NO_x from all sources in Mercer County. The safety margin for 2018 would be the difference between these amounts, or 1.9 tpsd of VOC and 9.3 tpsd 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 8 shows the safety margins for the 2009 and 2018 years.

TABLE 8.—2009 AND 2018 SAFETY MARGINS FOR MERCER COUNTY

Inventory year	VOC emissions (tpsd)	NO _x emissions (tpsd)
2004 Attainment	19.0	22.4
2009 Interim	18.0	19.1
2009 Safety Margin	1.0	3.3
2004 Attainment	19.0	22.4
2018 Final	17.1	13.1
2018 Safety Margin	1.9	9.3

The PADEP allocated 0.3 tpsd VOC and 0.4 tpsd NO_x 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 PADEP allocated 0.4 tpsd VOC and 0.4 tpsd NO_x 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 9 shows the final 2009 and 2018 MVEBs for Mercer County.

TABLE 9.—2009 AND 2018 FINAL MVEBs FOR MERCER COUNTY

Inventory year	VOC emissions (tpsd)	NO _x emissions (tpsd)
2009 projected on-road mobile source projected emissions	4.2	11.2
2009 Safety Margin Allocated to MVEBs	0.3	0.4
2009 MVEBs	4.5	11.6

TABLE 9.—2009 AND 2018 FINAL MVEBS FOR MERCER COUNTY—Continued

Inventory year	VOC emissions (tpsd)	NO _x emissions (tpsd)
2018 projected on-road mobile source projected emissions	2.6	4.9
2018 Safety Margin Allocated to MVEBs	0.4	0.4
2018 MVEBs	3.0	5.3

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for Mercer County are approvable because the MVEBs for VOCs and NO_x continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations. Note that in a separate rulemaking action (72 FR 19435, April 18, 2007) EPA proposed approval of Trumbull, Mahoning, and Columbiana Counties, Ohio MVEBs.

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

The MVEBs for the Mercer County maintenance plan are being posted to EPA's conformity Web site concurrently 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 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 Mercer County 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 Mercer County MVEBs will also be announced on EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/index.htm> (once there, click on "Adequacy Review of SIP Submissions").

VIII. Proposed Actions

EPA is proposing to determine that Mercer County has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of Mercer

County from nonattainment to attainment for the 8-hour ozone NAAQS. EPA has evaluated Pennsylvania's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that Mercer County has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of Mercer County from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for Mercer County, submitted on March 27, 2007, as a revision to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for Mercer County because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the 2002 base-year inventory for Mercer County, and the MVEBs submitted by Pennsylvania for Mercer County 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. 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 approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the

necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen 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: July 16, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7-14589 Filed 7-26-07; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU98

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for *Astragalus magdalenae* var. *peirsonii*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of the draft economic analysis; notice of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise currently designated critical habitat for *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch) pursuant to the Endangered Species Act of 1973, as amended (Act). In total,

approximately 16,108 acres (ac) (6,519 hectares (ha)) in Imperial County, California, fall within the boundaries of the proposed revised critical habitat designation. Lands being proposed as critical habitat are under Federal (15,857 ac (6,418 ha)), private (240 ac (97 ha)), and State (11 ac (4 ha)) ownership.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any area as critical habitat. We have conducted an analysis of the economic impacts of designating the aforementioned areas as critical habitat for *Astragalus magdalenae* var. *peirsonii*, and are announcing the availability of the draft economic analysis for public review. We hereby solicit data and comments from the public on all aspects of this revised proposal, including data on the economic and other impacts of the designation.

We are also announcing that public hearings will be held on both the proposed critical habitat rule and the draft economic analysis.

DATES: We will accept comments from all interested parties until September 25, 2007. The public hearings will take place on August 23, 2007, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. at the Carlsbad Fish and Wildlife Office in Carlsbad, California (see **ADDRESSES**).

ADDRESSES: *Public Hearings.* The public hearings will be held at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California, 92011.

Comments. If you wish to comment on the proposed rule and/or the draft economic analysis, you may submit your comments and materials, identified by RIN 1018-AU98, by any of the following methods:

- (1) You may send comments by electronic mail (e-mail) to fw8cfwocomments@fws.gov. Include "RIN 1018-AU98" in the subject line.
- (2) You may fax your comments to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office at 760-431-5901.
- (3) You may mail or hand-deliver your written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office at the address above.

(4) You may submit your comments at the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife

Office at the above address (telephone 760-431-9440). Copies of the draft economic analysis are available for downloading from the Internet at <http://www.fws.gov/carlsbad/> or by contacting the Carlsbad Fish and Wildlife Office directly at the above phone number or address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the address listed under **ADDRESSES** (telephone 760-431-9440; facsimile 760-431-5901). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed critical habitat rule and its associated draft economic analysis are hereby solicited. On the basis of public comment, during the development of the final rule we may find that areas proposed are not essential or are appropriate for exclusion under section 4(b)(2) in which case they would be removed from the final critical habitat designation.

Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the taxon caused by designation.

(2) Specific information on the amount and distribution of *Astragalus magdalenae* var. *peirsonii* habitat, and what areas that were occupied at the time of listing that contain features essential for the conservation of the taxon should be included in the designation and why, and what areas that were not occupied at the time of listing are essential to the conservation of the taxon and why.

(3) Additional information on the specific physical and biological features (primary constituent elements) that are essential to the conservation of *Astragalus magdalenae* var. *peirsonii* (see "Primary Constituent Elements" section of this proposed rule for more details).

(4) Land use designations and current or planned activities in the subject areas