

### III. Proposed Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP on February 4, 2003 and November 21, 2005 to establish and require VOC and NO<sub>x</sub> RACT for seven individual sources pursuant to the Commonwealth's SIP-approved generic RACT regulations. EPA is soliciting public comments on this proposed rule to approve these source-specific RACT determinations established and imposed by PADEP in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to these sources. These comments will be considered before taking final action.

### IV. 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 standard, 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. 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 proposed rule to approve seven source-specific RACT determinations established and imposed by the Commonwealth of Pennsylvania pursuant to its SIP-approved generic RACT regulations 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 in 40 CFR Part 52

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

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

Dated: April 24, 2006.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[EPA-R03-OAR-2005-0548; FRL-8165-4]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the Charleston Ozone Nonattainment Area to Attainment and Approval of the Area's 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 submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) is requesting that the Charleston area be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). In conjunction with its redesignation request, the WVDEP submitted a SIP revision consisting of a maintenance plan for the Charleston area that provides for continued attainment of the 8-hour ozone NAAQS for the next 12 years. EPA is proposing to make a determination that the Charleston area 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 the Charleston area 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 maintenance plan for the Charleston area 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 June 5, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2005-0548 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](mailto:morris.makeba@epa.gov).

C. Mail: EPA-R03-OAR-2005-0548, Makeba Morris, Chief, Air Quality Planning Branch.

D. Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. 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-2005-0548. 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.epa.gov/edocket>, <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) 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 [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <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:**

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**SUPPLEMENTARY INFORMATION:**

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

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**I. What Actions Are EPA Proposing To Take?**

On November 30, 2005, WVDEP formally submitted a request to redesignate the Charleston area from nonattainment to attainment of the 8-hour NAAQS for ozone. On November 30, 2005, West Virginia submitted a maintenance plan for the Charleston area as a SIP revision, to ensure continued attainment over the next 12 years. The Charleston area is composed of Kanawha and Putnam Counties. It is currently designated as a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the Charleston area 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 the Charleston area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the area, such approval being one of the CAA requirements for approval of a redesignation request. The maintenance plan is designed to ensure continued attainment in the Charleston area for the next 12 years. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) for the Charleston

area for transportation conformity purposes. Concurrently, the State is requesting that EPA approve the maintenance plan as meeting the requirements of CAA 175(A)(b) with respect to the 1-hour ozone maintenance plan update.

**II. What Is the Background for These Proposed Actions?**

*A. General*

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO<sub>x</sub> and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO<sub>x</sub> 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 Charleston area was designated as basic 8-hour ozone nonattainment status in a **Federal Register** notice signed on April 25, 2004 and published on April 30, 2004 (69 FR 23857). On June 15, 2005 (69 FR at 23396), the 1-hour ozone NAAQS was revoked in the Charleston area (as well as most other areas of the country). See 40 CFR 50.9(b); 69 FR at 23396, 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 an 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 Charleston 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 concentration 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 from the 3-year period of 2002–2004 indicates that the Charleston area has a design value of 0.081 ppm. Therefore, the ambient ozone data for the Charleston area indicates no violations of the 8-hour ozone standard. Monitoring data for 2005 indicates continued attainment of the 8-hour ozone standard.

#### B. The Charleston Area

The Charleston area consists of Kanawha and Putnam Counties. Prior to its designation as an 8-hour ozone nonattainment area, the Charleston area was a maintenance area for the 1-hour ozone nonattainment NAAQS.

On November 30, 2005, the WVDEP requested that the Charleston area 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 Charleston 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 (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 November 30, 2005, the WVDEP requested redesignation of the Charleston area to attainment for the 8-hour ozone standard. On November 30, 2005, the WVDEP submitted a maintenance plan for the Charleston area as a SIP revision, to assure continued attainment over the next 12 years, until 2018. Concurrently, West Virginia is requesting that EPA approve maintenance plan as meeting the requirements of CAA 175A(b) with respect to the 1-hour ozone maintenance plan update. EPA is proposing to approve the maintenance plan to fulfill the requirement of section 175A(b) for submission of a maintenance plan update eight years after the area was redesignated to attainment of the 1-hour ozone NAAQS. EPA believes that such an update must ensure that the maintenance plan in the SIP provides maintenance of the NAAQS for a period of 20 years after the area is initially redesignated to attainment. EPA can propose approval because the maintenance plan, which demonstrates maintenance of the 8-hour ozone NAAQS through 2018, also demonstrates maintenance of the 1-hour ozone NAAQS through 2018, even though the latter standard is no longer

in effect. The Charleston area was redesignated to attainment of the 1-hour ozone NAAQS on September 6, 1994 (59 FR 45985), and, the initial 1-hour ozone maintenance plan provided for maintenance through 2005. Section 51.905(e) of the “Final Rule To Implement the 8-Hour Requirements—Phase 1,” April 30, 2004 (69 FR 23999) specifies the conditions that must be satisfied before EPA may approve a modification to a 1-hour maintenance plan which: (1) removes the obligation to submit a maintenance plan for the 1-hour ozone NAAQS eight years after approval of the initial 1-hour maintenance plan and/or (2) removes the obligation to implement contingency measures upon a violation of the 1-hour NAAQS. EPA believes that section 51.905(e) of the final rule allows a State to make either one or both of these modifications to a 1-hour maintenance plan SIP once EPA approves a maintenance plan for the 8-hour NAAQS. The maintenance plan will not trigger the contingency plan upon a violation of the 1-hour ozone NAAQS, but upon a violation of the 8-hour ozone NAAQS. EPA believes that the 8-hour standard is now the proper standard which should trigger the contingency plan now that the 1-hour NAAQS has been revoked and now that approval of the maintenance plan would allow the State to remove a 1-hour NAAQS obligation from the SIP. EPA has determined that the Charleston area 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 the Charleston area 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 the Charleston area 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<sub>x</sub> and VOC for transportation conformity purposes for the years 2004, 2009 and 2018. These MVEBs are displayed in the following table:

**TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY [tpd]**

Year	NO <sub>x</sub>	VOC
2004 .....	26.4	16.1
2009 .....	19.8	11.6
2018 .....	8.20	7.20

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

EPA is proposing to determine that the Charleston nonattainment area 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 November 30, 2005 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

*A. The Charleston Area Has Attained the 8-Hour Ozone NAAQS*

EPA is proposing to determine that the Charleston 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 Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Charleston area there is one ozone monitor, located in Kanawha County, that measures air quality with respect to ozone. As part of its redesignation request, West Virginia submitted ozone monitoring data for the years 2002–2004 (the most recent three years of data available as of the time of the redesignation request). This data has been quality assured and is recorded in AIRS. The fourth high 8-hour daily maximum concentrations, along with the three-year average, are summarized in Table 2.

**TABLE 2.—CHARLESTON NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; CHARLESTON MONITOR, AIRS ID 54–033–4000**

Year	Annual 4th high reading (ppm)
2002 .....	0.087
2003 .....	0.088
2004 .....	0.069
2005 .....	0.079

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

The data for 2002–2004 show that the area has attained the standard, and preliminary data for the 2005 ozone season show that the annual fourth high reading is 0.079 ppm and that the area continues to attain the standard. The data collected at the Charleston monitor 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 the Charleston area indicates that the data was quality assured in accordance with 40 CFR part 58. The WVDEP uses AIRS 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 indicates that the Charleston area has attained the 8-hour ozone NAAQS.

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

EPA has determined that West Virginia has met all SIP requirements for the Charleston area 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 the area, 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 come 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 area’s submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of 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<sub>x</sub> SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO<sub>x</sub> 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. The State will still be subject to these requirements after the Charleston 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 50399 (October 19, 2001). Similarly, with respect to the NO<sub>x</sub> SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO<sub>x</sub> SIP Call rules are not “an ‘applicable requirement’ for purposes of section 110(l) because the NO<sub>x</sub> 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. 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 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 Charleston 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. Since the Charleston area was maintaining attainment of the 1-hour standard at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004, no Part D submittals under the 1-hour standard were required or made for this 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 Charleston 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 the West Virginia 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 the area’s redesignation request. Because the State submitted a complete redesignation request for the Charleston area 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 the Charleston area 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 (Dec. 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 the Charleston area, 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 the area upon redesignation to attainment in the Charleston area. 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. The Area Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the West Virginia SIP for the purposes of 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 Charleston area was maintaining attainment of the 1-hour standard at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004. Because the area was redesignated as a 1-hour maintenance area, no Part D SIP submittals were previously required. Because there are no current SIP submission requirements applicable for the purposes of redesignation of the Charleston area, 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 Charleston area, and therefore they need not be approved into the SIP prior to redesignation.

4. The Air Quality Improvement in the Charleston 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 State has 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 are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO<sub>x</sub> EMISSIONS FOR 2002 AND 2004 [tpd]

Year	Point	Area	Nonroad	Mobile	Total
<b>Volatile Organic Compounds (VOC)</b>					
Year 2002 .....	10.1	21.2	5.5	15.7	52.5
Year 2004* .....	10.0	20.9	5.3	13.4	49.6
Diff. (02-04) .....	-0.1	-0.3	-0.2	-2.3	-2.9
<b>Nitrogen Oxides (NO<sub>x</sub>)</b>					
Year 2002 .....	133.8	2.4	13.0	25.5	174.7
Year 2004* .....	87.8	2.5	12.7	22.0	125.0
Diff. (02-04) .....	-46.0	+0.1	-0.3	-3.5	-49.7

\* 2004 Emissions estimated by linear interpolation for all sectors except highway and point EGUs.

Between 2002 and 2004, VOC emissions were reduced by 2.9 tpd, and NO<sub>x</sub> emissions were reduced by 49.7 tpd, due to the following permanent and enforceable measures implemented or in

the process of being implemented in the Charleston area:

*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 VOC and NO<sub>x</sub> emissions. Nearly all of the reductions in VOC are attributable to mobile source emission controls such as NLEV and Tier 2 programs. The mobile programs produced 2.3 tpd of VOC reductions and 3.5 tpd of NO<sub>x</sub> reductions.

Nearly all of the reductions in NO<sub>x</sub> are attributable to the implementation of the NO<sub>x</sub> SIP Call. West Virginia has indicated in its submittal that the implementation of the NO<sub>x</sub> SIP Call, with its mandatory reductions in NO<sub>x</sub> emissions from Electric Generating Units (EGUs) and large industrial boilers (non-EGUs), reduced NO<sub>x</sub> emissions throughout the Charleston area. NO<sub>x</sub> emissions from EGUs in the Charleston area were reduced by 6,798 tons between 2002 and 2004. Also, NO<sub>x</sub> emissions from non-EGU sources in the Charleston area were reduced by 806 tons between 2003 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 39858 (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 Charleston area monitor. The Tier 2 standards came into effect in 2004, and by 2030, EPA expects that the new Tier 2 standards will reduce NO<sub>x</sub> 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. The Charleston Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Charleston area to attainment status, West Virginia submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the area for at least 12 years after redesignation. West Virginia is requesting that EPA approve this SIP revision as meeting the requirement of CAA 175A(b) and replace the 1-hour ozone maintenance plan update requirement.

Under 40 CFR 51.905(e), the EPA may approve a SIP revision requesting the removal of the obligation to implement contingency measures upon a violation of the 1-hour ozone NAAQS when the State submits and EPA approves an attainment demonstration for the 8-hour ozone NAAQS for an area *initially designated* nonattainment for the 8-hour NAAQS or a maintenance SIP for the 8-hour NAAQS for an area *initially designated* attainment for the 8-hour NAAQS.

The rationale behind 40 CFR 51.905(e) is to ensure that the area maintains the applicable ozone standard (the 8-hour standard in areas where the 1-hour standard has been revoked). EPA believes this rationale analogously applies to areas that were not initially designated, but are *redesignated* as attainment with the 8-hour ozone NAAQS. Therefore, EPA intends to treat redesignated areas as though they had been initially designated attainment of the 8-hour ozone NAAQS, and accordingly proposes to relieve the Charleston area of its maintenance plan obligations with respect to the 1-hour standard. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for the Charleston area 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 (12 years in Charleston's

case). 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 Charleston Area 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 the Charleston area 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<sub>x</sub> emissions inventories for the Charleston area, including point, area, mobile on-road, and mobile non-road sources for a base year of 2002.

To develop the NO<sub>x</sub> 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 purchased from a vendor, Pacific Environmental Services. 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. For the 2002 inventory, diskettes were populated with i-STEPS software information, as well as source-specific data from the previous year and sent to facilities for updates of their 2002 activity and emissions data. The facilities then sent the diskettes back to the State and, where WVDEP staff quality assured the data and submitted it to EPA's Central

Data Exchange (CDX) site as well as to contractors for the Visibility Improvement State and Tribal Association of the Southeast (VISTAS), a Regional Planning Organization (RPO).

WVDEP used the VISTAS revised 2002 base year point source inventory including both EGUs and non-EGUs. The WVDEP took VISTAS data and calculated the emissions for the EGUs and non-EGUs for a typical summer weekday for peak ozone season (June thru August).

(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 highway emissions budgets. This applies to the maintenance plan submitted by WVDEP on November 30, 2005. Therefore, the WVDEP has consulted with the Charleston MPO, and the Regional Intergovernmental Council (RIC). The RIC provided base year and projection emissions data consistent with their most recent available Travel Demand Model (TDM) results along with EPA’s most recent emission factor model, MOBILE6.2. The WVDEP used these data to estimate highway emissions and, in consultation with the RIC, to develop highway emissions budgets for VOC and NO<sub>x</sub>. The RIC must evaluate future Long Range Transportation Plans and Transportation Improvement Programs 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 an actual decrease in highway emissions occurred between 2002 and 2004.

(iv) *Mobile non-road emissions*—Mobile non-road emissions were calculated in the same manner as the area source emissions.

The 2004 attainment year VOC and NO<sub>x</sub> emissions for the Charleston area are summarized along with the 2009 and 2018 projected emissions for this

area in tables 4 and 5, which cover 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<sub>x</sub> emissions for this area.

(b) *Maintenance Demonstration*—On November 30, 2005, the WVDEP submitted a SIP revision to supplement its November 30, 2005 redesignation request. The submittal by WVDEP consists of the maintenance plan as required by section 175A of the CAA. The Charleston area plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO<sub>x</sub> remain at or below the attainment year 2004 emissions levels throughout the Charleston area through the year 2018. The Charleston area 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).

Tables 4 and 5 specify the VOC and NO<sub>x</sub> emissions for the Charleston area for 2004, 2009, and 2018. The WVDEP chose 2009 as an interim year in the 12-year maintenance demonstration period to demonstrate that the VOC and NO<sub>x</sub> emissions are not projected to increase above the 2004 attainment level during the time of the 12-year maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018 [tpd]

Source category	2004 VOC emissions <sup>1</sup>	2009 VOC emissions	2018 VOC emissions
Mobile .....	13.4	11.6	7.2
Nonroad .....	5.3	4.6	3.5
Area .....	20.9	20.1	22.1
Point <sup>2</sup> .....	10.0	10.4	12.2
<b>Total .....</b>	<b>49.6</b>	<b>46.7</b>	<b>45.0</b>

<sup>1</sup> 2004 Emissions estimated by linear interpolation for all sectors except highway and EGUs.

<sup>2</sup> Non-EGU emissions updated for 2008 NO<sub>x</sub> SIP Call.

TABLE 5.—TOTAL NO<sub>x</sub> EMISSIONS 2004–2018 [tpd]

Source category	2004 NO <sub>x</sub> emissions <sup>1</sup>	2009 NO <sub>x</sub> emissions	2018 NO <sub>x</sub> emissions
Mobile .....	22.0	19.8	8.2
Nonroad .....	12.7	12.0	10.1
Area .....	2.5	2.6	2.9
Point <sup>2</sup> .....	87.8	67.9	59.4
<b>Total .....</b>	<b>125.0</b>	<b>102.3</b>	<b>80.6</b>

<sup>1</sup> 2004 Emissions estimated by linear interpolation for all sectors except highway and EGUs.

<sup>2</sup> Non-EGU emissions updated for 2008 NO<sub>x</sub> SIP Call.



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, the Clean Air Interstate Rule (CAIR), promulgated May 12, 2005, (70 FR 25161) should have positive impacts on the State'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 the air quality in the Charleston area.

Currently, the State is in the process of adopting rules to address CAIR through state rules 45CSR3, 45CSR40, and 45CSR41, which require annual and ozone season NO<sub>x</sub> reductions from EGUs and ozone season NO<sub>x</sub> reductions from non-EGUs. These rules will be 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 Charleston area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the Charleston area. West Virginia will continue to operate its current air quality monitor 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 Tier2/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 Charleston area to maintain attainment.

In addition to maintaining the key elements of its regulatory program, the State 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<sub>x</sub> emissions by review of annual emissions statements and by update of its emissions inventories. The area source inventory will be updated using non-point NEI. 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/RII) population estimates. The mobile source inventory model will be updated by obtaining county-level VMT from the West Virginia Department of Transportation (WVDOT) for the subject year and calculating emissions using the latest approved MOBILE model. Alternatively, the highway emissions may be obtained in consultation with the MPO, the RIC, using methodology similar to that used for Transportation Conformity purposes.

(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 the Charleston area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO<sub>x</sub> emissions in the area remaining at or below 2004 levels. The State's maintenance plan projects VOC and NO<sub>x</sub> 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 emissions growth in excess of 10 percent of the 2002 base-year inventory or if a monitored air quality exceedance pattern indicates that an ozone NAAQS*

*violation may be imminent*—The maintenance plan states that an exceedance pattern would include, but is not limited to, the measurement of three exceedances or more occurring at the same monitor during a calendar year. The plan also states that comprehensive tracking inventories will also be developed every 3 years using current EPA-approved methods to assure that its growth projections relative to emissions in the area are sufficiently accurate to assure ongoing attainment with the NAAQS. If the 2002 base-year inventory or a monitored air quality exceedance pattern occurs, the following measure will be implemented:

- WVDEP will evaluate existing control measures to ascertain if additional regulatory revisions are necessary to maintain the ozone standard.

(ii) *In the event that a violation of the 8-hour ozone standard occurs at the Kanawha County/Charleston monitor*—The maintenance plan states that in the event that a violation of the ozone standard occurs at the Charleston monitor, the State of West Virginia, in consultation with EPA Region III, will implement 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<sub>x</sub> 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 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 the area by the start of the following ozone season.

(f) An Additional Provision of the Maintenance Plan—The State's maintenance plan for the Charleston area 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 would 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. West Virginia regulation 45CSR29 requires significant point source emitters in six counties, including Kanawha and Putnam, to submit annual emission statements which contain emission totals for VOCs and NO<sub>x</sub>. 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 the Charleston area meets the requirements of section 175A of the Act.

#### **VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Maintenance Plan for the Charleston Area 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 state implementation plan.

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<sub>2.5</sub> 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 the Charleston area 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. 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: The Charleston area 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 the Charleston area. The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 49.6 tpd of VOC and 125 tpd of NO<sub>x</sub>. The WVDEP projected emissions out to the year 2018 and projected a total of 45 tpd of VOC and 80.6 tpd of NO<sub>x</sub> from all sources in the

Charleston area. The safety margin for the Charleston area for 2018 would be the difference between these amounts, or 4.6 tpd of VOC and 44.4 tpd of NO<sub>x</sub>. 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 6 shows the safety margins for the 2009 and 2018 years.

TABLE 6.—2009 AND 2018 SAFETY MARGINS FOR THE CHARLESTON AREA

Inventory year	VOC emissions (tpd)	NO <sub>x</sub> emissions (tpd)
2004 Attainment .....	49.6	125
2009 Interim .....	46.7	102.3
2009 Safety Margin .....	2.9	22.7
2004 Attainment .....	49.6	125
2018 Final .....	45	80.6
2018 Safety Margin .....	4.6	44.4

The WVDEP allocated 3.3 tpd NO<sub>x</sub> and 1.9 tpd VOC to the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO<sub>x</sub> projected on-road mobile source emissions projection to arrive at

the 2009 MVEBs. For the 2018 MVEBs the VADEQ allocated 1.4 tpd NO<sub>x</sub> and 1.2 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 7 shows the final 2009 and 2018 MVEBs for the Charleston area.

TABLE 7.—2009 AND 2018 FINAL MVEBS FOR THE CHARLESTON AREA

Inventory year	VOC emissions (tpd)	NO <sub>x</sub> emissions (tpd)
2009 projected on-road mobile source projected emissions .....	9.7	16.5
2009 Safety Margin Allocated to MVEBs .....	1.9	3.3
2009 MVEBs .....	11.6	19.8
2018 projected on-road mobile source projected emissions .....	6.0	6.8
2018 Safety Margin Allocated to MVEBs .....	1.2	1.4
2018 MVEBs .....	7.20	8.20

### C. Why Are the MVEBs Approvable?

The 2004, 2009 and 2018 MVEBs for the Charleston area are approvable because the MVEBs for NO<sub>x</sub> 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 Charleston Area Maintenance Plan?

The MVEBs for the Charleston area 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 Charleston 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 Charleston area 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 Charleston area has attained the 8-hour ozone NAAQS. The EPA is also proposing to approve the State of West Virginia's November 30, 2005 request for the Charleston area to be designated to attainment of the 8-hour NAAQS for ozone because the requirements for approval have been satisfied. 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 the area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Charleston area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for this area, submitted on November 30, 2005, as a revision to the West Virginia SIP. EPA is proposing to approve the maintenance plan for the area 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 the area 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 SNP 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 the Charleston 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.*).

### 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: April 24, 2006.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. E6-6754 Filed 5-3-06; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 06-849; MM Docket No. 01-154; RM-10163]

### Radio Broadcasting Services; Goldthwaite, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This document dismisses an Application for Review filed by Charles Crawford directed to the *Report and Order* in this proceeding. With this action, the proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Media Bureau (202) 418-2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 01-154, adopted April 12, 2006, and released April 14, 2006. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. This document is not subject to the Congressional Review Act. The Commission is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the proposed rule published at 66 FR 38410, July 24, 2001 is withdrawn.

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.