

and the amount deposited in the Copyright Office was either too high or too low.

(1) If the original Statement of Account was not filed and signed electronically, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, a statement in accordance with Section 1746 of title 28 of the United States, made and signed in accordance with paragraph (e)(14) of this Section. In the alternative, the cable operator may choose to file an amended Statement of Account signed and certified in Space O of the amended statement. The affidavit, statement, or amended Statement of Account shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculations. If the filing official chooses to file an amended Statement of Account, this additional information may be included on the Statement of Account itself or may be set out in a written document attached to the Statement of Account.

(2) If the original Statement of Account was filed and signed electronically, the filing official of the cable system shall electronically sign and file in accordance with paragraph (e)(15) of this Section an amended Statement of Account. The amended statement shall include on the amended statement itself, or in an attached written document, an explanation of why the royalty fee was improperly calculated and a detailed analysis of the proper royalty calculations.

\* \* \* \* \*

Dated: June 18, 2013.

**Maria A. Pallante,**

*Register of Copyrights.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2012-0338; FRL-9827-6]

#### Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Ohio Portion of the Wheeling Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

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

**ACTION:** Proposed rule; Supplemental.

**SUMMARY:** EPA is issuing a supplement to its proposed approval of Ohio's request to redesignate the Ohio portion of the Wheeling, West Virginia-Ohio, area to attainment for the 1997 annual National Ambient Air Quality Standards (NAAQS or standard) for fine particulate matter (PM<sub>2.5</sub>). This supplemental proposal revises and expands the basis for proposing approval of the state's request, in light of developments since EPA issued its initial proposal on November 30, 2012. This supplemental proposal addresses the effects of a January 4, 2013, decision of the United States Court of Appeals for the District of Columbia (DC Circuit or Court) to remand to EPA two final rules implementing the 1997 PM<sub>2.5</sub> standard. In this supplemental proposal, EPA is also proposing to approve a supplement to the emission inventories previously submitted by Ohio. EPA is proposing that the inventories for ammonia and volatile organic compounds (VOC), in conjunction with the inventories for nitrogen oxides (NO<sub>x</sub>), direct PM<sub>2.5</sub>, and sulfur dioxide (SO<sub>2</sub>) that EPA previously proposed to approve, meet the comprehensive emissions inventory requirements of the Clean Air Act (CAA or Act). EPA is seeking comment only on the issues raised in its supplemental proposal, and is not re-opening for comment other issues raised in its prior proposal.

**DATES:** Comments must be received on or before July 26, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2012-0338, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-Mail*: [Blakley.Pamela@epa.gov](mailto:Blakley.Pamela@epa.gov).
3. *Fax*: (312) 692-2450.
4. *Mail*: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand delivery*: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2012-

0338. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. 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 email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email 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. For additional instructions on submitting comments, go to Section I of this document, "What Should I Consider as I Prepare My Comments for EPA?"

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353-8777 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR-18J),

Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, [maietta.anthony@epa.gov](mailto:maietta.anthony@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What should I consider as I prepare my comments for EPA?
- II. What is the background for the supplemental proposal?
- III. On what specific issues is EPA taking comments?
  - A. Effect of the January 4, 2013, DC Circuit Decision Regarding PM<sub>2.5</sub> Implementation Under Subpart 4
    1. Background
    2. Supplemental Proposal on This Issue
      - a. Applicable Requirements for Purposes of Evaluating the Redesignation Request
      - b. Subpart 4 Requirements and Ohio's Redesignation Request
      - c. Subpart 4 and Control of PM<sub>2.5</sub> Precursors
      - d. Maintenance Plan and Evaluation of Precursors
    - B. Ammonia and VOC Comprehensive Emissions Inventories
  - IV. Summary of Proposed Actions
  - V. Statutory and Executive Order Reviews

#### **I. What should I consider as I prepare my comments for EPA?**

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

#### **II. What is the background for the supplemental proposal?**

On April 16, 2012, the Ohio Environmental Protection Agency (OEPA) submitted a request to EPA to

redesignate the Ohio portion of the Wheeling, West Virginia-Ohio nonattainment area (Belmont County, Ohio) to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS, and for EPA approval of Ohio's state implementation plan (SIP) revision containing an emissions inventory and a maintenance plan for the area.

On December 2, 2011, EPA published a notice of final rulemaking determining that the air quality in the Wheeling area has met the 1997 annual PM<sub>2.5</sub> standard (76 FR 75464). On November 30, 2012, EPA published a proposed rulemaking determining further that the Ohio portion of the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA (77 FR 71371). In that rulemaking EPA proposed several related actions. First, EPA proposed to approve the request from OEPA to change the legal designation of the Ohio portion of the Wheeling area from nonattainment to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS. EPA also proposed to approve Ohio's PM<sub>2.5</sub> maintenance plan for the Ohio portion of the Wheeling area as a revision to the Ohio SIP because the plan meets the requirements of section 175A of the CAA. In addition, EPA proposed to approve 2006 emissions inventories for primary PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub>, documented in Ohio's April 16, 2012, PM<sub>2.5</sub> redesignation request submittal as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA proposed a finding of insignificance of motor vehicle emissions for the Ohio portion of the Wheeling area (such that no motor vehicle emission budgets for emissions of directly emitted PM<sub>2.5</sub> and NO<sub>x</sub> are necessary). EPA did not receive adverse comments on the proposed rulemaking.

Today, EPA is issuing a supplement to its November 30, 2012, proposed rulemaking. This supplemental proposal addresses two separate issues which affect the proposed redesignation and which have arisen since the issuance of the proposal: A recent decision of the D.C. Circuit, and Ohio's supplemental submission of comprehensive ammonia and VOC emissions inventories.

On January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit remanded to EPA the “Final Clean Air Fine Particle Implementation Rule” (72 FR 20586, April 25, 2007) and the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)” final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013). In a supplemental submission to EPA on

April 30, 2013, Ohio submitted 2007/2008 ammonia and VOC emissions inventories to supplement the emissions inventories that had previously been submitted.

#### **III. On what specific issues is EPA taking comments?**

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

##### **1. Background**

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

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

In this portion of EPA's supplemental proposal, EPA is soliciting comment on the limited issue of the effect of the Court's January 4, 2013, ruling on the proposed redesignation of the Ohio portion of the Wheeling area to attainment for the 1997 annual PM<sub>2.5</sub> standard. As explained below, EPA is proposing to determine that the Court's January 4, 2013, decision does not prevent EPA from redesignating the Ohio portion of the Wheeling area to attainment, because even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. First, EPA explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA shows that, even if EPA applies the subpart 4 requirements to the Ohio portion of the Wheeling area redesignation request and disregards the provisions of its 1997 PM<sub>2.5</sub> implementation rule recently remanded by the Court, the state's request for redesignation of this area still qualifies for approval. EPA's discussion takes

into account the effect of the Court's ruling on the area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

a. Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the 1997 PM<sub>2.5</sub> Implementation Rule, the Court's January 4, 2013, ruling rejected EPA's reasons for implementing the PM<sub>2.5</sub> NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 PM<sub>2.5</sub> NAAQS under subpart 4 of part D of the CAA, in addition to subpart 1. For the purposes of evaluating Ohio's redesignation request for the Ohio portion of the Wheeling area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not "applicable" for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the Ohio portion of the Wheeling area redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are "applicable" and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. See "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). See also "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club v. EPA*, 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting *Sierra Club's* view that the meaning of "applicable" under the statute is "whatever should have been in the plan at the time of attainment rather than

whatever actually was in the plan and already implemented or due at the time of attainment").<sup>1</sup> In this case, at the time that Ohio submitted its redesignation request, requirements under subpart 4 were not due, and indeed, were not yet known to apply.

EPA's view that, for purposes of evaluating the Ohio portion of the Wheeling area's redesignation, the subpart 4 requirements were not due at the time Ohio submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the D.C. Circuit's decision in *South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). In *South Coast*, the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that "applicable requirements", for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. See, e.g., Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be "applicable" for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

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

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

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

In the context of the Ohio portion of the Wheeling area's redesignation, the timing and nature of the Court's January 4, 2013, decision in *NRDC v. EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. While Ohio submitted its redesignation request on April 16, 2012, and EPA proposed to approve it on November 30, 2012, the Court did not issue its decision remanding EPA's 1997 PM<sub>2.5</sub> implementation rule concerning the applicability of the provisions of subpart 4 until January 4, 2013.

To require Ohio's fully-completed and long-pending redesignation request to comply now with requirements of subpart 4 would be to give retroactive

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

effect to such requirements when the state had no notice that it was required to meet them. The DC Circuit recognized the inequity of this type of retroactive impact in *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002),<sup>2</sup> where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it "would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time." *Id.* at 68. Similarly, it would be unreasonable to penalize Ohio by rejecting its redesignation request for an area that is already attaining the 1997 PM<sub>2.5</sub> standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club v. Whitman*.

#### b. Subpart 4 Requirements and Ohio's Redesignation Request

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

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Ohio portion of the Wheeling area, EPA notes that subpart 4 incorporates

components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM<sub>10</sub>,<sup>3</sup> nonattainment areas, and under the Court's January 4, 2013, decision in *NRDC v. EPA*, these same statutory requirements also apply for PM<sub>2.5</sub> nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See*, "State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (the "General Preamble"). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent "subsumed by, or integrally related to, the more specific PM-10 requirements." 57 FR 13538 (April 16, 1992). EPA's previously published proposal for this redesignation action addressed how the Wheeling area meets the requirements for redesignation under subpart 1. These subpart 1 requirements include, among other things, provisions for attainment demonstrations, reasonably available control measures (RACM), reasonable further progress (RFP), emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, we are considering the Ohio portion of the Wheeling area to be a "moderate" PM<sub>2.5</sub> nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as "moderate" nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a "serious" nonattainment area.<sup>4</sup> Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major

stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM<sub>10</sub>, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.<sup>5</sup> In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,<sup>6</sup> when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the PM<sub>2.5</sub> standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

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

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

<sup>4</sup> Section 188(a) also provides that EPA publish a notice announcing the classification of each area under subpart 4.

<sup>5</sup> The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

<sup>6</sup> *I.e.*, attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

“General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990”; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

*Id.*

EPA similarly stated in its 1992 Calcagni memorandum that, “The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.”

It is evident that even if we were to consider the Court’s January 4, 2013, decision in *NRDC v. EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively<sup>7</sup> and thus are now past due, those requirements do not apply to an area that is attaining the 1997 PM<sub>2.5</sub> standard, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA’s authority to interpret “applicable requirements” in the redesignation context. *See Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA’s prior “Clean Data Policy” rulemakings for the PM<sub>10</sub> NAAQS, also governed by the requirements of subpart 4, explain EPA’s reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* “Determination of Attainment for Coso Junction Nonattainment Area,” (75 FR 27944, May 19, 2010). *See also* Coso Junction proposed PM<sub>10</sub> redesignation, (75 FR 36023, 36027, June 24, 2010);

Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

In its November 30, 2012, proposal for this action, EPA proposed to determine that the Ohio portion of the Wheeling area has attained the 1997 PM<sub>2.5</sub> standard and therefore meets the attainment-related plan requirements of subpart 1. Under its longstanding interpretation, EPA is proposing to determine here that the area also meets the attainment-related plan requirements of subpart 4.

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

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

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

EPA’s 1997 PM<sub>2.5</sub> implementation rule, remanded by the D.C. Circuit, contained rebuttable presumptions concerning certain PM<sub>2.5</sub> precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was “not required to address VOC [and ammonia] as . . . PM<sub>2.5</sub> attainment plan precursor[s] and to evaluate sources of VOC [and ammonia]

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

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

Elsewhere in the Court’s opinion, however, the Court observed:

Ammonia is a precursor to fine particulate matter, making it a precursor to both PM<sub>2.5</sub> and PM<sub>10</sub>. For a PM<sub>10</sub> nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].  
*Id.* at 21, n.7.

For a number of reasons, EPA believes that the Court’s decision on this aspect of subpart 4 does not preclude EPA’s approval of Ohio’s redesignation request for the 1997 PM<sub>2.5</sub> NAAQS. First, while the Court, citing section 189(e), stated that “for a PM<sub>10</sub> area governed by subpart 4, a precursor is ‘presumptively regulated,’” the Court expressly declined to decide the specific challenge to EPA’s 1997 PM<sub>2.5</sub> implementation rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular PM<sub>2.5</sub> nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule’s rebuttable presumptions regarding ammonia and VOC as PM<sub>2.5</sub> precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the Ohio portion of the Wheeling area, EPA believes that doing so would

<sup>7</sup> As EPA has explained above, we do not believe that the Court’s January 4, 2013, decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club v. Whitman*, *supra*.

not affect the approvability of the proposed redesignation of the area for the 1997 PM<sub>2.5</sub> standard. The entire Wheeling area has attained the standard without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM<sub>10</sub> precursors.<sup>8</sup> Under subpart 1 and EPA's prior implementation rule, all major stationary sources of PM<sub>2.5</sub> precursors were subject to regulation, with the exception of ammonia and VOC. Thus we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the Ohio portion of the Wheeling area for the 1997 PM<sub>2.5</sub> standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other Act requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). 57 FR 13542. EPA in this supplemental proposal proposes to determine that the Ohio SIP has met the provisions of section 189(e) with respect to ammonia and VOCs as precursors. This proposed supplemental determination is based on our findings that: (1) The Ohio portion of the Wheeling area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.<sup>9</sup> In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the Ohio portion of the Wheeling area, which is attaining the

1997 annual PM<sub>2.5</sub> standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 PM<sub>2.5</sub> standard in the area. *See* 57 FR 13539–13542.

EPA notes that its 1997 PM<sub>2.5</sub> implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of PM<sub>2.5</sub> precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 PM<sub>2.5</sub> NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for "presumptive regulation" of ammonia and VOC for PM<sub>2.5</sub> under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation, nor does EPA believe that requiring Ohio to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM<sub>10</sub> contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, *i.e.*, states may determine that only certain precursors need be regulated for attainment and control purposes.<sup>10</sup> Courts have upheld this approach to the requirements of subpart 4 for PM<sub>10</sub>.<sup>11</sup> EPA believes that application of this approach to PM<sub>2.5</sub> precursors under subpart 4 is reasonable. Because the Wheeling area has already attained the 1997 PM<sub>2.5</sub> NAAQS with its current approach to regulation of PM<sub>2.5</sub> precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment

control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Ohio's request for redesignation of the Ohio portion of the Wheeling area. In the context of a redesignation, the area has shown that it has attained the standard. Moreover, the state has shown and EPA has proposed to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, decision of the Court as precluding redesignation of the Ohio portion of the Wheeling area to attainment for the 1997 PM<sub>2.5</sub> NAAQS at this time.

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

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

With regard to the redesignation of the Ohio portion of the Wheeling area, in evaluating the effect of the Court's remand of EPA's implementation rule, which included presumptions against consideration of VOC and ammonia as PM<sub>2.5</sub> precursors, EPA in this supplemental proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained the 1997 PM<sub>2.5</sub> standard and that the state has shown that attainment of that standard is due to permanent and enforceable emission reductions.

In its prior proposal notice for this action, EPA proposed to determine that the state's maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 1997 PM<sub>2.5</sub> standard in the Ohio portion of the Wheeling area. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013, decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance

<sup>8</sup> Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

<sup>9</sup> The Ohio portion of the Wheeling area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology regulations and various on-road and non-road motor vehicle control programs.

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

<sup>11</sup> *See, e.g.*, *Assoc. of Irrigated Residents v. EPA et al.*, 423 F.3d 989 (9th Cir. 2005).

in this area. As explained below, based upon documentation provided by the state and supporting information, EPA believes that the maintenance plan for the Ohio portion of the Wheeling area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the standard.

First, as noted above in EPA's discussion of section 189(e), VOC emission levels in this area have historically been well controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Ohio portion of the Wheeling area are very low, estimated to be less than 500 tons per year. See Table 4 below. This amount of ammonia emissions is especially small in comparison to the total amounts of SO<sub>2</sub>, NO<sub>x</sub>, and even direct PM<sub>2.5</sub> emissions from sources in the area. Third, as described below, available information shows that no precursor, including VOC and ammonia, is

expected to increase over the maintenance period so as to interfere with or undermine the state's maintenance demonstration.

Ohio's maintenance plan shows that emissions of direct PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> are projected to decrease by 212.68 tons per year (tpy), 31,342.08 tpy, and 2,137.21 tpy, respectively, over the maintenance period. See Tables 1–3 below. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 PM<sub>2.5</sub> NAAQS show that VOC emissions are projected to decrease by 1,155.91 tpy, and that ammonia emissions will decrease by 17.98 tpy, between 2007 and 2020. See Table 4 below. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that the downward trend of VOC and ammonia emissions would not continue through 2022. Given that the Wheeling area is already attaining the 1997 PM<sub>2.5</sub> NAAQS even with the current level of emissions from sources

in the area, the downward trend of emissions from VOC and ammonia inventories would be consistent with continued attainment of the NAAQS. Indeed, projected emissions reductions for the precursors that the state is addressing for purposes of the 1997 PM<sub>2.5</sub> NAAQS indicate that the area should continue to attain the NAAQS following the precursor control strategy that the state has already elected to pursue. Even if VOC and ammonia emissions were to increase unexpectedly between 2020 and 2022, the overall emissions reductions projected in direct PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential PM<sub>2.5</sub> precursors will not increase to the extent that they will cause monitored PM<sub>2.5</sub> levels to violate the 1997 PM<sub>2.5</sub> standard during the maintenance period.

TABLE 1—COMPARISON OF 2005, 2008, 2015, AND 2022 DIRECT PM<sub>2.5</sub> EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE OHIO PORTION OF THE WHEELING AREA  
[Belmont County, Ohio]

Sector	Direct PM <sub>2.5</sub>				Net change 2005–2022
	2005	2008	2015	2022	
Point .....	3.39	3.39	3.94	4.40	1.01
EGU <sup>12</sup> .....	93.85	69.58	20.87	0	– 93.85
Area .....	307.93	305.38	297.20	289.22	– 18.71
Non-road .....	33.60	29.80	20.84	11.89	– 21.71
On-road <sup>13</sup> .....	105.74	88.66	45.08	26.32	– 79.42
Total .....	544.51	496.81	387.93	331.83	– 212.68

TABLE 2—COMPARISON OF 2005, 2008, 2015, AND 2022 SO<sub>2</sub> EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE OHIO PORTION OF THE WHEELING AREA  
[Belmont County, Ohio]

Sector	SO <sub>2</sub>				Net change 2005–2022
	2005	2008	2015	2022	
Point .....	0.13	0.07	0.10	0.11	– 0.02
EGU .....	37,329.95	15,126.00	8,783.33	6,065.04	– 31,264.91
Area .....	93.50	92.24	87.16	82.29	– 11.21
Non-road .....	44.82	24.46	8.23	3.51	– 41.31
On-road .....	30.84	9.38	6.72	6.21	– 24.63
Total .....	37,499.24	15,252.15	8,885.54	6,157.16	– 31,342.08

<sup>12</sup>Electric generating units.

<sup>13</sup>Emissions projections for the on-road sector were generated using the MOVES model.



TABLE 3—COMPARISON OF 2005, 2008, 2015, AND 2022 NO<sub>x</sub> EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE OHIO PORTION OF THE WHEELING AREA  
[Belmont County, Ohio]

Sector	NO <sub>x</sub>				
	2005	2008	2015	2022	Net change 2005–2022
Point .....	22.76	20.67	20.19	18.90	– 3.86
EGU .....	4,149.93	4,167.94	4,477.58	4,738.00	588.07
Area .....	284.66	286.90	286.77	287.15	2.49
Non-road .....	484.31	444.10	306.14	172.31	– 312
On-road .....	3,179.52	2,593.58	1,279.25	587.61	– 2,591.91
Total .....	8,121.18	7,513.19	6,369.93	5,803.97	– 2,137.21

TABLE 4—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE OHIO PORTION OF THE WHEELING AREA  
[Belmont County, Ohio]<sup>14</sup>

Sector	VOC			Ammonia		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Point .....	52.50	51.37	– 1.13	56.94	56.09	– 0.85
Area .....	777.12	774.54	– 2.58	386.69	391.03	4.34
Non-road .....	418.70	218.65	– 200.05	0.38	0.42	0.04
On-road .....	1,465.35	513.19	– 952.16	48.10	26.58	– 21.52
Fires .....	42.42	42.42	0	2.95	2.95	0
Total .....	2,756.08	1,600.17	– 1,155.91	495.05	477.07	– 17.98

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The current air quality design value for the area is 13 micrograms per cubic meter (µg/m<sup>3</sup>) (based on 2009–11 air quality data), which is well below the 1997 annual PM<sub>2.5</sub> NAAQS of 15 µg/m<sup>3</sup>. Moreover, the modeling analysis conducted for the RIA for the 2012 PM<sub>2.5</sub> NAAQS indicates that the design value for this area is expected to significantly decline through 2020. In the RIA analysis, the 2020 modeled design value for the Wheeling area is 8.4 µg/m<sup>3</sup>. Given that all precursor emissions are projected to decrease through 2022, it is reasonable to conclude that monitored PM<sub>2.5</sub> levels in this area will also continue to decrease through 2022.

Thus, EPA believes that there is ample justification to conclude that the Ohio portion of the Wheeling area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to PM<sub>2.5</sub>. After consideration of the D.C. Circuit's January 4, 2013, decision, and for the reasons set forth in this supplemental

notice, EPA continues to propose approval of Ohio's maintenance plan and its request to redesignate the Ohio portion of the Wheeling area to attainment for the 1997 PM<sub>2.5</sub> annual standard.

#### *B. Ammonia and VOC Comprehensive Emissions Inventories*

In this supplemental proposal EPA also addresses the State of Ohio's supplemental submission that provides additional information concerning ammonia and VOC emissions in the Wheeling area in order to meet the emissions inventory requirement of CAA section 172(c)(3). Section 172(c)(3) of the CAA requires states to submit a comprehensive, accurate, and current emissions inventory for a nonattainment area. For purposes of the PM<sub>2.5</sub> NAAQS, this emissions inventory should address not only direct emissions of PM<sub>2.5</sub>, but also emissions of all precursors with the potential to participate in PM<sub>2.5</sub> formation, *i.e.*, SO<sub>2</sub>, NO<sub>x</sub>, VOC and ammonia.

In the November 30, 2012, proposed rule, EPA proposed to approve the emissions inventory information for direct PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub> submitted by OEPA as meeting the emissions inventory requirement for the Wheeling area. On April 30, 2013, OEPA supplemented its submittal with 2007/

2008 emissions inventories for ammonia and VOC. The additional emissions inventory information provided by the state addresses emissions of VOC and ammonia from the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. The state-submitted emissions inventories were based upon information generated by the Lake Michigan Air Directors Consortium (LADCO) in conjunction with its member states and are presented in Table 5 below.

LADCO ran the EMS model using data provided by Ohio to generate point source emissions estimates. The point source data was obtained from Ohio's source facility emissions reporting.

For area sources, LADCO ran the EMS model using the 2008 National Emissions Inventory (NEI) data provided by Ohio. LADCO followed Eastern Regional Technical Advisory Committee (ERTAC) recommendations on area sources when preparing the data. Agricultural ammonia emissions were not taken from NEI; instead emissions were based on Carnegie Mellon University's Ammonia Emission Inventory for the Continental United States (CMU). Specifically, the CMU 2002 annual emissions were grown to reflect 2007 conditions. A process-based ammonia emissions model developed

<sup>14</sup> These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 PM<sub>2.5</sub> NAAQS.



for LADCO was then used to develop temporal factors to reflect the impact of average meteorology on livestock emissions.

Non-road mobile source emissions were generated using the NMIM2008 emissions model. LADCO also accounted for three other non-road categories not covered by the NMIM model (commercial marine vessels, aircraft, and railroads). Marine emissions were based on reports

prepared by Environ entitled “LADCO Nonroad Emissions Inventory Project for Locomotive, Commercial Marine, and Recreational Marine Emission Sources, Final Report, December 2004” and “LADCO 2005 Commercial Marine Emissions, Draft, March 2, 2007.” Aircraft emissions were provided by Ohio and calculated using AP-42 emission factors and landing and take-off data provided by the Federal Aviation Administration. Rail emissions

were based on the 2008 inventory developed by ERTAC.

On-road mobile source emissions were generated using EPA’s MOVES2010a emissions model.

EPA notes that the emissions inventory developed by LADCO is documented in “Regional Air Quality Analyses for Ozone, PM<sub>2.5</sub>, and Regional Haze: Base C Emissions Inventory” (September 12, 2011).

TABLE 5—WHEELING AREA AMMONIA AND VOC EMISSIONS (tpy) FOR 2007/2008 BY SOURCE SECTOR

Sector	Ammonia	VOC
Point .....	54.06	48.68
Area .....	405.94	863.87
Non-road .....	0.37	430.01
On-road .....	52.82	1,376.69
Total .....	513.19	2,719.26

EPA has concluded that the 2007/2008 ammonia and VOC emissions inventories provided by Ohio are complete and as accurate as possible given the input data available for the relevant source categories. EPA also believes that these inventories provide information about VOC and ammonia as PM<sub>2.5</sub> precursors in the context of evaluating redesignation of the Ohio portion of the Wheeling area under subpart 4. Therefore, we are proposing to approve the ammonia and VOC emissions inventories submitted by Ohio, in conjunction with the NO<sub>x</sub>, direct PM<sub>2.5</sub>, and SO<sub>2</sub> emissions inventories that EPA previously proposed to approve, as fully meeting the comprehensive inventory requirement of section 172(c)(3) of the CAA for the Ohio portion of the Wheeling area for the 1997 annual PM<sub>2.5</sub> standard. Since EPA’s prior proposal addressed other precursor emissions inventories, EPA in this supplemental proposal is seeking comment only with respect to the additional inventories for VOC and ammonia that Ohio has submitted.

#### IV. Summary of Proposed Actions

After fully considering the D.C. Circuit’s decision in the *NRDC v. EPA* on EPA’s 1997 PM<sub>2.5</sub> Implementation rule, EPA in this supplemental notice is proposing to proceed with approval of the request to redesignate the Ohio portion of the Wheeling area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS and of the associated maintenance plan. EPA is concluding that the D.C. Circuit decision regarding the applicability of the requirements of subpart 4 of part D of title I of the CAA

does not change the applicable requirements for redesignation of the Parkersburg area to attainment of the 1997 PM<sub>2.5</sub> NAAQS. In this supplemental notice, EPA is also proposing to approve the 2007/2008 ammonia and VOC emissions inventories as meeting, in conjunction with the NO<sub>x</sub>, direct PM<sub>2.5</sub> and SO<sub>2</sub> inventories that EPA previously proposed to approve, the comprehensive emissions inventory requirements of section 172(c)(3) of the CAA. EPA is seeking comment only on the issues raised in its supplemental proposals, and is not re-opening comment on other issues addressed in its prior proposal.

#### V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed

actions do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these proposed actions:

- Are not “significant regulatory actions” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because a determination of attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

## List of Subjects

### 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 13, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2013-15295 Filed 6-25-13; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R05-OAR-2012-0212; FRL-9827-8]

### Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Ohio Portion of the Parkersburg-Marietta Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

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

**ACTION:** Proposed rule; supplemental.

**SUMMARY:** EPA is issuing a supplement to its proposed approval of Ohio's request to redesignate the Ohio portion of the Parkersburg-Marietta, West Virginia-Ohio, area to attainment for the 1997 annual National Ambient Air Quality Standards (NAAQS or standard) for fine particulate matter (PM<sub>2.5</sub>). This supplemental proposal revises and expands the basis for proposing approval of the state's request, in light of developments since EPA issued its initial proposal on November 30, 2012. This supplemental proposal addresses the effects of a January 4, 2013, decision of the United States Court of Appeals for the District of Columbia (D.C. Circuit or Court) to remand to EPA two final rules

implementing the 1997 PM<sub>2.5</sub> standard. In this supplemental proposal, EPA is also proposing to approve a supplement to the emission inventories previously submitted by Ohio. EPA is proposing that the inventories for ammonia and volatile organic compounds (VOC), in conjunction with the inventories for nitrogen oxides (NO<sub>x</sub>), direct PM<sub>2.5</sub>, and sulfur dioxide (SO<sub>2</sub>) that EPA previously proposed to approve, meet the comprehensive emissions inventory requirements of the Clean Air Act (CAA or Act). EPA is seeking comment only on the issues raised in its supplemental proposal, and is not re-opening for comment other issues raised in its prior proposal.

**DATES:** Comments must be received on or before July 26, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2012-0212, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email: Blakley.Pamela@epa.gov*.
3. *Fax: (312) 692-2450*.
4. *Mail: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.*
5. *Hand delivery: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.* Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2012-0212. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, 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* or email. The *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 email comment directly to EPA without going through *www.regulations.gov*, your email 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. For additional instructions on submitting comments, go to Section I of this document, "What Should I Consider as I Prepare my Comments for EPA?"

**Docket:** All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353-8777 before visiting the Region 5 office.

### FOR FURTHER INFORMATION CONTACT:

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### SUPPLEMENTARY INFORMATION:

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

- I. What should I consider as I prepare my comments for EPA?
- II. What is the background for the supplemental proposal?
- III. On what specific issues is EPA taking comments?
  - A. Effect of the January 4, 2013, D.C. Circuit Decision Regarding PM<sub>2.5</sub> Implementation Under Subpart 4
    1. Background