

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R02-OAR-2012-0889; FRL-9827-3]

#### Approval and Promulgation of Air Quality Implementation Plans; State of New Jersey; Redesignation of Areas for Air Quality Planning Purposes and Approval of the Associated Maintenance Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revision submitted by the State of New Jersey. The New Jersey Department of Environmental Protection (NJDEP) is requesting that EPA redesignate the New Jersey portion of the New York-N.J.-New Jersey-Long Island, NY-NJ-CT nonattainment area, and the New Jersey portion of the Philadelphia-Wilmington, PA-NJ-DE nonattainment area, from nonattainment to attainment for the 1997 annual and the 2006 24-hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). In conjunction with its redesignation request, New Jersey submitted a SIP revision containing a maintenance plan for the areas that provides for continued maintenance of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. The maintenance plan includes the 2007 attainment year emissions inventory that EPA is proposing to approve in this rulemaking in accordance with the requirements of the Clean Air Act (CAA).

EPA is also proposing to approve a supplement to the 2007 attainment year emission inventory previously submitted by the State as part of the SIP revision. EPA is proposing that the inventories for ammonia (NH<sub>3</sub>) and Volatile Organic Compounds (VOC) that were submitted as part of the supplement, 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 were previously submitted, meet the comprehensive emissions inventory requirement of section 172(c)(3) of the CAA.

Additionally, EPA is proposing to approve the 2009 and 2025 motor vehicle emissions budgets for PM<sub>2.5</sub> and NO<sub>x</sub>.

EPA previously determined that the New Jersey portions of the New York-N.J.-New Jersey-Long Island, NY-NJ-CT and Philadelphia-Wilmington, PA-nonattainment areas have attained the

1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. In this action, EPA is proposing to approve the request for redesignation for the 1997 annual and 24-hour 2006 PM<sub>2.5</sub> NAAQS, the maintenance plan, and the 2007 attainment year inventory based on EPA's determination that the areas have met the redesignation requirements set forth in the CAA.

**DATES:** Comments must be received on or before July 29, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R02-OAR-2012-0889 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email: Ruvo.Richard@epa.gov*.
3. *Fax: 212-637-3901*.
4. *Mail: Richard Ruvo, Chief, Air Planning Section, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.*
5. *Hand Delivery or Courier:* Deliver your comments to: Richard Ruvo, Chief, Air Planning Section, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official business hours is Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R02-OAR-2012-0889. 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 through *www.regulations.gov*, or email, information that you consider to be CBI or otherwise protected. 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 information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the *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 *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Raymond Forde ([forde.raymond@epa.gov](mailto:forde.raymond@epa.gov)) concerning emission inventories and Kenneth Fradkin ([fradkin.kenneth@epa.gov](mailto:fradkin.kenneth@epa.gov)) concerning other portions of the SIP revision, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

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### I. What are the actions EPA is proposing to take?

On December 26, 2012, the State of New Jersey, through NJDEP, submitted a request to redesignate the New Jersey portion of the New York-N.J.-New Jersey-Long Island, NY-NJ-CT nonattainment area ("NY-NJ-CT nonattainment area"), and the New Jersey portion of the Philadelphia-Wilmington, PA-NJ-DE nonattainment area ("PA-NJ-DE nonattainment area") from nonattainment to attainment for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. Concurrently, NJDEP submitted a maintenance plan for the areas as a SIP revision to ensure continued attainment. In a supplemental submission to EPA on May 3, 2013, the State of New Jersey submitted NH<sub>3</sub> and VOC emissions inventories to supplement the emissions inventories that had been submitted on December 26, 2012.

EPA is proposing to take several actions pursuant to the redesignation of the New Jersey portion of the NY-NJ-CT and the PA-NJ-DE nonattainment areas for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA is proposing to find that the New Jersey portion of the NY-NJ-CT nonattainment area (hereafter referred to as the Northern New Jersey PM<sub>2.5</sub> "or NNJ" nonattainment area) and the New Jersey portion of the PA-NJ-DE nonattainment area (hereafter referred to as the Southern New Jersey PM<sub>2.5</sub> "or SNJ" nonattainment area) meet the requirements for redesignation under 107(d)(3)(E) of the CAA. EPA is thus proposing to approve New Jersey's request to change the legal definition of the NNJ and SNJ nonattainment areas from nonattainment to attainment. This action does not impact the New York and Connecticut portions of the NY-NJ-CT nonattainment area, or the

Pennsylvania and Delaware portions of the PA-NJ-DE nonattainment area. EPA may take separate actions on those portions of the nonattainment areas in a separate rulemaking.

EPA is also proposing to approve the maintenance plan for the NNJ and SNJ nonattainment areas as a revision to the New Jersey SIP. Such approval is one of the CAA criteria for redesignation of an area to attainment. The maintenance plan is designed to ensure continued attainment in the NNJ and SNJ nonattainment areas for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS for 10 years after redesignation. The maintenance plan includes the 2007 attainment year, 2017 interim year, and 2025 end year projection emission inventories. EPA is also proposing to approve the 2009 and 2025 motor vehicle emissions budgets for PM<sub>2.5</sub> and Nitrogen Oxides (NO<sub>x</sub>).

In this proposed redesignation, EPA takes into account the D.C. Circuit January 4, 2013 decision remanding 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), *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013).

EPA's analysis for these proposed actions is discussed in sections V, VI and VII of today's proposed rulemaking action.

### II. What is the background for EPA's proposed actions?

#### A. General

The first air quality standards for PM<sub>2.5</sub> were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>), based on a three-year average of annual mean PM<sub>2.5</sub> concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 µg/m<sup>3</sup>, based on a three-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual average standard at 15 µg/m<sup>3</sup> but revised the 24-hour standard to 35 µg/m<sup>3</sup>, based again on the three-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005, at 70 FR 944, and supplemented on April 14, 2005, at 70 FR 19844, EPA designated the NY-NJ-CT and PA-NJ-DE nonattainment areas as nonattainment for the 1997 PM<sub>2.5</sub> air quality standards. In that action, EPA defined the NNJ nonattainment area to

include Bergen, Essex, Hudson, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union Counties; and defined the SNJ nonattainment area to include Burlington, Camden, and Gloucester Counties. On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 24-hour standard set in 2006, designating the NY-NJ-CT nonattainment area and the PA-NJ-DE nonattainment area as nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. The nonattainment area boundaries for the NNJ and SNJ nonattainment areas for the 2006 PM<sub>2.5</sub> NAAQS were identical to the boundaries for the 1997 PM<sub>2.5</sub> NAAQS, containing the same counties as listed above. EPA did not promulgate designations for the annual average NAAQS promulgated in 2006 since that NAAQS was essentially identical to the 1997 annual PM<sub>2.5</sub> NAAQS. Today's action addresses the designation for the annual NAAQS promulgated in 1997, and the 24-hour NAAQS promulgated in 2006, for the NNJ and the SNJ nonattainment areas.

In the final rulemaking action dated November 15, 2010 (75 FR 69589), EPA determined, pursuant to CAA section 179(c), that the entire NY-NJ-CT nonattainment area had attained the 1997 annual PM<sub>2.5</sub> NAAQS, based upon quality assured, quality controlled, and certified ambient air monitoring data for the period of 2007–2009. On May 16, 2012 (77 FR 28782), EPA determined that the entire PA-NJ-DE nonattainment area was attaining the 1997 annual PM<sub>2.5</sub> NAAQS, based upon quality assured, quality controlled, and certified ambient air monitoring data for the 2007–2009 and 2008–2010 monitoring periods.

EPA finalized, on December 31, 2012 (77 FR 76867), the determination that the entire NY-NJ-CT nonattainment area had attained the 2006 24-hour PM<sub>2.5</sub> NAAQS, based upon quality assured, quality controlled, and certified ambient air monitoring data that showed that the area had monitored attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS for the 2007–2009 and 2008–2010 monitoring periods. On January 7, 2013 (78 FR 882), EPA finalized the determination that the PA-NJ-DE nonattainment area had attained the 2006 24-hour PM<sub>2.5</sub> NAAQS, based upon quality assured, quality controlled, and certified ambient air monitoring data that showed that the areas had monitored attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS for the 2008–2010 and 2009–2011 monitoring periods.

The 3-year ambient air quality data for the last three year monitoring periods for the 2007–2009, 2008–2010, and 2009–2011 indicated no violations for

the 1997 annual PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> NAAQS. Preliminary design values for 2010–2012 also indicate no violations for the 1997 annual PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> NAAQS. As a result of the monitoring data continuing to show attainment, on December 26, 2012 New Jersey requested redesignation of the NNJ and the SNJ PM<sub>2.5</sub> nonattainment areas to attainment for the 1997 annual PM<sub>2.5</sub> and 2006 24-hour PM<sub>2.5</sub> NAAQS. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements under 107(d)(3)(E).

*B. Clean Air Interstate Rule (CAIR) and Cross State Air Pollution Rule (CSAPR or the Transport Rule)*

On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of SO<sub>2</sub> and NO<sub>x</sub> from electric generating units (EGUs) to limit the interstate transport of these pollutants and the ozone and PM<sub>2.5</sub> they form in the atmosphere. See 70 FR 25162. The D.C. Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the D.C. Circuit's decision, EPA issued the Transport Rule, also known as CSAPR, to address interstate transport of NO<sub>x</sub> and SO<sub>2</sub> in the eastern United States. See 76 FR 48208 (August 8, 2011).

On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR “pending the promulgation of a valid replacement.” *EME Homer City*, 696 F.3d at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court, but those petitions have not been acted on to date. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

As explained below, EPA proposes that New Jersey has demonstrated that the attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS will be maintained with or without the implementation of CAIR or CSAPR. New Jersey's maintenance plan does not include the emission reductions from either program in the permanent and enforceable Federal and State control measures needed for attainment and

continued maintenance. In addition, air quality modeling analysis conducted during the CSAPR rulemaking process also demonstrated that the counties in the NY-NJ-CT and PA-NJ-DE nonattainment areas will have PM<sub>2.5</sub> levels below the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS in both 2012 and 2014 without taking into account emissions reductions from CAIR or CSAPR. See “Air Quality Modeling Final Rule Technical Support Document”<sup>1</sup>, App. B, B–18, B–19. This modeling is also available in the docket for this proposed redesignation.

**III. What are the criteria for redesignation?**

Under the CAA, designations can be revised if sufficient data is available to warrant such revisions. Section 107(d)(3)(E) of the CAA identifies five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS.
2. The area must meet all applicable requirements under section 110 and part D of the CAA.
3. The area must have a fully approved SIP under section 110 (k) of the CAA.
4. The air quality improvement must be permanent and enforceable.
5. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

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

1. “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the “Calcagni Memorandum”);
2. “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
3. “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

4. “Implementation Guidance for the 2006 24-hour PM<sub>2.5</sub> NAAQS,” Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, March 2, 2012.

**IV. What is the effect of EPA's proposed actions?**

EPA's approval of the redesignation request, if made final, would change the official designation of the NNJ and the SNJ PM<sub>2.5</sub> nonattainment areas to attainment for the 1997 annual PM<sub>2.5</sub> and 2006 24-hour PM<sub>2.5</sub> NAAQS, found at 40 CFR part 81. It would incorporate into the New Jersey SIP a maintenance plan ensuring continued attainment of the 1997 annual PM<sub>2.5</sub> and 2006 24-hour PM<sub>2.5</sub> NAAQS until 2025. The maintenance plan includes, among other elements, contingency measures to remedy any future violations, should they occur, of the 1997 annual PM<sub>2.5</sub> and 2006 24-hour PM<sub>2.5</sub> NAAQS. Approval of the 2007 base year emissions inventory, which is part of the maintenance plan, will satisfy the inventory requirements under section 172(c)(3) of the CAA.

**V. What is the effect of the January 4, 2013 D.C. Circuit decision regarding PM<sub>2.5</sub> implementation under subpart 4?**

*A. Background*

As discussed in section I, 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. Although the Court's ruling did not directly address the 2006 PM<sub>2.5</sub> standard, EPA is taking into account the Court's position on subpart 4 and the 1997 PM<sub>2.5</sub> standard in evaluating redesignations for the 2006 standard.

*B. Proposal on This Issue*

EPA is proposing to determine that the Court's January 4, 2013 decision does not prevent EPA from redesignating the NNJ and SNJ nonattainment areas to attainment for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. Even in light of the Court's decision,

<sup>1</sup>The document is available at <http://www.epa.gov/crossstaterule/pdfs/AQModeling.pdf>.

redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first 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 then shows that, even if EPA applies the subpart 4 requirements to the New Jersey 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.

#### 1. 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 New Jersey's redesignation request for the areas, 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 New Jersey 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 Calcagni memorandum referenced in section III. See also 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, 25424-25427, 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>2</sup> In this case, at the time that New Jersey 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 NNJ and SNJ redesignation, the subpart 4 requirements were not due at the time the State 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

<sup>2</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.

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 this 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. The State submitted its redesignation request on December 26, 2012, but 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 2013.

To require the State's fully-completed and pending redesignation request to comply now with requirements of subpart 4 that the Court announced only in January, 2013, would be to give retroactive effect to such requirements when the State had no notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002),<sup>3</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 the State of New Jersey by rejecting its redesignation request for an area that is already attaining the 1997 and 2006 PM<sub>2.5</sub> standards 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*.

## 2. Subpart 4 Requirements and New Jersey 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 NNJ and SNJ areas still qualify for

redesignation to attainment. As explained below, EPA believes that the redesignation request for the NNJ and SNJ areas, 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 NNJ and SNJ areas, 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>4</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). The 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 NNJ and SNJ areas to be "moderate" PM<sub>2.5</sub> nonattainment areas. 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. 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. 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>5</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

<sup>3</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>4</sup> PM<sub>10</sub> refers to particulates nominally 10 micrometers in diameter or smaller.

<sup>5</sup> i.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

State will make RFP towards attainment will, therefore, have no meaning at that point.

“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 and thus are now past due, those requirements do not apply to an area that is attaining the 1997 and 2006 PM<sub>2.5</sub> standards, 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

40954–40955, July 19, 2006; and 71 FR 63641, 63643–63647 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.

Elsewhere in this action, EPA proposes to determine that the NNJ and SNJ areas continue to attain the 1997 and 2006 PM<sub>2.5</sub> standards. Under its longstanding interpretation, EPA is proposing to determine here that the areas meet the attainment-related plan requirements of subparts 1 and 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)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation request.

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

The DC 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. EPA in this section addresses the Court’s opinion with respect to PM<sub>2.5</sub> precursors. 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 DC 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 NH<sub>3</sub>] as . . . PM<sub>2.5</sub> attainment plan precursor[s] and to evaluate sources of VOC [and NH<sub>3</sub>] 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 NH<sub>3</sub> 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 NH<sub>3</sub> 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:

NH<sub>3</sub> 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 its proposed redesignation of the NNJ and SNJ areas is consistent with the Court’s decision on this aspect of subpart 4. 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 NH<sub>3</sub> 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 NH<sub>3</sub> and VOC as PM<sub>2.5</sub> precursors (and any similar provisions reflected in guidance for the 2006 PM<sub>2.5</sub> standard), 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 NNJ and SNJ areas EPA believes that doing so is consistent with proposing redesignation of the areas for the 1997 PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> standards. The NNJ and SNJ areas have attained the standard without any specific additional controls of VOC and

NH<sub>3</sub> 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>6</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 NH<sub>3</sub> and VOC. Thus we must address here whether additional controls of NH<sub>3</sub> and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the area for the 1997 PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> standards. As explained below, we do not believe that any additional controls of NH<sub>3</sub> 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 proposal proposes to determine that the SIP has met the provisions of section 189(e) with respect to NH<sub>3</sub> and VOCs as precursors. This proposed determination is based on our findings that (1) the NNJ and SNJ areas contain no major stationary sources of NH<sub>3</sub>, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.<sup>7</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 area, which is attaining the 1997 and 2006 PM<sub>2.5</sub> standards, at present NH<sub>3</sub> and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 and 2006 PM<sub>2.5</sub> standards in the NNJ and SNJ areas. See 57 FR 13539–42.

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 NH<sub>3</sub> 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 New Jersey 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>8</sup> Courts have upheld this approach to the requirements of subpart 4 for PM<sub>10</sub>.<sup>9</sup> EPA believes that application of this approach to PM<sub>2.5</sub> precursors under subpart 4 is reasonable. Because the NNJ and SNJ areas have already attained the 1997 and 2006 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 New Jersey's request

for redesignation of the NNJ and SNJ areas. In the context of a redesignation, the areas have shown that they have attained the standards. Moreover, the State has shown and EPA is proposing to determine that attainment in these areas are 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 NNJ and SNJ areas to attainment for the 1997 and 2006 PM<sub>2.5</sub> NAAQS at this time.

In sum, even if New Jersey were required to address precursors for the NNJ and SNJ areas 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).

## VI. What is EPA's analysis of New Jersey's redesignation request?

In an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on December 26, 2012, the State of New Jersey submitted a redesignation request and maintenance plan for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS for the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas.

The following is a description of how the state has fulfilled each of the CAA redesignation requirements.

### A. Attainment

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). In this action for this rulemaking, EPA is proposing to determine that the NY-NJ-CT and the PA-NJ-DE nonattainment areas are continuing to attain the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS.

### 1997 annual PM<sub>2.5</sub> NAAQS

An area may be considered to be attaining the 1997 annual PM<sub>2.5</sub> NAAQS if it meets the NAAQS as determined in accordance with 40 CFR 50.7 and Appendix N of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-year average of annual means must be less than or equal to 15 µg/m<sup>3</sup> at all relevant monitoring sites in the subject area. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and

<sup>6</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>7</sup> The NNJ and SNJ areas have 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>8</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>9</sup> See, e.g., *Assoc. of Irrigated Residents v. EPA et al.*, 423 F.3d 989 (9th Cir. 2005).

recorded in the EPA Air Quality System (AQS). The monitors meet data completeness requirements when “at least 75 percent of the scheduled sampling days for each quarter have valid data.” The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data.

As noted in section IIA above, EPA has finalized determinations that the NY-NJ-CT and PA-NJ-DE nonattainment areas had attained the 1997 annual PM<sub>2.5</sub> NAAQS. EPA has also reviewed more recent quality-assured data for both NY-NJ-CT and the PA-NJ-DE nonattainment areas. The ambient air monitoring data submitted by New Jersey shows PM<sub>2.5</sub> concentrations attaining the annual PM<sub>2.5</sub> NAAQS for the 2009–2011 time period for both nonattainment areas.

Table 1, below, shows the design value by county (i.e., 3-year average) of annual mean PM<sub>2.5</sub> concentrations) for the 2009–2011 time period for the 1997 annual PM<sub>2.5</sub> NAAQS for the NY-NJ-CT PM<sub>2.5</sub> nonattainment area monitors. Table 2, below, shows the design value for the 2009–2011 time period for the 1997 annual PM<sub>2.5</sub> NAAQS for the PA-NJ-DE nonattainment area monitors. Preliminary design values<sup>10</sup> for the 2010–2012 time period is also shown.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE NY-NJ-CT 1997 ANNUAL PM<sub>2.5</sub> AREA (µg/m<sup>3</sup>)  
[The standard is 15.0 µg/m<sup>3</sup>]

Nonattainment area counties	Annual mean concentrations			Preliminary annual mean concentration	2011 3-year annual design value	Preliminary 2012 3-year annual design value
	2009	2010	2011	2012	2009–2011	2010–2012
<b>NEW JERSEY:</b>						
Bergen .....	9.1	8.8	9.8	8.9	9.2	9.2
Essex .....	INC	9.2	10.5	9.0	INC	9.5
Hudson .....	10.8	10.6	11.8	10.9	11.1	11.1
Mercer .....	9.3	9.5	10.3	8.8	9.7	9.5
Middlesex .....	8.1	7.4	8.3	* 8.3	7.9	* 8.0
Monmouth .....	NM	NM	NM	NM	NM	NM
Morris .....	8.1	8.5	8.7	7.9	8.5	8.4
Passaic .....	9.0	8.9	10.1	9.1	9.3	* 9.3
Somerset .....	NM	NM	NM	NM		
Union .....	11.3	10.6	12.2	10.7	11.4	11.2
<b>NEW YORK:</b>						
Bronx .....	12.7	11.4	11.6	9.5	11.9	9.8
Kings .....	10.7	9.9	10.3	9.7	10.3	9.9
Nassau .....	9.0	8.7	8.9	(*)	8.9	(*)
New York .....	11.6	11.5	12.2	11.7	11.7	11.8
Orange .....	7.9	8.1	8.6	* 7.8	8.2	* 8.2
Queens .....	9.5	9.4	9.3	8.5	9.4	* 9.1
Richmond .....	9.8	9.7	10.1	9.4	9.8	9.6*
Rockland .....	NM	NM	NM	NM	NM	NM
Suffolk .....	8.1	8.4	8.8	7.9	8.4	8.4
Westchester .....	9.1	8.8	9.3	(*)	9.1	(*)
<b>CONNECTICUT:</b>						
Fairfield .....	9.4	8.8	10.0	9.3	9.4	9.4
New Haven .....	9.9	9.0	10.0	9.2	9.6	9.4

INC—All counties listed as INC did not meet 75 percent data completeness requirement for the relevant time period.

NM—No monitor located in county.

\*—Missing 1 or more quarters.

TABLE 2—DESIGN VALUE CONCENTRATIONS FOR THE PA-NJ-DE 1997 ANNUAL PM<sub>2.5</sub> AREA (µg/m<sup>3</sup>)  
[The standard is 15.0 µg/m<sup>3</sup>]

Nonattainment area counties	Annual mean concentrations			Preliminary annual mean concentration	2011 3-year annual design value	Preliminary 2012 3-year annual design value
	2009	2010	2011	2012	2009–2011	2010–2012
<b>NEW JERSEY:</b>						
Camden .....	9.5	10.3	10.1	9.0	9.7	9.5
Gloucester .....	9.3	10.0	9.4	9.4	9.3	* 9.3
Burlington .....	NM	NM	NM	NM	NM	NM
<b>DELAWARE:</b>						
New Castle .....	11.2	11.7	10.3	10.3	10.7	10.4
<b>PENNSYLVANIA:</b>						
Bucks .....	10.8	10.5	11.5	10.7	10.9	10.9
Chester .....	14.1	13.8	13.3	9.8	13.7	* 12.3

<sup>10</sup> All data for 2012 has been quality-assured.



TABLE 2—DESIGN VALUE CONCENTRATIONS FOR THE PA-NJ-DE 1997 ANNUAL PM<sub>2.5</sub> AREA (µg/m<sup>3</sup>)—Continued  
[The standard is 15.0 µg/m<sup>3</sup>]

Nonattainment area counties	Annual mean concentrations			Preliminary annual mean concentration	2011 3-year annual design value	Preliminary 2012 3-year annual design value
	2009	2010	2011	2012	2009–2011	2010–2012
Delaware .....	12.4	13.5	12.9	* 12.8	12.9	* 13.1
Montgomery .....	10.4	9.5	10.3	9.7	10.1	9.8
Philadelphia .....	11.1	11.0	11.4	16.4	11.2	13.4

NM—No monitor located in county.  
\*—Missing 1 or more quarters.

Air monitoring data indicates that the NY-NJ-CT and the PA-NJ-DE nonattainment areas continue to meet the 1997 annual PM<sub>2.5</sub> NAAQS. EPA concludes that NY-NJ-CT and the PA-NJ-DE nonattainment areas are continuing to attain the 1997 annual PM<sub>2.5</sub> NAAQS. Therefore, EPA proposes that the statutory criterion for attainment of the 1997 annual PM<sub>2.5</sub> NAAQS (40 CFR 50.7 and Appendix N of part 50) has been met.

2006 24-Hour PM<sub>2.5</sub> NAAQS

An area may be considered to be attaining the 2006 24-hour PM<sub>2.5</sub> NAAQS if it meets the NAAQS as determined in accordance with 40 CFR 50.13 and Appendix N of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 98th percentile 24-hour

concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35 µg/m<sup>3</sup> at all relevant monitoring sites in the subject area over a 3-year period. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA’s AQS. The monitors meet data completeness requirements when “at least 75 percent of the scheduled sampling days for each quarter have valid data.” The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data.

EPA previously finalized determinations that the NY-NJ-CT and PA-NJ-DE nonattainment areas had

attained the 2006 24-hour PM<sub>2.5</sub> NAAQS, as noted in section IIA. EPA has also reviewed more recent quality-assured data for both NY-NJ-CT and the PA-NJ-DE nonattainment areas. The ambient air monitoring data submitted by New Jersey shows PM<sub>2.5</sub> concentrations attaining the 24-hour PM<sub>2.5</sub> NAAQS for the 2009–2011 time period for both nonattainment areas.

Table 3, below, shows the design value by county for the 98th percentile 24-hour PM<sub>2.5</sub> concentrations for the 2009–2011 time period for the 2006 24-hour PM<sub>2.5</sub> NAAQS for the NY-NJ-CT PM<sub>2.5</sub> nonattainment area monitors. Table 4 shows the design value by county for the 2009–2011 time period for the PA-NJ-DE nonattainment area monitors. Preliminary design values<sup>11</sup> for the 2010–2012 time period is also shown.

TABLE 3—DESIGN VALUE CONCENTRATIONS FOR THE NY-NJ-CT 2006 24-HOUR PM<sub>2.5</sub> AREA (µg/m<sup>3</sup>)  
[The standard is 35 µg/m<sup>3</sup>]

Nonattainment area counties	98th percentile 24-hour concentrations			Preliminary 98th percentile 24-hour concentration	2011 3-year 24-hour design value	Preliminary 2012 3-year 24-hour design value
	2009	2010	2011	2012	2009–2011	2010–2012
<b>NEW JERSEY:</b>						
Bergen .....	27.1	25.1	23.5	19.2	25	23
Essex .....	INC	INC	23.9	21.5	INC	23
Hudson .....	29.2	25.9	28.2	24.6	28	26
Mercer .....	23.0	26.9	27.7	20.5	26	25
Middlesex .....	21.0	19.1	20.5	* 17.5	20	* 19
Monmouth .....	NM	NM	NM	NM	NM	NM
Morris .....	20.9	22.7	24.4	18.2	23	21
Passaic .....	26.1	24.4	25.4	21.4	25	* 24
Somerset .....	NM	NM	NM	NM	NM	NM
Union .....	27.7	28.1	32.9	25.8	30	29
<b>NEW YORK:</b>						
Bronx .....	30.0	27.0	27.0	25.1	28	24
Kings .....	26.9	24.8	24.3	22.1	25	24
Nassau .....	25.8	20.2	23.1	(*)	23	(*)
New York .....	29.0	27.0	26.8	24.9	28	26
Orange .....	20.6	26.5	20.8	* 20.2	23	* 23
Queens .....	26.7	25.5	24.7	20.5	26	* 24
Richmond .....	24.6	25.5	23.2	22.1	24	* 24
Rockland .....	NM	NM	NM	NM	NM	NM

<sup>11</sup> All data for 2012 has been quality-assured.

TABLE 3—DESIGN VALUE CONCENTRATIONS FOR THE NY-NJ-CT 2006 24-HOUR PM<sub>2.5</sub> AREA (µg/m<sup>3</sup>)—Continued  
[The standard is 35 µg/m<sup>3</sup>]

Nonattainment area counties	98th percentile 24-hour concentrations			Preliminary 98th percentile 24-hour concentration	2011 3-year 24-hour design value	Preliminary 2012 3-year 24-hour design value
	2009	2010	2011	2012	2009–2011	2010–2012
Suffolk .....	21.6	26.1	21.7	18.7	23	22
Westchester .....	27.0	26.7	22.7	(*)	25	(*)
CONNECTICUT:						
Fairfield .....	26.4	24.2	25.2	22.5	26	24
New Haven .....	30.2	25.5	27.5	22.0	28	25

NM—No monitor located in county.  
INC—All counties listed as INC did not meet 75 percent data completeness requirement for the relevant time period.  
\*—Missing 1 or more quarters.

TABLE 4—DESIGN VALUE CONCENTRATIONS FOR THE PA-NJ-DE 2006 24-HOUR PM<sub>2.5</sub> AREA (µg/m<sup>3</sup>)  
[The standard is 35 µg/m<sup>3</sup>]

Nonattainment area counties	98th percentile 24-hour concentrations			Preliminary 98th percentile 24-hour concentration	2011 3-year 24-hour design value	Preliminary 2012 3-year 24-hour design value
	2009	2010	2011	2012	2009–2011	2010–2012
NEW JERSEY:						
Camden .....	25.0	23.4	24.3	19.8	24	23
Gloucester .....	21.9	21.6	22.2	21.8	22	*22
Burlington .....	NM	NM	NM	NM	NM	NM
DELAWARE:						
New Castle .....	28.4	27.9	24.7	24.2	27	26
PENNSYLVANIA:						
Bucks .....	25.8	28.3	29.7	28.2	28	29
Chester .....	31.1	35.1	33.8	24.1	33	31
Delaware .....	27.9	32.8	28.6	*31.1	30	*31
Montgomery .....	27.2	25.9	27.6	21.8	27	25
Philadelphia .....	28.6	28.9	30.6	31.4	29	30

NM—No monitor located in county.  
\*—Missing 1 or more quarters.

Air monitoring data indicates that the NY-NJ-CT and the PA-NJ-DE nonattainment areas continue to meet the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA concludes that the NY-NJ-CT and the PA-NJ-DE nonattainment areas are continuing to attain the 2006 24-hour PM<sub>2.5</sub> NAAQS. Therefore, EPA proposes that the statutory criterion for attainment of the 2006 24-hour PM<sub>2.5</sub> NAAQS (40 CFR 50.13 and Appendix N of part 50) has been met.

*B. The Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA*

EPA has determined that the NNJ and the SNJ PM<sub>2.5</sub> nonattainment areas have met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that, upon final approval of the 2007 attainment year emissions inventory, as discussed below in this proposed rulemaking, it will have met all applicable SIP requirements under part D of Title I of

the CAA, in accordance with CAA section 107(d)(3)(E)(v). In addition, EPA is proposing to find that all applicable requirements of the New Jersey SIP for purposes of redesignation have been approved in accordance with CAA section 107(d)(3)(E)(ii).

1. Section 110 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 CAA section 110(a)(2) include, but are not limited to the following:

- Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing;

- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;

- Implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD));

- Provisions for the implementation of part D requirements for New Source Review (NSR) permit programs;

- Provisions for air pollution modeling; and

- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA 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 the interstate 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 CAIR, May 12, 2005 (70 FR 25162). However, the CAA 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, EPA does not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other CAA section 110(a)(2) elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after it is redesignated. EPA concludes that the CAA section 110(a)(2) 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, and that CAA section 110(a)(2) elements not linked in the area's nonattainment status are not applicable for purposes of redesignation. This approach is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR at 37890, June 19, 2000) and in the Pittsburgh, Pennsylvania redesignation (66 FR at 53099, October 19, 2001).

On April 10, 2013 (78 FR at 21296) EPA proposed action on New Jersey's section 110 "infrastructure SIPs" required under CAA section 110(a)(2) that were submitted by the state. New Jersey submitted an infrastructure SIP on February 25, 2008 that addressed the 1997 annual PM<sub>2.5</sub> NAAQS. On January 20, 2010 the state submitted an infrastructure SIP that addressed the 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA will be acting on those SIPs under separate actions.

EPA has reviewed the New Jersey SIP and has concluded that it meets the

general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes for redesignating the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS, and the 2006 24-hour PM<sub>2.5</sub> NAAQS. Notwithstanding the fact that EPA has not yet completed rulemaking on New Jersey's submittals for the PM<sub>2.5</sub> infrastructure SIP elements of section 110(a)(2), these requirements are, however, statewide requirements that are not linked to the PM<sub>2.5</sub> nonattainment status of the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of New Jersey's PM<sub>2.5</sub> redesignation request.

## 2. Title I, part D nonattainment requirements

Subpart 1 of part D of Title I of the CAA sets forth the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 1997 and 2006 PM<sub>2.5</sub> NAAQS were designated under this subpart of the CAA, and the requirements applicable to them are contained in sections 172 and 176. EPA's analysis of the particulate-matter-specific provisions of Subpart 4 of part D of Title I as a result of the January 4, 2013 D.C. Circuit decision is discussed earlier in this notice.

### Section 172 Requirements

Under CAA section 172, states with nonattainment areas must submit plans providing for timely attainment and meet a variety of other requirements. As mentioned, EPA has finalized determinations that the NY-NJ-CT and PA-NJ-DE nonattainment areas had attained the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS.

Notwithstanding that New Jersey's obligation to submit an attainment demonstration, RACT/RACM, RFP, contingency measures, and other planning SIPs related to the attainment of the PM<sub>2.5</sub> NAAQS has been suspended due to EPA's determination that the nonattainment areas attained the NAAQS, New Jersey had previously submitted a SIP revision (PM<sub>2.5</sub> attainment plan) for attaining the 1997 annual PM<sub>2.5</sub> NAAQS. The SIP was submitted to EPA on April 1, 2009. EPA proposed to approve the PM<sub>2.5</sub> attainment plan on December 14, 2012 (77 FR 74421). As a result of the determination of attainment, the only remaining requirement to be considered

is the emission inventory required under CAA section 172(c)(3).

The General Preamble for Implementation of Title I also discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining the standard. See General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Because attainment has been reached for the NY-NJ-CT and PA-NJ-DE nonattainment areas, no additional measures are needed to provide for attainment. CAA section 172(c)(1) requirements for an attainment demonstration and RACT/RACM are no longer considered to be applicable requirements for as long as the area continues to attain the standard until redesignation. See 40 CFR 51.1004(c). The RFP requirement under CAA section 172(c)(2) is similarly not relevant for purposes of redesignation.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. As part of the maintenance plan submitted by New Jersey on December 26, 2012, and further supplemented on May 3, 2013, the State has submitted an attainment year inventory that meets this requirement. For purposes of the PM<sub>2.5</sub> NAAQS, the 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 NH<sub>3</sub>. The 2007 attainment year emissions inventory submitted by New Jersey in the December 26, 2012 submission addressed PM<sub>2.5</sub> (including condensables), SO<sub>2</sub>, and NO<sub>x</sub> emissions. The May 3, 2013 submission addressed VOC and NH<sub>3</sub>.

The emissions cover the general source categories of point sources, area sources, onroad sources and nonroad sources. The proposed approval of the 2007 attainment year emissions inventory in this rulemaking action will, when finalized, meet the requirements of CAA section 172(c)(3).

The 2007 emissions inventory was prepared by NJDEP and is presented in Tables 7A and 7B located in section VI.E.2(a), Attainment Emissions Inventory, of this action. The tables show the 2007 base year PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC and NH<sub>3</sub> annual emission inventories for the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas. EPA's detailed evaluation of the base year inventories for all pollutants are addressed in section VI.E.2.(a), Attainment Emissions

Inventory, of this action. A copy of the Technical Support Document<sup>13</sup> submitted by New Jersey is included in the New Jersey SIP submission.

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and CAA section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since the PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment New Source Review (NSR) program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in the 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."

New Jersey has not relied on a part D NSR program to maintain air quality for the 1997 annual PM<sub>2.5</sub> and 2006 24-hour PM<sub>2.5</sub> NAAQS. Moreover, because the NJ and SNJ PM<sub>2.5</sub> nonattainment areas are being redesignated to attainment by this action, Prevention of Significant Deterioration (PSD) requirements will be applicable to new or modified sources of PM<sub>2.5</sub> in the area.

New Jersey currently implements NSR in the thirteen nonattainment counties through the "transitional" NSR provisions contained in Appendix S of 40 CFR Part 51 and the USEPA policy memorandum dated July 21, 2011, concerning interpollutant offsets. The Federal provisions and policy memorandum will be superseded once New Jersey revises its Emission Offset Rule N.J.A.C. 7:27-18.

New Jersey does not have its own promulgated regulations as part of the SIP for part C Prevention of Significant Deterioration (PSD) rules. New Jersey is appropriately implementing the PSD program through the delegated federal PSD regulations at 40 CFR 52.21. The program will become effective in the NJ and SNJ areas upon redesignation to attainment.

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached in the NY-NJ-CT and the PA-NJ-DE nonattainment areas, no additional control measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes the New Jersey SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

CAA section 172(c)(9) provides that SIPs in nonattainment areas "shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or [EPA]." This contingency measure requirement is inextricably tied to the reasonable further progress and attainment demonstration requirements. Because attainment has been reached for the 1997 annual and the 2006 24-hour PM<sub>2.5</sub> NAAQS, contingency measures are not applicable for redesignation.

#### 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 transportation conformity applies to transportation plans, programs and projects that are developed, funded or approved under Title 23 of the United States Code (U.S.C.) and the Federal Transit Act. The requirement to determine general conformity applies to all other federally supported or funded projects. State transportation conformity SIP revisions must be consistent with Federal transportation conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA<sup>12</sup>.

EPA interprets the conformity<sup>13</sup> SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because 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 (6th Cir. 2001) (upholding this interpretation); see also

60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).

#### C. Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) of the CAA requires that for an area to be redesignated the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Upon final approval of New Jersey's 2007 attainment year emissions inventory, EPA will have fully approved the SIPs for the NJ and SNJ PM<sub>2.5</sub> nonattainment areas for the 1997 annual and 2006 PM<sub>2.5</sub> NAAQS under section 110(k) for all requirements applicable for purposes of redesignation.

EPA is proposing to approve the 2007 attainment year emissions inventory (submitted as part of its maintenance plan) for the NJ and SNJ PM<sub>2.5</sub> nonattainment areas as meeting the requirement of section 172(c)(3) of the CAA for the 1997 annual and 2006 PM<sub>2.5</sub> NAAQS. Therefore, New Jersey will have satisfied all applicable requirements under part D of Title I of the CAA.

#### D. The Air Quality Improvement Must Be Permanent and Enforceable

The improvement in air quality must be 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 (CAA section 107(d)(3)(E)(iii)). EPA proposes to determine that the air quality improvement in New Jersey in the NJ and SNJ PM<sub>2.5</sub> nonattainment areas is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state adopted measures.

New Jersey's redesignation submission cited a number of regulatory programs that provided for emission reductions of PM<sub>2.5</sub>, and PM<sub>2.5</sub> precursors NO<sub>x</sub>, and SO<sub>2</sub>. New Jersey also included control measures for VOCs, which were not considered quantifiable precursors when the redesignation request was submitted, as they expected some PM<sub>2.5</sub> benefit from the implementation of VOC control measures.

The regulatory control measures for PM<sub>2.5</sub>, and PM<sub>2.5</sub> precursors VOCs, NO<sub>x</sub>, and SO<sub>2</sub>, included in New Jersey's redesignation submission have been adopted into the SIP, which provided for emission reductions from 2002 to 2009, the year modeled for the attainment demonstration for the 1997

<sup>12</sup> Guidance on transportation conformity SIPs can be found at: <http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf>.

<sup>13</sup> CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from MVEBs that are established in control strategy SIPs and maintenance plans.

PM<sub>2.5</sub> NAAQS. New Jersey also included additional measures that were adopted by the state, but not yet implemented, that would provide benefit after 2009. From 2002 to 2009, statewide emissions decreased significantly: PM<sub>2.5</sub> emissions decreased by 34 percent, NO<sub>x</sub> emissions

have decreased by 39 percent, and SO<sub>2</sub> emissions have decreased by 70 percent. Tables 5A and 5B below, show the State and Federal control measures, which provide emission reductions from 2002 to 2009. The tables also summarize the maintenance plan measures with quantifiable emission

reductions that New Jersey is relying on to demonstrate maintenance; discussed in more detail in section VI.E below. Additional 2002 to 2009 control measures that support the SIP but were not quantified, or are VOC only measures, are also shown.

TABLE 5A—NEW JERSEY’S 2002–2009 CONTROL MEASURES THAT REDUCE EMISSIONS OF PM<sub>2.5</sub> AND ITS PRECURSORS IN NEW JERSEY

Measure	Targeted pollutants				Maintenance plan measure	Affected State rules
	NO <sub>x</sub>	PM <sub>2.5</sub>	SO <sub>2</sub>	VOC		
Vehicle Inspection and Maintenance (IM) Program.	X	.....	.....	X	X	NJAC 7:27–15.
NO <sub>x</sub> Budget Program (SIP Call) .....	X	.....	X	.....	.....	NJAC 7:27–30.
Electric Generating Unit (EGU)—BL England Administrative Consent Order (ACO).	X	X	X	.....	.....	NA.
EGUP—SEG—Consent Decree .....	X	X	X	.....	X	NA.
Refinery Consent Decree (Sunoco, Valero, ConocoPhillips).	X	X	X	X	X	NA.
Industrial, Commercial and Institutional Boilers (ICI) Boilers, Turbines and Engines 2005.	X	.....	.....	.....	X	NJAC 7:27–27.19.
Case by Case NO <sub>x</sub> and VOC (Facility Specific Emission Limits or FSELs/Administrative Emission Limits or AELs).	X	.....	.....	X	.....	NJAC 7:27–16, 19.
Sewage and Sludge Incinerators .....	X	.....	.....	.....	.....	NJAC 7:27–19.28.
New Jersey Low Emission Vehicle (LEV) Program.	X	X	X	X	X	NJAC 7:27–29.
Municipal Waste Combustors (Incinerators) ....	X	.....	.....	.....	.....	NJAC 7:27–19.13.
Asphalt Production Plants .....	X	.....	.....	.....	X	NJAC 7:27–19.9.
ICI Boilers 2009 .....	X	.....	.....	.....	X	NJAC 7:27–19.7.
EGU-High Electric Demand Day (HEDD) .....	X	.....	X	.....	.....	NJAC 7:27–19.29.

**Additional New Jersey Measures That Support the SIP**

Stage I and II (Gasoline Transfer Operations).	.....	.....	.....	X	.....	NJAC 7:27–16.
Architectural Coatings 2005 .....	.....	.....	.....	X	.....	NJAC 7:27–23.
Consumer Products 2005 .....	.....	.....	.....	X	.....	NJAC 7:27–24.
Mobile Equipment Refinishing (Auto body) ....	.....	.....	.....	X	.....	NJAC 7:27–16.
Solvent Cleaning .....	.....	.....	.....	X	.....	NJAC 7:27–16.
Portable Fuel Containers 2005 .....	.....	.....	.....	X	.....	NJAC 7:27–24.
Mercury Rule .....	X	X	X	.....	.....	NJAC 7:27–27.
Diesel Vehicle Retrofit Program .....	.....	X	.....	.....	.....	NJAC 7:27–32, 14.
Consumer Products 2009 .....	.....	.....	.....	X	.....	NJAC 7:27–24.
Adhesives & Sealants .....	.....	.....	.....	X	.....	NJAC 7:27–26.
Asphalt Paving (cutback and emulsified) .....	.....	.....	.....	X	.....	NJAC 7:27–16.19.
Control Technology Guideline (CTG) Group 1: Printing.	.....	.....	.....	X	.....	NJAC 7:27–16.7.
Portable Fuel Containers 2009 .....	.....	.....	.....	X	.....	NJAC 7:27–24.
Nonattainment New Source Review (NNSR) ..	X	X	X	X	.....	NJAC 7:27–8.
Prevention of Significant Deterioration (PSD)	X	X	X	X	.....	NA.
Energy Master Plan .....	X	X	X	X	.....	NA.

TABLE 5B—FEDERAL 2002–2009 CONTROL MEASURES THAT REDUCE EMISSIONS OF PM<sub>2.5</sub> AND ITS PRECURSORS IN NEW JERSEY

Measure	Targeted pollutants				Maintenance plan measure
	NO <sub>x</sub>	PM <sub>2.5</sub>	SO <sub>2</sub>	VOC	
Residential Woodstove NSPS .....	X	X	.....	X	X
Motor Vehicle Control Program (Tier 1 and Tier 2) .....	X	X	X	X	X
Acid Rain Program .....	X	.....	X	.....	.....
Nonroad Diesel Engine Standards .....	X	X	.....	X	X
Phase 2 Standards for New Nonroad Spark-Ignition Nonhandheld Engines at or below 19 kW (lawn and garden) .....	X	.....	.....	X	X
Phase 2 Standards for Small Spark-Ignition Handheld Engines at or below 19 kW (lawn and garden) .....	X	.....	.....	X	X
Heavy Duty Diesel Vehicle (HDDV) Defeat Device Settlement .....	X	.....	.....	.....	.....
Gasoline Boats and Personal Watercraft, Outboard Engines .....	X	X	.....	X	X
National Low Emission Vehicle Program (NLEV) .....	X	X	.....	X	X

TABLE 5B—FEDERAL 2002–2009 CONTROL MEASURES THAT REDUCE EMISSIONS OF PM<sub>2.5</sub> AND ITS PRECURSORS IN NEW JERSEY—Continued

Measure	Targeted pollutants				Maintenance plan measure
	NO <sub>x</sub>	PM <sub>2.5</sub>	SO <sub>2</sub>	VOC	
Large Industrial Spark-Ignition Engines over 19 kW (>50 hp) Tier 1 and Tier 2 .....	X	.....	.....	.....	X
Heavy-Duty Highway Rule—Vehicle Standards and Diesel Fuel Sulfur Control .....	X	X	.....	X	X
Diesel Marine Engines over 37 kW Category 1 Tier 2, Category 2 Tier 2, Category 3 Tier 1 .....	X	.....	.....	X	X
Recreational Vehicles (includes snowmobiles, off-highway motorcycles, and all-terrain vehicles) .....	X	.....	.....	X	X
Locomotive Engines and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder Tier 2 and Tier 3 .....	X	X	.....	X	X
USEPA Maximum Achievable Control Technology (MACT) Standards including Industrial Boiler/Process Heater MACT .....	.....	.....	.....	X	X

Tables 6A and 6B show additional post 2009 maintenance plan measures with creditable emission reductions, including measures that have been adopted but not yet implemented, that

New Jersey is relying on to demonstrate maintenance; discussed in more detail in section VI.E below. New Jersey’s submittal also included additional measures to provide additional

assurance that the improvement in New Jersey’s air quality will continue to improve.

TABLE 6A—NEW JERSEY’S POST 2009 CONTROL MEASURES THAT REDUCE EMISSIONS OF PM<sub>2.5</sub> AND ITS PRECURSORS IN NEW JERSEY

Measure	Targeted pollutants				Maintenance plan measure	Affected State rules
	NO <sub>x</sub>	PM <sub>2.5</sub>	SO <sub>2</sub>	VOC		
Vehicle IM Program Revisions .....	X	.....	.....	X	X	NJAC 7:27–15.
Glass Manufacturing .....	X	.....	.....	.....	X	NJAC 7:27–19.10.
EGU—Coal, Oil, and Gas Fired Boilers .....	X	X	X	.....	X	NJAC 7:27–4.2, 10.2, 19.4.
Low Sulfur Distillate and Residual Fuel Strategies.	X	.....	X	.....	X	NJAC 7:27–9, 7:27–27.9.

TABLE 6B—FEDERAL POST 2009 CONTROL MEASURES THAT REDUCE EMISSIONS OF PM<sub>2.5</sub> AND ITS PRECURSORS IN NEW JERSEY

Measure	Targeted pollutants				Maintenance plan measure
	NO <sub>x</sub>	PM <sub>2.5</sub>	SO <sub>2</sub>	VOC	
Reciprocating Internal Combustion Engines MACT .....	X	X	.....	.....	X

New Jersey also presented data to demonstrate that the decline in PM<sub>2.5</sub> concentrations was due primarily to permanent and enforceable control measures rather than the country’s economic recession that began in 2007 and resulting downturn in energy use.

Although electricity generation in New Jersey decreased by one percent from 2007 to 2009, electricity generation in New Jersey has experienced an overall increase of 5 percent from 2002 to 2011. In contrast, emission reductions have outpaced generation changes with decreases of 93, 84 and 72 percent for SO<sub>2</sub>, NO<sub>x</sub> and PM<sub>2.5</sub>, respectively, from 2000–2011, with significant emission reductions occurring prior to 2007. From 2007 to 2009, emission reductions

for SO<sub>2</sub>, NO<sub>x</sub> and PM<sub>2.5</sub> show decreases of 65, 51, and 46 percent, respectively.

New Jersey also examined the onroad mobile sector to determine if statewide vehicle miles traveled (VMT) data declined and whether it was significant enough to affect air quality compared to emission reductions from “fleet turnover”. “Fleet turnover” refers to the replacement of older, more polluting vehicles with newer vehicles that emit pollutants at lower levels as a result of the Federal “Tier 2” new vehicle emission standards (began with the 2004 model year), and further augmented by the California Low Emission Vehicle (LEV)II new vehicle emission standards (began with the 2009 model year in New Jersey).

Based on yearly statewide data, VMT declined approximately 3.7 percent in 2008 and 0.5 percent in 2009 after steady annual VMT increases of about two percent between 1996 and 2006. Between 2007 and 2009, emissions of PM<sub>2.5</sub> decreased by 23 percent, and NO<sub>x</sub> by 24 percent. An evaluation of onroad emissions data from 2002 to 2009 shows New Jersey emissions of PM<sub>2.5</sub> decreasing by approximately 39 percent and emissions of NO<sub>x</sub> decreasing by approximately 50 percent, even though VMT increased by 4.5 to 6 percent. This suggests that fleet turnover, rather than changes in VMT, had a much greater impact on onroad emissions.

New Jersey has demonstrated that actual enforceable emission reductions are responsible for the air quality

improvement. EPA proposes to find that the combination of existing EPA-approved SIP and Federal measures contribute to the permanence and enforceability of reduction in ambient PM<sub>2.5</sub> levels that have allowed New Jersey to attain the 1997 PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> NAAQS.

*E. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS and the 2006 24-hour PM<sub>2.5</sub> NAAQS, New Jersey submitted a SIP revision to provide for maintenance for at least 10 years after the effective date of redesignation to attainment. EPA believes this maintenance plan meets the requirements for approval under section 175A of the CAA.

1. 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 the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future PM<sub>2.5</sub> violations. The Calcagni Memorandum, dated September 4, 1992, provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: (1) An attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and (5) a contingency plan to prevent or correct future violations. As is discussed more fully below, EPA proposes to find that the New Jersey maintenance plan includes all the necessary components

and is thus proposing to approve it as a revision to the New Jersey SIP.

2. Analysis of the Maintenance Plan

The maintenance demonstration must demonstrate effective safeguards of the NAAQS for at least 10 years following the redesignation showing that future PM<sub>2.5</sub> and precursor emissions will not exceed the level of the attainment year.

States are required to submit the following inventory elements to satisfy the redesignation/maintenance plan inventory requirements:

*Maintenance Plan Attainment Inventory.* Maintenance plan provisions include a comprehensive, accurate, and current emissions inventory from all point, area, nonroad and onroad mobile sources for the PM<sub>2.5</sub> nonattainment area. States are required to develop an attainment inventory to identify the level of emissions in the area that is sufficient to attain the NAAQS. This inventory should include the emissions during the time period associated with the monitoring data showing attainment.

*Maintenance Plan Interim Year Inventory.* At a minimum, emissions should be projected to a midpoint year between the attainment year and the endpoint/10-year inventory. This inventory provides a summary of controlled emissions for point, area, nonroad and onroad mobile sources for the PM<sub>2.5</sub> nonattainment area for the interim year inventory.

*Maintenance Plan Projected Final Year Inventory.* Emissions should be projected from the attainment year to at least 10 years into the future. This inventory provides a summary of controlled emissions for point, area, nonroad and onroad mobile sources at the endpoint/10-year period.

For the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas, 2007 emissions were projected to 2017 and 2025. New Jersey must demonstrate, with the control programs identified in this SIP, that total 2017 or 2025 projected emissions do not exceed the 2007 emission levels.

Below are EPA's review and evaluation of the maintenance demonstration for the two areas. Additional detail is provided in the TSD.

(a) Attainment Emissions Inventory

*Selection of 2007 Base Year as the Maintenance Plan Attainment Year.* Inventory An attainment inventory is comprised of the emissions during the time period associated with the monitoring data showing attainment. New Jersey selected 2007 as the attainment inventory year for the SNJ

and NNJ PM<sub>2.5</sub> nonattainment areas for the 1997 annual PM<sub>2.5</sub> and 2006 24-hour PM<sub>2.5</sub> standards.

For the 1997 PM<sub>2.5</sub> annual standard, the NNJ nonattainment area had monitored attainment based on air monitoring data for 2007–2009; and the SNJ nonattainment area had monitored attainment based on air monitoring data for 2007–2009, and 2008–2010. Additionally, for the 2006 24-hour PM<sub>2.5</sub> standard, the NNJ PM<sub>2.5</sub> nonattainment area had monitored attainment for 2007–2009, and 2008–2010; and the SNJ PM<sub>2.5</sub> nonattainment area had monitored attainment for 2008–2010, and 2009–2011.

Historically for the attainment inventory, the state would select an attainment year inventory characterizing emissions in the maintenance area from one of the three years in the three-year period in which the state monitored attainment. For the SNJ PM<sub>2.5</sub> nonattainment area, New Jersey should have selected 2008 or 2009 as the attainment year inventory for the 2006 24-hour PM<sub>2.5</sub> standard. However, the state believes that the 2007 inventory is an appropriate and representative inventory to use as a surrogate attainment inventory for the 2008 inventory for the SNJ PM<sub>2.5</sub> nonattainment area for the 2006 24-hour PM<sub>2.5</sub> standard for several reasons discussed:

- The 2007 inventory is the most comprehensive inventory developed by states in the region for SIP purposes.

- For all of the available data, the monitors in the SNJ nonattainment area showed compliance with the 2006 24-hour PM<sub>2.5</sub> standard of 35 µg/m<sup>3</sup> during the 2007–2009 monitoring period. However, there was some incomplete data for 2007 in the SNJ area that was not able to be addressed through data substitution and statistical analysis. Incomplete data also existed for the 2008–2010 monitoring period, but was able to be addressed through data substitution and statistical analysis.<sup>14</sup>

- The monitors in the NNJ PM<sub>2.5</sub> nonattainment area showed compliance with the 35 µg/m<sup>3</sup> daily standard during the 2007–2009 monitoring period.

- The 2007 and 2008 emission inventories are comparable, as demonstrated by a comparison of New Jersey's 2007 inventory with USEPA's 2008 National Emissions Inventory (NEI).

<sup>14</sup> See TSD in EPA Docket ID Number EPA-R03-OAR-2012-0371 at [www.regulations.gov](http://www.regulations.gov) for discussion of EPA's procedure for addressing missing data not meeting completeness requirements for monitors in the PA-NJ-DE nonattainment area for the 2006 NAAQS.

• Most important, comparison of the 2008 to the 2017 and 2025 inventories, shows that emissions will continue to decrease and will be well below the 2007 and 2008 levels for PM<sub>2.5</sub> and its precursors, NO<sub>x</sub>, and SO<sub>2</sub>, in the SNJ PM<sub>2.5</sub> nonattainment area.

For these reasons, the state selected the 2007 inventory as a surrogate for the 2008 inventory. EPA proposes to concur that the 2007 base year emissions inventory is appropriate as the attainment year inventory for the PM<sub>2.5</sub> redesignation maintenance plan.

*Criteria for Approval of the Maintenance Plan Attainment Year Inventory.* There are general and specific components of an acceptable emission inventory. In general, the State must submit a revision to its SIP and the emission inventory must meet the minimum requirements for reporting by source category.

For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. Evidence that the inventory was quality assured by the state and its implementation documented.
2. The point source inventory must be complete.
3. Point source emissions must have been prepared or calculated according to the current EPA guidance.
4. The area source inventory must be complete.
5. The area source emissions must have been prepared or calculated according to the current EPA guidance.
6. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.
7. The method (e.g., Highway Performance Monitoring System or a network transportation planning model) used to develop VMT estimates must follow EPA guidance. The VMT development methods must be adequately described and documented in the inventory report.
8. The Motor Vehicle Emission Simulator (MOVES) model must be correctly used to produce emission factors for each of the vehicle classes.

#### *EPA's Evaluation of the Maintenance Plan Attainment Year Inventory*

##### Quality Assurance Plan Implementation

The Quality Assurance (QA) plan was implemented for all portions of the inventory. QA checks were performed relative to data collection and analysis, and double counting of emissions from point, area and mobile sources. QA/QC checks were conducted to ensure accuracy of units, unit conversions, transposition of figures, and calculations.

##### Point and Area Source Inventories

New Jersey's inventory includes major point sources based on specific thresholds for each pollutant in tons per year (tpy). The inventory report describes how point and area source activity levels and their associated parameters were developed, and how the data were used to calculate emission estimates. The inventory lists the source categories that are included in (and excluded from) the area source inventory. The report provides referenced documents for activity level and emission factors used. Information on how control efficiencies were derived (with the associated sample calculations) is also provided. Point and area source summary information on detailed county and/or nonattainment area levels, are included in the inventory. Where applicable, annual emissions are provided for PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC and NH<sub>3</sub> for the PM<sub>2.5</sub> nonattainment areas.

The primary sources of anthropogenic NH<sub>3</sub> emissions are two agricultural operations, livestock and fertilizer. NH<sub>3</sub> emissions from livestock and fertilizer were prepared by the USEPA using the Carnegie Mellon University (CMU) Ammonia Model, version 6. The model runs are based on 2007 activity levels. NH<sub>3</sub> emissions for industrial refrigeration, composting, and publicly owned treatment works were prepared by the USEPA.

##### Nonroad Mobile Source Inventory

For New Jersey, the predominant non-road mobile source categories (i.e., agricultural equipment, construction equipment, industrial equipment, airport service equipment, light

commercial equipment, lawn and garden equipment, etc.) were developed by the Nonroad Emissions Equipment Model 2008 released by EPA's Office of Transportation and Air Quality (OTAQ). Nonroad mobile source emissions are presented on a source category, county and/or nonattainment area basis. Where applicable, annual emissions are provided for PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC and NH<sub>3</sub> for the PM<sub>2.5</sub> nonattainment areas.

##### Aircraft, Locomotive and Commercial Marine Vessel Inventories

Where applicable, aircraft, locomotive, and commercial marine vessel emissions on a county and/or nonattainment area basis are provided for PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC and NH<sub>3</sub>. Activity level and emissions data for each source category is provided. Aircraft, locomotive and commercial marine vessel source emissions are presented on a source category, county and/or nonattainment area basis. Where applicable, annual emissions are provided for PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC and NH<sub>3</sub> for PM<sub>2.5</sub> nonattainment areas.

##### Onroad Mobile Source Inventory

New Jersey's mobile source inventory was developed by using the travel demand model (TDM) used by the two Metropolitan Planning Organizations in the States as the basis for estimating actual county level and functional class VMT estimates. Estimates were developed from the aforementioned sources for each roadway functional class, by county, in each of the PM<sub>2.5</sub> nonattainment areas. MOVES2010a Model was used to generate emission factors for on-road vehicle emission estimates. It provides the sources for the key inputs into the mobile source emissions model. Key assumptions are also included. Where applicable, PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC and NH<sub>3</sub> mobile emissions are presented on county and/or nonattainment area basis. Where applicable, annual emissions are provided for PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC and NH<sub>3</sub> for PM<sub>2.5</sub> nonattainment areas.

Tables 7A and 7B below show the 2007 base year PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC and NH<sub>3</sub> annual emission inventories for the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas.

TABLE 7A—2007 NNJ AREA BASE YEAR INVENTORY

[In tons/year]

Pollutant	Point	Area	Nonroad mobile	Onroad mobile	Total
PM <sub>2.5</sub> .....	4,937	5,498	2,497	3,677	16,610
NO <sub>x</sub> .....	15,828	16,122	39,457	93,385	164,793
SO <sub>x</sub> .....	20,360	4,983	5,761	586	31,690
VOC .....	7,584	60,560	26,833	47,490	142,667



TABLE 7A—2007 NNJ AREA BASE YEAR INVENTORY—Continued  
[In tons/year]

Pollutant	Point	Area	Nonroad mobile	Onroad mobile	Total
NH <sub>3</sub> .....	804	2,909	37	2,101	5,840

TABLE 7B—2007 SNJ AREA BASE YEAR INVENTORY  
[In tons/year]

Pollutant	Point	Area	Nonroad mobile	Onroad mobile	Total
PM <sub>2.5</sub> .....	800	2,837	560	1,055	5,159
NO <sub>x</sub> .....	4,453	3,483	6,790	26,992	41,718
SO <sub>x</sub> .....	2,034	1,128	1,642	161	4,965
VOC .....	2,041	17,184	6,490	10,880	36,594
NH <sub>3</sub> .....	53	1,032	12	462	1,559

EPA is proposing to approve the 2007 base year inventory for PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOC and NH<sub>3</sub> for the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas. The 2007 Maintenance Plan Attainment Year/Base Year emissions inventory is comprehensive, accurate, and current for all sources of relevant pollutants in the nonattainment area. In all cases the 2007 attainment/base year inventory was done in accordance with EPA guidance. The technical support document provides additional information regarding the review conducted by EPA for the 2007 PM<sub>2.5</sub> base year inventory.

(b) 2017 Interim and 2025 End Year Projection Inventories

*Criteria for Approval of the 2017 Interim and 2025 Projection End Year Inventories.* There are general and specific components for acceptable 2017 Maintenance Plan Interim and 2025 End Year Projection Inventories. In general, the State must submit a revision to its SIP and the aforementioned components must meet certain minimum requirements for reporting by source category.

For the projection inventories to be acceptable they must pass the following acceptance criteria:<sup>15</sup>

1. Were the 2017 and 2025 projection inventories developed in accordance with the procedures outlined in EPA's latest guidance?

2. Were the Plans developed in accordance with EPA's latest guidance for Growth Factors, Projections, and Control Strategies for Reasonable Progress Goal Plans?

*EPA's Evaluation of the Maintenance Plan 2017 Interim and 2025 End Year Projection Inventories.* A projection of 2007 PM<sub>2.5</sub>, NO<sub>x</sub>, and SO<sub>2</sub>

anthropogenic emissions to 2017 and 2025 is required to determine the emission reductions needed for the inventory maintenance plan. The 2017 and 2025 projection year emission inventories are calculated by multiplying the 2007 base year inventory by factors which estimate growth from 2007 to 2017 and 2025. A specific growth factor for each source type in the inventory is required since sources typically grow at different rates.

Major Point Sources

Electric Generating Units (EGU) and Non-Electric Generating Units (Non-EGUs)

For the major point source category, the projected emissions inventories were first calculated by estimating growth in each source category. As appropriate, the 2007 emissions inventory was used as the base for applying factors to account for inventory growth. The point source inventory was grown from the 2007 inventory to 2017 and 2025 for each facility using growth factors utilized in New Jersey's Emissions Statement Program, US Department of Energy's (USDOE) Annual Energy Outlook projections, and NJ Department of Labor statistics.

Area Sources

For the area source category, New Jersey projected emissions from 2007 to 2017 and 2025 using growth factors generated from USDOE 2011 Annual Energy Outlook, and state-supplied population and employment data, where appropriate.

Non-Road Mobile Sources

Nonroad Vehicle Equipment Emissions

Non-road vehicle equipment emissions were projected from 2007 to 2017 and 2025 using the EPA's NONROAD 2008a model (July 2009

version). This model was used to calculate past and future emission inventories for all nonroad equipment categories except commercial marine vessels, locomotives and aircrafts. Emissions were determined on a monthly basis and combined to provide annual emission estimates.

Aircrafts, Locomotives and Commercial Marine Vessels (CMV)

Aircraft emissions were projected from 2007 to 2017 and 2025 based on landing and takeoff growth factors from the Federal Aviation Administration Terminal Area Forecast System for 2009–2030.

Locomotives emissions were projected from 2007 to 2017 and 2025 based on combined growth and control factors from EPA's regulatory impact analysis (RIA) in May 2008 for control of locomotive engines and USDOE's 2006 Annual Energy Outlook report.

CMV emissions were projected to 2017 and 2025 using EPA's May 2008 RIA report, for category 1 and 2 vessels and EPA's 2009 RIA report for category 3 vessels based on combined growth and control factors.

Onroad Mobile Sources

For the onroad mobile source category, the primary indicator and tool for developing on-road mobile growth and expected emissions are VMT and US EPA's mobile emissions model MOVES2010a. Projection years 2017 and 2025 pollutant emission factors were generated by MOVES2010a (with the associated controlled measures applied, where appropriate) and applied to the monthly VMT projections provided by the State. Monthly emissions were then combined to develop annual emission estimates.

Tables 8A–8C and 9A–9C, show the 2017 and 2025 projection emission inventories controlled after 2007 using the aforementioned growth indicators/

<sup>15</sup> Emission Inventory Improvement Program guidance document titled *Volume X, Emission Projections*, dated December 1999

methodologies for the NNJ and SNJ  
PM<sub>2.5</sub> nonattainment areas, respectively.

TABLE 8A—COMPARISON OF 2007, 2017 AND 2025 PM<sub>2.5</sub> EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE NNJ AREA

PM <sub>2.5</sub>				
Sector	2007	2017	2025	Net change 2008–2025
Point .....	4,937	3,131	3,243	.....
Area .....	5,498	5,436	5,616	.....
Nonroad .....	2,497	1,725	1,410	.....
On-road .....	3,677	1,874	1,218	.....
Total .....	16,610	12,227	11,487	– 5,123

TABLE 8B—COMPARISON OF 2007, 2017 AND 2025 NO<sub>x</sub> EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE NNJ AREA

NO <sub>x</sub>				
Sector	2007	2017	2025	Net change 2008–2025
Point .....	15,828	13,512	4,126	.....
Area .....	16,122	15,969	3,429	.....
Nonroad .....	39,457	27,050	4,998	.....
On-road .....	93,385	45,687	13,504	.....
Total .....	164,793	102,218	26,057	– 138,736

TABLE 8C—COMPARISON OF 2007, 2017 AND 2025 SO<sub>2</sub> EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE NNJ AREA

SO <sub>2</sub>				
Sector	2007	2017	2025	Net change 2008–2025
Point .....	20,360	3,583	1,245	.....
Area .....	4,983	452	102	.....
Nonroad .....	5,761	719	105	.....
On-road .....	586	531	129	.....
Total .....	31,690	5,295	1,579	– 30,111

TABLE 9A—COMPARISON OF 2007, 2017 AND 2025 PM<sub>2.5</sub> EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE SNJ AREA

PM <sub>2.5</sub>				
Sector	2007	2017	2025	Net change 2008–2025
Point .....	800	818	858	.....
Area .....	2,837	2,243	2,651	.....
Nonroad .....	560	372	315	.....
On-road .....	1,055	616	278	.....
Total .....	5,159	4,549	4,102	– 1,057

TABLE 9B—COMPARISON OF 2007, 2017 AND 2025 NO<sub>x</sub> EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE SNJ AREA

NO <sub>x</sub>				
Sector	2007	2017	2025	Net change 2008–2025
Point .....	4,453	4,126	4,433	.....
Area .....	3,483	3,429	3,427	.....

TABLE 9B—COMPARISON OF 2007, 2017 AND 2025 NO<sub>x</sub> EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE SNJ AREA—Continued

NO <sub>x</sub>				
Sector	2007	2017	2025	Net change 2008–2025
Nonroad .....	6,790	4,998	3,915	.....
On-road .....	26,992	13,504	6,095	.....
Total .....	41,718	26,057	17,870	–23,848

TABLE 9C—COMPARISON OF 2007, 2017 AND 2025 SO<sub>2</sub> EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE SNJ AREA

SO <sub>2</sub>				
Sector	2007	2017	2025	Net change 2008–2025
Point .....	2,034	1,245	1,355	.....
Area .....	1,128	102	260	.....
Nonroad .....	1,642	105	141	.....
On-road .....	161	129	161	.....
Total .....	4,965	1,579	1,880	–3,085

The permanent and enforceable control measures that are relied on to provide continued attainment or maintenance of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS are listed as maintenance plan measures in tables 5 (A thru B) and 6 (A thru B). New Jersey has already implemented, or adopted these control measures, some with future implementation dates. Additional information regarding the control measures can be found in the TSD. EPA is proposing to approve the 2017 interim and 2025 projection inventories for PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>2</sub> for the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas. In all cases the 2017 and 2025 projection year inventories were performed in accordance with EPA guidance. For further information concerning EPA's evaluation and analysis of the emission inventories, see the TSD available in the docket.

Tables 8A–9C above show the inventories for the 2007 attainment year, the 2017 interim year, and the 2025 endpoint year for the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas. Table 8A–9C show that between 2007 and 2017, the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas, are projected to reduce SO<sub>2</sub>, NO<sub>x</sub> and PM<sub>2.5</sub> emissions substantially. Between 2007 and 2025, the NNJ and SNJ areas are projected to reduce emissions well below the 2007 attainment inventory emission levels for all three pollutants. Thus, the projected emissions inventories show that the NNJ and SNJ areas will continue to maintain the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS during the 10 year maintenance period.

#### Maintenance Demonstration Thru 2025

As noted in section VI.E.1, CAA section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area “for at least 10 years after the redesignation.” EPA has interpreted this as a showing of maintenance “for a period of 10 years following redesignation.” See Calcagni Memorandum. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. See Calcagni Memorandum.

As discussed in detail above, the State's maintenance plan submission expressly documents that the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas' emissions inventories will remain below the attainment year inventories through at least 2025. In addition, for the reasons set forth below, EPA proposes to determine that the State's submission further demonstrates that the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas will continue to maintain the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS at least through 2025:

- As explained in the previous section, levels of SO<sub>2</sub>, NO<sub>x</sub>, and PM<sub>2.5</sub> are projected to decrease substantially between 2007 and 2025. EPA believes that it is highly improbable that sudden increases would occur that could exceed the attainment year inventory levels in 2025.

- Air quality concentrations for PM<sub>2.5</sub> are 1 to 2 µg/m<sup>3</sup> or more under the NAAQS level, indicating a margin of safety in the event of any emissions increase. As shown in tables 1 and 2, for the 1997 annual NAAQS of 15 µg/m<sup>3</sup>, the design value for 2009–2011 for the NY-NJ-CT PM<sub>2.5</sub> nonattainment area was 11.7 µg/m<sup>3</sup>; and the design value for 2009–2011 for the PA-NJ-DE PM<sub>2.5</sub> nonattainment area was measured at 13.7 µg/m<sup>3</sup>. As shown in tables 3 and 4, for the 2006 PM<sub>2.5</sub> NAAQS of 35 µg/m<sup>3</sup>, the design value for 2009–2011 for the NY-NJ-CT PM<sub>2.5</sub> nonattainment area was 30 µg/m<sup>3</sup>; and the design value for 2009–2011 for the PA-NJ-DE PM<sub>2.5</sub> nonattainment area was measured at 33 µg/m<sup>3</sup>.

- Air quality concentrations showed a significant downward trend over time for both the NY-NJ-CT and PA-NJ-DE PM<sub>2.5</sub> nonattainment areas for both the 1997 and 2006 PM<sub>2.5</sub> NAAQS. See figures 3 thru 6 of the New Jersey redesignation request, which is available in the docket.

- Additional emissions reductions will occur now, and in the future, from EPA's Mercury and Air Toxics Standards (MATS)<sup>16</sup>, New Jersey's Diesel Retrofit Program, NJDEP's amended Administrative Consent Order with B.L. England, and from New Jersey's Clean Construction Program. See the TSD for more information regarding these measures, including expected emission reductions.

<sup>16</sup> 77 FR 9304 (February 16, 2012).

(c) Maintenance Plan and Evaluation of Precursors

With regard to the redesignation of NNJ and SNJ areas, in evaluating the effect of the D.C. Circuit's remand of EPA's implementation rule, which included presumptions against consideration of VOC and NH<sub>3</sub> as PM<sub>2.5</sub> precursors, in this proposal EPA 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 and 2006 PM<sub>2.5</sub> standards and that the state, as shown below, has shown that attainment of that standard is due to permanent and enforceable emission reductions.

EPA proposes to determine that the State's maintenance plan shows continued maintenance of the 1997 PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> NAAQS by tracking the levels of the precursors whose control brought about attainment of the standards in the NNJ and SNJ nonattainment areas. EPA therefore determines that the 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 NH<sub>3</sub> in demonstrating continued maintenance in this area. As explained below, based upon documentation provided by the

State and supporting information, EPA believes that the maintenance plan for the NNJ and SNJ nonattainment areas need not include any additional emission reductions of VOC or NH<sub>3</sub> 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 NH<sub>3</sub> emissions for the NNJ and SNJ area are very low, estimated to be less than 6,000 and 1,600 tons per year, respectively. See Tables 7A and 7B. This amount of NH<sub>3</sub> emissions appears especially small in comparison to the total amounts of SO<sub>2</sub>, NO<sub>x</sub>, and even PM<sub>2.5</sub> emissions from sources in the areas. Third, as described below, available information shows that no precursor, including VOC and NH<sub>3</sub>, is expected to increase over the maintenance period so as to interfere with or undermine the State's maintenance demonstration.

NNJ and SNJ areas' maintenance plans show that emissions of direct PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> are projected to decrease substantially over the maintenance period. See Tables 8A–9C. In addition, emissions inventories used in the RIA for the 2012 PM<sub>2.5</sub> NAAQS show that VOC and NH<sub>3</sub> emissions for the NNJ and SNJ areas are projected to

decrease substantially from 2007 through 2020. See Tables 10A and 10B below. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that this downward trend would not continue through 2025. Given that the NNJ and SNJ areas are already attaining the 1997 PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> NAAQS with the current level of emissions from sources in the area, the downward trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that the State is addressing for purposes of the 1997 PM<sub>2.5</sub> and 2006 PM<sub>2.5</sub> NAAQS indicate that the areas should continue to attain the NAAQS following the precursor control strategy that the state has already elected to pursue. Even if VOC and NH<sub>3</sub> emissions were to increase unexpectedly between 2020 and 2025, 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 proposes to determine 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> and 2006 PM<sub>2.5</sub> standards during the maintenance period.

TABLE 10A—COMPARISON OF 2007 AND 2020 VOC AND NH<sub>3</sub> EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE NNJ AREA <sup>17</sup>

Sector	VOC			NH <sub>3</sub>		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Point .....	7,150	7,508	.....	852	1,301	.....
Area .....	59,925	60,657	.....	2,810	2,872	.....
Nonroad .....	29,203	16,613	.....	28	34	.....
On-road .....	44,389	15,285	.....	2,433	1,243	.....
Total .....	140,667	100,063	– 40,604	6,123	5,450	– 703

TABLE 10B—COMPARISON OF 2007 AND 2020 VOC AND NH<sub>3</sub> EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE SNJ AREA <sup>18</sup>

Sector	VOC			NH <sub>3</sub>		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Point .....	1,874	1,837	.....	123	159	.....
Area .....	18,140	18,488	.....	1,075	1,103	.....
Nonroad .....	7,023	3,890	.....	10	12	.....
On-road .....	9,072	3,295	.....	469	263	.....
Total .....	36,109	27,150	– 8,959	1,677	1,527	– 150

<sup>17</sup> These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 PM<sub>2.5</sub> NAAQS.

<sup>18</sup> These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 PM<sub>2.5</sub> NAAQS.

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. 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 continue to decline through 2020. In the RIA analysis, the 2020 modeled design value is 10.8 µg/m<sup>3</sup> for the NY-NJ-CT nonattainment area, and 9.4 µg/m<sup>3</sup> for the PA-NJ-DE nonattainment area. Given that precursor emissions are projected to decrease through 2025, it is reasonable to conclude that monitored PM<sub>2.5</sub> levels in this area will also continue to decrease through 2025.

Thus, EPA proposes to determine that there is ample justification to conclude that the NNJ and SNJ areas 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 notice, EPA proposes to approve the State's maintenance plan and its request to redesignate the NNJ and SNJ nonattainment areas to attainment for the 1997 PM<sub>2.5</sub> annual and the 2006 PM<sub>2.5</sub> 24-hour standards.

#### (d) Monitoring Network

New Jersey has committed to tracking the air quality for continued attainment of the PM<sub>2.5</sub> NAAQS, and will work with EPA prior to making any changes to the existing PM<sub>2.5</sub> air monitoring network.

The State is obligated to work with EPA each year through the air monitoring network review process, as required by 40 CFR Part 58 to determine: (1) The adequacy of the PM<sub>2.5</sub> monitoring network; (2) if additional monitoring is needed; and (3) if/when sites can be discontinued or relocated. Any changes to the monitoring network, including replacing or moving monitor(s) to new locations, as necessary, will be made through the air monitoring network review process. This review process undergoes a public comment period, and is subject to approval by the EPA. Air monitoring data will continue to be quality assured according to requirements in 40 CFR Part 58.

EPA proposes to conclude that the State of New Jersey has met the requirement for continuing to operate an appropriate air monitoring network.

#### (e) Verification of Continued Attainment

Continued attainment of the PM<sub>2.5</sub> NAAQS in the state depends, in part, on the state's efforts towards tracking indicators of continued attainment

during the maintenance period. New Jersey's plan for verifying continued attainment of the PM<sub>2.5</sub> NAAQS consists of continued ambient PM<sub>2.5</sub> air quality monitoring in accordance with the requirements of 40 CFR Part 58. New Jersey will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (codified at 40 CFR Part 51, subpart A).

EPA proposes to approve New Jersey's plans for verifying continued attainment of the PM<sub>2.5</sub> NAAQS.

#### (f) Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency provision 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 contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, New Jersey has included contingency provisions in the maintenance plan to address possible future annual PM<sub>2.5</sub> air quality problems. New Jersey will use the following triggers to determine the cause of elevated levels, and implement contingency measures, as necessary, in accordance with the described schedule:

1. If monitored PM<sub>2.5</sub> concentrations in any year exceed the level of the NAAQS, NJDEP will perform a data assessment to determine the cause of the violation. This assessment will be performed when the annual average PM<sub>2.5</sub> concentration for the previous year exceeds 15 µg/m<sup>3</sup> at any New Jersey monitoring site, or when the 98th percentile of the 24-hour average daily concentrations exceeds 35 µg/m<sup>3</sup> at any New Jersey air monitoring site. NJDEP will perform this evaluation within six months of the data certification. New Jersey will work with the other states in its shared multi-state nonattainment areas as necessary.

2. If annual or 24-hour PM<sub>2.5</sub> design values exceed 15 µg/m<sup>3</sup> or 35 µg/m<sup>3</sup>, respectively, NJDEP will evaluate all

appropriate data to determine the cause using the same analyses discussed in Item number 1. NJDEP will perform this evaluation within six months of the determination of a violation.

3. Based on any findings, New Jersey will make a judgment on whether the violation was caused by an exceptional event or a violation of an existing rule or permit. The State will rely on one or more of the following contingency measures for any other violation:

- Onroad Vehicle Fleet Turnover
- Nonroad Vehicle and Equipment Fleet Turnover
- Low Sulfur Fuel Rule N.J.A.C. 7:27–9 (prior to July 2016)
- Diesel Retrofit Program, Diesel Inspection and Maintenance Program, N.J.A.C. 7:27–14 and 32

4. If necessary, New Jersey will evaluate the feasibility and applicability of additional measures, how they relate to the cause and location of the violation, and if these additional measures would correct the violation. These may include:

- New control measures that have been adopted for other purposes
- Residential wood burning strategies
- Fugitive dust reductions at stationary sources
- Lower particulate limits for No. 6 fuel oil-fired boilers
- Lower particulate limits for stationary diesel engines
- Working with the local metropolitan planning agencies to implement transportation control measures

NJDEP will perform this evaluation within six months of the determination of a violation. If it is determined that a new rule is required or appropriate to correct a violation of the NAAQS, NJDEP will propose a new rule within 18 month, and take final action within 30 months, of the determination of a violation.

New Jersey is relying on existing measures, which are already implemented, or have been adopted with future implementation dates, to promptly correct any violation of the NAAQS. The state has also included a commitment to further evaluate additional measures, if necessary and appropriate. EPA proposes to find that the New Jersey maintenance plan includes appropriate contingency measures to promptly correct any violation of the NAAQS that occurs after redesignation.

#### Maintenance Plan Conclusion

For all of the reasons discussed above, EPA is proposing to approve New Jersey's 1997 annual and 2006 24-hour PM<sub>2.5</sub> maintenance plan for the NNJ and

SNJ areas as meeting the requirements of section 175A of the CAA.

**VII. What is EPA’s analysis of New Jersey’s proposed NO<sub>x</sub> and PM<sub>2.5</sub> motor vehicle emission budgets?**

Under section 176(c) of the CAA, new transportation plans, programs, and 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 the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR Part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstrations) and maintenance plans create motor vehicle emissions budgets (MVEBs or budgets) for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR Part 93, an MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area’s planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

New Jersey has developed MVEBs for both the NNJ and SNJ nonattainment areas. The budgets are being established for both the 1997 annual and 2006 daily PM<sub>2.5</sub> standards. New Jersey determined that budgets based on annual emissions of direct PM<sub>2.5</sub> and NO<sub>x</sub>, a precursor, are appropriate for the 2006 daily standard

because exceedences of the standard were not isolated to one particular season; therefore, the budgets established by this maintenance plan will be used by transportation agencies to meet conformity requirements for both the annual and daily standards.

New Jersey developed these MVEBs, as required, for the last year of its maintenance plan, 2025, and an additional year, 2009, for the purpose of establishing budgets for the near-term based on EPA’s MOVES model. Previously established and approved MVEBs had been based on MOBILE6.2.

The 2009 MVEB was developed without an accompanying full emissions inventory. EPA proposes to approve this approach that is consistent with attainment and maintenance of both the 1997 and 2006 PM<sub>2.5</sub> standards because of our earlier determinations that both the NY-NJ-CT and the PA-NJ-DE nonattainment areas had attained the standards based on monitored air quality that included the year 2009 (see section II.A.).

The MVEBs for 2025 reflect the total on-road emissions for 2025, plus an allocation from the available NO<sub>x</sub> and PM<sub>2.5</sub> safety margins. Under 40 CFR 93.101, the term “safety margin” is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. New Jersey chose to add 8% of the available safety margin to both the PM<sub>2.5</sub> and NO<sub>x</sub> budgets for 2025 for both the NNJ and SNJ nonattainment areas. The NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs and safety margin allocations were developed in consultation with the transportation partners and were added to accommodate expected future improvements to MOVES model inputs and methodologies.

In the submittal, the State has also established “sub-area budgets” for the two metropolitan planning organizations (MPO) within the NNJ nonattainment area: the North Jersey Transportation Planning Authority (NJTPA) and the Delaware Valley Regional Planning Commission (DVRPC). These sub-area budgets allow each MPO to work independently to demonstrate conformity by meeting its own PM<sub>2.5</sub> and NO<sub>x</sub> budgets. Each MPO must still verify, however, that the other MPO currently has a conforming long range transportation plan and transportation improvement program

(TIP) prior to making a new plan/TIP conformity determination. The MVEBs for both the NNJ and SNJ areas are defined in Tables 11 (A thru D) below.

**TABLE 11A—2009 PM<sub>2.5</sub> AND NO<sub>x</sub> MVEBs FOR NNJ FOR BOTH THE 1997 ANNUAL AND 2006 DAILY PM<sub>2.5</sub> NAAQS**

[Tons/year]

MPO/Subarea	Direct PM <sub>2.5</sub>	NO <sub>x</sub>
NJTPA .....	2,736	67,272
DVRPC (Mercer County) .....	224	5,835

**TABLE 11B—2025 PM<sub>2.5</sub> AND NO<sub>x</sub> MVEBs FOR NNJ FOR BOTH THE 1997 ANNUAL AND 2006 DAILY PM<sub>2.5</sub> NAAQS**

[Tons/year]

MPO/Subarea	Direct PM <sub>2.5</sub>	NO <sub>x</sub>
NJTPA .....	1,509	25,437
DVRPC (Mercer County) .....	119	2,551

**TABLE 11C—2009 PM<sub>2.5</sub> AND NO<sub>x</sub> MVEBs FOR SNJ FOR BOTH THE 1997 ANNUAL AND 2006 DAILY PM<sub>2.5</sub> NAAQS**

[Tons/year]

MPO	Direct PM <sub>2.5</sub>	NO <sub>x</sub>
DVRPC (Burlington, Camden, and Gloucester Counties) .....	680	18,254

**TABLE 11D—2025 PM<sub>2.5</sub> AND NO<sub>x</sub> MVEBs FOR SNJ FOR BOTH THE 1997 ANNUAL AND 2006 DAILY PM<sub>2.5</sub> NAAQS**

[Tons/year]

MPO	Direct PM <sub>2.5</sub>	NO <sub>x</sub>
DVRPC (Burlington, Camden, and Gloucester Counties) .....	363	8,003

As mentioned above, New Jersey has chosen to allocate a portion of the available safety margin to the NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2025. Details of this allocation are shown in Tables 12 (A thru D) below.

TABLE 12A—DIRECT PM<sub>2.5</sub> MVEB SAFETY MARGIN ALLOCATION FOR NNJ  
[Tons/year]

MPO/Subarea	On-Road inventory for 2025	Total reduction from all sources, 2007 to 2025	Safety margin (8% of total reduction)	2025 MVEB
NJTPA .....	1,128	4,766	381	1,509
DVRPC (Mercer County) .....	90	358	29	119

TABLE 12B—NO<sub>x</sub> MVEB SAFETY MARGIN ALLOCATION FOR NNJ  
[Tons/year]

MPO/Subarea	On-Road inventory for 2025	Total reduction from all sources, 2007 to 2025	Safety margin (8% of total reduction)	2025 MVEB
NJTPA .....	18,626	85,142	6,811	25,437
DVRPC (Mercer County) .....	1,920	7,881	630	2,551

TABLE 12C—DIRECT PM<sub>2.5</sub> MVEB SAFETY MARGIN ALLOCATION FOR SNJ  
[Tons/year]

MPO/Subarea	On-Road inventory for 2025	Total reduction from all sources, 2007 to 2025	Safety margin (8% of total reduction)	2025 MVEB
DVRPC (Burlington, Camden, and Gloucester Counties) .....	278	1,056	85	363

TABLE 12D—NO<sub>x</sub> MVEB SAFETY MARGIN ALLOCATION FOR SNJ  
[Tons/year]

MPO/Subarea	On-Road inventory for 2025	Total reduction from all sources, 2007 to 2025	Safety margin (8% of total reduction)	2025 MVEB
DVRPC (Burlington, Camden, and Gloucester Counties) .....	6,095	23,848	1,908	8,003

EPA is proposing to approve the 2009 and 2025 MVEBs for NO<sub>x</sub> and PM<sub>2.5</sub> for NNJ and SNJ because EPA has determined that the areas will maintain both the 1997 annual and 2006 24-hr PM<sub>2.5</sub> NAAQS with on-road vehicle emissions capped at the levels set by the budgets. EPA's review thus far indicates that the budgets meet the adequacy criteria set forth by 40 CFR 93.118(e)(4), as follows:

(i) *The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a State public hearing:* The SIP revision was submitted to EPA by the Commissioner of the New Jersey Department of Environmental

Protection, who is the Governor's designee.

(ii) *Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among Federal, State, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed:* New Jersey conducted an interagency consultation process involving EPA and USDOT, the New Jersey Department of Transportation and affected MPOs. All comments and concerns were addressed prior to the final submittal.

(iii) *The motor vehicle emissions budget(s) is clearly identified and precisely quantified:* The MVEB was

clearly identified and quantified and is reiterated here in Tables 11A–11D.

(iv) *The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for maintenance:* Both the 2009 and 2025 MVEB are less than the on-road mobile source inventory for 2007 that was shown to be consistent with attainment and maintenance of the standards. In addition, the 2009 budgets are for a year in which EPA has determined that New Jersey attained the applicable air quality standards and are therefore consistent with maintenance of the respective standards.

(v) *The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and*

the control measures in the submitted control strategy implementation plan revision or maintenance plan: The MVEB were developed from the on-road mobile source inventories, including all applicable state and Federal control measures. Inputs related to inspection and maintenance and fuels are consistent with New Jersey's Federally-approved control programs.

(vi) *Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see § 93.101 for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled):* The submitted maintenance plan establishes new 2009 and 2025 budgets to ensure continued maintenance of the standards; therefore, this is not applicable.

Once the budgets are approved or found adequate (whichever is completed first), they must be used for future conformity determinations.

#### **VIII. What is the status of EPA's adequacy determination for the proposed NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for 2009 and 2025 for Northern and Southern New Jersey?**

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

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4), and our review of New Jersey's submission in the context of these criteria was presented in section VII. The process for determining adequacy consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the

adequacy process in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM<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). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, New Jersey's maintenance plan submission includes NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the NNJ and SNJ maintenance areas for 2009 and 2025. EPA reviewed the NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs through the adequacy process. The New Jersey SIP submission, including the NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs, was open for public comment on EPA's adequacy Web site on September 12, 2012, found at: <http://www.epa.gov/otaq/stateresources/transconf/cursips.htm>. The public comment period closed on October 12, 2012. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal.

EPA intends to make its determination on the adequacy of the 2009 and 2025 MVEBs for NNJ and SNJ for transportation conformity purposes in the near future by completing the adequacy process that was started on September 12, 2012. After EPA finds the MVEBs adequate or approves them, the new MVEBs for NO<sub>x</sub> and PM<sub>2.5</sub> must be used for future transportation conformity determinations.

#### **IX. What action is EPA proposing to take?**

EPA is proposing to approve New Jersey's request for redesignating the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas for the 1997 and 2006 PM<sub>2.5</sub> NAAQS to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA has evaluated New Jersey'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 monitoring data demonstrate that the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas has attained the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS and will continue to attain the standard. Final approval of this redesignation request would change the designation of the NNJ and SNJ PM<sub>2.5</sub>

nonattainment areas from nonattainment to attainment for the 1997 PM<sub>2.5</sub> annual and the 2006 PM<sub>2.5</sub> 24-hour NAAQS. EPA is also proposing to approve the maintenance plan for the NNJ and SNJ PM<sub>2.5</sub> nonattainment areas as a revision to the New Jersey SIP. EPA is also proposing to approve the 2007 NH<sub>3</sub>, VOC, NO<sub>x</sub>, direct PM<sub>2.5</sub> and SO<sub>2</sub> emissions inventories as meeting the comprehensive emissions inventory requirements of section 172(c)(3) of the CAA. Additionally, EPA is proposing to approve the 2009 and 2025 motor vehicle emissions budgets for PM<sub>2.5</sub> and NO<sub>x</sub>. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### **X. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National



Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

##### 40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: June 12, 2013.

**Judith A. Enck,**

*Regional Administrator, Region 2.*

[FR Doc. 2013-15147 Filed 6-26-13; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[EPA-R06-OW-2011-0712; FRL-9826-5]

#### Ocean Dumping; Sabine-Neches Waterway (SNWW) Ocean Dredged Material Disposal Site Designation

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to designate four new Ocean Dredged Material Disposal Site(s) (ODMDS) located offshore of Texas for the disposal of dredged material from the Sabine-Neches Waterway (SNWW), pursuant to the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). The new sites are needed for the disposal of additional dredged material associated with the SNWW Channel Improvement Project, which includes an extension of the

Entrance Channel into the Gulf of Mexico. Final action by EPA on this proposal would authorize the disposal of the additional dredged materials at the additional ocean disposal sites.

**DATES:** Comments on this proposed rule must be received on or before August 12, 2013.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OW-2011-0712, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>; follow the online instruction for submitting comments.
- *Email:* Dr. Jessica Franks at [franks.jessica@epa.gov](mailto:franks.jessica@epa.gov).
- *Fax:* Dr. Jessica Franks, Marine and Coastal Section (6WQ-EC) at fax number 214-665-6689.
- *Mail:* Dr. Jessica Franks, Marine and Coastal Section (6WQ-EC), Environmental Protection Agency, Mailcode: (6WQ-EC), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

**Instructions:** Direct your comments to Docket No. EPA-R06-OW-2011-0712. 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.

**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 Marine and Coastal Section (6WQ-EC), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

**FOR FURTHER INFORMATION CONTACT:** Jessica Franks, Ph.D., Marine and Coastal Section (6WQ-EC), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-8335, fax number (214) 665-6689; email address [franks.jessica@epa.gov](mailto:franks.jessica@epa.gov).

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  5. Executive Order 13132: Federalism
  6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks