of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Air pollution control, Environmental protection, National Parks, Wilderness.

Dated: June 25, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–16659 Filed 7–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2012–0337 and EPA–R05–OAR–2012–0462; FRL–9831–7]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Ohio Portion of the Steubenville-Weirton Area to Attainment of the 1997 Annual and 2006 24-Hour Standards for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 16, 2012, and May 25, 2012, the Ohio Environmental Protection Agency submitted a request under the Clean Air Act (CAA or Act) for EPA to grant the redesignation of the Ohio portion of the Steubenville-Weirton area (Jefferson County), West Virginia-Ohio (Brooke and Hancock counties) (WV–OH), nonattainment area to attainment of the 1997 annual and 2006 24-hour standards for fine particulate matter ($PM_{2.5}$). EPA is proposing to determine that the entire Steubenville-Weirton area attains both the 1997 annual and the 2006 24-hour $PM_{2.5}$ standard, based on the most recent three years of certified air quality data. EPA is proposing to approve, as revisions to the Ohio state implementation plan (SIP), the state's plan for maintaining the 1997 annual and 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS or standard) through 2025 in the Ohio portion of the area. EPA is proposing to approve 2005 and 2008 emission inventories for the Ohio portion of the Steubenville-Weirton area as meeting the comprehensive emissions inventory requirement of the CAA. In this proposal, EPA is also proposing to approve a supplement to the emission inventories previously submitted by the state. EPA is proposing that the inventories for ammonia and volatile organic compounds (VOC), in conjunction with the inventories for nitrogen oxides (NO_X), direct $PM_{2.5}$, and sulfur dioxide (SO_2) that EPA previously proposed to approve, meet the comprehensive emissions inventory requirement of the CAA. Ohio's maintenance plan submission includes a motor vehicle emission budget (MVEB) for the mobile source contribution of $PM_{2.5}$ and NO_X to the Steubenville-Weirton area for transportation conformity purposes; EPA is proposing to approve the MVEBs for 2015 and 2025 into the Ohio SIP for transportation conformity purposes.

DATES: Comments must be received on or before August 12, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0337 or EPA–R05–OAR–2012–0462, by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2012–0337 or EPA–R05–OAR–2012–0462. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be

able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon, Environmental Engineer, at (312) 353–8290 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov*.

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

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

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What actions is EPA proposing to take?

EPA is proposing to take several actions related to redesignation of the Ohio portion of the Steubenville-Weirton area to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. In addition to EPA's September 14, 2011, determination that the area meets the NAAQS for $PM_{2.5}$ based on quality-assured, certified 2008–2010 ambient air monitoring data (76 FR 56641), we are proposing to determine that the area continues to attain the NAAQS for $PM_{2.5}$, based on quality-assured and state certified monitoring data for 2010–2012. EPA is proposing to find that Ohio meets the requirements for redesignation of the Steubenville-Weirton area to attainment of the 1997 and 2006 24-hour $PM_{2.5}$ NAAQS under section 107(d)(3)(E) of the CAA.

Second, EPA is proposing to approve Ohio's annual $PM_{2.5}$ maintenance plan for the Steubenville-Weirton area as a revision to the Ohio SIP, including the MVEB for $PM_{2.5}$ and NO_X emissions for the mobile source contribution of the Steubenville-Weirton area.

Finally, EPA is proposing to approve the 2005 and 2008 primary $PM_{2.5}$, NO_X and SO_2 emissions inventories as satisfying the requirement in section 172(c)(3) of the CAA for a current, accurate and comprehensive emission inventory. In a supplemental submission to EPA on April 29, 2013, Ohio submitted ammonia and VOC emissions inventories to supplement the emissions inventories that had previously been submitted.

Therefore, EPA is proposing to grant the request from the State of Ohio to change the designation of Jefferson County (the Ohio portion of the Steubenville-Weirton area) from nonattainment to attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. This action would not change the legal designation of the West Virginia portion of the area. The West Virginia portion of the area will be addressed in a separate rulemaking.

III. What is the background for these actions?

Fine particulate pollution can be emitted directly from a source (primary $PM_{2.5}$) or formed secondarily through chemical reactions in the atmosphere involving precursor pollutants emitted from a variety of sources. Sulfates are a type of secondary particulate formed from SO_2 emissions from power plants and industrial facilities. Nitrates, another common type of secondary particulate, are formed from combustion emissions of NO_X from power plants, mobile sources and other combustion sources.

The first air quality standards for $PM_{2.5}$ were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$) of ambient air, based on a three-year average of the annual mean $PM_{2.5}$ concentrations at each monitoring site. In the same rulemaking, EPA promulgated a 24-hour $PM_{2.5}$ standard at 65 $\mu g/m^3$, based on a three-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each monitoring site.

On January 5, 2005, at 70 FR 944, EPA published air quality area designations for the 1997 annual $PM_{2.5}$ standard based on air quality data for calendar years 2001–2003. In that rulemaking, EPA designated the Steubenville-Weirton area as nonattainment for the 1997 annual $PM_{2.5}$ standard.

On October 17, 2006, at 71 FR 61144, EPA retained the annual $PM_{2.5}$ standard at 15 $\mu g/m^3$ (2006 annual $PM_{2.5}$ standard), but revised the 24-hour standard to 35 $\mu g/m^3$, based again on the three-year average of the annual 98th percentile of the 24-hour $PM_{2.5}$ concentrations. In response to legal challenges of the 2006 annual $PM_{2.5}$

standard, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court) remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). On December 14, 2012, EPA finalized a rule revising the $PM_{2.5}$ annual standard to 12 μg/m^3 based on current scientific evidence regarding the protection of public health. Since the Steubenville-Weirton area is designated as nonattainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards, today's proposed action addresses redesignation to attainment only for these standards.

On September 14, 2011, EPA issued a final determination that the entire Steubenville-Weirton area had attained the 1997 $PM_{2.5}$ standard by the applicable attainment date (76 FR 56641) and a final determination for the 2006 24-hour standard on May 14, 2012 (77 FR 28264). Based upon our review of complete, quality-assured and certified ambient air monitoring data from 2009–2011 and state certified data from 2010–2012, we are proposing to determine that the area continues to attain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

In this proposed redesignation, EPA takes into account two decisions of the D.C. Circuit. In the first of the two Court decisions, the D.C. Circuit, on August 21, 2012, issued *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), which vacated and remanded the Cross-State Air Pollution Rule (CSAPR) and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) ''pending . . . development of a valid replacement.'' *EME Homer City* at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. In the second decision, 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 ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013).

IV. What are the criteria for redesignation to attainment?

The CAA sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

V. What is EPA's analysis of the State's request?

EPA is proposing to grant the redesignation of the Ohio portion of the Steubenville-Weirton area to attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and is proposing to approve Ohio's maintenance plan for the area and other related SIP revisions. The bases for these actions follow.

1. Attainment

As noted above, in a rulemaking published on September 14, 2011, EPA determined that the Steubenville-Weirton area had attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date. The basis and effect of the determinations of attainment for both the 1997 and 2006 standards were discussed in the notices of proposed (76 FR 28393; 76 FR 61219 respectively) and final (76 FR 56641; 77 FR 28264, respectively) rulemaking. The determinations were based on quality-assured air quality monitoring data for 2007–2009 and 2008–2010 showing the area has met the standards.

In this action, we are proposing to determine that the Steubenville-Weirton area continues to attain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS based upon the most recent three years of complete, certified and quality-assured data. Under EPA's regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 μg/m^3 at all relevant monitoring sites in the area.

EPA has reviewed the ambient air quality monitoring data in the Steubenville-Weirton area, consistent with the requirements contained at 40 CFR part 50. EPA's review focused on data recorded in the EPA Air Quality System (AQS) database for the Steubenville-Weirton $PM_{2.5}$ nonattainment area from 2009–2011 and state certified data from 2010–2012.

The Steubenville-Weirton area has five monitors located in Jefferson County, Ohio, and Brooke and Hancock counties, West Virginia. Based on preliminary calculations using state-certified data for 2010–2012, the most recent three full years of data, the five monitors had design values from 2010–2012 ranging from 12.7 to 11.1 μg/m^3 for the 1997 annual standard, and from 27 to 24 μg/m^3 for the 2006 24-hour standard. The monitors in the Steubenville-Weirton area recorded complete data in accordance with criteria set forth by EPA in 40 CFR part 50, appendix N, where a complete year of air quality data comprises four calendar quarters, with each quarter containing data with at least 75% capture of the scheduled sampling days. Available data are considered to be sufficient for comparison to the NAAQS if three consecutive complete years of data exist.

TABLE 1—THE 1997 ANNUAL AND 2006 24-HOUR $PM_{2.5}$ DESIGN VALUES FOR THE STEUBENVILLE-WEIRTON MONITOR WITH COMPLETE DATA FOR THE 2009–2011 AND STATE CERTIFIED 2010–2012 DESIGN VALUES [1] IN μg/m^3

County	Site	Annual standard 2009–2011	24-hour standard 2009–2011	Annual standard 2010–2012	24-hour standard 2010–2012
Jefferson,OH	390810017	12.5	28	12.2	27
Jefferson,OH	390811001	11.8	24	11.4	24
Brooke, WV	540090005	13.0	27	12.7	27
Brooke, WV	540090011	11.6	29	11.1	27
Hancock, WV	540291004	11.7	28	11.3	27

[1] As defined in 40 CFR Part 50 Appendix N(1)(c).

EPA's review of these monitoring data supports EPA's determination that the Steubenville-Weirton area has monitored attainment for each time period. Therefore, EPA proposes to determine that the Steubenville-Weirton area continues to attain the 1997 annual and 2006 24-hour $PM_{2.5}$ standards.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D and Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We believe that Ohio has met all currently applicable SIP requirements for purposes of redesignation for the Ohio portion of the Steubenville-Weirton area under section 110 of the CAA (general SIP requirements). We are also proposing to find that the Ohio SIP meets all SIP requirements currently applicable for purposes of redesignation under part D of title I of the CAA, in accordance with section 107(d)(3)(E)(v). We are proposing to find that all applicable requirements of the Ohio SIP for purposes of redesignation have been met, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is proposing to approve Ohio's 2005 and 2008 emissions inventory as meeting the section 172(c)(3) comprehensive emissions inventory requirement. In making these proposed determinations, we have ascertained which SIP requirements are applicable for purposes of redesignation, and concluded that there are SIP measures meeting those requirements and that they are approved or will be approved by the time of final rulemaking.

a. Ohio Has Met All Applicable Requirements for Purposes of Redesignation of the Ohio Portion of the Area Under Section 110 and Part D of the CAA

i. Section 110 General SIP Requirements

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and, among other things, must: Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; include criteria for stationary source emission control measures, monitoring and reporting; include provisions for air quality modeling; and provide 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 measures to prevent sources in a state from significantly contributing to air quality problems in another state. EPA believes that the requirements linked with a particular nonattainment area's designation are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with a particular area's designation are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996) and (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 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed the Ohio SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of Ohio's SIP addressing section 110 requirements, including provisions addressing particulate matter, at 40 CFR 52.1870, respectively). On December 5, 2007, and September 4, 2009, Ohio made submittals addressing ''infrastructure SIP'' elements required under CAA section 110(a)(2). EPA proposed approval of the December 5, 2007, submittal on April 28, 2011, at 76 FR 23757, and published final approval on July 14, 2011, at 76 FR 41075. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the Steubenville-Weirton area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the state's $PM_{2.5}$ redesignation request.

ii. Part D Requirements

EPA is proposing to determine that, upon approval of the base year emissions inventories discussed in section V(6) of this rulemaking, the Ohio SIP will meet the SIP requirements for the Ohio portion of the Steubenville-Weirton area applicable for purposes of redesignation under part D of the CAA.

Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas.

(1) Subpart 1

a. Section 172 Requirements.

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Ohio portion of the Steubenville-Weirton area are contained in section 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all Reasonably Achievable Control Measures (RACM) as expeditiously as practicable and to provide for attainment of the primary NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are

no longer considered to be applicable as long as the area continues to attain the standard until redesignation. (40 CFR 51.1004(c).)

The Reasonable Further Progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Steubenville-Weirton area has monitored attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918. In addition, because the Steubenville-Weirton area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and is no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. Ohio submitted a 2005 (nonattainment year) and 2008 (attainment year) emissions inventories along with their redesignation request. As discussed below in section V(6), EPA is approving both the 2005 and 2008 base year inventory as meeting the section 172(c)(3) emissions inventory requirement for the Ohio portion of the Steubenville-Weirton area.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and 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 approved Ohio's current NSR program on January 10, 2003 (68 FR 1366). Nonetheless, since PSD requirements will apply after redesignation, the area need not have a fully-approved NSR program for purposes of redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. 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.'' Ohio has demonstrated that the Steubenville-Weirton area will be able to maintain the standard without part D NSR in effect; therefore, the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state's PSD program will become effective in the Steubenville-Weirton area upon redesignation to attainment. *See* 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).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional 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, we believe the Ohio SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

(b) Section 176(c)(4)(D) Conformity SIP Requirements.

The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code and the Federal Transit Act (transportation conformity), as well as to all other Federally-supported or funded projects (general conformity).

Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which was signed into law on August 10, 2005 (Pub. L. 109–59). Among the changes Congress made to this section of the CAA were streamlined requirements for state transportation conformity SIPs. State transportation conformity regulations must be consistent with Federal conformity regulations and address three specific requirements related to consultation, enforcement and enforceability. EPA believes that it is reasonable to interpret the transportation conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons.

First, the requirement to submit SIP revisions to comply with the transportation conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the transportation conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. *See* also 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida). Ohio has an approved transportation conformity SIP (72 FR 20945). Ohio is in the process of updating its approved transportation conformity SIP, and EPA will review its provisions when they are submitted.

2. Effect of the January 4, 2013, D.C. Circuit Decision Regarding $PM_{2.5}$ Implementation Under Subpart 4

a. Background

As discussed above, on January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule''). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 $PM_{2.5}$ 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 $PM_{2.5}$ standard, EPA is taking into account the Court's position on subpart 4 and the 1997 $PM_{2.5}$ 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 Steubenville-Weirton area to attainment. Even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA's 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, even if EPA applies the subpart 4 requirements to the Steubenville-Weirton redesignation request and disregards the provisions of its 1997 $PM_{2.5}$ implementation rule recently remanded by the Court, the

state's request for redesignation of this area still qualifies for approval.

i. Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the 1997 $PM_{2.5}$ implementation rule, the Court's January 4, 2013, ruling rejected EPA's reasons for implementing the $PM_{2.5}$ 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 $PM_{2.5}$ NAAQS under subpart 4 of part D of the CAA, in addition to subpart 1. For the purposes of evaluating Ohio's redesignation request for the area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not ''applicable'' for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the Steubenville-Weirton redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). *See also* ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992,'' Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statute is ''whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment'').[2] In this case, at the time that Ohio submitted its redesignation request, requirements under subpart 4 were not due, [and indeed, were not yet known to apply.]

EPA's view that, for purposes of evaluating the Steubenville-Weirton 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 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 CAA 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 July 5, 2011, but the Court did not issue its decision remanding EPA's 1997 $PM_{2.5}$ 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

[2] 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.

recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002),[3] where it upheld the 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 Ohio by rejecting its redesignation request for an area that is already attaining the 1997 $PM_{2.5}$ standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club* v. *Whitman.*

ii. Subpart 4 Requirements and Ohio 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 Steubenville-Weirton area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Steubenville-Weirton area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Steubenville-Weirton area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM_{10}[4] nonattainment areas, and under the Court's January 4, 2013, decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ 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, RACM, 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 Steubenville-Weirton area to be a ''moderate'' $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as ''moderate'' nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area. 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_{10}, 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.[5] 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 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,[6] when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the $PM_{2.5}$ standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

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

''General Preamble for the Interpretation of Title I of the CAA 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

[3] *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).

[4] PM_{10} refers to particulates nominally 10 micrometers in diameter or smaller.

[5] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

[6] I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

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 [7] and thus are now past due, those requirements do not apply to an area that is attaining the 1997 and 2006 $PM_{2.5}$ standard, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret ''applicable requirements'' in the redesignation context. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior ''Clean Data Policy'' rulemakings for the PM_{10} 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_{10} redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this notice, EPA proposes to determine that the area has attained the 1997 and 2006 $PM_{2.5}$ standards. Under its longstanding interpretation, EPA is proposing to determine here that the area meets 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.

iii. Subpart 4 and Control of $PM_{2.5}$ Precursors

The D.C. Circuit in *NRDC* v. *EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the Court's opinion with respect to $PM_{2.5}$ precursors. While past implementation of subpart 4 for PM_{10} has allowed for control of PM_{10} precursors such as NO_X 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_{10} shall also apply to PM_{10} precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

EPA's 1997 $PM_{2.5}$ implementation rule, remanded by the DC Circuit, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures.'' EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013, decision made reference to both section 189(e) and 40 CFR 51. 1002, and stated that, ''In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.'' *NRDC* v. *EPA,* at 27, n.10.

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

> Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} 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 Steubenville-Weirton area 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_{10} area governed by subpart 4, a precursor is 'presumptively regulated,''' the Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ implementation rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as $PM_{2.5}$ precursors, (and any similar provisions reflected in the guidance for the 2006 $PM_{2.5}$ 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 Steubenville-Weirton, EPA believes that doing so is consistent with proposing redesignation of the area for the 1997 $PM_{2.5}$ standard. The Steubenville-Weirton area has attained both standards without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM_{10} precursors.[8]

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

[8] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as

Continued

Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of ammonia and VOC. Thus we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the area for the 1997 $PM_{2.5}$ standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other Act requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e) (57 FR 13542). EPA in this proposal proposes to determine that the SIP has met the provisions of section 189(e) with respect to ammonia and VOCs as precursors. This proposed determination is based on our findings that (1) the Steubenville-Weirton area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[9] 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 annual $PM_{2.5}$ standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 $PM_{2.5}$ standard in the Steubenville-Weirton area. *See* 57 FR 13539–42.

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

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10} 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.[10] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[11] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Steubenville-Weirton area has already attained the 1997 and 2006 $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Ohio's request for redesignation of the Steubenville-Weirton area. In the context of a redesignation, the area has shown that it has attained both standards. Moreover, the state has shown and EPA is proposing to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, decision of the Court as precluding redesignation of the Steubenville-Weirton area to attainment for the 1997 $PM_{2.5}$ NAAQS at this time.

In sum, even if Ohio were required to address precursors for the Steubenville-Weirton area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded $PM_{2.5}$ 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).

b. The Ohio Portion of the Steubenville-Weirton Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of Ohio's comprehensive 2005 and 2008 emissions inventories, EPA will have fully approved the Ohio SIP for the Ohio portion of the Steubenville-Weirton area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ standard. EPA may rely on prior SIP approvals in approving a redesignation request (*See* page 3 of the Calcagni Memorandum; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)), plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio has adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under particulate matter standards. In this action, EPA is proposing to approve Ohio's 2005 and 2008 base year emissions inventories for the Steubenville-Weirton area as meeting the requirement of section 172(c)(3) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ standard.

c. Nonattainment Requirements

Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. On July 16, 2008, Ohio submitted a state-wide attainment demonstration for $PM_{2.5}$, including the Steubenville-Weirton area. However, EPA's determination that the area attained the 1997 $PM_{2.5}$ annual and 2006 24-hour standards (76 FR 56641; 77 FR 28264, respectively) suspended the

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.

[9] The Steubenville-Weirton area has reduced VOC emissions through the implementation of various SIP approved VOC control programs and various on-road and nonroad motor vehicle control programs.

[10] *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_{10} attainment plan that impose controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or ammonia emissions).

[11] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.,* 423 F.3d 989 (9th Cir. 2005).

requirement to submit certain planning SIPs related to attainment, including attainment demonstration requirements, the Reasonably Achievable Control Technology (RACT)-RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA and the requirement for contingency measures of section 172(c)(9) of the CAA).

As a result, the only remaining requirement under section 172 to be considered is the emissions inventory required under section 172(c)(3). As discussed in a later section, EPA is proposing to approve the inventory that Ohio submitted as part of its maintenance plan as satisfying this requirement.

No SIP provisions applicable for redesignation of the Ohio portion of the Steubenville-Weirton area are currently disapproved, conditionally approved or partially approved. If EPA approves Ohio's Steubenville-Weirton area $PM_{2.5}$ emissions inventories as proposed, Ohio will have a fully approved SIP for all requirements applicable for purposes of redesignation.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA believes that Ohio has demonstrated that the observed air quality improvement in the Steubenville-Weirton area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures and other state-adopted measures.

In making this demonstration, Ohio has calculated the change in emissions between 2005, one of the years used to designate the Steubenville-Weirton area as nonattainment, and 2008, one of the years the Steubenville-Weirton area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Steubenville-Weirton area and contributing areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the area:

i. Federal Emission Control Measures

Reductions in fine particle precursor emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower NO_X and SO_2 emissions from new cars and light duty trucks. The Federal rules were phased in between 2004 and 2009. By the end of the phase-in period, new vehicles were emitting the following percentages less NO_X: Passenger cars (light duty vehicles)—77%; light duty trucks, minivans, and sports utility vehicles—86%; and, larger sports utility vehicles, vans, and heavier trucks—69% to 95%. EPA expects fleet wide average emissions to come to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006. Most gasoline sold in Ohio prior to January 2006 had a sulfur content of about 500 ppm.

Heavy-Duty Diesel Engine Rule. EPA issued this rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which reduced fine particle emissions from heavy-duty highway engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The total program is estimated to achieve a 90% reduction in direct $PM_{2.5}$ emissions and a 95% reduction in NO_X emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur content diesel. The reduction in fuel sulfur content also yielded an immediate reduction in sulfate particle emissions from all diesel vehicles.

Nonroad Diesel Rule. In May 2004, EPA promulgated a new rule for large nonroad diesel engines, such as those used construction, agriculture and mining equipment, to be phased in between 2008 and 2014. The rule also reduces the sulfur content in nonroad diesel fuel by over 99%. Prior to 2006, nonroad diesel fuel averaged approximately 3,400 ppm sulfur. This rule limited nonroad diesel sulfur content to 500 ppm by 2006, with a further reduction to 15 ppm by 2010. The combined engine and fuel rules will reduce NO_X and PM emissions from large nonroad diesel engines by over 90%, compared to current nonroad engines using higher sulfur content diesel. It is estimated that compliance with this rule will cut NO_X emissions from nonroad diesel engines by up to 90%. This rule achieved some emission reductions by 2008 and was fully implemented by 2010. The reduction in fuel sulfur content also yielded an immediate reduction in sulfate particle emissions from all diesel vehicles.

Nonroad Large Spark-Ignition Engine and Recreational Engine Standards. In November 2002 EPA promulgated emission standards for groups of previously unregulated nonroad engines. These engines include large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles and snowmobiles; and recreational marine diesel engines. Emission standards from large spark-ignition engines were implemented in two tiers, with Tier 1 starting in 2004 and Tier 2 in 2007. Recreational vehicle emission standards are being phased in from 2006 through 2012. Marine Diesel engine standards were phased in from 2006 through 2009. With full implementation of the entire nonroad spark-ignition engine and recreational engine standards, an 80% reduction in NO_X expected by 2020. Some of these emission reductions occurred by the 2008–2010 period used to demonstrate attainment, and additional emission reductions will occur during the maintenance period.

i. Control Measures in Contributing Areas

Given the significance of sulfates and nitrates in the Steubenville-Weirton area, the area's air quality is strongly affected by regulation of SO_2 and NO_X emissions from power plants.

NO_X SIP Call. On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable.

CAIR. On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of SO_2 and NO_X from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. *See* 76 FR 70093. The D.C. Circuit initially issued an opinion for vacating 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).

EPA recently promulgated CSAPR (76 FR 48208, August 8, 2011), to replace CAIR, which has been in place since 2005. *See* 76 FR 59517.

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

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.

In light of these unique circumstances and for the reasons explained below, EPA proposes to approve the redesignation request and the related SIP revision for the Ohio portion of the Steubenville-Weirton area, including Ohio's plan for maintaining attainment of the $PM_{2.5}$ standard. The air quality modeling analysis conducted for CSAPR demonstrates that the Steubenville-Weirton area would be able to attain the $PM_{2.5}$ standard even in the absence of either CAIR or CSAPR. *See* ''Air Quality Modeling Final Rule Technical Support Document,'' App. B, B–62 to B–134. This modeling is available in the docket for this proposed redesignation action.

In addition, CAIR remains in place and enforceable until substituted by a valid replacement rule. Ohio's CAIR SIP was approved on September 25, 2009 (74 FR 48857). As a result of CAIR, EPA projected that Ohio's 2009 electric generating unit (EGU) emissions of NO_X would decrease from a baseline of 264,000 tons per year (tpy) to 93,000 tpy while in 2010 emissions of SO_2 would decrease from a baseline of 1,373,000 tpy to 298,000 tpy. And by 2015, we projected emissions of NO_X would decrease to 83,000 tpy while emissions of SO_2 would decrease to 208,000 tpy within Ohio (*http://www.epa.gov/CAIR/oh.html*). The monitoring data used to demonstrate the area's attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS by the April 2010 attainment deadline was impacted by CAIR.

To the extent that Ohio is relying on CAIR in its maintenance plan, the directive from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule to address interstate transport to replace CSAPR and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. The Court's clear instruction to EPA that it must continue to administer CAIR until a valid replacement exists provides an additional backstop: By definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR ''might be more severe now in light of the reliance interests accumulated over the intervening four years.'' *EME Homer City,* 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

iii. Consent Decrees

A Federal consent decree with Ohio Edison Company, W.H. Sammis Power Station in 2005, and then a 2009 modification, results in reductions from 2009 levels of SO_2 emissions of 14,000 tpy; for NO_X, 1,300 tpy; and for $PM_{2.5}$ 700 tpy. In 2007, a Federal consent decree was signed for the American Electric Power Service Corp., which required the Cardinal Power Plant in Ohio to install selective catalytic reduction (SCR) controls on three boilers in 2009, and flue-gas desulfurization (FGD) for SO_2 control in 2008 and 2012, and a new PM emissions rate for two boilers in 2009.

b. Emission Reductions

Ohio developed emissions inventories for NO_X, direct $PM_{2.5}$ and SO_2 for 2005, one of the years used to designate the area as nonattainment, and 2008, one of the years the Steubenville-Weirton area monitored attainment of the standard.

Point source EGU SO_2 and NO_X emissions were derived from EPA's Clean Air Market's acid rain database. These emissions reflect Ohio and West Virginia NO_X emission budgets resulting from EPA's NO_X SIP call. The 2008 emissions from EGUs reflect Ohio's emission caps under CAIR. All other point source emissions were obtained from Ohio's source facility emissions reporting.

Area source emissions for the Steubenville-Weirton area for 2005 were taken from periodic emissions inventories.[12] These 2005 area source emission estimates were extrapolated to 2008. Source growth factors were supplied by the Lake Michigan Air Directors Consortium (LADCO).

Nonroad mobile source emissions were extrapolated from nonroad mobile source emissions reported in EPA's 2005 National Emissions Inventory (NEI). Contractors were employed by LADCO to estimate emissions for commercial marine vessels and railroads.

On-road mobile source emissions were calculated using EPA's mobile source emission factor model, MOVES2010a, in conjunction with transportation model results developed by the Brooke-Hancock-Jefferson

[12] Periodic emission inventories are derived by states every three years and reported to the EPA. These periodic emission inventories are required by the Federal Consolidated Emissions Reporting Rule, codified at 40 CFR Subpart A. EPA revised these and other emission reporting requirements in a final rule published on December 17, 2008, at 73 FR 76539.

Metropolitan Planning Commission (BHJ).

All emissions estimates discussed below were documented in the submittal and appendices of Ohio's redesignation request submittal from April 16, 2012, and theApril 30, 2013, supplemental submittal. For these data and additional emissions inventory data, the reader is referred to EPA's digital docket for this rule, *http://www.regulations.gov,* which includes digital copies of Ohio's submittal.

Emissions data in tpy for the Ohio portion of the Steubenville-Weirton area are shown in Tables 2 and 3, below.

TABLE 2—SUMMARY OF 2005 EMISSIONS FOR THE OHIO PORTION OF THE STEUBENVILLE-WEIRTON AREA BY SOURCE TYPE

[tpy]

	SO_2	NO_X	$PM_{2.5}$
Point (EGU)	225,594.94	41,046.61	1,307.90
Non-EGU	849.92	1,991.85	461.57
On-road	18.18	2,105.85	73.17
Nonroad	17.31	234.30	24.30
Area	110.89	251.38	110.12
MAR	26.16	317.3	8.07
Total Steubenville-Weirton	226,617.40	45,947.29	1,985.13

TABLE 3—SUMMARY OF 2007 BASE YEAR EMISSIONS OF AMMONIA AND VOCS FOR THE OHIO PORTION OF THE STEUBENVILLE-WEIRTON AREA BY SOURCE TYPE

[tpy]

	Ammonia	VOC
Point	11.53	448.96
Area	204.47	914.14
Nonroad	0.41	480.78
On-road	37.73	940.29
Total	254.14	2784.17

TABLE 4—COMPARISON OF 2005 EMISSIONS FROM THE NONATTAINMENT YEAR AND 2008 EMISSIONS FOR AN ATTAINMENT YEAR FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA

[tpy]

	2005	2008	Net change (2005–2008)
$PM_{2.5}$	2,946.39	2,813.98	−132.41
NO_X	52,083.06	43,349.31	−8,733.75
SO_2	229,703.73	138,266.82	−91,436.91

Table 4 shows that the entire Steubenville-Weirton area shows a decrease in direct $PM_{2.5}$ emissions by 132.41 tons, the area reduced NO_X emissions by 8,733.75 tons and SO_2 emissions by 91,436.91 tons between 2005, a nonattainment year, and 2008, an attainment year.

Based on the information summarized above, Ohio has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. Ohio Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with Ohio's request to redesignate the Ohio portion of the Steubenville-Weirton nonattainment area to attainment status, Ohio has submitted a SIP revision to provide for maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in the area through 2025.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required 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 ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future annual $PM_{2.5}$ violations.

The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following items: The attainment emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

Ohio developed emissions inventories for NO_X, direct $PM_{2.5}$ and SO_2 for 2008, one of the years in the period during which the Steubenville-Weirton area monitored attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ standard, as described previously. The attainment levels of emissions for the entire area are summarized in Tables 3, above.

c. Demonstration of Maintenance

Along with the redesignation request, Ohio submitted a revision to its $PM_{2.5}$ SIP to include a maintenance plan for the Steubenville-Weirton area, as required by section 175A of the 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 ten years following redesignation.'' Calcagni Memorandum, p. 9. 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. Calcagni Memorandum, pp. 9–10.

Ohio's submission uses emissions inventory projections for the years 2015 and 2025 to demonstrate maintenance for the entire Steubenville-Weirton area. The projected emissions were estimated by Ohio, with assistance from LADCO and BHJ using the MOVES2010a model. Projection modeling of inventory emissions was done for the 2015 interim year emissions using estimates based on the 2009 and 2018 LADCO modeling inventory, using LADCO's growth factors, for all sectors. The 2025 maintenance year is based on emissions estimates from the 2018 LADCO modeling. Table 4 shows the 2008 attainment base year emission estimates and the 2015 and 2025 emission projections for the entire Steubenville-Weirton area that Ohio provided in its April 16, 2012, submission.

TABLE 4—COMPARISON OF 2008, 2015 AND 2025 NO_X, DIRECT $PM_{2.5}$ AND SO_2 EMISSION TOTALS (TPY) FOR THE ENTIRE STEUBENVILLE-WEIRTON AREA

	SO_2	NO_X	$PM_{2.5}$
2008 (baseline)	138,266.82	43,349.31	2,813.98.
2015	74,806.60	25,263.36	2,740.52.
2025	47,445.58	17,533.17	2,698.00.
Change 2008–2025	−90,821.24	−25,816.14	−115.98.
	66% decrease	60% decrease	4% decrease.

Table 4 shows that the entire Steubenville-Weirton area reduced NO_X emissions by 25,816.14 tpy between 2008 and the maintenance projection to 2025, direct $PM_{2.5}$ emissions by 115.98 tpy, and reduced SO_2 emissions by 90,821.24 tpy between 2008 and 2025.

Maintenance Plan Evaluation of Ammonia and VOCs

With regard to the redesignation of the Steubenville-Weirton area, in evaluating the effect of the Court's remand of EPA's implementation rule, which included presumptions against consideration of VOC and ammonia as $PM_{2.5}$ precursors, EPA in this proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained the 1997 and 2006 $PM_{2.5}$ standard and that the state has shown that attainment of those standards is due to permanent and enforceable emission reductions.

EPA proposes to determine that the state's maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 1997 and 2006 $PM_{2.5}$ standard in the Steubenville-Weirton area. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013, decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this area. As explained below, based upon documentation provided by the state and supporting information, EPA believes that the maintenance plan for the Steubenville-Weirton area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the standard.

First, as noted above in EPA's discussion of section 189(e), VOC emission levels in this area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Steubenville-Weirton area are very low, estimated to be less than 500 tpy. *See* Table 5 below. This amount of ammonia emissions appears especially small in comparison to the total amounts of SO_2, NO_X, and even direct $PM_{2.5}$ emissions from sources in the area. Third, as described below, available information shows that no precursor, including VOC and ammonia, is expected to increase over the maintenance period so as to interfere with or undermine the state's maintenance demonstration.

Ohio's maintenance plan shows that there is a projected reduction of NO_X emissions by 25,816.14 tpy between 2008 and the maintenance projection to 2025, direct $PM_{2.5}$ emissions of 115.98 tpy, and reduced SO_2 emissions of 90,821.24 tpy between 2008 and 2025. *See* Table 4 above. In addition, emissions inventories used in EPA's regulatory impact analysis (RIA) for the 2012 $PM_{2.5}$ NAAQS show that VOC emissions are projected to decrease by 720 tpy, respectively between 2007 and 2020. Ammonia emissions are projected to increase slightly between 2007 and 2020 by 162 tpy, the overall emissions reductions projected in direct $PM_{2.5}$, SO_2, and NO_X would be sufficient to offset any increases. *See* Table 5 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 Steubenville-Weirton area is already attaining the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS even 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 $PM_{2.5}$ NAAQS indicate that the area should continue to attain the NAAQS following the precursor control strategy that the state has already elected to pursue. Even if VOC and ammonia emissions were to increase unexpectedly between 2020 and 2025, the overall emissions reductions projected in direct $PM_{2.5}$, SO_2, and NO_X

would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential $PM_{2.5}$ precursors will not increase to the extent that they will cause monitored $PM_{2.5}$ levels to violate the 1997 or the 2006 $PM_{2.5}$ standard during the maintenance period.

TABLE 5—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE STEUBENVILLE-WEIRTON AREA [13]

	Ammonia			VOCs		
	2007	2020	Net change 2007–2020	2007	2020	Net change 2007–2020
Point	11.64	188.87	177.24	460.57	657.02	196.45
Area	195.94	196.65	0.71	858.74	875.13	16.40
Nonroad	0.41	0.45	0.04	464.43	237.02	−227.41
On-road	33.85	18.53	−15.31	1,096.33	389.98	−706.35
Fires	0.97	0.97	0.00	14.00	14.00	0.00
Total	242.81	405.48	162.67	2,894.06	2,173.15	−720.91

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The current air quality design value for the area is 12.5 and 29 μg/m³ (based on 2009–11 air quality data), which are well below the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS of 15 and 35 μg/m³. Moreover, the modeling analysis conducted for the RIA for the 2012 $PM_{2.5}$ NAAQS indicates that the design value for this area is expected to continue to decline through 2020. In the RIA analysis, the highest 2020 modeled design value for the Steubenville-Weirton area is 9.2 μg/m³. Given that precursor emissions are projected to decrease through 2025, it is reasonable to conclude that monitored $PM_{2.5}$ levels in this area will also continue to decrease through 2025.

Thus, EPA believes that there is ample justification to conclude that the Steubenville-Weirton area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to $PM_{2.5}$. 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 Steubenville-Weirton area to attainment for the $PM_{2.5}$ 1997 annual and 2006 24-hour NAAQS.

As described in section V(3)(b) of this action, the result of Federal rules and consent decree actions, demonstrate that the reductions from power plants in the Steubenville-Weirton area have occurred and are mandated to continue to occur in 2025 and beyond. Thus the emissions inventories set forth in Table 4 show that the area will continue to maintain the annual $PM_{2.5}$ standard during the maintenance period at least through 2025. These consent decree actions, along with other consent decrees in the area, are significant controls of NO_X and SO_2, along with implementation of Ohio's SIP approved CAIR controls for the area.

Based on the information summarized above, Ohio has adequately demonstrated maintenance of the $PM_{2.5}$ standard in this area for a period extending in excess of ten years from expected final action on Ohio's redesignation request.

d. Monitoring Network

Ohio's plan includes a commitment to continue working with West Virginia to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. Ohio currently operates two $PM_{2.5}$ monitors in the Ohio portion of the Steubenville-Weirton area. West Virginia currently operates three monitors in their portion of the Steubenville-Weirton area.

e. Verification of Continued Attainment

Ohio remains obligated to continue to quality-assure monitoring data and enter all data into the Air Quality System in accordance with Federal guidelines. Ohio will use these data, supplemented with additional information as necessary, to assure that the area continues to attain the standard. Ohio will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions. Both of these actions will help to verify continued attainment in accordance with 40 CFR part 58.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure 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. Ohio's contingency measures include a Warning Level Response and an Action Level Response. An initial Warning Level Response is triggered when the average weighted annual mean for one year exceeds 15.5 μg/m³. A warning level response for the 2006 24-hour standard shall be prompted whenever the 98th percentile 24-hour $PM_{2.5}$ concentration of 35.5 μg/m³ occurs in a single calendar year within the maintenance area. In that case, a study will be conducted to determine if the emissions trends show increases; if action is necessary to reverse emissions increases, Ohio will follow the same procedures for control selection and

[13] These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 $PM_{2.5}$ NAAQS which can be found in the docket.

implementation as for an Action Level Response.

The Action Level Response will be prompted by any one of the following: A Warning Level Response study that shows emissions increases, a weighted annual mean for the 1997 annual standard, or a 98th percentile for the 24-hour standard, over a two-year period that exceeds the standard or a violation of the standard. If an Action Level Response is triggered, Ohio will adopt and implement appropriate control measures within 12 months from the end of the year in which monitored air quality triggering a response occurs.

Ohio's candidate contingency measures include the following:

i. Diesel emission reduction strategies;

ii. Alternative fuels;

iii. Statewide NO_X RACT rules;

iv. Impact crushers at recycle scrap yards using wet suppression;

v. Tighter emission offsets for new and modified major sources;

vi. ICI Boilers—SO_2 and NO_X controls;

vii. Emission controls for:

a. Process heaters;

b. EGUS;

c. Internal combustion engines;

d. Combustion turbines;

e. Other sources > 100 TPY;

f. Fleet vehicles;

g. Concrete manufacturers and;

h. Aggregate processing plants.

Ohio further commits to conduct ongoing review of its data, and if monitored concentrations or emissions are trending upward, Ohio commits to take appropriate steps to avoid a violation if possible. Ohio commits to continue implementing SIP requirements upon and after redesignation.

EPA believes that Ohio's contingency measures, as well as the commitment to continue implementing any SIP requirements, satisfy the pertinent requirements of section 175A(d).

As required by section 175A(b) of the CAA, Ohio commits to submit to the EPA an updated $PM_{2.5}$ maintenance plan eight years after redesignation of the Steubenville-Weirton area to cover an additional ten year period beyond the initial ten year maintenance period. As required by section 175A of the CAA, Ohio has also committed to retain the $PM_{2.5}$ control measures contained in the SIP prior to redesignation.

For all of the reasons set forth above, EPA is proposing to approve Ohio's 1997 annual and 2006 24-hour $PM_{2.5}$ maintenance plan for the Steubenville-Weirton area as meeting the requirements of CAA section 175A.

5. Insignificance Determination for the Mobile Source Contribution to $PM_{2.5}$ and NO_X

Under section 176(c) of the CAA, transportation plans and transportation improvement programs (TIPs) must conform to applicable SIP goals. This means that such actions will not: (1) Cause or contribute to violations of a NAAQS; (2) worsen the severity of an existing violation; or (3) delay timely attainment of a NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the Transportation Conformity Rule (40 CFR part 93 subpart A). Under this rule, MPOs in nonattainment and maintenance areas coordinate with state air quality agencies and Federal transportation agencies (EPA, FHWA and FTA) to demonstrate that their metropolitan transportation plans (''plans'') and TIPs conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets contained in a SIP.

For budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria (40 CFR 93.118(e)(4)). However, the Transportation Conformity Rule at 40 CFR 93.109(m) allows areas to forgo establishment of a budget(s) where it is demonstrated that regional motor vehicle emissions for a particular pollutant or precursor pollutant are an insignificant contributor to the air quality problem in the area. The general criteria for insignificance determinations per 40 CFR 93.109(m) are based on a number of factors, including (1) The percentage of motor vehicle emissions in context of the total SIP inventory; (2) the current state of air quality as determined by monitoring data for that NAAQS; (3) the absence of SIP motor vehicle control measures; and (4) historical trends and future projections of the growth of motor vehicle emissions in the area.

The redesignation request that Ohio submitted for its portion of the Steubenville-Weirton area includes a request for EPA to make an insignificance finding for NO_X and directly emitted $PM_{2.5}$ for the Steubenville-Weirton $PM_{2.5}$ nonattainment area. Pursuant to sections 93.118(e)(4) and 93.109(k) of the Transportation Conformity Rule, as part of the review of Ohio's redesignation request and maintenance plan submittal, we have reviewed Ohio's justification for the finding of insignificance for direct $PM_{2.5}$ and also for NO_X as a precursor of $PM_{2.5}$ in the Ohio portion of the Steubenville-Weirton area. EPA agrees with Ohio's conclusion that on-road emissions of $PM_{2.5}$ and NO_X in the Steubenville-Weirton area, are insignificant for transportation conformity purposes. We base our finding on several factors:

- The fact that the area has been determined to attain the annual $PM_{2.5}$ standard, and continues to attain the standard with the most recent three years of complete, quality-assured monitoring data;
- The absence of local on-road control measures; and
- The continued downward trend, historically and in modeled future projections, of on-road NO_X and $PM_{2.5}$ emissions from 2005–2025.

Consistent with EPA's adequacy review of Ohio's redesignation request and maintenance plan and the Agency's thorough review of the entire SIP submission, EPA is proposing to approve Ohio's insignificance determination for the on-road motor vehicle contribution of NO_X and $PM_{2.5}$ emissions to the overall $PM_{2.5}$ emissions in the Steubenville-Weirton $PM_{2.5}$ area.

Because EPA finds that Ohio's submitted maintenance plan and redesignation request meets the criteria in the conformity rule for an insignificance finding for motor vehicle emissions of NO_X and $PM_{2.5}$ in the Steubenville-Weirton $PM_{2.5}$ area, it is not necessary to establish $PM_{2.5}$ and NO_X budgets for the Steubenville-Weirton $PM_{2.5}$ area. That is, EPA finds that the submittal demonstrates that, for NO_X and $PM_{2.5}$, regional motor vehicle emissions are an insignificant contributor to the annual $PM_{2.5}$ air quality problem in the combined Steubenville-Weirton area. Motor vehicle emissions in general, for the maintenance period of 2015 and 2025, are low and declining (See appendix C in Ohio submittal found in the docket) in the Ohio portion of the area, and in the combined Steubenville-Weirton area overall. In 2015 the percentage contribution to emissions for the combined Steubenville-Weirton area from motor vehicles is 4.67% and 1.66% for NO_X and $PM_{2.5}$, respectively. In 2025, motor vehicles in the combined Steubenville-Weirton area are projected to contribute only 2.49% and 0.92% of emissions for NO_X, and $PM_{2.5}$, respectively, with the decrease due to Federal regulations on motor vehicle rules such as Heavy-duty Highway Vehicle standards and Tier 2 vehicle and fuel standards. Also, there have been no SIP requirements for motor vehicle control measures for the Ohio

portion of the area and it is unlikely that motor vehicle control measures will be implemented for $PM_{2.5}$ in this area in the future.

Finally, as described above, the area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and we are proposing to approve the maintenance plan and redesignation request for the Ohio portion of the area, with no requirement for motor vehicle emissions budgets for $PM_{2.5}$ and NO_X for the Steubenville-Weirton area in order to maintain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

With regard to on-road emissions of SO_2, volatile organic compounds and ammonia, Ohio did not provide emission budgets (or an insignificance demonstration) because it concluded, consistent with EPA's presumptions regarding these $PM_{2.5}$ precursors (70 FR 24280), that emissions of these precursors from motor vehicles are not significant contributors to the area's $PM_{2.5}$ air quality problem. EPA issued conformity regulations to implement the 1997 $PM_{2.5}$ NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005, respectively). Those actions were not part of the final rule recently remanded to EPA by the Court of Appeals for the District of Columbia in *NRDC* v. *EPA,* No. 08–1250 (Jan. 4, 2013), in which the Court remanded to EPA the implementation rule for the $PM_{2.5}$ NAAQS because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4 of Part D of Title I of the CAA, rather than solely under the general provisions of subpart 1.

EPA is proposing to approve the inventory and the findings of insignificant contribution by motor vehicles, resulting in no proposed motor vehicle emissions budgets for the Ohio portion of the Steubenville-Weirton area for 2015 and 2025 projected maintenance years.

6. 2005 and 2008 Comprehensive Emissions Inventory

As discussed above, section 172(c)(3) of the CAA requires areas to submit a comprehensive emissions inventory. Ohio submitted a 2005 base year emissions inventories that meets this requirement. Emissions contained in the submittals cover the general source categories of point sources, area sources, on-road mobile sources, and nonroad mobile sources. Discussion on the methodology used to compile the emission inventories can be found in section V(3)(b) as well as the docket.

All emissions discussed in Table 3 were documented in the submittal and the appendices of Ohio's redesignation request submittal. EPA has reviewed Ohio's documentation of the emissions inventory techniques and data sources used for the derivation of the 2005 and 2008 emissions estimates and has found that Ohio has thoroughly documented the derivation of these emissions inventories. The submittal from the state shows that the 2005 and 2008 emissions inventory are currently the most complete emissions inventories for $PM_{2.5}$ and $PM_{2.5}$ precursors in the Steubenville-Weirton area. Based upon EPA's review, we propose to find that the 2005 and 2008 emissions inventories are as complete and accurate as possible given the input data available to the Ohio, and we are proposing to approve them under CAA section 172(c)(3).

7. Summary of Proposed Actions

EPA has previously determined that the Steubenville-Weirton area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is proposing to determine that the entire Steubenville-Weirton area continues to attain the 1997 annual and 2006 24-hour $PM_{2.5}$ standard using the latest three years of certified, quality-assured data, and that the Ohio portion of the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is proposing to approve the request from Ohio to change the legal designation of the Ohio portion of the Steubenville-Weirton area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is proposing to approve Ohio's $PM_{2.5}$ maintenance plan for the Steubenville-Weirton area as a revision to the Ohio SIP because the plan meets the requirements of section 175A of the CAA. EPA is proposing to approve the 2005 and 2008 emissions inventories for primary $PM_{2.5}$, NO_X, and SO_2, documented in Ohio's April 16, 2012, submittal as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, for transportation conformity purposes EPA is also proposing to approve Ohio's determination that on-road emissions of $PM_{2.5}$ and NO_X are insignificant contributors to $PM_{2.5}$ concentrations in the area.

VI. What are the effects of EPA's proposed actions?

If finalized, approval of the redesignation request would change the official designation of the Ohio portion of the Steubenville-Weirton area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment. If finalized, EPA's proposal would approve as a revision to the Ohio SIP for the Steubenville-Weirton area, the maintenance plan for the 1997 annual and 2006 24-hour $PM_{2.5}$ standard as well as the 2005 and 2008 emissions inventories included with the redesignation request.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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

In addition, this 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, Intergovernmental relations, Particulate matter.

40 CFR part 81

Air pollution control, Environmental protection, National Parks, Wilderness.

Dated: June 25, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–16658 Filed 7–10–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[EPA–HQ–OPPT–2011–0683; FRL–9339–4]

Chemical Substances and Mixtures Used in Oil and Gas Exploration or Production; TSCA Section 21 Petition; Reasons for Agency Response

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petition; reasons for Agency response.

SUMMARY: On August 4, 2011, Earthjustice and 114 other organizations petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA) to use: TSCA section 8(a) to require manufacturers and processors of oil and gas exploration and production (E&P) chemical substances and mixtures to maintain certain records and submit reports on those records; TSCA section 8(d) to require manufacturers, processors, and distributors to submit to EPA existing health and safety studies related to E&P chemical substances and mixtures; TSCA section 8(c) to request submission of copies of any information related to significant adverse reactions to human health or the environment alleged to have been caused by E&P chemical substances and mixtures; and TSCA section 4 to require manufacturers and processors of E&P chemical substances and mixtures to conduct toxicity testing of E&P chemical substances and mixtures. In a letter dated November 2, 2011, EPA informed petitioners that it denied the TSCA section 4 request and in a letter dated November 23, 2011, EPA informed petitioners that it granted in part the TSCA section 8(a) and 8(d) requests. This document sets forth EPA's reasons for denying in part the petitioners' requests. In addition, EPA has concluded that TSCA section 21 does not apply to requests for a TSCA section 8(c) data call-in.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Mark Seltzer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–2901; fax number: (202) 564–4775; email address: *seltzer.mark@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action, however, may be of interest to you if you manufacture (including import), process, or distribute chemical substances or mixtures used in hydraulic fracturing to create fractures in geologic formations, such as shale rock, allowing enhanced natural gas or oil recovery. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I access information about this petition?

The docket for this TSCA section 21 petition, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0683, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. TSCA Section 21

A. What is a TSCA section 21 petition?

Under TSCA section 21 (15 U.S.C. 2620), any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8 or an order under TSCA sections 5(e) or 6(b)(2). A TSCA section 21 petition must set forth the facts that are claimed to establish the necessity for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding within 60 days of the denial, if the denial occurs prior to the expiration of the 90-day period, or within 60 days after the expiration of the 90-day period.

B. What criteria apply to a decision on a TSCA section 21 petition?

Section 21(b)(1) of TSCA requires that the petition ''set forth the facts which it is claimed establish that it is necessary'' to issue the rule or order requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. In addition, TSCA section 21 establishes standards a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner. 15 U.S.C. 2620(b)(4)(B). Accordingly, EPA has relied on the standards in TSCA section 21 and in the provisions under which