



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2012-0564; FRL-9844-2]

**Approval and Promulgation of Air Quality Implementation Plans;
Ohio; Redesignation of the Canton-Massillon 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 June 26, 2012, the Ohio Environmental Protection Agency submitted a request for EPA to redesignate the Canton-Massillon area (Stark County), Ohio, nonattainment area to attainment of the 1997 annual and 2006 24-hour standards for fine particulate matter (PM_{2.5}). EPA is proposing to grant Ohio's request. EPA is proposing to determine that the Canton-Massillon area attains 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 standard (NAAQS or standard) through 2025 for the area. EPA is proposing to approve the 2005 and 2008 emissions inventories for the Canton-Massillon area as meeting

the comprehensive emissions inventory requirement of the Clean Air Act (CAA or Act). Ohio's maintenance plan submission includes a motor vehicle emission budget (MVEB) for the mobile source contribution of PM_{2.5} and nitrogen oxides (NO_x) to the Canton-Massillon 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 **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2012-0564, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: blakley.pamela@epa.gov.
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-2012-0564. 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 e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to

technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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

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

I. What Should I Consider as I Prepare My Comments for EPA?

II. What Actions is EPA Proposing to Take?

III. What is the Background for These Actions?

IV. What are the Criteria for Redesignation to Attainment?

V. What is EPA's Analysis of the state's Request?

1. Attainment

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))

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))

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

5. Adequacy of Ohio's MVEB

6. 2005 and 2008 Comprehensive Emissions Inventory

7. Summary of Proposed Actions

VI. What are the Effects of EPA's Proposed Actions?

VII. Statutory and Executive Order Reviews.

I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

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

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

II. What Actions is EPA Proposing to Take?

EPA is proposing to take several actions related to redesignation of the Canton-Massillon area to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is proposing to determine that the area is attaining the NAAQS for $PM_{2.5}$, based on quality-assured and state certified ambient air monitoring data for 2010-2012, the most recent three years of quality-assured data for the area. EPA is proposing to find that Ohio meets the requirements for redesignation of the Canton-Massillon 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 Canton-Massillon 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 Canton-Massillon area.

Finally, EPA is proposing to approve Ohio's emissions inventories as satisfying the requirement in section 172(c)(3) of the CAA for a current, accurate and comprehensive emission inventory. These emission inventories include primary $PM_{2.5}$, NO_x and sulfur dioxide (SO_2) inventories included in its June 26, 2012, initial submittal and 2007 emissions for volatile organic

compounds (VOCs) and ammonia inventories included in a supplemental submission to EPA on April 29, 2013.

Therefore, EPA is proposing to grant the request from the state of Ohio to change the designation of Stark County (the Canton-Massillon area) from nonattainment to attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

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 Canton-Massillon 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 µg/m³ (2006 annual PM_{2.5} standard), but revised the 24-hour standard to 35 µg/m³, 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/m³ based on current scientific evidence regarding the protection of public health. Since the Canton-Massillon 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.

In this proposed redesignation, EPA takes into account the

January 4, 2013, Court ruling in *Natural Resources Defense Council v. EPA*, in which 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).

Also noted are the decisions of the D.C. Circuit regarding the status of the Cross-State Air Pollution Rule (CSAPR). 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 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. On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, the Court 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 filed petitions for certiorari to the U.S. Supreme Court. On June 24, 2013, the Supreme Court granted certiorari

and agreed to review the D.C. Circuit's decision in *EME Homer City*. The Supreme Court's grant of certiorari, by itself, does not alter the status of CAIR or CSAPR. At this time, CAIR remains in place. EPA has determined that the status of both CSAPR and CAIR do not affect the ability of the Canton-Massillon area to attain or maintain the PM NAAQS, which is discussed in more detail in section V.3.a.ii.

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 redesignate the Canton-Massillon 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

EPA is proposing to determine that the Canton-Massillon area is attaining 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/m³ at all monitoring sites in the area. Under EPA regulations in 40 CFR 50.13 and in accordance with 40 CFR part 50, appendix N, the 24-hour primary and secondary PM_{2.5} standards are met when the 98th percentile 24-hour concentration is less than or equal to 35 µg/m³.

EPA has reviewed the ambient air quality monitoring data in the Canton-Massillon area, consistent with the requirements contained at 40 CFR part 50. EPA's review focused on state

certified data recorded in the EPA Air Quality System (AQS) database for the Canton-Massillon PM_{2.5} nonattainment area for 2009-2011 and for 2010-2012.

The Canton-Massillon area has two monitors located in Stark County, Ohio. Preliminary calculations of design values for 2010-2012, the most recent three full years of data, the two monitors had design values of 13.0 and 11.8 µg/m³ for the 1997 annual standard, and 29 and 26 µg/m³ for the 2006 24-hour standard. The monitors in the Canton-Massillon area recorded complete data for 2010-2012 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 Canton-Massillon Monitors (in µg/m³).

County	Site	Annual Standard 2009- 2011	24-Hour Standard 2009-2011	Annual Standard 2010- 2012	24-Hour Standard 2010- 2012
Stark, OH ¹	391510017	13.4	30	13.0	29
Stark, OH	391510020	11.9	28	11.8	26

1. Design values for the site 391510017 were incomplete for 2009-2011 due to one quarter in 2009, substitution analysis for 2009-2011 showed attainment for the annual standard. 2010-2012 data was complete for both standards.

EPA's review of these monitoring data supports EPA's determination that the Canton-Massillon area has monitored attainment for the most recent three years of data. Therefore, EPA proposes to determine that the Canton-Massillon area is attaining 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 Canton-Massillon 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 well as the supplemental submission to the emissions inventory of 2007 VOC and ammonia data made on April 30, 2013, 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 SIP measures meeting those requirements 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 Canton-Massillon 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 this 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 Canton-Massillon 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 Canton-Massillon 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 Canton-Massillon 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 Canton-Massillon 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 Canton-Massillon 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 for SO₂, NO_x, and directly emitted PM_{2.5} as part of their redesignation request, and Ohio supplemented these inventories with emission inventories for VOC and ammonia on April 29, 2013. 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 Canton-Massillon 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 this 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 Canton-Massillon 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 Canton-Massillon 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's 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 (Public Law 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 Canton-Massillon 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 first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the Canton-Massillon 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. EPA's discussion takes into account the effect of the Court's ruling on the area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

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 Canton-Massillon 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").¹ In this

¹ 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.

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 Canton-Massillon 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 recognized the inequity of this type of retroactive impact in *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002),² where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it "would likely impose large

²*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).

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 Canton-Massillon area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Canton-Massillon 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 Canton-Massillon 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 PM₁₀³ 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

³ PM₁₀ refers to particulates nominally 10 micrometers in diameter or smaller.

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 Canton-Massillon 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 PM₁₀, 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 1.⁴ 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 4,⁵ when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is

⁴ The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

⁵ I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

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 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 retroactively⁶ 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

⁶ 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*.

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 PM₁₀ 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 PM₁₀ 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 PM₁₀ has allowed for control of PM₁₀ 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 PM₁₀ shall also apply to PM₁₀ precursors from those sources, except where EPA determines that major stationary sources of such precursors "do not contribute significantly to PM₁₀ levels which exceed the standard in the area."

EPA's 1997 PM_{2.5} implementation rule, remanded by the D.C. 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 PM₁₀. For a PM₁₀ 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 Canton-Massillon 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 PM₁₀ 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 Canton-Massillon, EPA believes that doing so is consistent with proposing redesignation of the area for the 1997 PM_{2.5} standard. The Canton-Massillon 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 PM₁₀ precursors.⁷ 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.

⁷ Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

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 Canton-Massillon 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.⁸ 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 Canton-Massillon area. See 57 FR 13539-42.

⁸The Canton-Massillon 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.

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 PM₁₀ 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.⁹ Courts have upheld this approach to the requirements of subpart 4 for PM₁₀.¹⁰ EPA believes that application of this approach to PM_{2.5} precursors under subpart 4 is reasonable. Because the Canton-Massillon 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 Canton-Massillon 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

⁹See, 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 PM10 attainment plan that impose controls on direct PM10 and NO_x emissions and did not impose controls on SO₂, VOC, or ammonia emissions).

¹⁰See, e.g., *Assoc. of Irrigated Residents v. EPA et al.*, 423 F.3d 989 (9th Cir. 2005).

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 Canton-Massillon 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 Canton-Massillon 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 Canton-Massillon Area Has a Fully Approved
Applicable SIP under Section 110(k) of the CAA**

Upon final approval of Ohio's comprehensive emissions inventories, EPA will have fully approved the Ohio SIP for the Canton-Massillon 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, as discussed in section V.6 EPA is proposing to approve Ohio's base year emissions inventories for the Canton-Massillon 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 Canton-Massillon 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 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 section V.6, 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 Canton-Massillon area are currently disapproved, conditionally approved or partially approved. If EPA approves Ohio's Canton-Massillon 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 Canton-Massillon 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 Canton-Massillon area as nonattainment, and 2008, one of the years the Canton-Massillon 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 Canton-Massillon 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 SO₂ emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, new vehicles will emit 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 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.

ii. Control Measures in Contributing Areas

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 with Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the NO_x SIP Call are permanent and enforceable.

CAIR. The Canton-Massillon area has demonstrated that attainment of the 1997 8-hour ozone NAAQS will be maintained with or without the implementation of CAIR or CSAPR. The Canton-Massillon area has no local electric generating units (EGUs) that would be impacted by CAIR or CSAPR, and in fact, the area's emissions are dominated by mobile sources (Table 2).

Mobile sources in the area comprise 85% of the NO_x emissions, 38% of the SO₂ emission, and 46% of the PM_{2.5} emissions from the base-year inventory. In addition, regional emissions will not affect the attainment or maintenance of the Canton-Massillon area.

Modeling conducted by EPA during the CSAPR rulemaking process demonstrates that the counties in the Canton-Massillon PM_{2.5} nonattainment area will have concentrations below the 1997 annual and the 2006 24-hour PM_{2.5} standards in both 2012 and 2014 without taking into account emissions reductions from CAIR or CSAPR. See "Air Quality Modeling Final Rule Technical Support Document", App. B. This modeling is available in the docket for this proposed redesignation action.

Moreover, in its August 2012 decision, the Court also ordered EPA to continue implementing CAIR. See *EME Homer City Generation LP v. EPA*, 696 F.3d 7 (D.C. Cir. 2012). In sum, neither the current status of CAIR nor the current status of CSAPR affects any of the criteria for proposed approval of this redesignation request for the Canton-Massillon area.

iii. Consent Decrees

On December 31, 2012, the Marathon petroleum refinery in Canton was required by a Federal consent decree to shut down an open waste gas flare, resulting in reductions of VOCs, SO₂ and direct PM. The Canton refinery is also required under this consent

decree to meet specific limits on their capped gas flare that must be incorporated into the permanent construction permit. These emission reductions will add to continued reductions for other sources in the area throughout the maintenance period. In a 2011 state consent decree, Akron Iron & Metal, LLC, in Canton, added baghouse controls resulting in reductions of direct PM in the Canton area.

b. Emission Reductions

Ohio developed emissions inventories for NO_x, direct PM_{2.5} and SO₂ for 2005, one of the years used to designate the area as nonattainment, and 2008, one of the years the Canton-Massillon area monitored attainment of the standard.

Area source emissions the Canton-Massillon area for 2005 were taken from periodic emissions inventories.¹¹ 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

11 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.

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 Stark County Area Transportation Study (SCATS).

All emissions estimates discussed below were documented in the submittal and appendices of Ohio's redesignation request submittal from April 16, 2012, and their April 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 Canton-Massillon area are shown in Tables 2 and 3, below.

Table 2. Summary of 2005 emissions of SO₂, NO_x, and directly emitted PM_{2.5} for the Canton-Massillon area by source type (tpy)

	SO ₂	NO _x	PM _{2.5}
Point (EGU)	0.00	0.00	0.00
Non-EGU	553.14	1,129.41	380.10
On-road	191.33	14,004.65	433.47
Nonroad	261.01	2,801.96	231.64
Area	163.72	1,313.88	370.87
MAR	38.35	537.27	14.58
Total Canton-	1,207.55	19,787.17	1,430.66

Massillon			
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Table 3. Comparison of PM_{2.5}, NO_x, and SO₂ emissions from a nonattainment year (2005) and emissions for an attainment year (2008) for the Canton-Massillon area (tpy)

	2005	2008	Net Change (2005- 2008)
PM _{2.5}	1,430.66	1,257.11	-173.55
NO _x	19,787.17	16,227.26	-3,559.91
SO ₂	1,207.55	906.79	-300.76

Table 3 shows that the Canton-Massillon area shows a decrease in direct PM_{2.5} emissions by 173.55 tons, the area reduced NO_x emissions by 3,559.91 tons and SO₂ emissions by 300.76 tons between 2005, a nonattainment year, and 2008, an attainment year. Ohio did not attribute attainment to any changes in VOC or ammonia emissions; instead to changes in SO₂, NO_x, and PM_{2.5} emissions. EPA agrees that emission reductions from sources of SO₂, NO_x, and PM_{2.5} brought the area into attainment, with most emission reductions occurring from Federal mobile source engine standards and fuel standards (Table 2 and 3). 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 Canton-Massillon 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 SO₂ for 2008, one of the years in the period during which the Canton-Massillon 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 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 Canton-Massillon 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 Canton-Massillon area. The projected emissions were estimated by Ohio, with assistance from LADCO and SCATS using the MOVES2010a model. The 2015 interim year emissions were projected using estimates based on the 2009 and 2018 LADCO modeling inventory, using LADCO’s growth factors, for all sectors. The 2025 maintenance year inventory 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 NO_x, direct PM_{2.5} and SO₂ for the Canton-Massillon 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 SO₂ emission totals (tpy) for the Canton-Massillon area

	SO ₂	NO _x	PM _{2.5}
2008(baseline)	906.79	16,227.26	1,257.11
2015	812.89	11,001.32	1,088.72

2025	795.30	7,822.67	912.92
Change 2008-2025	-111.49 12% decrease	-8,404.59 52% decrease	-344.19 27% decrease

Table 4 shows that the Canton-Massillon area reduced NO_x emissions by 8,404.59 tpy between 2008 and the maintenance projection to 2025, direct PM_{2.5} emissions by 344.19 tpy, and reduced SO₂ emissions by 111.49 tpy between 2008 and 2025.

EPA in this proposal is also considering the effect of the Court's remand of EPA's implementation rule, in particular the remand of presumptions against consideration of VOC and ammonia as PM_{2.5} precursors, on requirements for the maintenance plan mandated 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 Canton-Massillon 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 Canton-Massillon 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 Canton-Massillon area are low, estimated to be less than 1,700 tpy. See Table 5 below. This amount of ammonia emissions appears especially small in comparison to the total amounts of NO_x, and VOCs from sources in the area. Both VOC and NO_x are also well controlled in the Canton-Massillon area and have decreased due to permanent and enforceable measures such as RACT rules controlling stationary sources previously approved (75 FR 65572; OAC 3745-17; OAC 3745-110). Additional significant reductions resulted from Federal mobile source standards discussed above, accounting for 3,536 tpy of the NO_x reductions in the area and 665 tpy of PM_{2.5} reductions between 2005 and

2008. Future compliance with mobile source standards is also projected to reduce NO_x by approximately 700 tpy and PM_{2.5} by approximately 200 tpy between 2008 and 2025.

Ohio's maintenance plan shows a projected reduction of NO_x emissions by 8,404.59 tpy between 2008 and the maintenance projection to 2025, direct PM_{2.5} emissions of 344.19 tpy, and reduced SO₂ emissions of 111.49 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 8 tpy, which is expected to have minimal air quality impact, an impact that will be more than compensated by the significant emissions reductions projected in direct PM_{2.5}, SO₂, and NO_x. See Table 5. Given that all emissions except ammonia decrease significantly below attainment year levels, providing a large margin of safety, the minimal increase in ammonia would not be expected to impact the areas ability to attain either the 1997 or 2006 PM_{2.5} NAAQS.

Table 5. Comparison of 2007 and 2020 VOC and Ammonia Emission Totals by Source Sector (tpy) for the Canton-Massillon Area¹

	Ammonia			VOCs		
	2007	2020	Net Change 2007- 2020	2007	2020	Net Change 2007- 2020
Point	21.29	20.40	-0.89	919.30	901.40	-17.90
Area	1491.50	1564.69	73.20	4825.67	4846.99	21.32
Nonroad	2.66	3.04	0.38	2723.36	1612.89	-1110.47
On-road	148.98	84.33	-64.65	5199.46	1847.15	-3352.30
Fires	1.69	1.69	0.00	24.28	24.28	0.00
Total	1666.11	1674.16	8.04	13692.06	9232.71	-4459.35

1. 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.

The current air quality design values for the area are 13.0 and 29 µg/m³ (based on 2010-2012 air quality data), which are well below the 1997 annual and 2006 24-hour PM_{2.5} NAAQS of 15 and 35 µg/m³. In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The modeling analysis conducted for the RIA for the 2012 PM_{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 Canton-Massillon area is 10.8 µg/m³. Given that NO_x, SO₂, PM_{2.5}, and VOC emissions are projected to decrease through 2025, and given that ammonia emissions are expected to remain relatively constant, it

is reasonable to conclude that monitored PM_{2.5} levels in this area will continue to decrease through 2025.

Thus, EPA believes that there is ample justification to conclude that the Canton-Massillon area will continue to maintain the standard, 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 Canton-Massillon 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 in emissions from point, area, and mobile sources in the Canton-Massillon area have occurred and are mandated to continue to occur through 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.

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 three PM_{2.5} monitors in the Canton-Massillon area. West Virginia currently operates three monitors in their portion of the Canton-Massillon area.

e. Verification of Continued Attainment

Ohio remains obligated to continue to quality-assure monitoring data and enter all data into AQS 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 $15.5 \mu\text{g}/\text{m}^3$. A warning level response for the 2006 24-hour standard shall be prompted whenever the 98th percentile 24-hour $\text{PM}_{2.5}$ concentration of $35.5 \mu\text{g}/\text{m}^3$ 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 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 - SO₂ 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 Canton-Massillon 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 Canton-Massillon area as meeting the requirements of CAA section 175A.

5. Adequacy of Ohio's MVEB

a. How Are MVEBs Developed and What Are the MVEBs for the Canton-Massillon Area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for PM_{2.5} nonattainment areas and for areas seeking redesignations to attainment of the PM_{2.5} standard. These emission control strategy SIP revisions (e.g., RFP and attainment demonstration SIP revisions) and maintenance plans create MVEBs based on on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from on-road transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment, RFP or maintenance, as applicable.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan and could also be established for an interim year or years. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, new transportation plans and transportation improvement programs (TIPs) must be evaluated to determine if they conform to the purpose of the area's SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or any required interim milestone. If a transportation plan or TIP does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find adequate and/or approve the MVEBs for use in determining transportation conformity before

the MVEBs can be used. Once EPA affirmatively approves and/or finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation plans and TIPS conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve a motor vehicle emissions budget EPA must complete a thorough review of the SIP, in this case the PM_{2.5} maintenance plans, and conclude that the SIP will achieve its overall purpose, in this case providing for maintenance of the 1997 annual PM_{2.5} standard the Canton-Massillon area.

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA taking action on the MVEB. The process for determining the adequacy of submitted SIP MVEBs is codified at 40 CFR 93.118.

The maintenance plan submitted by Ohio for the Canton-Massillon area contains new primary PM_{2.5} and NO_x MVEBs for the area for the years 2015 and 2025. The motor vehicle emissions budgets were calculated using MOVES2010(a). After the adequacy finding and approval of the budgets become effective, the

budgets will have to be used in future conformity determinations and regional emissions analyses prepared by the SCATS, will have to be based on the use of MOVES2010a or the most recent version of MOVES required to be used in transportation conformity determinations.¹² The state has determined the 2015 MVEBs for the Canton-Massillon area to be 204.33 tpy for primary PM_{2.5} and 7,782.84 tpy for NO_x. Ohio has determined the 2025 MVEBs for the Canton-Massillon area to be 101.50 tpy for primary PM_{2.5} and 4,673.83 tpy for NO_x. These MVEBs exceed the on-road mobile source primary PM_{2.5} and NO_x emissions projected by the states for 2015 and 2025. Ohio has decided to include "safety margins" as provided for in 40 CFR 93.124(a) (described below) of 26.65 tpy and 13.24 tpy for primary PM_{2.5} and 1,015.15 tpy and 609.63 tpy for NO_x in the 2015 and 2025 MVEBs, respectively, to provide for on-road mobile source growth. Ohio did not provide emission budgets for SO₂, VOCs, and ammonia because it concluded, that emissions of these precursors from on-road 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

¹² EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010, Federal Register notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

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. That decision does not affect EPA's proposed approval of the Canton-Massillon area MVEBs.

In the Canton-Massillon area, the motor vehicle budgets including the safety margins and motor vehicle emission projections for both NO_x and PM_{2.5} are lower than the levels in the attainment year.

EPA has reviewed the submitted budgets for 2015 and 2025 including the added safety margins using the conformity rule's adequacy criteria found at 40 CFR 93.118(e)(4) and the conformity rule's requirements for safety margins found at 40 CFR 93.124(a). EPA has also completed a thorough review of the maintenance plan for the Canton-Massillon area. Based on the results of this review of the budgets and the maintenance plans, EPA is approving the 2015 and 2025 direct PM_{2.5} and NO_x budgets including the requested safety margins for the Canton-Massillon

area. Additionally, EPA, through this rulemaking, has found the submitted budgets to be adequate for use to determine transportation conformity in the Canton-Massillon area, because EPA has determined that the area can maintain the 1997 annual $PM_{2.5}$ NAAQS for the relevant maintenance period with on-road mobile source emissions at the levels of the MVEBs including the requested safety margins. These budgets must be used in conformity determinations made on or after the effective date of this direct final rulemaking (40 CFR 93.118(f)(iii)). Additionally, transportation conformity determinations made after the effective date of this notice must be based on regional emissions analyses using MOVES2010a or a more recent version of MOVES that has been approved for use in conformity determinations.¹³

b. What Is a Safety Margin?

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As shown in Table 4, the Canton-Massillon area is projected to have safety margins for NO_x and direct $PM_{2.5}$ of 8,404.59 tpy and 344.19 tpy in 2025 (the difference between the attainment year, 2008,

¹³ EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010 Federal Register notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

emissions and the projected year of 2025 emissions for all sources in the Canton-Massillon area). The transportation conformity rule allows areas to allocate all or a portion of a "safety margin" to the area's motor vehicle emissions budgets (40 CFR 92.124(a)). The MVEBs requested by Ohio contain NO_x safety margins for mobile sources in 2015 and 2025 and PM_{2.5} safety margins for mobile sources in 2015 and 2025 are much smaller than the allowable safety margins reflected in the total emissions for the Canton-Massillon area. The state is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the state is requesting MVEBs that exceed the projected on-road mobile source emissions for 2015 and 2025 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the overall PM_{2.5} maintenance demonstration.

Therefore, EPA believes that the requested budgets, including the requested portion of the safety margins, provide for a quantity of mobile source emissions that would be expected to maintain the PM_{2.5} standard. Once allocated to mobile sources, these portions of the safety margins will not be available for use by other sources.

c. What action is EPA taking on the submitted motor vehicle emissions budgets?

EPA, through this rulemaking, has found adequate and is proposing to approve the MVEBs for use to determine transportation conformity in the Canton-Massillon area, because EPA has determined that the area can maintain attainment of the 1997 annual PM_{2.5} NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs including the requested safety margins. These budgets must be used in conformity determinations if this rulemaking goes final. (40 CFR 93.118(f)(iii)) Additionally, the determinations must be based on regional emissions analyses using MOVES2010b or a more recent version of MOVES that has been approved for use in conformity determinations.¹⁴

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 inventory and a 2008 base year emissions inventory 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

¹⁴ EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010, Federal Register notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

mobile sources. Further discussion on the methodology of compiling the emissions inventories can be found in section V.3.b above, and in the docket. Ohio's supplemental submittal of base year emission inventories of VOCs and ammonia are also found in the docket and summarized in Table 6, below.

Table 6. Summary of 2007 base year emissions of ammonia and VOCs for the Canton-Massillon area by source type (tpy)

	Ammonia	VOC
Point	21.29	919.30
Area	1491.50	4825.67
Nonroad	2.66	2723.36
On-road	148.98	5199.46
Total	1666.11	13692.06

All emissions discussed in Tables 2, 3, and 6 above were documented in the docket and the appendices of Ohio's redesignation request and supplemental submittals. EPA has reviewed Ohio's documentation of the emissions inventory techniques and data sources used for the derivation of the 2005, 2007, 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 2008 emissions inventory is currently the most complete emissions inventories for PM_{2.5} and PM_{2.5} precursors in the Canton-Massillon area. Based upon EPA's review, we propose to find that the 2005

and 2007/2008 emissions inventories are as complete and accurate as possible given the input data available to 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 Canton-Massillon area has attained the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. EPA is proposing to determine that the Canton-Massillon 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 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 Canton-Massillon 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 Canton-Massillon 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 SO₂, 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, EPA finds adequate and is approving 2015 and 2025 primary PM_{2.5} and NO_x MVEBs for the Canton-Massillon area. These

MVEBs will be used in future transportation conformity analyses for 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 Canton-Massillon area for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, found at 40 CFR part 81, from nonattainment to attainment. If EPA's proposal is finalized, this action would approve the maintenance plan for the 1997 annual and 2006 24-hour PM_{2.5} standards for the Canton-Massillon area, as well as the 2005 and 2008 emissions inventories included with the redesignation request, as revisions to the Ohio SIP.

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 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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: July 24, 2013

Susan Hedman,
Regional Administrator, Region 5.

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