ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0455(b); FRL–8969–8]

Approval and Promulgation of Air Quality Implementation Plans; South Carolina; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the South Carolina State Implementation Plan (SIP) submitted by the State of South Carolina through the South Carolina Department of Health and Environmental Control on December 4, 2008. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR). Although the District of Columbia Circuit Court found CAIR to be flawed, the rule was remanded without vacatur and thus remains in place. Thus, EPA is continuing to approve CAIR provisions into SIPs as appropriate. CAIR, as promulgated, requires states to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) that significantly contribute to, or interfere with maintenance of, the national ambient air quality standards for fine particulates and/or ozone in any downwind state. CAIR establishes budgets for SO_2 and NO_X for states that contribute significantly to nonattainment in downwind States and requires the significantly contributing states to submit SIP revisions that implement these budgets. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. In the full SIP revision that EPA is proposing to approve, South Carolina will meet CAIR requirements by participating in these cap-and-trade programs. EPA is proposing to approve the full SIP revision, as interpreted and clarified herein, as fully implementing the CAIR requirements for South Carolina. Consequently, this action will also cause the CAIR Federal Implementation Plans (CAIR FIPs) concerning SO_2, NO_X annual, and NO_X ozone season emissions by South Carolina sources to be automatically withdrawn. This action is being taken pursuant to section 110 of the Clean Air Act.

DATES: Written comments must be received on or before November 16, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0455, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* EPA–R04–OAR–2009–0455, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Steven Scofield, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9034. Mr. Scofield can also be reached via electronic mail at *scofield.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register.** In the Final Rules Section of this **Federal Register,** EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: *October 9, 2009.*

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. E9–25052 Filed 10–15–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2009–0338; FRL–8968–9]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; North Carolina: Redesignation of Great Smoky Mountains National Park 1997 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of North Carolina through the North Carolina Department of Environment and Natural Resources, Division of Air Quality (NC DAQ) submitted, on July 24, 2009, a request to redesignate the Great Smoky Mountains National Park (GSMNP) 1997 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone national ambient air quality standards (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan with a 2020 end year for the GSMNP Area. The GSMNP Area is composed of portions of Haywood and Swain Counties in North Carolina. In this action, EPA is proposing to approve the 1997 8-hour ozone redesignation request for the GSMNP Area. Additionally, EPA is proposing to approve the emission inventory and the 1997 8-hour ozone maintenance plan for the GSMNP Area, including motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and an insignificance determination for conformity for volatile organic compounds (VOC) emissions from motor vehicles. Further, in this action, EPA is also describing the status of its transportation conformity adequacy determination for the new 2011 and 2020 MVEBs for NO_X, and for the insignificance determination for VOC contribution from motor vehicle emissions to the 8-hour ozone pollution for the 1997 NAAQS, that are contained in the 1997 8-hour ozone maintenance plan for the GSMNP Area. On March 12,

2008, EPA issued a revised ozone standard. The current action, however, is being taken to address requirements under the 1997 8-hour ozone NAAQS. Requirements for the GSMNP Area under the 2008 standard will be addressed in the future.

DATES: Written comments must be received on or before November 16, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0338, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2009–0338 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2009–0338. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann or Nacosta Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Jane Spann may be reached by phone at (404) 562–9029 or via electronic mail at *spann.jane@epa.gov.* The telephone number for Ms. Ward is (404) 562–9140 and the electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Proposed Actions Is EPA Taking?

EPA is proposing to take several related actions, which are summarized below and described in greater detail throughout this notice of proposed rulemaking: (1) To redesignate the GSMNP Area to attainment for the 1997 8-hour ozone NAAQS; (2) to approve the emissions inventory submitted with the maintenance plan (under the Clean Air Act (CAA) section 172(c)(3)); and (3) to approve North Carolina's 1997 8-hour ozone maintenance plan into the North Carolina SIP, including the associated MVEBs for NO_X and the VOC insignificance determination for VOC emission contribution from motor vehicles. In addition, and related to today's proposed actions, EPA is also notifying the public of the status of EPA's adequacy determination for the GSMNP Area NO_X MVEBs.

First, EPA is proposing to determine that the GSMNP Area has attained the 1997 8-hour ozone standard, and that the GSMNP Area has met the other requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is now proposing to approve a request to change the legal designation of the GSMNP Area from nonattainment to attainment for the 1997 8-hour ozone NAAQS.

Second, EPA is proposing to approve North Carolina's 1997 emissions inventory (under section 172(c)(3)). North Carolina selected 2005 as ''the attainment year'' for the GSMNP Area for the purpose of demonstrating attainment of the 1997 8-hour ozone NAAQS. This attainment inventory identifies the level of emissions in the area, which is sufficient to attain the 1997 8-hour ozone standard.

Third, EPA is proposing to approve North Carolina's 1997 8-hour ozone maintenance plan for the GSMNP Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the GSMNP Area in attainment of the 1997 8-hour ozone

NAAQS through 2020. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2011 and 2020 MVEBs for NO_X, and a VOC insignificance determination for transportation conformity. Today, EPA is proposing to approve (into the North Carolina SIP) the 2011 and 2020 NO_X MVEBs, and the VOC insignificance determination for conformity, that are included as part of North Carolina's maintenance plan for the GSMNP Area for the 1997 8-hour ozone NAAQS.

EPA is also notifying the public of the status of EPA's adequacy process for the newly-established 2011 and 2020 NO_X MVEBs, and of its insignificance determination for VOC for transportation conformity purposes for the GSMNP Area.

Today's notice of proposed rulemaking is in response to North Carolina's May 15, 2009, proposed SIP submittal, which was submitted in draft form for parallel processing, and then again in final form on July 24, 2009. The July 24, 2009, submittal requests redesignation of the GSMNP Area, and includes a SIP revision addressing the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

II. What Is the Background for EPA's Proposed Actions?

Ground level ozone is not directly emitted by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS. On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). The 1997 standard was more stringent than the previous 1-hour ozone standard. Under EPA's regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). (See 69 FR 23857, April 30, 2004, for further information.) Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, ''*Comparisons with the Primary and Secondary Ozone Standards''* states:

''The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentrations with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.''

The CAA required EPA to designate as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The GSMNP 1997 8-hour ozone nonattainment area was designated using 2001–2003 ambient air quality data. The **Federal Register** document making these designations was signed on April 15, 2004, and published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions, subpart 1 and subpart 2 that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 1997 8-hour ozone nonattainment areas were subject only to the provisions of subpart 1. Other 1997 8-hour ozone nonattainment areas were classified as subpart 2 areas and were subject to the provisions of subpart 2 in addition to subpart 1. Under EPA's phase 1 8-hour ozone implementation rule (69 FR 23857) (Phase 1 Rule), signed on April 15, 2004, and published April 30, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas were covered under subpart 1, based upon their 8-hour ambient air quality design values.

The GSMNP Area was designated attainment for the 1-hour ozone standard. On April 30, 2004, EPA designated the GSMNP Area as a ''basic'' 8-hour ozone nonattainment area or subpart 1 nonattainment area (see, 69 FR 23857, April 30, 2004). When North Carolina submitted its redesignation request, the GSMNP Area was attaining the 1997 8-hour ozone standard. The area has continued to attain since that time.

Various aspects of EPA's Phase 1 Rule were challenged in court. On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated EPA's Phase 1 Rule (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD)* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 1997 8-hour nonattainment areas, the 1997 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 1997 8-hour ozone NAAQS remain effective. The June 8th decision left intact the Court's rejection of EPA's reason for implementing the 1997 8-hour ozone standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182 (c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour motor vehicle

emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of the GSMNP Area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

With respect to the 1997 8-hour standard, the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 1997 8-hour standard, and remanded that matter to the Agency. In its January 16, 2009, proposed rulemaking in response to the *SCAQMD* decision, EPA has proposed to classify GSMNP under subpart 2 as a marginal area. See 74 FR 2936, 2944. If EPA finalizes this rulemaking, the requirements under subpart 2 will become applicable when they are due, a deadline that EPA has proposed to be one year after the effective date of a final rulemaking classifying areas as marginal or moderate. See 74 FR 2940–41. Although the final rulemaking to classify this area under subpart 2 has not yet been made, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the GSMNP Area was not classified under subpart 2, nor were there any subpart 2 requirements yet due for this Area. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to submittal of a complete redesignation request. September 4, 1992, Calcagni Memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). (See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit—Ann Arbor, Michigan). See *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) (upholding this interpretation). See also 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit Court has recognized the inequity in such retroactive rulemaking (See *Sierra Club* v. *Whitman* 285 F.3d 63 (D.C. Cir. 2002)), in which the Court upheld a district court's ruling refusing to make retroactive, an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the states, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly here, it would be unfair to penalize the area by applying to it for purpose of redesignation, additional SIP requirements under subpart 2 that were not in effect or yet due at the time it submitted its redesignation request, or the time that the Area attained the standard.

With respect to the requirements under the 1-hour ozone standard, the GSMNP Area was designated attainment. The D.C. Circuit Court's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court, in its June 8th decision, clarified that for those areas with 1-hour MVEBs in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour budgets. Since this Area was attainment for the 1-hour ozone standard, there were no preexisting 1-hour MVEBs to consider for 8-hour conformity requirements.

First, there are no conformity requirements relevant for the GSMNP Area request, such as a transportation conformity SIP. It is EPA's longstanding policy that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation, and Federal conformity rules apply where state rules have not been approved. See 40 CFR 51.390; see also *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding EPA's interpretation); 60 FR 62748 (Dec. 7, 1995) (Redesignation of Tampa, Florida).

Second, with regard to the three other anti-backsliding provisions for the 1-hour ozone standard that the D.C. Circuit Court found were not properly retained, the GSMNP Area has always been an attainment area for the 1-hour ozone standard, and the NSR, contingency measures pursuant to section 172(c)(9) or 182(c)(9), and fee provision requirements do not apply to this area. As a result, the decisions in *SCAQMD* should not alter any requirements that would preclude EPA from finalizing the redesignation of the GSMNP Area to attainment for the 1997 8-hour ozone standard.

As noted earlier, in 2008, the ambient ozone data for the GSMNP Area indicated no further violations of the 1997 8-hour ozone NAAQS, using the data from the 3-year period of 2006–2008 to demonstrate attainment. As a result, on May 15, 2009, North Carolina requested parallel processing of its request for redesignation of the GSMNP Area to attainment for the 1997 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (April 1st until October 31st) of 2006–2008, indicating that the 1997 8-hour ozone NAAQS had been achieved for the entire GSMNP Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). While EPA did not have the opportunity to parallel process this draft submittal, EPA did begin the adequacy process for the newly-established MVEBs. Also, while EPA can initiate the adequacy process with a draft submittal, EPA cannot conclude this process until a final submittal is received. On July 24, 2009, North Carolina submitted to EPA a final SIP revision. This final submittal included MVEBs for 2011 and 2020.

III. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area

to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

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

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Proposing These Actions?

North Carolina submitted a final SIP revision on July 24, 2009, with a request for redesignation of the GSMNP Area to attainment for the 1997 8-hour ozone standard. EPA's preliminary evaluation indicates that North Carolina has demonstrated that the GSMNP Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA. EPA is also announcing the status of its adequacy determination for the 2011 and 2020 NOx MVEBs, and the VOC insignificance determination, which are relevant to the requested redesignation.

V. What Is the Effect of EPA's Proposed Actions?

EPA's proposed actions establish the bases upon which EPA may take final action on the issues being proposed for approval today. Final approval of the emissions inventory would determine that it satisfies the requirements of section 172(c)(3) of the CAA. Approval of North Carolina's redesignation request would change the legal designation for the portions of Haywood and Swain Counties included in the GSMNP Area for the 1997 8-hour ozone NAAQS found at 40 CFR part 81. Approval of North Carolina's request would also incorporate into the North Carolina SIP, a plan for the GSMNP Area for maintaining the 1997 8-hour ozone NAAQS in the Area through 2020. This maintenance plan includes contingency measures to remedy future violations of the 1997 8-hour ozone NAAQS. The maintenance plan also establishes regional NO_X MVEBs and provides a VOC insignificance determination for the GSMNP Area. The following Table identifies the NO_X MVEBs for the years 2011 and 2020 for this Area.

TABLE 1—GSMNP AREA MVEBS

[Kilograms per day [1]]

	2011	2020
NO_X MVEB	179.9	127.0

[1] North Carolina has provided the conversion factor of 907.1847 kilograms per ton, rounded to two decimal places for tons to allow for comparison of the MVEBs to the emissions inventory (expressed in tons per day) in this Area.

Approval of North Carolina's maintenance plan would also result in approval of the regional NO_X MVEBs, and the VOC insignificance determination for conformity purposes. Additionally, EPA is notifying the public of the status of its adequacy determination for the 2011 and 2020 NO_X MVEBs, and its VOC insignificance determination for conformity, pursuant to 40 CFR 93.118(f)(1).

VI. What Is EPA's Analysis of the Request?

EPA is proposing to make the determination that the GSMNP Area has attained the 1997 8-hour ozone standard, and that all other redesignation criteria have been met for the GSMNP Area. The basis for EPA's determination for this Area is discussed in greater detail below.

Criteria (1)—The GSMNP Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the GSMNP Area has attained the 1997 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 1997 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed ozone monitoring data from the ambient ozone monitoring

station in the GSMNP Area for the ozone season from 2006–2008. These data have been quality assured and is recorded in AQS. The fourth highest 8-hour averages for 2006, 2007 and 2008, and the 3-year average of these values (i.e., design values), are summarized in the following table:

TABLE 2—ANNUAL 4TH HIGHEST MAXIMUM AND DESIGN VALUE CONCENTRATION FOR 8-HOUR OZONE FOR THE GSMNP AREA

Year	Fourth highest 8-hour ozone value (ppm)	Design value (ppm) 2006–2008
2006	0.073	0.077
2007	0.078	.....
2008	0.080	.....

As discussed above, the design value for an area is the 3-year average of the annual 4th highest 8-hour ozone value recorded at the monitor in the area. Therefore, the design value for the GSMNP Area is 0.077 ppm, which meets the standard as described above. Currently available data show that the Area continues to attain the standard. If the Area does not continue to attain until EPA finalizes the redesignation, EPA will not go forward with the redesignation. It is important to note that this area has been in attainment of the 1997 standard since 2004. The design value for the Area with 2002–2004 data was 0.082 ppm. See below for a historical trend of design values for this Area.

TABLE 3—GSMNP AREA HISTORIC DESIGN VALUES

[1999–2007]

Monitor	Design value (ppm)						
	99–01	00–02	01–03	02–04	03–05	04–06	05–07
Purchase Knob, AIRS ID #37–087–0036, Haywood County	**0.087**	**0.087**	**0.085**	0.082	0.078	0.076	0.078

Note: **Bolded** values represent violations of the 8-hour ozone standard.

As is discussed in more detail below, North Carolina has committed to continue monitoring in this Area in accordance with 40 CFR part 58. The data submitted by North Carolina provides an adequate demonstration that the GSMNP Area has attained the 1997 8-hour ozone NAAQS.

Criteria (2)—North Carolina Has a Fully Approved SIP Under Section 110(k) for the GSMNP Area and Criteria (5)—Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

Below is a summary of how these two criteria were met.

EPA has determined that North Carolina has met all applicable SIP requirements for the GSMNP Area under section 110 of the CAA (general SIP requirements). EPA has also determined that the North Carolina SIP satisfies the criterion that it meet applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 basic 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v) and 110(l). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

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

The September 4, 1992, Calcagni Memorandum describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro Memorandum, (''SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992,'' September 17, 1993); and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). 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. See section 175A(c) of the CAA; *Sierra Club,* 375 F.3d 537; see also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (the NO_X SIP Call, the Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted timely SIPs under section 110(a)(1) to meet the interstate transport requirements of section 110(a)(2)(D)(i). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and

classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for the purpose of redesignation.

In addition, EPA believes that other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. EPA notes it has previously approved provisions in the North Carolina SIP addressing section 110 elements under the 1-hour ozone NAAQS (See 51 FR 19834, June 3, 1986). The State has submitted a letter, dated December 12, 2007, setting forth its belief that the section 110 SIP approved for the 1-hour ozone NAAQS is also sufficient to meet the requirements under the 1997 8-hour ozone NAAQS. EPA has not yet approved these submissions, but such approval is not necessary for purposes of redesignation.

Part D requirements. EPA proposes that if EPA approves the base year emissions inventory, which is part of the maintenance plan submittal, the North Carolina SIP will meet applicable SIP requirements under part D of the CAA. The 2005 VOC and NO_X emissions, as well as the emissions for other years, for the GSMNP Area were developed consistent with EPA guidance for emission inventories and the choice of the 2005 base year is appropriate because it represents the 2004–2006 period when the 1997 8 hour ozone NAAQS was not violated.

Part D, subpart 1 applicable SIP requirements. For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172–176. 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).

EPA is proposing here to determine that the Area has attained the 1997 8-hour ozone standard, under 40 CFR 51.918. If that determination is finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements, the Reasonably Available Control Measure (RACM) requirement of section 172(c)(1) of the CAA, the Reasonable Further Progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA, would not be applicable to the Area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble, EPA stated that: [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply to an area that has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans provide specific requirements for contingency measures that effectively supersede the requirements of section 172 (c)(9) for these areas. ''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble''), 57 FR 13498, 13564 (April 16, 1992). See also Calcagni memorandum at page 6 (''The requirements for reasonable further progress and other measures for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.'') Since the GSMNP area was not classified under subpart 2 at the time the redesignation request was submitted, the subpart 2 requirements do not apply for purposes of redesignation. EPA believes it is reasonable to interpret the conformity and NSR requirements as not requiring approval prior to redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall,* 265 F.3d 426 (upholding this interpretation). See also 60 FR 62748 (December 7, 1995, Tampa, Florida).

NSR Requirements. EPA has also determined that areas being redesignated need not comply with the requirement that an NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect, since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment.'' North Carolina has demonstrated that the GSMNP Area will be able to maintain the standard without a part D NSR program in effect, and therefore, North Carolina need not have a fully approved part D NSR program prior to approval of the redesignation request. Since there are no major sources in GSMNP and none planned, the Area has demonstrated maintenance without the need for a part D NSR program in this Area. North Carolina's PSD program will become effective in the GSMNP

Area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the GSMNP Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. The GSMNP Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

If EPA issues a final approval of the base year emissions inventory under section 172(c)(3), EPA will have fully approved the applicable North Carolina SIP for the GSMNP Area, under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426, plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, North Carolina has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the GSMNP Area (58 FR 47391, September 9, 1993; 59 FR 18300, April 18, 1994; 60 FR 34859, July 5, 1995; 69 FR 56163, September 20, 2004).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D subpart 2 requirements did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis-East St. Louis Area to attainment of the 1-hour ozone NAAQS). With the approval of the emissions inventory, EPA will have approved all Part D subpart 1 requirements applicable for purposes of redesignation.

Criteria (3)—The Air Quality Improvement in the GSMNP Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that North Carolina has demonstrated that the observed air quality improvement in the GSMNP Area is due to permanent and enforceable reductions in emissions in the region surrounding the GSMNP Area resulting from implementation of the SIP, Federal measures, and other state adopted measures. Additionally, new emissions control programs for fuels and motor vehicles will help ensure a continued decrease in emissions throughout the region and continued maintenance of the ozone standard.

The overwhelming abundance of biogenic VOC emissions makes the majority of North Carolina a NO_X limited environment for the formation of ozone. This holds especially true in the North Carolina GSMNP nonattainment area. The NO_X emissions within the North Carolina GSMNP nonattainment area are extremely low; total manmade emissions are currently about a quarter ton per day (tpd) of NO_X. NC DAQ has provided a demonstration that the GSMNP man-made emissions are not the primary cause of the ozone exceedances within the GSMNP. North Carolina's demonstration indicates that emission reductions in the GSMNP itself have only a limited impact on the observed ozone values within the GSMNP; and thus concludes these reductions primarily must come from sources upwind of the nonattainment area.

There are numerous State and Federal measures that have been enacted in recent years that are resulting in permanent and enforceable regional emissions reductions. A list of those measures that contributed to the permanent and enforceable regional emission reductions that resulted in attainment or will contribute to future maintenance of the ozone standard are listed in Table 4.

TABLE 4—REGION-WIDE EMISSION REDUCTIONS PROGRAMS IN THE GSMNP AREA

Federal Control Measures
Tier 2 Vehicle Standards.
Heavy-Duty Gasoline and Diesel Highway Vehicles Standards.
Large Nonroad Diesel Engines Rule.
Nonroad Spark-Ignition Engines and Recreational Engines Standard.
NO_X SIP Call in Surrounding States.
Clean Air Interstate Rule in Surrounding States.
State Control Measures
Clean Air Bill.
NO_X SIP Call/Clean Air Interstate Rule.
Clean Smokestacks Act.
Open Burning Bans.
Air Toxics Control Program.
Prevention of Significant Deterioration.
Heavy Duty Diesel Engine Gap Filling Requirements.
Air Awareness Program.

Two of the measures of consideration included by North Carolina in its maintenance plan submittal were CAIR in surrounding states and the NO_X SIP Call in surrounding states. Because of the uncertainty introduced by the recent court actions affecting CAIR and the NO_X SIP Call, EPA undertook an analysis of the changes in NO_X expected during the ten year maintenance period across a broader region. Of particular significance are reductions in NO_X emissions from large power plants in the region since they were responsible for the preponderance of the NO_X in the GSMNP Area. There are seven facilities located in North Carolina and four facilities located in Tennessee in the Region around the GSMNP Area. Table 5 displays the NO_X emission reductions, as the result of the NO_X SIP Call rule, from power plants that most likely impact the North Carolina GSMNP nonattainment area in 2002 through 2007. This data is from the EPA's Clean Air Markets Division and represents the second and third quarters of the year (April through September), the period during which ozone levels are the highest. It is clearly demonstrated that the emissions from these facilities have significantly decreased during the ozone season since 2002, with 52,431 tons of NO_X reductions in the 2007 ozone season compared to 2002. This is a 67 percent reduction in utility NO_X emissions that are permanent and enforceable and implemented prior to CAIR coming into effect.

TABLE 5—APRIL–SEPTEMBER NO_X EMISSIONS FOR UTILITIES IMPACTING THE GSMNP AREA

[tons/period]

Facility	2002	2003	2004	2005	2006	2007
North Carolina Sources						
Asheville	2,252	2,158	2,205	2,156	1,931	598
Belews Creek	21,269	13,871	7,102	3,803	3,769	1,559
Buck	1,084	1,468	1,089	1,286	1,262	870
Cliffside	1,944	2,149	1,738	1,782	1,540	1,311
G G Allen	5,011	3,643	4,002	3,589	3,001	3,053
Marshall	9,283	9,101	8,243	7,558	6,370	7,253
River Bend	2,556	2,703	1,844	1,379	1,417	1,296
Total NC	43,399	35,093	26,223	21,553	19,290	15,940
Tennessee Sources						
Bull Run	10,554	9,234	1,670	2,468	692	1,513
Gallatin	5,894	6,043	4,556	3,933	3,647	3,124
John Sevier	5,438	4,911	5,343	4,437	4,504	4,187
Kingston	13,335	13,882	5,660	3,444	1,344	1,425
Total TN	35,221	34,070	17,229	14,282	10,187	10,249
Total Combined	78,620	69,163	43,452	35,835	29,477	26,189

These reductions are primarily the result of the NO_X SIP Call (63 FR 57356) that set ozone season NO_X budgets for the purpose of reducing regional transport of ozone. This rule called for ozone season controls to be put on utility and industrial boilers, as well as internal combustion engines in 22 states in the Eastern United States. A NO_X emissions budget was set for each state and the states were required to develop rules that would allow the state to meet their budget. The emission budgets were to be met by the beginning of 2004, prior to the adoption of CAIR. The amount of ozone season NO_X emissions from power plants has decreased significantly in and around North Carolina as a result and are expected to be maintained at these levels throughout the maintenance period.

Georgia power plants were the only ones in a nearby state not affected by the NO_X SIP Call. While no NO_X reductions were achieved during the period GSMNP demonstrated attainment, Georgia enacted regulations pursuant to the Georgia multi-pollutant bill in the summer 2007 to require coal fired power plants in Georgia to reduce NO_X, approximately 50 percent, by 2015. Reductions will affect 21 units at seven facilities. The rule requires specific controls on specific units according to a specific schedule and will assure that NO_X emissions will not increase during the maintenance period.

Besides controls on electrical generating units (EGUs), substantial additional reductions in NO_X are expected due to controls being imposed on fuels and off road and on road motor vehicles. To evaluate NO_X changes expected to occur during the maintenance period to other NO_X sources in the region, we reviewed projections made for Regional Haze for 2009 and 2018. This is the latest region-wide assessment available done for emissions for the regional area.

As summarized in Tables 6 and 7, all point sources are expected to further decrease during this period by 337,742 tons per year (tpy) or 24 percent. However mobile sources are projected to decrease by an even greater amount, decreasing by 751,038 tpy or 53 percent during this period and non-road emissions are expected to decrease 166,687 tpy or 22 percent. The only category showing an increase is area source emissions which are projected to grow 6 percent, an increase of 21,146 tpy. In total, non point source NO_X emissions in the region are expected to decrease by 896,579 tpy from 2009 to 2018. Region-wide, annual emissions of NO_X are expected to decrease 39 percent from 2009 to 2018. Every state in the 10 state Visibility Improvement State and Tribal Association of the Southeast (VISTAS) planning area projects reductions of NO_X emissions from 2009 to 2018.

Even if the projected point source reductions from CAIR are not considered and EGU emissions are held at 2009 levels, annual emissions of NO_X are still projected to decrease 23 percent. Since both North Carolina and Georgia have rules requiring EGUs to reduce NO_X independent of CAIR and a number of other facilities in the region are controlling NO_X emissions due to consent decrees, this assumption of no regional reductions in EGU emissions during this period is very conservative.

These regional projections of emissions data have only been prepared through 2018. However, since mobile and non-road emissions continue to decrease long after a rule is adopted as the engine population is gradually replaced by newer engines, it is reasonable to assume that this projected decrease in regional NO_X emissions from mobile and non-road sources should continue through 2020 and assure that ozone in the GSMNP will continue to decline throughout the 10-year maintenance period. Hence we believe the projected regional NO_X reductions are adequate to assure that the GSMNP will continue demonstrating maintenance throughout the 10-year maintenance period.

TABLE 6—VISTAS 2009 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO_X *

States	Point	Non-road	Area	Mobile	Total
AL	151,714	56,862	35,831	101,831	346,238

TABLE 6—VISTAS 2009 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO_X*—Continued

States	Point	Non-road	Area	Mobile	Total
FL	132,185	163,794	47,979	315,840	659,798
GA	148,809	85,733	51,925	209,349	495,816
KY	129,779	94,752	43,548	101,182	369,261
MS	92,409	80,567	8,048	70,743	251,767
NC	101,236	70,997	45,382	201,609	419,224
SC	86,934	43,235	25,259	92,499	247,927
TN	124,274	86,641	20,717	151,912	383,544
VA	288,213	54,993	53,596	134,232	531,034
WV	124,359	30,133	14,384	35,635	204,511
Total	1,379,912	767,707	346,669	1,414,832	3,909,120

TABLE 7—VISTAS 2018 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO_X*

States	Point	Non-road	Area	Mobile	Total
AL	141,178	43,779	36,945	47,298	269,200
FL	110,243	127,885	50,499	150,180	438,807
GA	125,083	64,579	55,518	102,179	347,359
KY	100,774	79,392	45,806	52,263	278,235
MS	71,988	68,252	8,322	30,619	179,181
NC	94,276	49,046	49,514	87,791	280,627
SC	94,089	31,758	26,491	43,490	195,828
TN	93,443	70,226	21,810	69,385	254,864
VA	116,560	40,393	57,137	63,342	277,432
WV	94,536	25,710	15,773	17,247	153,266
Total	1,042,170	601,020	367,815	663,794	2,674,799

*From North Carolina Regional Haze Plan, December 17, 2007, pages Appendix D.3–10 & 11.

EPA has considered the relationship of the GSMNP Area's maintenance plan to the reductions currently required pursuant to CAIR. CAIR was remanded to EPA, and the process of developing a replacement rule is ongoing. However, the remand of CAIR does not alter the requirements of the NO_X SIP Call and the State has now demonstrated that the GSMNP Area can maintain without any additional requirements (beyond those required by the NO_X SIP Call). Therefore, EPA believes that the State's demonstration of maintenance under sections 175A and 107(d)(3)(E) remains valid.

The NO_X SIP Call requires states to make significant, specific emissions reductions. It also provides a mechanism, the NO_X Budget Trading Program, that states could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO_X Budget Trading Program, 40 CFR 51.121(r), but created another mechanism—the CAIR ozone season trading program—which states could use to meet their SIP Call obligations, 70 FR 25289–90. EPA notes that a number of states, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program, removed the SIP provisions that required sources to participate in the NO_X Budget Trading Program. In addition, because the provisions of CAIR including the ozone season NO_X trading program remain in place during the remand, EPA is not currently administering the NO_X Budget Trading Program. Nonetheless, all states regardless of the current status of their regulations that previously required participation in the NO_X Budget Trading Program, will remain subject to all of the requirements in the NO_X SIP Call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP Call, including the statewide NO_X emission budgets, continue to apply after revocation of the 1-hour standard.

All NO_X SIP Call states have SIPs that currently satisfy their obligations under the NO_X SIP Call; the NO_X SIP Call reduction requirements are being met; and EPA will continue to enforce the requirements of the NO_X SIP Call even after any response to the CAIR remand. For these reasons, EPA believes that regardless of the status of the CAIR program, the NO_X SIP Call requirements can be relied upon in demonstrating maintenance. Here, the State has demonstrated maintenance based in part on those requirements.

Criteria (4)—The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the GSMNP 1997 8-hour ozone nonattainment area to attainment status, NC DAQ submitted a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS in the GSMNP Area for at least 10 years after the effective date of redesignation to attainment.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State of North Carolina must submit a revised maintenance plan, which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt

correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, North Carolina's maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

North Carolina selected 2005 as ''the attainment year'' for the GSMNP Area for the purpose of demonstrating attainment of the 1997 8-hour ozone NAAQS. This attainment inventory identifies the level of emissions in the area, which is sufficient to attain the 1997 8-hour ozone standard. North Carolina began development of this attainment inventory by first developing a baseline emissions inventory for the GSMNP Area. The year 2005 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2008, 2011, 2014, 2017 and 2020. Non-road mobile emissions estimates were based on the EPA's NONROAD2005c model. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2005 VOC and NO_X emissions, as well as the emissions for other years, for the GSMNP Area were developed consistent with EPA guidance, and are summarized in Tables 8 and 9.

TABLE 8—GSMNP AREA VOC EMISSIONS (TPD)

Source category	2005	2008	2011	2014	2017	2020
Area	0.17	0.17	0.17	0.17	0.17	0.17
Mobile	0.41	0.36	0.32	0.27	0.24	0.22
Nonroad	0.00	0.00	0.00	0.00	0.00	0.00
Total	0.58	0.53	0.49	0.44	0.41	0.39

TABLE 9—GSMNP AREA NO_X EMISSIONS (TPD)

Source category	2005	2008	2011	2014	2017	2020
Area	0.00	0.00	0.00	0.00	0.00	0.00
Mobile	0.26	0.23	0.20	0.17	0.15	0.14
Nonroad	0.00	0.00	0.00	0.00	0.00	0.00
Total	0.26	0.23	0.20	0.17	0.15	0.14

Biogenic emissions are estimated using models developed by EPA. The biogenic emissions were obtained from modeling using available data a typical summer day's emissions and 2002 meteorology. Biogenic emissions are not expected to vary significantly year to year. Since these emissions are reported at the county level, the biogenic emissions for the GSMNP Area were estimated by taking the county area fraction of the GSMNP Area in Haywood and Swain Counties, respectively. Biogenic VOC emissions are estimated to be 48.50 tpd.

c. Maintenance Demonstration

The July 24, 2009, submittal includes a maintenance plan for the GSMNP Area. This demonstration:

(i) Shows compliance with and maintenance of the 1997 8-hour ozone standard by providing information to support the demonstration that current and future emissions of VOC and NO_X remain at or below attainment year 2005 emissions levels. The year 2005 was chosen as the attainment year because it is one of the most recent three years (i.e. 2004, 2005, and 2006) for which the GSMNP Area has clean air quality data for the 1997 8-hour ozone standard.

(ii) Uses 2005 as the attainment year and includes future emission inventory projections for 2008, 2011, 2014, 2017 and 2020.

(iii) Identifies an ''out year,'' at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, regional NO_X MVEBs were established for the last year (2020) of the maintenance plan. Additionally, North Carolina chose, through interagency consultation, to establish MVEBs for the year 2011 for NO_X, and to determine insignificance for VOC for the GSMNP Area. See, section VII below.

(iv) Provides actual and projected emissions inventories, in tpd for the GSMNP Area. See Tables 8 and 9.

d. Monitoring Network

There is currently one monitor measuring ozone in the GSMNP Area. North Carolina has committed in the maintenance plan to continue the operation of this monitor in compliance with 40 CFR part 58, and has addressed the requirement for monitoring.

e. Verification of Continued Attainment

North Carolina has the legal authority to enforce and implement the requirements of the ozone maintenance plan for the GSMNP Area. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems. North Carolina will track the progress of the maintenance plan by performing future reviews of actual emissions for the Area using the latest emissions factors, models and methodologies. For these periodic inventories, North Carolina will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, North Carolina will re-project emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. 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, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the July 24, 2009, submittal, North Carolina affirms that all programs instituted by the State and EPA will remain enforceable, and there are no permitted point sources within the GSMNP Area. The contingency plan included in the submittal provides tracking and triggering mechanisms to determine when contingency measures are needed and a process of developing and adopting appropriate control measures. The primary trigger of the contingency plan will be a violation of the 1997 8-hour ozone NAAQS or when the three-year average of the fourth-highest value is equal to or greater than 0.085 ppm at the monitor. The trigger date will be 60 days from the date that the State observes a fourth-highest value that, when averaged with the two previous ozone seasons' fourth highest values, would result in a three-year average equal to or greater than 0.085 ppm.

The secondary trigger will apply where no actual violation of the 1997 8-hour ozone standard has occurred, but where the State finds monitored ozone levels indicating that an ozone NAAQS violation may be imminent. An imminent violation exists where there is a pattern. A pattern will be deemed to exist when there are two consecutive ozone seasons in which the fourth-highest values are 0.085 ppm or greater at the monitor within the GSMNP Area.

The trigger date will be 60 days from the date that the State observes a fourth-highest value of 0.085 ppm or greater at the monitor for which the previous season had a fourth-highest value of 0.085 ppm or greater. Once one of the triggers is activated, the Planning Section of the NC DAQ shall commence analyses including trajectory analyses of high ozone days, and emissions inventory assessment to determine the cause of the ozone transport into the GSMNP Area.

The NC DAQ considered what additional measures could be implemented; however, as mentioned earlier, exceedances are at night and are the result of ozone transported into the nonattainment area from outside regions. Additionally, the GSMNP Area is already taking measures to reduce emissions within the Park to include Stage I vapor recovery on gasoline stations located in the Park, along with having an Air Quality Action Day Program in place that includes the following measures:

a. Encouraging employees to decrease vehicle use by car pooling and reducing the number of non-essential trips;

b. Fuel switching using biodiesel;

c. Postponing or decreasing the use of mowers and other gasoline engine equipment until ozone levels drop;

d. Encouraging refueling of vehicles in the early morning or late evening hours. Additionally, should one of the triggers occur, the NC DAQ will commence discussion amongst the stakeholders in the maintenance area regarding additional measures that could be implemented before the next ozone season. Such measures would likely relate to mobile sources within the maintenance area.

Furthermore, the State will commence discussion with regulatory authorities responsible for upwind sources to determine additional actions to be implemented.

These actions may include one or more of the following measures:

* RACM for sources of NO_X
* Reasonably Available Control Technology for existing point sources of NO_X
* Mobile Source Measures
* Additional NO_X reduction measures yet to be identified.

If the cause of the ozone transport is due to sources within North Carolina, by May 1st of the year following the ozone season in which the trigger has been activated, North Carolina will complete sufficient analyses to begin adoption of necessary rules for ensuring attainment and maintenance of the 1997 8-hour ozone NAAQS. The rules would become State effective by the following January 1st, unless legislative review is required. It is the States' aim to ensure that at least one of these measures be implemented within 18 to 24 months from the trigger being activated.

If the cause of the ozone transport is from sources outside of North Carolina, then the NC DAQ will begin working with neighboring states to resolve the ozone transport issue. North Carolina has already filed a section 126 petition in order to ensure that adjacent states reduce their utility emissions in a timely manner.

VII. What Is EPA's Analysis of North Carolina's Proposed VOC Insignificance Determination for Conformity and the Proposed NO_X MVEBs for the GSMNP Area?

Today's actions address two related elements regarding on-road motor vehicle emissions and the requirement to establish MVEBs. First, EPA is proposing to find that the VOC emission contribution from motor vehicles to 8-hour ozone pollution for the 1997 standard in the GSMNP Area is insignificant for transportation conformity. The result of this finding, if finalized, is that North Carolina need not develop an MVEB for VOC for the GSMNP Area. See below for further information on the insignificance determination. Second, EPA is proposing to approve the NO_X MVEBs for the GSMNP Area.

A. Proposed VOC Insignificance Determination for Transportation Conformity

In certain instances, the Transportation Conformity Rule allows areas not to establish an MVEB where it is demonstrated that the regional motor vehicle emissions for a particular pollutant/precursor is an insignificant contributor to the air quality problem in an area. The general criteria for insignificance findings can be found in 40 CFR 93.109(k). Insignificance determinations are based on a number of factors, including (1) the percentage of motor vehicle emissions in context of the total SIP inventory; (2) the current state of air quality as determined by monitoring data for that NAAQS; (3) the absence of SIP motor vehicle control measures; and (4) historical trends and future projections of the growth of motor vehicle emissions. EPA's rationale for the providing for insignificance determinations is described in the July 1, 2004, revision to the Transportation Conformity Rule at 69 FR 40004. Specifically, the rationale is explained on page 40061 under the subsection entitled ''XXIII. B. Areas With Insignificant Motor Vehicle Emissions.'' Any insignificance determination under review of EPA is subject to the adequacy and approval process for EPA's action on the SIP.

Through the adequacy and SIP approval process, EPA may find that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for the pollutant/precursor at issue. In the case of the GSMNP Area, EPA intends to make its finding as part of

EPA's final action on this redesignation request of North Carolina for the GSMNP Area. Upon the effective date of EPA's adequacy finding or the publication date of the final rule for this SIP revision (*i.e.,* which includes the VOC insignificance determination), federal regulations waive the regional emissions analysis requirements (for the purpose of transportation conformity implementation) for the relevant pollutant or precursor. Areas with insignificant regional motor vehicle emissions for a pollutant or precursor are still required to make a conformity determination that satisfies other relevant requirements. Additionally, such areas are required to satisfy the regional emissions analysis requirements for pollutants or precursors for which EPA has not made a finding of insignificance.

The maintenance plan for the GSMNP Area, included as part of the SIP revision, contains MVEBs for NO_X and an insignificance determination for conformity for the VOC contribution from motor vehicles to the 8-hour ozone pollution for the 1997 standard in the GSMNP Area. As part of the preparation for its redesignation request, North Carolina consulted with the interagency consultation group for the GSMNP Area regarding the insignificance determination for transportation conformity for VOC. For the purposes of regional emissions analysis, the information provided by North Carolina supports EPA's proposal to determine VOC contribution to 8-hour ozone pollution from motor vehicles in the GSMNP Area as insignificant for conformity. The information provided by North Carolina to EPA as part of the SIP revision addresses each of the factors listed in 40 CFR 93.109(k), and is summarized below.

According to information provided by North Carolina, biogenic emissions account for approximately 99 percent of the VOC emissions in future years in the GSMNP Area. On-road VOC emissions are projected to decline by about 54 percent by 2020 despite vehicle miles traveled going up by about 25 to 30 percent by 2020 and total non anthropogenic VOC are projected to decline from 0.58 to 0.39 tpd by 2020. Similarly, the current state of air quality in the GSMNP Area is steadily improving. The current ozone design value in the GSMNP Area is 0.077 ppm based on data from 2006–2008. This is well below the NAAQS of 0.084 ppm.

In addition, North Carolina conducted a sensitivity analysis (a photochemical model) that indicated that 8-hour ozone levels in the GSMNP Area were not impacted by reductions in man-made VOC emissions (*i.e.,* reductions from motor vehicles). Specifically, the photochemical model was run with a modeled 30 percent reduction in man-made VOC emissions, which is equivalent to a 33 percent highway mobile VOC reduction in 2009 for a 39-day period (June 1–July 9). In all 39 days of the modeling simulation, the 8-hour ozone maximum concentrations were not changed in Haywood and Swain Counties, which is a clear indication that highway mobile VOC is an insignificant contributor to ozone formation in that Area. In comparison, biogenic emissions are expected to account for at least 98 percent of the total inventory for VOC emissions. As discussed in North Carolina's submittal, the biogenic sector is the most abundant source of VOC in North Carolina and accounts for approximately 98 percent of the total VOC emissions statewide. As a result, the information provided by North Carolina indicates that VOC contribution to 8-hour ozone pollution from motor vehicle emissions is insignificant.

With regard to the factor relating to the absence of motor vehicle control measures in the SIP, EPA considered the existence of an inspection and maintenance (I/M) program in the North Carolina SIP, and its implementation in the individual counties comprising the GSMNP Area. The I/M program was not added to the North Carolina SIP as a VOC control measure, but rather, a NO_X control measure. The I/M program is currently being implemented in one of the counties (*i.e.* Haywood County) in the GSMNP Area. Implementation of the I/M program in the GSMNP Area began from July 2005, and continues to be ongoing in the Area. In North Carolina's SIP submittal, the State explains that the I/M program was established to achieve additional reductions in NO_X emissions. As a result, the existence of this program in the SIP for the purpose of NO_X reductions does not prohibit EPA from finding the VOC contribution to 8-hour ozone pollution from motor vehicles insignificant.

After evaluating the information provided by North Carolina and weighing the factors for the insignificance determination outlined in 40 CFR 93.109(k), particularly the biogenic contribution to the overall VOC inventory, EPA is now proposing to approve North Carolina's determination that the VOC contribution from motor vehicle emissions to the 8-hour ozone pollution for the GSMNP Area is insignificant for purposes of conformity. If this finding is completed through the adequacy process (see Section VIII below) or approved through the final rulemaking on this SIP submission, the insignificance determination should be considered and specifically noted in the transportation conformity document that is prepared for this Area.

B. Proposed Regional NO_X MVEBs

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (reasonable further progress and attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB is established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See, 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

North Carolina, after interagency consultation with the transportation partners for the GSMNP Area, has elected to develop regional MVEBs for NO_X. North Carolina is developing these MVEBs, as required, for the last year of its maintenance plan, 2020, and for an additional year, 2011. The NO_X MVEBs for the GSMNP Area are defined in Table 10 below.

TABLE 10—GSMNP AREA NO_X MVEBS (KILOGRAMS PER DAY)

	2011	2020
NO_X MVEB	179.9	127.0

Through this rulemaking, EPA is proposing to approve the 2011 and 2020 MVEBs for NO_X for the GSMNP Area because EPA has determined that the Area maintains the 1997 8-hour ozone standard with the emissions at the levels of the budgets. As mentioned above, these MVEBs are for the entire GSMNP Area in North Carolina. Once the new MVEBs for the GSMNP Area (the subject of this rulemaking) are approved or found adequate (whichever is done first), they must be used for future conformity determinations.

VIII. What Is an Adequacy Determination?

As discussed above, the MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB. Additionally, the transportation conformity rule (see 93.109(k)) allows for areas not to establish a MVEB for a particular pollutant or precursor if it can be demonstrated that motor vehicle emissions contributions do not significantly contribute to an area's pollution. North Carolina's submittal for this area establishes MVEBs for NO_X and provides an insignificance determination for VOC contribution.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

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

EPA's substantive criteria for determining ''adequacy'' of an MVEB, including EPA's determination that an MVEB need not be established because of an insignificance determination, are set out in 40 CFR 93.118(e)(4). The process for determining ''adequacy'' consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; transportation conformity rule amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations. EPA must also use a similar process to determine the adequacy of an insignificance determination that is submitted by a state as a part of a control strategy SIP or maintenance plan. Additional information on the adequacy process for both MVEBs and insignificance determinations is available in the proposed rule entitled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

IX. What Is the Status of EPA's Adequacy Determination for the Regional NO_X MVEBs for the Years 2011 and 2020, and the VOC Insignificance Determination?

As discussed earlier, North Carolina's maintenance plan submission includes new NO_X MVEBs for the GSMNP Area for the years 2011 and 2020. Additionally, the maintenance plan included a VOC insignificance determination for the entire GSMNP Area, and therefore, no MVEB for VOC is included as part of the SIP revision. EPA is reviewing both the NO_X MVEBs and the VOC insignificance determination through the adequacy process. The North Carolina SIP submission, including the GSMNP Area NO_X MVEBs and the VOC insignificance determination, was open for public comment on EPA's adequacy Web site on May 18, 2009, found at: *http://www.epa.gov/ataq/stateresoures/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2011 and 2020 NO_X MVEBs, and VOC insignificance determination closed on June 17, 2009. There were no comments on the North Carolina submission.

EPA intends to make its determination on the adequacy of the 2011 and 2020 NO_X MVEBs, and the VOC insignificance determination for the GSMNP Area for transportation conformity purposes in the final rulemaking on the redesignation of the GSMNP Area. If EPA finds the 2011 and 2020 NO_X MVEBs, and the VOC insignificance determination adequate or approves these MVEBs and the VOC insignificance determination in the final rulemaking action, the new MVEBs for NO_X must be used, and the VOC insignificance determination should be noted, for future transportation conformity determinations. If the new 2011 and 2020 NO_X MVEBs are found adequate, and both the NO_X MVEBs and the related VOC insignificance determination are approved in the final rulemaking, the NO_X MVEBs and the VOC insignificance determination will be effective on the date of publication of EPA's final rulemaking in the **Federal Register**. For required regional emissions analysis years that involve the year 2019 or before, the applicable budget for the purposes of conducting transportation conformity will be the new 2011 NO_X MVEBs for the GSMNP Area. For required regional emissions analysis years that involve 2020 or beyond, the applicable budgets will be the new 2020 NO_X MVEBs. Both the 2011 and 2020 NO_X MVEBs are defined in section VII of this proposed rulemaking. More detail on the VOC insignificance determination can be found in section VII of this proposed rulemaking as well.

X. Proposed Action on the Redesignation Request and Maintenance Plan SIP Revision Including Proposed Approval of the 2011 and 2020 NO_X MVEBs, and the Proposed VOC Insignificance Determination for the GSMNP Area

EPA is proposing to make the determination that the GSMNP Area has met the criteria for redesignation from nonattainment to attainment for the 1997 8-hour ozone NAAQS. This proposed approval of North Carolina's redesignation request is based on EPA's determination that North Carolina has demonstrated that the GSMNP Area has met the criteria for redesignation to attainment specified in the CAA, including the determination that the entire GSMNP 1997 8-hour ozone nonattainment area has attained the 1997 8-hour ozone NAAQS.

Specifically, EPA is proposing to approve the maintenance plan for the GSMNP Area included as part of the July 24, 2009, SIP revision. The maintenance plan includes NO_X MVEBs for 2011 and 2020, and a VOC insignificance determination for motor vehicles' contribution to the ozone pollution in this Area, among other requirements. EPA is proposing to approve the 2011 and 2020 regional NO_X MVEBs for the GSMNP Area because the maintenance plan demonstrates that even with expected emissions for all other source categories, the GSMNP Area will continue to maintain the 1997 8-hour ozone standard. EPA is also proposing to approve the insignificance determination for the VOC contribution from motor vehicle emissions to the 8-hour ozone pollution for the 1997 standard for the GSMNP Area.

Further as part of today's action, EPA is describing the status of its adequacy determination for the 2011 and 2020 NO_X MVEBs, and VOC insignificance determination, in accordance with 40 CFR 93.118(f)(1). If transportation conformity is needed to be implemented in this Area, the transportation partners will need to demonstrate conformity to the new NO_X MVEBs pursuant to 40 CFR 93.104(e). Additionally, the transportation partners should note EPA's finding of adequacy and approval for the VOC insignificance determination for future conformity determinations.

XI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

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

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

Dated: September 29, 2009

Beverly H. Banister,

Acting Regional Administrator, Region 4.

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