§ 52.423 is amended by adding paragraph (c) to read as follows:

§ 52.423 1990 Base year emissions inventory.

(c) EPA approves as a revision to the Delaware State Implementation Plan for the 2002 base year emissions inventory for the Delaware 1997 annual fine particulate matter (PM$_{2.5}$) nonattainment area submitted by the Delaware Department of Natural Resources and Environmental Control on April 3, 2008. The 2002 base year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO$_x$), volatile organic compounds (VOCs), PM$_{2.5}$, coarse particles (PM$_{10}$), ammonia (NH$_3$), and sulfur dioxide (SO$_2$).

Applicable geographic area: Delaware-Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware nonattainment area.

Dates: This action is effective March 4, 2013.

Addressee: This final rule is available on the Internet at http://www.regulations.gov. It will also be available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, West Virginia Field Office, 694 Beverly Pike, Elkins, West Virginia 26241. Call (304) 636–6586 to make arrangements.

FOR FURTHER INFORMATION CONTACT:

Deborah Carter, Project Leader, at our West Virginia field office (see ADDRESSES) or telephone (304) 636–6586, extension 12. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2008, we published a final rule to remove ESA protections for the Virginia northern flying squirrel, more commonly known as the West Virginia northern flying squirrel (WVNFS) (76 FR 35349, June 17, 2011). On August 17, 2012, the U.S. Court of Appeals, in a two-to-one opinion, reversed the ruling of the U.S. District Court (Friends of Blackwater, et al. v. Salazar, et al., 691 F.3d 428 (DC Cir. 2012)). On September 28, 2012, Friends of Blackwater et al. petitioned the U.S. Court of Appeals for a rehearing and a rehearing en banc, which were both denied on November 1, 2012 (Friends of Blackwater, et al. v. Salazar, et al., DC Cir., No: 11–5128). On November, 13, 2012, the U.S. Court of Appeals issued its mandate consistent with its August 17, 2012, opinion reversing the U.S. District Court’s vacatur of the WVNFS delisting rule. On January 30, 2013, Friends of Blackwater et al.’s time to file a petition for a writ of certiorari with the U.S. Supreme Court expired.

Effects of the Rule

As of the publication of this rule, the WVNFS is again removed from the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h). Therefore, this species will no longer receive Federal protection under the ESA. This rule will not affect the status of the WVNFS under State law or suspend any other legal protections provided by State law.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulagation

To comply with the court order and mandate discussed above, we amend part 17, subchapter B of chapter I, title 50 of the CFR, as set forth below:
PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

2. Amend § 17.11(h) by removing the entry for “Squirrel, Virginia northern flying” under “MAMMALS” from the List of Endangered and Threatened Wildlife.

Rowan W. Gould,
Deputy Director, Fish and Wildlife Service.

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