

Issued in Fort Worth, TX on April 19, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010-9749 Filed 4-26-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Intent To Initiate Consultation and Coordinate the National Oceanic and Atmospheric Administration's Responsibilities Under Section 106 of the National Historic Preservation Act (NHPA) With the Ongoing National Environmental Policy Act (NEPA) Process Supporting the Review of the Olympic Coast National Marine Sanctuary Management Plan

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Consultation under Section 106 of the NHPA in conjunction with Review of Management Plan/Regulations and associated NEPA public process.

SUMMARY: In accordance with section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) has initiated a review of the Olympic Coast National Marine Sanctuary (OCNMS or sanctuary) management plan, to evaluate substantive progress toward implementing the goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA (73 FR 53161). The management plan review process occurs concurrently with a public process under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). This notice confirms that NOAA will coordinate its responsibilities under NEPA with those under section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470).

DATES: Comments may be submitted at any time.

ADDRESSES: Written comments may be sent to the Olympic Coast National Marine Sanctuary (Management Plan Review), 115 Railroad Ave. East, Suite

301, Port Angeles, WA 98362, or faxed to (360) 457-8496. Electronic comments may be sent to ocnmsmanagementplan@noaa.gov.

FOR FURTHER INFORMATION CONTACT: George Galasso, 360.457.6622 Ext. 12, ocnmsmanagementplan@noaa.gov.

SUPPLEMENTARY INFORMATION: OCNMS was designated in May 1994. It spans 3,310 square miles of marine waters off the rugged Olympic Peninsula coast, covering much of the continental shelf and the heads of several major submarine canyons. The present management plan was written as part of the sanctuary designation process and published in the Final Environmental Impact Statement in 1993.

In September 2008, NOAA published a Notice of Intent to prepare an Environmental Impact Statement under the authority of NEPA (73 FR 53161). The management plan review process is composed of four major stages: (1) Information collection and characterization; (2) preparation and release of a draft management plan/environmental impact analysis document; (3) public review and comment; (4) preparation and release of a final management plan/environmental impact analysis document, and any final amendments to the regulations. NOAA anticipates completion of the revised management plan and concomitant documents will require approximately thirty-six months from the date of publication of the original notice of intent (37 FR 53161; September 15, 2008). The proposed revised management plan will likely involve changes to existing policies of the Sanctuary in order to address contemporary issues and challenges, and to better protect and manage the Sanctuary's natural resources and qualities and historic properties.

This notice confirms that NOAA will coordinate its responsibilities under section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470) with its ongoing NEPA process, pursuant to 36 CFR 800.8(a)—coordination with NEPA—including the use of NEPA documents and public and stakeholder meetings to also meet the section 106 requirements. The NHPA specifically applies to any agency undertaking that has an adverse effect on historic properties. Pursuant to 36 CFR 800.16(1)(1), historic properties includes: "any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains

that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe * * * and that meet the National Register criteria."

In coordinating its responsibilities under the NHPA and NEPA, NOAA intends to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; initiate formal consultation with the Washington State Historic Preservation Officer, appropriate Tribal Historic Preservation Officers, the Advisory Council of Historic Preservation, and other consulting parties; involve the public in accordance with NOAA's NEPA procedures, and develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects on historic properties and describe them in any Environmental Assessment or Draft Environmental Impact Statement.

Authority: 16 U.S.C. 1431 *et seq.*; 16 U.S.C. 470.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 15, 2010.

Daniel J. Basta,

Director for the Office of National Marine Sanctuaries.

[FR Doc. 2010-9203 Filed 4-26-10; 8:45 am]

BILLING CODE 3510-NK-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 52 AND 81

[EPA-R05-OAR-2009-0730; FRL-9142-2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Wisconsin; Redesignation of the Manitowoc County and Door County Areas to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Wisconsin's requests to redesignate the Manitowoc County and Door County, Wisconsin nonattainment areas, to attainment for the 1997 8-hour ozone standard, because the requests meet the statutory requirements for redesignation under the Clean Air Act (CAA). The Wisconsin Department of Natural Resources (WDNR) submitted these requests on September 11, 2009.

These proposed approvals involve several related actions. EPA is proposing to determine that the Manitowoc County and Door County areas have attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). These determinations are based on three years of complete, quality-assured and certified ambient air quality monitoring data for the 2006–2008 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the areas. Complete, quality-assured air quality data for the 2009 ozone season have been recorded in the EPA's Air Quality System (AQS) and show that the areas continue to attain the 8-hour ozone standard. EPA is also proposing to approve, as revisions to the Wisconsin State Implementation Plan (SIP), the State's plans for maintaining the 8-hour ozone NAAQS through 2020 in the areas.

EPA is proposing to approve the 2005 base year emissions inventories for the Manitowoc County and Door County areas as meeting the base year emissions inventory requirement of the CAA. WDNR submitted these base year emissions inventories on June 12, 2007. Finally, EPA finds adequate and is proposing to approve the State's 2012 and 2020 Motor Vehicle Emission Budgets (MVEBs) for the Manitowoc County and Door County areas.

DATES: Comments must be received on or before May 27, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0730, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: bortzer.jay@epa.gov.

3. *Fax*: (312) 692–2054.

4. *Mail*: Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand delivery*: Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0730. 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 information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. 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 instructions on submitting comments, go to section I of this document, "What Should I Consider as I Prepare My Comments for EPA?"

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency,

Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, dagostino.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

Table of Contents

- I. What should I consider as I prepare my comments for EPA?
- II. What actions is EPA proposing to take?
- III. What is the background for these actions?
 - A. What is the general background information?
 - B. What are the impacts of the December 22, 2006, and June 8, 2007, United States Court of Appeals decisions regarding EPA's Phase 1 implementation rule?
- IV. What are the criteria for redesignation?
- V. What is the effect of these actions?
- VI. What is EPA's analysis of the requests?
 - A. Attainment Determinations and Redesignations
 - B. Adequacy of Wisconsin's MVEBs
 - C. 2005 Base Year Emissions Inventories
- VII. What actions is EPA taking?
- VIII. Statutory and Executive Order Reviews

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

When submitting comments, remember to:

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

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

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

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

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

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

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

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

II. What actions is EPA proposing to take?

EPA is proposing to take several related actions. EPA is proposing to determine that the Manitowoc County and Door County nonattainment areas have attained the 1997 8-hour ozone

standard and that the areas have met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve the requests from WDNR to change the legal designation of the Manitowoc County and Door County areas from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve, as revisions to the Wisconsin SIP, the State's maintenance plans (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plans are designed to keep the Manitowoc County and Door County areas in attainment of the ozone NAAQS through 2020. EPA is proposing to approve the 2005 base year emissions inventories for the Manitowoc County and Door County areas as meeting the requirements of section 172(c)(3) of the CAA. If EPA's determination of attainment is finalized, under the provisions of 40 CFR 51.918, the requirement to submit certain planning SIPs related to attainment (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) are not applicable to the area as long as it continues to attain the NAAQS and would cease to be applicable upon redesignation. In addition, as set forth in more detail below, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. Finally, EPA finds adequate and is proposing to approve the newly-established 2012 and 2020 MVEBs for the Manitowoc County and Door County areas. The adequacy comment period for the MVEBs began on February 24, 2010, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>). The adequacy comment period for these MVEBs ended on March 26, 2010. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. In a letter dated April 7, 2010, EPA informed WDNR that we had found the 2012 and 2020 MVEBs to be adequate for use in transportation conformity analyses. Please see section VI.B. of this rulemaking, "Adequacy of Wisconsin's MVEBs," for further explanation of this process. Therefore, we find adequate,

and are proposing to approve, the State's 2012 and 2020 MVEBs for transportation conformity purposes.

III. What is the background for these actions?

A. What is the general background information?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_x and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the 8-hour standard, the ozone NAAQS was based on a 1-hour standard. On November 6, 1991 (56 FR 56693 and 56852), the Manitowoc County and Door County areas were designated as moderate and rural transport nonattainment areas, respectively, under the 1-hour ozone NAAQS. The Manitowoc County and Door County areas were subsequently redesignated to attainment of the 1-hour standard on April 17, 2003 (68 FR 18883). At the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005, the Manitowoc County and Door County areas were designated as attainment under the 1-hour ozone NAAQS.

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million parts (ppm). On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in Title I, part D, of the CAA; 42 U.S.C. 7501–7509a and 7511–7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides additional and more specific requirements for ozone nonattainment areas.

Under EPA's implementation rule for the 1997 8-hour ozone standard, (69 FR 23951 (April 30, 2004)), an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.* the three-year average annual fourth-highest daily maximum 8-hour average ozone

concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The Manitowoc County and Door County areas were designated as a subpart 1, 8-hour ozone nonattainment area by EPA on April 30, 2004 (69 FR 23857, 23947), based on air quality monitoring data from 2001–2003 (69 FR 23860).

40 CFR 50.10 and 40 CFR part 50, Appendix I, provide that the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. See 40 CFR part 50, Appendix I, 2.3(d).

The WDNR submitted requests to redesignate the Manitowoc County and Door County areas to attainment for the 8-hour ozone standard on September 11, 2009. The redesignation requests included three years of complete, quality-assured data for the period of 2006 through 2008, indicating the 8-hour NAAQS for ozone, as promulgated in 1997, had been attained for the Manitowoc County and Door County areas. Complete, quality-assured monitoring data in AQS but not yet certified for the 2009 ozone season show that the areas continue to attain the 8-hour ozone standard. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are 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).

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. In May 2008, States, environmental groups and industry groups filed petitions with the DC Circuit Court of Appeals for review of the 2008 ozone standards. In March 2009, the court granted EPA's request to stay the litigation so EPA could review the standards and determine whether they should be reconsidered. On September 16, 2009, we announced that we are reconsidering our 2008 decision setting national standards for ground-level ozone. The designation process for that standard has been stayed. On January 19, 2010, EPA proposed to set the level of the primary 8-hour ozone standard within the range of 0.060 to

0.070 ppm, rather than at 0.075 ppm (75 FR 2938). We expect by August 2010 to have completed our reconsideration of the standard and also expect that thereafter we will proceed with designations. The actions addressed in today's proposed rulemaking relate only to the 1997 8-hour ozone standard.

B. What are the impacts of the December 22, 2006, and June 8, 2007, United States Court of Appeals decisions regarding EPA's Phase 1 implementation rule?

1. Summary of Court Decision

On December 22, 2006, in *South Coast Air Quality Management Dist. v. EPA (South Coast)*, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. *Id.*, Docket No. 04 1201. Therefore, several provisions of the Phase 1 Rule remain effective: provisions related to classifications for areas currently classified under subpart 2 of Title I, part D, of the CAA as 8-hour nonattainment areas; the 8-hour attainment dates; and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS. The June 8, 2007, decision also left intact the court's rejection of EPA's reasons for implementing the 8-hour 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 8, 2007, decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four 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; (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, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal

actions. The June 8, 2007, decision clarified that the court's reference to conformity requirements 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.

This section sets forth EPA's views on the potential effect of the court's rulings on these proposed redesignation actions. For the reasons set forth below, EPA does not believe that the court's rulings alter any requirements relevant to these redesignation actions so as to preclude redesignation or prevent EPA from proposing or ultimately finalizing these redesignations. EPA believes that the court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of these areas 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.

2. Requirements Under the 8-Hour Standard

With respect to the 8-hour standard, the court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. In its January 16, 2009, proposed rulemaking in response to the *South Coast* decision, EPA has proposed to classify Door County and Manitowoc County under subpart 2 as moderate and marginal areas, respectively (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 moderate or marginal (74 FR 2940–2941). Although a future final decision by EPA to classify these areas under subpart 2 would trigger additional future requirements for the areas, EPA believes that this does not mean that redesignations 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 be applied in the future.

First, at the time the redesignation requests were submitted, the Manitowoc County and Door County areas were not classified under subpart 2, nor were there any subpart 2 requirements yet due for these areas. 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 the submittal of a complete redesignation request. See 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, 12465–12466 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). See *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld EPA's redesignation rulemaking applying this interpretation. See, e.g. also 68 FR 25418, 25424, 25427 (May 12, 2003) (Redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking. In *Sierra Club v. Whitman*, 285 F.3d 63 (DC Cir. 2002), the DC Circuit 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 time 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 areas by applying to them, for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect or yet due at the time WDNR submitted its redesignation requests.

3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the Manitowoc County and Door County areas were attainment areas subject to CAA section 175A maintenance plans under the 1-hour standard at the time that the 1-hour standard was revoked. Therefore, the DC Circuit's decisions with respect to 1-hour nonattainment anti-backsliding requirements do not impact redesignation requests for these types of areas, except to the extent that the court

in its June 8, 2007, decision clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the court found were not properly retained, the Manitowoc County and Door County areas are attainment areas subject to maintenance plans for the 1-hour standard, and the NSR, contingency measures (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to areas that have been redesignated to attainment of the 1-hour standard.

Thus, the *South Coast* decision in South Coast Air Quality Management Dist. does not preclude EPA from finalizing the redesignation of these areas.

IV. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided 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.

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:

"Ozone and Carbon Monoxide Design Value Calculations," Memorandum from

William G. Laxton, Director Technical Support Division, June 18, 1990;

"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;

"Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

"Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

"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;

"Technical Support Documents (TSDs) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

"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;

"Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, November 30, 1993.

"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

"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.

V. What is the effect of these actions?

Approval of the redesignation requests would change the official designations of the Manitowoc County and Door County areas for the 1997 8-

hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Wisconsin SIP plans for maintaining the 8-hour ozone NAAQS through 2020. The maintenance plans include contingency measures as required under CAA section 175A to remedy future violations of the 8-hour NAAQS. They also establish MVEBs for the Manitowoc County area of 1.76 and 1.25 tons per day (tpd) for VOC and 3.76 and 1.86 tpd for NO_x for the years 2012 and 2020, respectively, and MVEBs for the Door County area of 0.78 and 0.53 tpd for VOC and 1.55 and 0.74 tpd for NO_x for the years 2012 and 2020, respectively.

VI. What is EPA's analysis of the request?

A. Attainment Determinations and Redesignations

EPA is proposing to determine that the Manitowoc County and Door County areas have attained the 1997 8-hour ozone standard and that the areas have met all other applicable redesignation criteria under CAA section 107(d)(3)(E). The basis for EPA's proposed approvals of the redesignation requests is as follows:

1. The Areas Have Attained the 8-Hour Ozone NAAQS (Section 107(d)(3)(E)(i))

EPA is proposing to make determinations that the Manitowoc County and Door County areas have attained the 1997 8-hour ozone NAAQS. An area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and part 50, Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-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 AQS. The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Wisconsin included in its redesignation requests ozone monitoring data for the 2006 to 2008 ozone seasons and has subsequently provided monitoring data for 2009. Monitoring data for 2006 through 2008 have been certified by the State; 2009 data have

not yet been certified. However, Wisconsin has quality-assured all of the ambient monitoring data in accordance with 40 CFR 58.10, and has recorded it

in the AQS database. The data meet the completeness criteria in 40 CFR 50, Appendix I, which require a minimum completeness of 75 percent annually

and 90 percent over each three-year period. Monitoring data are presented in Table 1 below.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND THREE YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS

Monitor	2006 4th high (ppm)	2007 4th high (ppm)	2008 4th high (ppm)	2009 4th high (ppm)	2006–2008 average (ppm)	2007–2009 average (ppm)
Door 55–029–0004	0.079	0.092	0.069	0.075	0.080	0.078
Manitowoc 55–071–0007	0.078	0.085	0.064	0.078	0.075	0.075

In addition, as discussed below with respect to the maintenance plans, WDNR has committed to continue to operate an EPA-approved monitoring network in the areas. WDNR will continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into AQS in accordance with Federal guidelines. In summary, EPA believes that the data show that the Manitowoc County and Door County areas have attained the 8-hour ozone NAAQS.

2. The Areas Have Met All Applicable Requirements Under Section 110 and Part D; and the Areas Have Fully Approved SIPs Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Wisconsin has met all currently applicable SIP requirements for purposes of redesignation for the Manitowoc County and Door County areas under section 110 of the CAA (general SIP requirements). We are also proposing to determine that the Wisconsin SIP meets all SIP requirements for these areas currently applicable for purposes of redesignation under part D of Title I of the CAA (requirements specific to subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, with the exception of the base year emissions inventories, we have approved all applicable requirements of the Wisconsin SIP for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is proposing to approve Wisconsin's 2005 base year emissions inventories as meeting the section 172(c)(3) emissions inventory requirement for the areas.

In proposing these determinations, we have ascertained which SIP requirements are applicable to the areas for purposes of redesignation, and have determined that there are SIP measures meeting those requirements and that they are, or upon final approval of the emissions inventories, will be fully

approved under section 110(k) of the CAA. As discussed more fully below, for purposes of evaluating a redesignation request, SIPs must be fully approved only with respect to requirements that became due prior to the submission of the redesignation request.

The September 4, 1992, Calcagni memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a State and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the State's submittal of a complete redesignation request for the area. See also the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–12466 (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the State's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (Redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

Since EPA is proposing here to determine that the areas have attained the 1997 8-hour ozone standard, under 40 CFR 51.918, if these determinations are finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (c)(6) of the CAA, and the requirement for contingency measures

of section 172(c)(9) of the CAA), would not be applicable to the areas as long as they continue 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 when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans * * * provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. "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 6 ("The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.").

a. The Manitowoc County and Door County Areas Have Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA

i. Section 110 General SIP requirements

Section 110(a) of Title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a State must have been adopted by the State after reasonable public notice and hearing, and, among other things, must: Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provide for implementation of a source permit

program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; include criteria for stationary source emission control measures, monitoring, and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address transport of air pollutants (NO_x SIP Call¹ and Clean Air Interstate Rule (CAIR) (70 FR 25162, May 12, 2005)). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A State remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures that we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. *See Reading,*

Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Wisconsin's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of the Wisconsin SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.2570). Further, in a submittal dated December 12, 2007, Wisconsin confirmed that the State continues to meet the section 110 requirements for the 8-hour ozone standard. EPA has not yet taken rulemaking action on this submittal; however, such approval is not necessary for redesignation.

ii. Part D Requirements

EPA has determined that, if EPA finalizes the approval of the base year emissions inventories discussed in section VI.C. of this rulemaking, the Wisconsin SIP will meet the applicable SIP requirements for the Manitowoc County and Door County areas applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

Since the Manitowoc County and Door County areas were not classified under subpart 2, of Part D at the time the redesignation requests were submitted, the subpart 2 requirements do not apply for purposes of evaluating the State's redesignation requests. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176.

Subpart 1 Section 172 Requirements

For purposes of evaluating these redesignation requests, the applicable section 172 SIP requirements for the Manitowoc County and Door County areas are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section

172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the primary NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. (40 CFR 51.918).

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Manitowoc County and Door County areas have monitored attainment of the ozone NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918. In addition, because the Manitowoc County and Door County areas have attained the ozone NAAQS and are no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. Wisconsin submitted 2005 base year emissions inventories on June 12, 2007. As discussed below in section VI.C., EPA is proposing to approve the 2005 base year inventories as meeting the section 172(c)(3) emissions inventory requirement for the Manitowoc County and Door County areas.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Wisconsin's current NSR program on December 17, 2008 (73 FR 76558 and 76560). Nonetheless, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment NSR program be

¹ On October 27, 1998 (63 FR 57356), EPA issued a NO_x SIP Call requiring the District of Columbia and 22 States to reduce emissions of NO_x in order to reduce the transport of ozone and ozone precursors. Wisconsin was not included in EPA's NO_x SIP Call.

approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Wisconsin has demonstrated that the Manitowoc County and Door County areas will be able to maintain the standard without part D NSR in effect; therefore, the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the Manitowoc County and Door County areas upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

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

Subpart 1 Section 176 Conformity Requirements

Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation

request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if State rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida).

EPA approved Wisconsin's general and transportation conformity SIPs on July 29, 1996 (61 FR 39329), and August 27, 1996 (61 FR 43970), respectively. Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005 (Pub. L. 109–59). Among the changes Congress made to this section of the CAA were streamlined requirements for State conformity SIPs. Wisconsin is in the process of updating its transportation conformity SIP to meet these new requirements. Wisconsin has submitted onroad MVEBs for the Manitowoc County area of 1.76 and 1.25 tpd VOC and 3.76 and 1.86 tpd NO_x for the years 2012 and 2020, respectively and MVEBs for the Door County area of 0.78 and 0.53 tpd VOC and 1.55 and 0.74 tpd NO_x for the years 2012 and 2020, respectively. The areas must use the MVEBs from the maintenance plans in any conformity determination that is effective on or after the effective date of the adequacy finding and/or the maintenance plans' approval.

b. The Manitowoc County and Door County Areas Have Fully Approved Applicable SIPs under Section 110(k) of the CAA

If EPA issues a final approval of the base year emissions inventories, EPA will have fully approved the Wisconsin SIP for the Manitowoc County and Door County areas 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 page 3 of the

September 4, 1992, John Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Wisconsin has adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under the 1-hour ozone standard. In this action, EPA is proposing to approve Wisconsin's 2005 base year emissions inventories for the Manitowoc County and Door County areas as meeting the requirement of section 172(c)(3) of the CAA. No Manitowoc County or Door County area SIP provisions are currently disapproved, conditionally approved, or partially approved.

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

EPA finds that Wisconsin has demonstrated that the observed air quality improvement in the Manitowoc County and Door County areas is due to permanent and enforceable reductions in emissions resulting from implementation of the SIPs, Federal measures, and other State-adopted measures.

In making this demonstration, WDNR has calculated the change in emissions between 2002 and 2007. Wisconsin developed an emissions inventory for 2002, one of the years used to designate the areas as nonattainment. The State developed an attainment inventory for 2007, one of the years the Manitowoc County and Door County areas monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Manitowoc and Door Counties and upwind areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

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

i. Federal Emission Control Measures

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

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower VOC and NO_x emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO_x emission reductions will occur nationwide: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent); and, larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Some of these emission reductions occurred by the 2007–2009 period used to demonstrate attainment, and additional emission reductions will occur during the maintenance period.

Heavy-Duty Diesel Engine Rule. EPA issued this rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which further reduced the highway diesel fuel sulfur content to 15 ppm, leading to additional reductions in combustion NO_x and VOC emissions. This rule is expected to achieve a 95 percent reduction in NO_x emissions from diesel trucks and busses.

Non-Road Diesel Rule. EPA issued this rule in 2004. This rule applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO_x emissions from non-road diesel engines by up to 90 percent. This rule is currently achieving emission reductions, but will not be fully implemented until 2010.

Maximum Achievable Control Technology (MACT) Rules. EPA has promulgated numerous MACT standards, many of which limit VOC emissions. Compliance began for many of the MACT rules from late 2005 through 2007.

ii. Control Measures in Upwind Areas

NO_x Reasonably Available Control Technology (RACT). Wisconsin adopted NO_x RACT regulations for the upwind Milwaukee-Racine area. The emission

requirements apply to stationary combustion units at major sources, with compliance required by May 1, 2009. The RACT rule is estimated to achieve reductions of over 29,000 tpy of NO_x emissions from 2002 levels.

NO_x SIP Call. On October 27, 1998 (63 FR 57356), EPA issued a NO_x SIP Call requiring the District of Columbia and 22 States to reduce emissions of NO_x. Affected States were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. The reduction in NO_x emissions has resulted in lower concentrations of transported ozone entering the Manitowoc County and Door County areas. Emission reductions resulting from regulations developed in response to the NO_x SIP Call are permanent and enforceable.

b. Emission Reductions

States are required to develop periodic emissions inventories every three years. (40 CFR part 51, subpart A). Wisconsin is using the periodic emissions inventory from 2002 as the nonattainment inventory. Point source sector emissions inventories were developed using reported point source emissions, EPA's Clean Air Markets database and approved EPA techniques for emissions calculations. Emissions were estimated by collecting process-level information from each facility that qualifies for inclusion into WDNR's point source database. Process, boiler, fugitive and tank emissions were typically calculated using throughput information multiplied by an emission factor for the process. Emission factor sources included mass balance, stack testing, continuous emissions monitors, engineering judgment and EPA's Factor Information Retrieval database.

Area source emissions were generated by backcasting from the 2005 periodic emissions inventory to minimize differences between the nonattainment and attainment inventories due to changes in methodology. The backcasting factors were based on 2002–2008 growth factors including the Census Bureau's County Business Pattern employment data, growth factors developed for the Lake Michigan Air Directors Consortium (LADCO) by E.H. Pechan & Associates, Inc. (Pechan); and the Economic Growth Analysis System (EGAS6.0). Area source emissions estimates for the 2005 periodic inventory were calculated using population, gasoline consumption, employment, crop acreages, and other activity surrogates. The results of an EPA Solvent Mass Balance study were

used to estimate emissions for some categories. Emission factors were derived from local data, local or national surveys and EPA guidance for the development of emissions inventories. Point source emissions were subtracted from total category specific area source emissions to prevent double counting.

Nonroad mobile source emissions were calculated using EPA's National Mobile Inventory Model (NMIM) and emissions estimates developed for commercial marine vessels, aircraft, and railroads (MAR), three nonroad categories not included in NMIM. Before NMIM was run, the following modifications and additions were made to the NMIM input data: (1) Revised activity data for construction equipment using updates provided by Pechan; (2) revised allocation data for recreational marine equipment using updates provided by ENVIRON International Corporation (ENVIRON); (3) added emission factors for diesel tampers/ rammers provided by Pechan; (4) revised population data for construction and recreational marine equipment using updates provided by Pechan and ENVIRON, respectively; (5) revised growth rates using updates provided by Pechan; and (6) revised gasoline parameters, including Reid Vapor Pressure, oxygenate content and sulfur content, using updates provided by the States and Pechan. Onroad mobile source emissions were calculated using the MOBILE6.2 emissions model.

Wisconsin developed a 2007 attainment year inventory using the methodologies described above to estimate point, nonroad mobile and onroad mobile sector emissions. Area source emissions were generated by applying growth factors and applicable emission controls to the 2005 area source sector inventory. Growth factors include the Census Bureau's County Business Pattern employment data, growth factors developed for LADCO by Pechan; and EGAS6.0.

Using the inventories described above, Wisconsin's submittal documents changes in VOC and NO_x emissions from 2002 to 2007 for the Manitowoc County and Door County areas. Because Manitowoc and Door Counties are impacted by transport, WDNR also documented emissions reductions for the upwind Wisconsin areas of Sheboygan and Milwaukee-Racine. Emissions data are shown in Tables 2 through 6 below.

BILLING CODE 6560-50-P

Table 2. VOC and NO_x Emissions for Nonattainment Year 2002 (tpd)

Area	VOC					NO _x				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Door	0.23	1.57	1.39	9.63	12.82	0.01	0.19	2.68	6.74	9.62
Manitowoc	1.58	4.63	3.26	3.59	13.06	2.83	0.42	7.41	4.21	14.87
Sheboygan	2.50	7.59	3.76	5.62	19.47	26.07	1.00	8.25	4.47	39.79
Milwaukee-Racine	14.72	106.61	45.36	61.19	227.88	114.73	12.87	103.18	51.94	282.72

Table 3. VOC and NO_x Emissions for Attainment Year 2007 (tpd)

Area	VOC					NO _x				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Door	0.30	1.51	0.93	8.85	11.59	0.002	0.20	1.97	5.28	7.452
Manitowoc	1.43	4.39	2.24	3.15	11.21	3.13	0.43	5.38	3.61	12.55
Sheboygan	2.26	7.08	2.50	5.02	16.86	12.99	1.04	5.81	3.73	23.57
Milwaukee-Racine	12.20	98.55	31.39	48.45	190.59	41.69	13.30	73.21	45.66	173.86

Table 4. Comparison of 2002 and 2007 VOC and NO_x Emissions for Manitowoc County (tpd)

	VOC			NO _x		
	2002	2007	Net Change (2002-2007)	2002	2007	Net Change (2002-2007)
Point	1.58	1.43	-0.15	2.83	3.13	0.30
Area	4.63	4.39	-0.24	0.42	0.43	0.01
Onroad	3.26	2.24	-1.02	7.41	5.38	-2.03
Nonroad	3.59	3.15	-0.44	4.21	3.61	-0.60
Total	13.06	11.21	-1.85	14.87	12.55	-2.32

Table 5. Comparison of 2002 and 2007 VOC and NO_x Emissions for the Door County (tpd)

	VOC			NO _x		
	2002	2007	Net Change (2002-2007)	2002	2007	Net Change (2002-2007)
Point	0.23	0.30	0.07	0.01	0.002	-0.01
Area	1.57	1.51	-0.06	0.19	0.20	0.01
Onroad	1.39	0.93	-0.46	2.68	1.97	-0.71
Nonroad	9.63	8.85	-0.78	6.74	5.28	-1.46
Total	12.82	11.59	-1.23	9.62	7.452	-2.17

Table 6. Comparison of 2002 and 2007 VOC and NO_x Emissions for Upwind Sheboygan and Milwaukee-Racine Areas (tpd)

	VOC			NO _x		
	2002	2007	Net Change (2002-2007)	2002	2007	Net Change (2002-2007)
Point	17.22	14.46	-2.76	140.80	54.68	-86.12
Area	114.20	105.63	-8.57	13.87	14.34	0.47
Onroad	49.12	33.89	-15.23	111.43	79.02	-32.41
Nonroad	66.81	53.47	-13.34	56.41	49.39	-7.02
Total	247.35	207.45	-39.90	322.51	197.43	-125.08

Table 4 shows that the Manitowoc County area reduced VOC emissions by 1.85 tpd and NO_x emissions by 2.32 tpd between 2002 and 2007. Table 5 shows that the Door County area reduced VOC emissions by 1.23 tpd and NO_x emissions by 2.17 tpd between 2002 and 2007. In addition, as shown in Table 6, the upwind areas of Sheboygan and Milwaukee-Racine reduced VOC emissions by 39.90 tpd and NO_x emissions by 125.08 tpd between 2002 and 2007. Based on the information summarized above, Wisconsin has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

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

In conjunction with its requests to redesignate the Manitowoc County and Door County nonattainment areas to attainment status, Wisconsin submitted SIP revisions to provide for the maintenance of the 8-hour ozone NAAQS in the areas through 2020.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the

possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum clarifies that an ozone maintenance plan should address the following items: the attainment VOC and NO_x emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The WDNR developed emissions inventories for 2007, one of the years used to demonstrate monitored attainment of the 8-hour NAAQS, as described above. The attainment level of emissions is summarized in Table 3, above.

c. Demonstration of Maintenance

Along with the redesignation requests, WDNR submitted revisions to the Wisconsin 8-hour ozone SIP to include maintenance plans for the Manitowoc County and Door County areas, as required by section 175A of the CAA. These demonstrations show maintenance of the 8-hour ozone standard through 2020 by showing that current and future emissions of VOC and NO_x for the areas remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club*

v. EPA, 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Wisconsin is using emissions inventory projections for the years 2012 and 2020 to demonstrate maintenance. Emissions estimates were generated for point sources, area sources, and the MAR portion of the nonroad mobile sector by applying growth factors and applicable emission controls to the 2005 emissions inventory. The 2005 emissions inventory was developed following the same methodologies described for the 2002 inventory, in section VI.A.3.b., above. Growth factors include the Census Bureau's County Business Pattern employment data, growth factors developed for LADCO by Pechan; and EGAS6.0. Growth factors were only available for emission projections to 2018. Emissions for 2020 were estimated using linear interpolation from 2018. For Electric Generating Unit (EGU) point sources, projections were performed on a facility by facility basis. The growth in generation emissions considers corporate utility growth in electricity demand and the potential dispatch by the regional Midwest Independent Transmission System Operator to meet broader demand. The growth in electricity consumption by load type is based on growth rate projections by the Wisconsin Public Service Commission and historic growth rates. Nonroad mobile emissions, excluding MAR, were calculated using NMIM with the modifications and additions to the input data described in section VI.A.3.b., above. Onroad mobile source emissions were calculated using the MOBILE6.2 emissions model. Emissions data are shown in Tables 7 through 11, below.

BILLING CODE 6560-50-P

Table 7. VOC and NO_x Emissions for Interim Year 2012 (tpd)

Area	VOC					NO _x				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Door	0.16	1.52	0.78	7.53	9.99	0.002	0.20	1.55	5.49	7.242
Manitowoc	1.64	4.41	1.76	2.59	10.40	3.69	0.44	3.76	3.16	11.05
Sheboygan	2.88	7.02	2.01	4.12	16.03	15.07	1.07	4.15	2.92	23.21
Milwaukee-Racine	16.34	98.00	22.66	40.60	177.60	57.48	13.52	47.27	37.16	155.43

Table 8. VOC and NO_x Emissions for Maintenance Year 2020 (tpd)

Area	VOC					NO _x				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Door	0.15	1.59	0.53	6.36	8.63	0.002	0.20	0.74	5.24	6.182
Manitowoc	2.08	4.62	1.25	2.27	10.22	3.74	0.46	1.86	2.61	8.67
Sheboygan	3.71	7.20	1.32	3.51	15.74	10.52	1.12	1.79	2.03	15.46
Milwaukee-Racine	20.20	101.41	14.91	38.99	175.51	50.98	13.89	20.41	30.06	115.34

Table 9. Comparison of 2007, 2012 and 2020 VOC and NO_x Emissions for Manitowoc County (tpd)

	VOC					NO _x				
	2007	2012	2020	Net Change (2007-2012)	Net Change (2007-2020)	2007	2012	2020	Net Change (2007-2012)	Net Change (2007-2020)
Point	1.43	1.64	2.08	0.21	0.65	3.13	3.69	3.74	0.56	0.61
Area	4.39	4.41	4.62	0.02	0.23	0.43	0.44	0.46	0.01	0.03
Onroad	2.24	1.76	1.25	-0.48	-0.99	5.38	3.76	1.86	-1.62	-3.52
Nonroad	3.15	2.59	2.27	-0.56	-0.88	3.61	3.16	2.61	-0.45	-1.00
Total	11.21	10.40	10.22	-0.81	-0.99	12.55	11.05	8.67	-1.50	-3.88

Table 10. Comparison of 2007, 2012 and 2020 VOC and NO_x Emissions for Door County (tpd)

	VOC					NO _x				
	2007	2012	2020	Net Change (2007-2012)	Net Change (2007-2020)	2007	2012	2020	Net Change (2007-2012)	Net Change (2007-2020)
Point	0.30	0.16	0.15	-0.14	-0.15	0.002	0.002	0.002	0.00	0.00
Area	1.51	1.52	1.59	0.01	0.08	0.20	0.20	0.20	0.00	0.00
Onroad	0.93	0.78	0.53	-0.15	-0.40	1.97	1.55	0.74	-0.42	-1.23
Nonroad	8.85	7.53	6.36	-1.32	-2.49	5.28	5.49	5.24	0.21	-0.04
Total	11.59	9.99	8.63	-1.60	-2.96	7.452	7.242	6.182	-0.21	-1.27

Table 11. Comparison of 2007, 2012 and 2020 VOC and NO_x Emissions for Upwind Sheboygan and Milwaukee-Racine Areas (tpd)

	VOC					NO _x				
	2007	2012	2020	Net Change (2007-2012)	Net Change (2007-2020)	2007	2012	2020	Net Change (2007-2012)	Net Change (2007-2020)
Point	14.46	19.22	23.91	4.76	9.45	54.68	72.55	61.50	17.87	6.82
Area	105.63	105.02	108.61	-0.61	2.98	14.34	14.59	15.01	0.25	0.67
Onroad	33.89	24.67	16.23	-9.22	-17.66	79.02	51.42	22.20	-27.60	-56.82
Nonroad	53.47	44.72	42.50	-8.75	-10.97	49.39	40.08	32.09	-9.31	-17.30
Total	207.45	193.63	191.25	-13.82	-16.20	197.43	178.64	130.80	-18.79	-66.63

The emission projections show that Wisconsin does not expect emissions in the Manitowoc County and Door County areas to exceed the level of the 2007 attainment year inventory during the maintenance period, even without implementation of CAIR. (See also discussion below.) As shown in Table 9, VOC and NO_x emissions in the Manitowoc County area are projected to decrease by 0.99 tpd and 3.88 tpd, respectively, between 2007 and 2020. As shown in Table 10, VOC and NO_x emissions in the Door County area are projected to decrease by 2.96 tpd and 1.27 tpd, respectively, between 2007 and 2020. In addition, as shown in Table 11, VOC and NO_x emissions in the upwind areas of Sheboygan and Milwaukee-Racine are projected to decrease by 16.20 tpd and 66.63 tpd, respectively, between 2007 and 2020.

In addition, LADCO performed a regional modeling analysis to address

the effect of the recent court decision vacating CAIR. This analysis is documented in LADCO's "Regional Air Quality Analyses for Ozone, PM_{2.5}, and Regional Haze: Final Technical Support Document (Supplement), September 12, 2008." LADCO produced a base year inventory for 2005 and future year inventories for 2009, 2012, and 2018. To estimate future EGU NO_x emissions without implementation of CAIR, LADCO projected 2007 EGU NO_x emissions for all States in the modeling domain based on Energy Information Administration growth rates by State (North American Electric Reliability Corporation (NERC) region) and fuel type for the years 2009, 2012 and 2018. The assumed 2007–2018 growth rates were 8.8% for Illinois, Iowa, Missouri and Wisconsin; 13.5% for Indiana, Kentucky, Michigan and Ohio; and 15.1% for Minnesota. Emissions were adjusted by applying legally enforceable

controls, e.g., consent decree or rule. EGU NO_x emissions projections for the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin are shown below in Table 12. The emission projections used for the modeling analysis do not account for certain relevant factors such as allowance trading and potential changes in operation of existing control devices. The NO_x projections indicate that, due to the NO_x SIP Call, certain State rules, consent decrees resulting from enforcement cases, and ongoing implementation of a number of mobile source rules, EGU NO_x is not expected to increase in Wisconsin, or any of the States in the immediate region, and overall NO_x emissions in Wisconsin, and the nearby region are expected to decrease substantially between 2005 and 2020.² Total NO_x emissions projections are shown in Table 13, below.

² There is more uncertainty about the use of SO₂ allowances and future projections for SO₂

emissions; thus, further review and discussion will be needed regarding the appropriateness of using

these emission projections for future PM_{2.5} SIP approvals and redesignation requests.

TABLE 12—EGU NO_x EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR 2007, 2009, 2012, AND 2018

	2007	2009	2012	2018
EGU	1,582	1,552	1,516	1,524

TABLE 13—TOTAL NO_x EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR THE YEARS 2005, 2009, 2012, AND 2018

	2005	2009	2012	2018
Total NO _x	8,260	6,778	6,076	4,759

Given that 2007 is one of the years Wisconsin used to demonstrate monitored attainment of the 8-hour NAAQS, Table 12 shows that EGU NO_x emissions will remain below attainment levels through 2018. If the rate of emissions increase between 2012 and 2018 continues through 2020, EGU NO_x emissions would still remain below attainment levels in 2020. Furthermore, as shown in Table 13, total NO_x emissions clearly continue to decrease substantially throughout the maintenance period.

Ozone modeling performed by LADCO supports the conclusion that the Manitowoc County and Door County areas will maintain the standard throughout the maintenance period. Peak modeled ozone levels in the Manitowoc County area for 2009, 2012 and 2018 are 0.081 ppm, 0.079 ppm, and 0.073 ppm, respectively. Peak modeled ozone levels in the Door County area for 2009, 2012 and 2018 are 0.084 ppm, 0.081 ppm, and 0.076 ppm, respectively. These projected ozone levels were modeled applying only legally enforceable controls; *e.g.*, consent decrees, rules, the NO_x SIP Call, Federal motor vehicle control programs, *etc.* Because these programs will remain in place, emission levels, and therefore ozone levels, would not be expected to increase significantly between 2018 and 2020. Given that projected emissions and modeled ozone levels continue to decrease substantially through 2018, it is reasonable to infer that a 2020 modeling run would also show levels well below the 1997 8-hour ozone standard.

EPA has considered the relationship of the maintenance plans to the reductions required pursuant to CAIR. This rule 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 Wisconsin has demonstrated maintenance without any additional CAIR requirements (beyond those required by the NO_x SIP Call).

Therefore, EPA believes that Wisconsin's demonstration of maintenance under sections 175A and 107(d)(3)(E) is valid.

The NO_x SIP Call requires States to make significant, specific emissions reductions. It also provided a mechanism, the NO_x Budget Trading Program, which 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 25289–25290). 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 SIP Call, the 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.

d. Monitoring Network

Wisconsin currently operates one ozone monitor in Manitowoc County and one ozone monitor in Door County. Wisconsin has committed to continue to operate and maintain an approved ozone monitoring network in the Manitowoc County and Door County areas. WDNR has also committed to consult with EPA regarding any changes in siting that may become necessary in the future. Wisconsin remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the AQS in accordance with Federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Manitowoc County and Door County areas depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. Wisconsin's plan for verifying continued attainment of the 8-hour standard in the Manitowoc County and Door County areas consists of continued ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. WDNR will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002), and will evaluate future VOC and NO_x emissions inventories for increases over the 2007 emission inventory levels.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after

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

As required by section 175A of the CAA, Wisconsin has adopted contingency plans for the Manitowoc County and Door County areas to address possible future ozone air quality problems. A contingency plan response will be triggered whenever a three-year average fourth-high monitored value of 0.085 ppm or greater is monitored within the maintenance area. When a response is triggered, WDNR will evaluate existing but not fully implemented, on-the way, and, if necessary, new control measures to correct the violation of the standard within 18 months. The State has confirmed EPA's interpretation that this commitment means that the measure will be adopted and implemented within 18 months of the triggering event. In addition, it is EPA's understanding that to acceptably address a violation of the standard, existing and on-the way control measures must be in excess of emissions reductions included in the projected maintenance inventories.

WDNR included the following list of potential contingency measures in its maintenance plans:

- i. Broaden the application of the NO_x RACT program by including a larger geographic area, and/or including sources with potential emissions of 50 tons per year, and/or increasing the cost-effectiveness thresholds utilized as a basis for Wisconsin's NO_x RACT Program;
- ii. Develop an anti-idling control program for mobile sources targeting diesel vehicles;
- iii. Adopt a rule reducing VOC content in architectural, industrial and maintenance coatings; and
- iv. Adopt a rule reducing VOC content in commercial and consumer products.

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, WDNR commits to submit to the

EPA updated ozone maintenance plans eight years after redesignation of the Manitowoc County and Door County areas to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175A of the CAA, Wisconsin has committed to retain the VOC and NO_x control measures contained in the SIP prior to redesignation.

EPA has concluded that the maintenance plans adequately address the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Thus EPA proposes to find that the maintenance plan SIP revisions submitted by Wisconsin for the Manitowoc County and Door County areas meet the requirements of section 175A of the CAA.

B. Adequacy of Wisconsin's MVEBs

1. How are MVEBs developed and what are the MVEBs for the Manitowoc County and Door County areas?

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

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

Under section 176(c) of the CAA, new transportation projects that receive Federal funding or support, such as the construction of new highways, must "conform" to (i.e., be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a

transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively approve or find that the MVEBs are "adequate" for use in determining transportation conformity before the MVEBs can be used. Once EPA affirmatively approves or finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs must be used by State and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

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

The maintenance plans submitted by Wisconsin for the Manitowoc County and Door County areas contain new VOC and NO_x MVEBs for the areas for the years 2012 and 2020. The availability of the SIP submission with these 2012 and 2020 MVEBs was announced for public comment on EPA's Adequacy Web site on February 24, 2010, at: <http://www.epa.gov/otaq/stateresources/transconf/cursips.htm>. The EPA public comment period on adequacy of the 2012 and 2020 MVEBs for the Manitowoc County and Door County areas closed on March 26, 2010. No adverse comments on the submittal were received during the adequacy comment period.

EPA, through this rulemaking, has found adequate and is proposing to approve the MVEBs for use to determine transportation conformity in the Manitowoc County and Door County areas, because EPA has determined that the areas can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. WDNR has determined the 2012 MVEBs for the Manitowoc County and Door County areas to be 1.76 tpd for VOC and 3.76 tpd for NO_x, and 0.78 tpd for VOC

and 1.55 tpd for NO_x, respectively. WDNR has determined the 2020 MVEBs for the Manitowoc County and Door County areas to be 1.25 tpd for VOC and 1.86 tpd for NO_x, and 0.53 tpd for VOC and 0.74 tpd for NO_x, respectively. These MVEBs are consistent with the onroad mobile source VOC and NO_x emissions projected by the Wisconsin Department of Transportation for 2012 and 2020, as summarized in Tables 9 and 10 above. Wisconsin has demonstrated that the Manitowoc County area can maintain the 8-hour ozone NAAQS with mobile source emissions of 1.76 tpd and 1.25 tpd of VOC and 3.76 tpd and 1.86 tpd of NO_x in 2012 and 2020, respectively, since emissions will remain under attainment year emission levels. Wisconsin has demonstrated that the Door County area can maintain the 8-hour ozone NAAQS with mobile source emissions of 0.78 tpd and 0.53 tpd of VOC and 1.55 tpd and 0.74 tpd of NO_x in 2012 and 2020, respectively, since emissions will remain under attainment year emission levels.

C. 2005 Base Year Emissions Inventories

As discussed above, section 172(c)(3) of the CAA requires areas to submit a base year emissions inventory. On June 12, 2007, WDNR submitted a 2005 base year emissions inventory to meet this requirement. Emissions contained in the submittal cover the general source categories of point sources, area sources,

on-road mobile sources, and non-road mobile sources. All emission summaries were accompanied by descriptions of emission calculation procedures and sources of input data.

Point source sector emissions inventories were developed using reported point source emissions, EPA's Clean Air Markets database and approved EPA techniques for emissions calculations. Emissions were estimated by collecting process-level information from each facility that qualifies for inclusion into WDNR's point source database. Process, boiler, fugitive and tank emissions were typically calculated using throughput information multiplied by an emission factor for the process. Emission factor sources included mass balance, stack testing, continuous emissions monitors, engineering judgment and EPA's Factor Information Retrieval database.

Area source emissions were calculated using population, gasoline consumption, employment, crop acreages, and other activity surrogates. The results of an EPA Solvent Mass Balance study were used to estimate emissions for some categories. Emission factors were derived from local data, local or national surveys and EPA guidance for the development of emissions inventories. Point source emissions were subtracted from total category specific area source emissions to prevent double counting.

Nonroad mobile source emissions were calculated using EPA's NMIM and emissions estimates developed for commercial marine vessels, aircraft, and railroads (MAR), three nonroad categories not included in NMIM. Before NMIM was run, the following modifications and additions were made to the NMIM input data: (1) Revised activity data for construction equipment using updates provided by Pechan; (2) revised allocation data for recreational marine equipment using updates provided by ENVIRON International Corporation (ENVIRON); (3) added emission factors for diesel tampers/rammers provided by Pechan; (4) revised population data for construction and recreational marine equipment using updates provided by Pechan and ENVIRON, respectively; (5) revised growth rates using updates provided by Pechan; and (6) revised gasoline parameters, including Reid Vapor Pressure, oxygenate content and sulfur content, using updates provided by the States and Pechan. Onroad mobile source emissions were calculated using the MOBILE6.2 emissions model.

The 2005 summer day emissions of VOC and NO_x for the Manitowoc County and Door County areas are summarized in Table 14, below. EPA is proposing to approve these 2005 base year inventories as meeting the section 172(c)(3) emissions inventory requirement.

Table 14. VOC and NO_x Emissions for Base Year 2005 (tpd).

Area	VOC					NO _x				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Door	0.251	1.910	1.046	9.305	12.512	0.003	0.259	2.453	5.348	8.063
Manitowoc	1.796	5.827	2.575	3.380	13.578	5.073	0.526	7.355	3.814	16.768

VII. What actions is EPA taking?

EPA is proposing to determine that the Manitowoc County and Door County areas have attained the 1997 8-hour ozone NAAQS. EPA is proposing to approve the redesignations of the Manitowoc County and Door County areas from nonattainment to attainment for the 1997 8-hour ozone NAAQS. After evaluating the redesignation requests submitted by Wisconsin, EPA believes that the requests meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. The final approval of these redesignation requests would change the official designations for the Manitowoc County and Door County areas from nonattainment to attainment for the 1997 8-hour ozone

standard. EPA is also proposing to approve the maintenance plan SIP revisions for the Manitowoc County and Door County areas. EPA's proposed approvals of the maintenance plans is based on the State's demonstration that the plans meet the requirements of section 175A of the CAA, as described more fully above. EPA is proposing to approve WDNR's 2005 base year emissions inventories for the Manitowoc County and Door County areas as meeting the requirements of section 172(c)(3) of the CAA. Finally, EPA finds adequate and is proposing to approve Wisconsin's 2012 and 2020 MVEBs for the Manitowoc County and Door County areas.

VIII. Statutory and Executive Order Reviews

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

Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely do not impose additional requirements beyond those imposed by State law and the Clean Air Act. For that reason, these actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental

relations, Ozone, Nitrogen dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: April 14, 2010.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. 2010-9753 Filed 4-26-10; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R8-ES-2010-0006]

[MO 92210-0-0008 B2]

Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition to List the Mohave Ground Squirrel as Endangered with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Mohave ground squirrel (*Xerospemophilus mohavensis*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the Mohave ground squirrel may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if listing the species is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act. We will make a determination on critical habitat for this species, which was also requested in the petition, if and when we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before June 28, 2010. After this date, you must

submit information directly to the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the date noted above.

ADDRESSES: You may submit information by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for docket FWS-R8-ES-2010-0006 and then follow the instructions for submitting comments.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R8-ES-2010-0006; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Michael McCrary, Listing and Recovery Coordinator, Ventura Fish and Wildlife Office, 2593 Portola Road, Suite B, Ventura, CA 93003; telephone (805) 644-1766; facsimile (805) 644-3958. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the Mohave ground squirrel from government agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

- (1) The species' biology, range, and population trends, including:
 - (a) Habitat requirements for feeding, breeding, and sheltering;
 - (b) Genetics and taxonomy;
 - (c) Historical and current range, including distribution patterns;
 - (d) Historical and current population levels, and current and projected trends; and
 - (e) Past and ongoing conservation measures for the species, its habitat, or both.