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Susan Hedman,

Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2009-0666; FRL-9629-3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Illinois; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from Illinois to redesignate the Illinois portion of the Chicago-Gary-Lake County, Illinois-Indiana (IL-IN) ozone nonattainment area (the Greater Chicago area) to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard) because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). The Illinois portion of the Greater Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and portions of Grundy (Aux Sable and Goose Lake Townships) and Kendall (Oswego Township) Counties. The Illinois Environmental Protection Agency (IEPA) submitted this request on July 23, 2009, and supplemented its request in a submittal on September 16, 2011. EPA is proposing to approve, as a revision of the Illinois State Implementation Plan (SIP), the State's plan for maintaining the 1997 8-hour ozone standard through 2025 in the Illinois portion of the Greater Chicago area. EPA is proposing to approve 2002 Volatile Organic Compound (VOC) and Nitrogen Oxides (NO_x) emission inventories for the Illinois portion of the Greater Chicago area as a revision of the Illinois SIP because the emission inventories meet the requirements of section 182(a) of the CAA. Finally, EPA proposes to approve the State's 2008 and 2025 VOC and NO_x Motor Vehicle Emission Budgets (MVEBs) for the Illinois portion of the Greater Chicago area.

DATES: Comments must be received on or before March 12, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0666, by one of the following methods:

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

- **Email:** aburano.douglas@epa.gov.

- **Fax:** (312) 408-2279.

- **Mail:** Douglas Aburano, Chief, Attainment Planning and Maintenance Section (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

- **Hand Delivery:** Douglas Aburano, Chief, Attainment Planning and Maintenance Section (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's 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-2009-0666. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects and viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov

index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the U.S. 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 Edward Doty at (312) 886-6057 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Edward Doty, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6057, or Doty.Edward@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:

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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 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 in the proposed rule.

II. What actions is EPA proposing?

EPA is proposing to take several related actions. First, EPA is proposing to approve the redesignation of the Illinois portion of the Greater Chicago area from nonattainment to attainment of the 1997 8-hour ozone NAAQS. EPA is also proposing to approve Illinois' ozone maintenance plan for the Illinois portion of the Greater Chicago area as a

revision of the Illinois SIP (such approval being one of the CAA criteria for redesignation to attainment). The ozone maintenance plan demonstrates that the Greater Chicago area should remain in attainment of the 1997 8-hour ozone standard through 2025, and specifies the measures that will be taken in the Illinois portion of the Greater Chicago area to assure maintenance of the 1997 8-hour ozone standard in the Greater Chicago area.

EPA is proposing to approve 2002 VOC and NO_x emission inventories for the Illinois portion of the Greater Chicago area as a revision of the Illinois SIP. These emission inventories satisfy the requirements in section 182(a)(1) of the CAA for comprehensive, accurate, and current emission inventories.

Finally, EPA is proposing to approve VOC and NO_x 2008 and 2025 MVEBs for the Illinois portion of the Greater Chicago area.

III. What is the background for these actions?

A. General Background

EPA has determined that ground-level ozone (O₃) is detrimental to human health. On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone NAAQS of 0.08 parts per million parts of air (0.08 ppm) (the 1997 8-hour ozone standard). This standard is violated in an area when any monitor in the area records 8-hour ozone concentrations with a 3-year average of the annual fourth-highest daily maximum 8-hour ozone concentrations equaling or exceeding 0.085 ppm.

Ground-level ozone is generally not emitted directly by sources. Rather, emitted NO_x and VOC react in the presence of sunlight to form ground-level ozone, as a secondary pollutant, along with other secondary compounds. NO_x and VOC are "ozone precursors." Reduction of peak ground-level ozone concentrations is achieved through controlling VOC and NO_x emissions.

Section 107 of the CAA required EPA to designate as nonattainment any area that violated the 1997 8-hour ozone standard. EPA promulgated 8-hour ozone designations and classifications on April 30, 2004 (69 FR 23857). The Greater Chicago area was designated and classified as a moderate nonattainment area for the 1997 8-hour ozone standard. The designation and classification became effective on June 15, 2004.

The CAA contains two sets of provisions, subparts 1 and 2, that address planning and emission control requirements for ozone nonattainment areas. Both of these subparts are found

in title I, part D of the CAA; sections 171–179 and sections 181–185, respectively. Subpart 1 contains general, less prescriptive requirements for all nonattainment areas of any pollutant, including ozone, governed by a NAAQS. Subpart 2 contains additional, more specific requirements for certain ozone nonattainment areas, and applies to ozone nonattainment areas classified under section 181 of the CAA.

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 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration at the worst-case monitoring site in the area or in its immediate downwind environs), if it had a 1-hour ozone design value¹ at the time of designation at or above 0.121 ppm. All other areas were covered under subpart 1 based on their 8-hour ozone design values² (69 FR 23958). The Greater Chicago area was designated as a subpart 2 moderate ozone nonattainment area by EPA on April 30, 2004 (69 FR 23898), based on air quality monitoring data from 2001–2003 (69 FR 23898).

40 CFR 50.10 and 40 CFR part 50, appendix I provide that the 8-hour ozone standard is attained when the 3-year averages of the annual fourth-highest daily maximum 8-hour average ozone concentrations at all monitoring sites in the area are less than or equal to 0.08 ppm. The ozone data must be complete over the 3-year period, meeting the data completeness requirements of 40 CFR part 50, appendix I, section 2.3(d).

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm (the 2008 8-hour ozone standard). EPA has not yet promulgated area designations for this standard. The actions addressed in this proposed rule relate only to the 1997 8-hour ozone standard.

On July 23, 2009, IEPA requested that EPA redesignate the Illinois portion of the Greater Chicago area to attainment for the 1997 8-hour ozone standard based on ozone data for the period of 2006–2008. On September 16, 2011, IEPA supplemented the original redesignation request, submitting ozone data for the period of 2008–2010, revising the mobile source emission estimates using EPA's new on-road

¹ Fourth-highest daily maximum 1-hour ozone concentration over a 3-year period at the worst-case monitoring site in the area.

² Three-year averages of the annual fourth-highest daily maximum 8-hour ozone concentrations at the worst-case monitoring sites in the areas.

mobile source emissions model, MOVES, and extending the demonstration of maintenance through 2025, with new MVEBs.

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 Ozone Implementation Rule?

1. Summary of Court Decisions

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's Phase 1 implementation rule for the 1997 8-hour ozone standard (69 FR 23591, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit Court (Court) clarified that the Phase 1 rule was vacated only for 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 ozone nonattainment areas; 8-hour ozone attainment dates for these areas; and, the timing of emission reductions needed for attainment of the 8-hour ozone NAAQS in these areas. The June 8, 2007, decision also left intact the Court's rejection of EPA's reasons for implementing the 8-hour ozone standard in certain nonattainment areas under subpart 1 in lieu of subpart 2 of the CAA. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour ozone 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 failed to retain four measures required for 1-hour ozone nonattainment areas under the anti-backsliding provisions of the regulations: (1) Part D 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 ozone 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 ozone NAAQS, or for failure to attain the NAAQS; and, (4) certain transportation conformity requirements for 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 MVEBs until 8-hour MVEBs are available for the 8-hour conformity determinations.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below in sections III.B.2 and B.3, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing and ultimately finalizing this redesignation. EPA believes that the Court's decisions impose no impediment to moving forward with redesignation of this area to attainment, because, even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

2. Requirements Under the 8-Hour Ozone Standard

With respect to the 1997 8-hour ozone standard, the Greater Chicago area is classified as moderate nonattainment under subpart 2, part D of the CAA. The June 8, 2007, decision clarifies that the Court did not vacate the Phase 1 rule's provisions with respect to classifications for areas under subpart 2. The Court's decision, therefore, upholds EPA's classifications for those areas classified under subpart 2 for the 1997 8-hour ozone standard, and all 8-hour ozone requirements for these areas remain in place.

3. Requirements Under the 1-Hour Ozone Standard

In its June 8, 2007, decision, the Court limited its Phase 1 rule vacatur so as to uphold provisions of EPA's anti-backsliding requirements that were not successfully challenged. Therefore, an area must meet the anti-backsliding requirements which apply by virtue of the area's classification for the 1-hour ozone standard. See 40 CFR 51.900, *et seq.*; 70 FR 30592, 30604 (May 26, 2005). As set forth in more detail below, the area must address four anti-backsliding provisions identified by the Court in its decisions.

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe 1-hour ozone standard requirements that continue to apply after revocation of the 1-hour ozone standard for former 1-hour ozone nonattainment areas. Section 51.905(a)(1)(i) provides that:

The area remains subject to the obligation to adopt and implement the applicable requirements as defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of

this section, and except as provided in paragraph (b) of this section.

Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), provides that:

Applicable requirements means for an area that the following requirements, to the extent such requirements applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS, remain in effect:

(1) Reasonably available control technology (RACT).

(2) Inspection and maintenance programs (I/M).

(3) Major source applicability cut-offs for purposes of RACT.

(4) Rate of Progress (ROP) reductions.

(5) Stage II vapor recovery.

(6) Clean fuels fleet program under section 183(c)(4) of the CAA.

(7) Clean fuels for boilers under section 182(e)(3) of the CAA.

(8) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA. [Not a requirement for the Illinois portion of the Greater Chicago area.]

(9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.

(10) TCMs under section 182(c)(5) of the CAA.

(11) Vehicle miles traveled (VMT) provisions of section 182(d)(1) of the CAA.

(12) NO_x requirements under section 182(f) of the CAA.

(13) Attainment demonstration or alternative as provided under section 51.905(a)(1)(ii).

Pursuant to 40 CFR 51.905(c), the Illinois portion of the Greater Chicago area is subject to the obligations set forth in 51.905(a) and 51.900(f).

With regard to part D NSR requirements, EPA has determined that an area being redesignated to attainment need not have an approved nonattainment NSR program, provided that the state demonstrates maintenance of the standard in the area without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation dated October 14, 1994, titled, "Part D New Source Requirements for Areas Requesting Redesignation to Attainment." This policy assumes that the state's Prevention of Significant Deterioration (PSD) program will become effective in the area upon redesignation of the area to attainment. Consequently, EPA concludes that an approved part D NSR program is not an applicable requirement for purposes of redesignation. See the more detailed explanations of this issue in the following rulemakings: 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, 53669, October 23, 2001); Grand Rapids, Michigan (61 FR 31831, 31836–31837, June 21, 1996).

The conformity portion of the Court's ruling does not impact the redesignation request for the Illinois portion of the Greater Chicago area except to the extent that the Court, in its June 8, 2007, decision clarified that, for those areas with MVEBs for the 1-hour ozone standard, anti-backsliding requires that these MVEBs must be used for 8-hour conformity determinations until replaced by MVEBs for the 8-hour ozone standard. 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. Note below that EPA is proposing to find adequate and approve 8-hour MVEBs established by Illinois' 8-hour ozone maintenance plan for the Illinois portion of the Greater Chicago area.

Severe ozone nonattainment areas must meet the CAA requirement for section 185 source penalty fees. Since the Greater Chicago area was classified as severe nonattainment under the 1-hour ozone standard, the Illinois portion of the Greater Chicago area and the Illinois SIP for this area are subject to this CAA requirement. It should be noted, however, that on December 30, 2008 (73 FR 79652), EPA published a final rule making a determination that the Greater Chicago area had attained the 1-hour ozone standard and confirming that this finding of attainment relieved Illinois (and Indiana) of the obligation to adopt section 185 source penalty fee regulations for this area.

Finally, with regard to the contingency measure requirements under sections 172(c)(9) and 182(c)(9) of the CAA, it is noted that these requirements must be addressed in state ozone Reasonable Further Progress (RFP) and attainment demonstration plans. Illinois addressed these requirements in the 1-hour ozone RFP and attainment demonstration plans for the Illinois portion of the Greater Chicago area by adopting and implementing extra VOC and NO_x emission controls that go beyond the emission reductions needed for RFP and attainment of the 1-hour ozone standard. EPA approved these ozone control plans, including their contingency elements: VOC-15 percent RFP plan (December 18, 1997, 62 FR 66279); post-1996 RFP plan (December 18, 2000, 65 FR 78961); and, 1-hour ozone attainment demonstration and post-1999 RFP plan (November 13,

2001, 66 FR 56904). Therefore, Illinois has met the contingency requirements of sections 172(c)(9) and 182(c)(9) of the CAA for the 1-hour ozone standard. As noted later in this proposed rule, Illinois has committed to retain and to implement all VOC and NO_x emission control measures under the 1-hour ozone RFP and attainment plans for the Illinois portion of the Greater Chicago area.

IV. What are the criteria for redesignation?

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

EPA provided guidance on redesignations 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).

Two significant policy documents affecting the review of ozone redesignation requests are the following: (1) "Procedures for Processing Requests To Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the September 4, 1992 Calcagni memorandum); and, (2) "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 (the May 10, 1995 Clean Data Policy memorandum). Additional guidance on

processing redesignation requests is included in the following documents:

- "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;
- "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 of 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, November 30, 1993; and,
- "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.

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

EPA is proposing to approve Illinois' ozone redesignation request for the Illinois portion of the Greater Chicago area with a determination that the Greater Chicago area has attained the 1997 8-hour ozone standard based on current ozone monitoring data for 2008–2010 and that the State of Illinois and the Illinois portion of this area have met all other applicable redesignation criteria for the 1997 8-hour ozone standard under section 107(d)(3)(E) of the CAA. The basis for EPA's proposed approval of the redesignation request is discussed in more detail as follows.

A. Has the Greater Chicago area attained the 1997 8-hour ozone NAAQS?

An area may be considered to be attaining the 1997 8-hour ozone NAAQS if there are no violations of the NAAQS, as determined in accordance with 40 CFR 50.10 and appendix I, based on the most recent 3 consecutive years of complete, quality-assured air quality monitoring data at all ozone monitoring sites in the area and in its nearby downwind environs. To attain this standard, the average of the annual fourth-high daily maximum 8-hour average ozone concentrations measured and recorded at each monitoring site over the most recent 3-year period (the monitoring site's ozone design value)

must not exceed 0.084 ppm. The data must be collected and quality-assured in accordance with 40 CFR part 58, and must be recorded in EPA's Air Quality System (AQS).

As part of the July 23, 2009, ozone redesignation request, IEPA summarized the annual fourth-high daily maximum 8-hour ozone concentrations and the 3-year 8-hour ozone design values for the period of 2006–2008 for all ozone monitoring sites in the Greater Chicago area. This ozone data summary also includes ozone concentration data for the Chiwaukee Prairie monitoring site in Wisconsin, an ozone peak downwind impact site for ozone precursor emissions originating in the Greater Chicago area. The September 16, 2011, updated ozone redesignation request

from Illinois also summarized the annual fourth-high ozone data for all monitoring sites for the period of 2006–2008.

Table 1 summarizes the monitoring site-specific annual fourth-high daily maximum 8-hour ozone concentrations and 3-year ozone design values for all monitoring sites covered in Illinois' ozone redesignation request for the period of 2006–2010. Note that we have included 2009 and 2010 ozone monitoring data in this summary. These additional data were obtained from EPA's AQS. Since Illinois' July 23, 2009, submittal of the ozone redesignation request, 2009 and 2010 ozone monitoring data have been quality assured and submitted to EPA's AQS.

TABLE 1—ANNUAL FOURTH-HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS IN PARTS PER MILLION (PPM) AND 3-YEAR AVERAGES

State/County	Monitoring site (AQS Site ID)	2006	2007	2008	2009	2010	3-Year average 2006–2008	3-Year average 2008–2010
Illinois:								
Cook	Alsip (170310001)	0.078	0.085	0.066	0.069	0.073	0.076	0.69
Cook	Chicago—SWFP (170310032)	0.075	0.082	0.067	0.065	0.074	0.074	0.069
Cook	Chicago—University of Chicago (170310064)	0.070	0.079	0.063	0.060	0.071	0.070	0.065
Cook	Chicago—Jardine (170310072)	0.065	0.075	0.063	0.062	0.071	0.067	0.065
Cook	Chicago—Commonwealth Edison (170310076)	0.075	0.080	0.066	0.067	0.068	0.073	0.067
Cook	Chicago—Taft (170311003)	0.077	0.079	0.064	0.064	0.070	0.073	0.066
Cook	Lemont (170311601)	0.070	0.085	0.071	0.067	0.073	0.075	0.070
Cook	Cicero (170314002)	0.060	0.068	0.060	0.067	0.068	0.062	0.065
Cook	Des Plaines (170314007)	0.065	0.078	0.057	0.050	0.064	0.066	0.057
Cook	Northbrook (170314201)	0.068	0.076	0.065	0.069	0.072	0.069	0.069
Cook	Evanston (170317002)	0.072	0.080	0.058	0.064	0.067	0.070	0.063
DuPage	Lisle (170436001)	0.062	0.072	0.057	0.059	0.064	0.063	0.060
Kane	Elgin (170890005)	0.062	0.075	0.061	0.068	0.069	0.066	0.066
Lake	Waukegan (170971002)	0.071	0.081	0.063	0.057	0.074	0.071	0.065
Lake	Zion (170971007)	0.068	0.080	0.069	0.075	0.078	0.072	0.074
McHenry	Cary (171110001)	0.057	0.074	0.065	0.066	0.065	0.065	0.065
Will	Braidwood (171971011)	0.068	0.071	0.060	0.063	0.065	0.066	0.063
Indiana:								
Lake	Gary (180890022)	0.073	0.085	0.062	0.058	0.064	0.073	0.061
Lake	Whiting (180890030)	0.081	0.088	0.062	0.062	0.069	0.077	0.064
Lake	Hammond (180892008)	0.075	0.077	0.068	0.065	0.069	0.073	0.067
Porter	Valparaiso (181270026)	0.071	0.080	0.061	0.064	0.061	0.070	0.062
Wisconsin:								
Kenosha	Chiwaukee Prairie (550590019)	0.079	0.085	0.072	0.071	0.081	0.078	0.075

IEPA notes that the 2006–2008 ozone design values for all monitoring sites are below the 0.084 ppm attainment level. We also note that the 2008–2010 ozone design values for all monitoring sites are below the 0.084 ppm attainment level. Therefore, the ozone monitoring data for the Greater Chicago area and for Chiwaukee Prairie in Wisconsin show attainment of the 1997 8-hour ozone standard.

IEPA commits to continue ozone monitoring at the Illinois monitoring sites in accordance with EPA-approved monitoring plans, as required to confirm

maintenance of the 1997 8-hour ozone standard. Should changes in the ozone monitoring system become necessary, IEPA commits to work with the EPA to assure the continued adequacy of the ozone monitoring network in the Illinois portion of the Greater Chicago area.

Based on the available ozone monitoring data, we conclude that the Greater Chicago area has attained the 1997 8-hour ozone standard, and has continued to attain this ozone standard through the most recent three years of quality-assured ozone monitoring data.

B. Has State of Illinois met all applicable requirements of Section 110 and Part D of the CAA for the Illinois portion of the Greater Chicago area, and does the Illinois portion of the Greater Chicago area have a fully approved SIP under Section 110(k) of the CAA?

In April 2004, the Greater Chicago area was designated as a moderate nonattainment area with a June 15, 2010, attainment deadline for the 1997 8-hour ozone standard. Prior to this, the Greater Chicago area had been designated as a severe nonattainment area with a November 15, 2007,

attainment deadline for the 1-hour ozone standard. As a result of these nonattainment designations, the State of Illinois was required to submit SIP revisions that meet certain ozone planning and emission control requirements of the CAA.

The September 4, 1992, Calcagni memorandum confirms that a state with an area seeking redesignation to attainment has to fully adopt rules and meet SIP requirements that come due prior to the submittal of a complete redesignation request. See also 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan); 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004); and, 70 FR 19895, 19900 (April 15, 2005) (redesignation of Cincinnati). Furthermore, requirements of the CAA that come due subsequent to the state's submittal of a complete redesignation request would continue to be applicable to the area until redesignation to attainment is approved, but are not required as a prerequisite for redesignation (see section 175A(c) of the CAA). If the redesignation is disapproved or is not completed due to a subsequent violation of the ozone standard in the area prior to final approval of the state's ozone redesignation request, the state remains obligated to fulfill these CAA requirements.

We are proposing to determine that the State of Illinois and the Illinois portion of the Greater Chicago area have met all currently applicable SIP requirements for purposes of redesignation of the Illinois portion of the Greater Chicago area to attainment under section 110 and part D of the CAA. We have determined that the Illinois SIP, with the exception of the 2002 base year VOC and NO_x emission inventories and certain VOC RACT rules: (1) Meets all SIP requirements currently applicable for purposes of redesignation under part D of title I of the CAA, in accordance with section 107(d)(3)(E)(v) of the CAA; and, (2) is fully approved with respect to all applicable requirements for purposes of redesignation to attainment of the 1997 8-hour ozone standard, in accordance with section 107(d)(3)(E)(ii) of the CAA.

As discussed below in section VII, EPA is proposing to approve Illinois' 2002 base year VOC and NO_x emission inventories as meeting the SIP emission inventory requirement of section 182(a)(1) of the CAA. If EPA approves the emission inventories in a final rule, Illinois will have met the ozone

precursor emission inventory requirements of the CAA.

In the September 16, 2011, submittal the IEPA submitted VOC emission control regulations and other rule revisions needed to meet the VOC RACT requirements of the CAA.³ On November 30, 2011, EPA proposed to approve all of these regulations and rule revisions as revisions of the Illinois SIP. If these VOC emission control regulations and revised rules are approved through a final rulemaking and are incorporated into the Illinois SIP, Illinois will have met the CAA requirements for VOC RACT.

Recognizing that the base year VOC and NO_x emission inventories and VOC RACT rules must be approved on or before we complete final rulemaking approving Illinois' ozone redesignation request, we determine here that, assuming that these approvals occur, Illinois will have met all applicable section 110 and part D SIP requirements of the CAA for purposes of approval of Illinois' ozone redesignation request for the Illinois portion of the Greater Chicago area. In making this determination, we have ascertained what SIP requirements are applicable to the Illinois portion of the Greater Chicago area for purposes of redesignation.

1. The Illinois Portion of the Greater Chicago Area Has Met All Applicable Requirements of Section 110 and Part D of the CAA for Purposes of Redesignation

a. Section 110: General Requirements for Implementation Plans

Section 110(a) of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the SIP implemented by a state must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C PSD and part D NSR permit programs; (5) include criteria for stationary source emission

control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to 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 certain air pollutants, e.g., NO_x SIP call.⁴ However, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's designation and classification. EPA concludes that the SIP requirements linked with an area's designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. See 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–27 (May 13, 2003).

Further, we believe that section 110(a)(2) elements, other than those described above that are not connected with nonattainment plan submissions and that are not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements regardless of an area's designation and after the area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with an area's designation and classification are the relevant measures for evaluating this aspect of a redesignation request. This approach is consistent with EPA's policy on applicability of conformity and oxygenated fuel requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See: Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176, October 10, 1996 and 62 FR 24826, May

³ Required VOC RACT rule revisions were also submitted by the IEPA on July 29, 2010 and September 29, 2011.

⁴ 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. In compliance with EPA's NO_x SIP Call, IEPA developed rules governing the control of NO_x emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers and turbines, and major cement kilns. EPA approved Illinois' rules as fulfilling the requirements of the NO_x SIP call on November 8, 2001, at 66 FR 56449 and 66 FR 56454.

7, 1997); Cleveland-Akron-Loraine, 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 ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed the Illinois SIP and conclude that it meets the general SIP requirements under section 110 of the CAA applicable to the State's request for redesignation. EPA has previously approved provisions of the Illinois SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.720 and 40 CFR 52.722). Further, in a submittal dated December 12, 2007, Illinois confirmed that the State continues to meet the section 110(a)(2) infrastructure requirements for the 8-hour ozone standard. EPA approved elements of this Illinois submittal on July 13, 2011, at 76 FR 41075. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the 8-hour ozone nonattainment status of the Illinois portion of the Greater Chicago area. Therefore, EPA concludes that these infrastructure elements are not applicable requirements for purposes of review of the State's 8-hour ozone redesignation request.

b. Part D Requirements

EPA has determined that, if EPA finalizes the approval of the 2002 base year VOC and NO_x emission inventories and the Illinois VOC RACT rules, discussed below under the heading "Subpart 2 Section 182(a) and (b) Requirements," the Illinois SIP will meet the SIP requirements applicable for purposes of redesignation under part D of the CAA for the Illinois portion of the Greater Chicago area. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment area requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional, specific requirements for ozone nonattainment areas depending on an area's ozone nonattainment classification.

As noted above, the Greater Chicago area was classified as moderate nonattainment for the 1997 8-hour ozone standard under subpart 2 of part D of the CAA. Therefore, Illinois must meet the requirements of subpart 1 and subpart 2 of part D of the CAA applicable for purposes of redesignation. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and 176 of the CAA. The

applicable subpart 2 requirements are contained in sections 182(a)–(b) (moderate nonattainment area requirements) of the CAA.

Subpart 1 Section 172 Requirements

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 state plans for all nonattainment areas to provide for the implementation of Reasonably Available Control Measures (RACM), including RACT at a minimum, as expeditiously as practicable. EPA interprets this requirement to impose a duty on all states with nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the areas as components of the areas' attainment demonstrations (the attainment demonstrations must address RACM). Because attainment of the 1997 8-hour ozone standard has been reached in the Greater Chicago area, no additional RACM measures, beyond RACT, are needed to provide for attainment, and section 172(c)(1) requirements (other than RACT) are no longer considered to be applicable as a prerequisite for approval of Illinois' redesignation request, provided the Greater Chicago area continues to attain the standard until redesignation of the Illinois portion of the area occurs. See 57 FR 13498, 13564 (April 16, 1991), 40 CFR 51.918.

Section 172(c)(2) requires plans for all nonattainment areas to provide for RFP toward attainment of the NAAQS. This requirement is not relevant to the Greater Chicago area for purposes of redesignation because the Greater Chicago area has monitored attainment of the 1997 8-hour ozone standard. General Preamble, 57 FR 13564. In addition, pursuant to EPA's determination of attainment of the 1997 8-hour ozone standard for the Greater Chicago area, the requirement for RFP under section 172(c)(2), as well as the section 172(c)(9) contingency measure requirement, is suspended pursuant to 40 CFR 51.918.

Section 172(c)(3) requires submission and EPA approval of a comprehensive, accurate, and current inventory of actual emissions. This requirement is superseded by the emission inventory requirement in section 182(a)(1) of the CAA. See the discussion of Illinois' emissions inventory for the Illinois portion of the Greater Chicago area

below in section VII of this proposed rule.

Section 172(c)(4) requires the identification and quantification of emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources in the nonattainment area. EPA approved the Illinois NSR program⁵ on December 17, 1992 (57 FR 59928), September 27, 1995 (60 FR 49780), and May 13, 2003 (68 FR 25504). Further, EPA has determined that, since PSD requirements⁶ will apply after redesignation, an area being redesignated to attainment need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the state demonstrates maintenance of the NAAQS in the area without implementation of 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, titled "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Illinois has demonstrated that the Greater Chicago area will be able to maintain the 1997 8-hour ozone standard without the continued implementation of the State's part D NSR program. Therefore, EPA concludes that the State need not have a fully approved part D NSR program as an applicable requirement for approval of the State's ozone redesignation request. The State's PSD program will become effective in the Chicago area upon redesignation to attainment of the 1997 8-hour ozone standard. See redesignation rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Loraine, 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 emission control measures necessary to provide for attainment of the standard. Because attainment has been reached in the Greater Chicago area, no additional emission control measures are needed to provide for attainment of the standard.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, in

⁵ The NSR program controls the growth and permitting of major source emissions in ozone nonattainment areas.

⁶ PSD requirements control the growth of new source emissions in areas designated as attainment for a NAAQS.

section V.B.1.a, we conclude the Illinois SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176 Conformity Requirements

Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals of the 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 SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA thinks 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 section 175A maintenance plans. 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 (December 7, 1995) (Tampa, Florida).

EPA approved Illinois' general conformity SIP on December 23, 1997 (62 FR 67000). Illinois does not have a Federally-approved transportation conformity SIP. However, Illinois performs conformity analyses pursuant to EPA's Federal conformity rules. Illinois has submitted on-road motor vehicle emission budgets for the Illinois portion of the Greater Chicago area of 117.23 tons VOC per ozone season weekday and 373.52 tons NO_x per ozone season weekday for 2008 and 48.13 tons VOC per ozone season

weekday and 125.27 tons NO_x per ozone season weekday for 2025, respectively. Illinois must use these MVEBs in any conformity determination that is effective on or after the effective date of the ozone maintenance plan approval.

Subpart 2 Section 182(a) and (b) Requirements

As set forth in the September 4, 1992, and September 17, 1993, EPA guidance memoranda referenced in section IV of this action, only those requirements which came due prior to Illinois' July 23, 2009, submittal of the request for redesignation of the Illinois portion of the Greater Chicago area must be fully approved into the SIP by the time EPA approves the redesignation of the area to attainment. These requirements are discussed below.

Comprehensive Emissions Inventory. Section 182(a)(1) requires the submission of a comprehensive, accurate, current emission inventory of ozone precursor emissions as a revision of the SIP. IEPA submitted inventories of 2002 VOC and NO_x emissions for the Illinois portion of the Greater Chicago area on June 21, 2006, to meet the requirements of section 182(a)(1). On September 16, 2011, IEPA supplemented the 2002 emissions inventory with updated on-road mobile source emission estimates based on the use of EPA's MOVES model. As discussed below, EPA is proposing to approve the 2002 emission inventories as meeting the section 182(a)(1) emission inventory requirement.

Emission Statements. Section 182(a)(3)(B) requires a State to adopt provisions in the SIP to require the owners or operators of stationary sources of VOC or NO_x to provide the state with annual statements of actual emissions from the sources. EPA approved Illinois' emission statement SIP revisions on September 9, 1993 (58 FR 47379), and May 15, 2002 (67 FR 34614).

Reasonable Further Progress and Attainment Demonstrations. On July 2, 2007, IEPA submitted an attainment demonstration for the Greater Chicago area and an RFP plan for the Illinois portion of the Greater Chicago area as required by section 182(b)(1) of the CAA. Because attainment has been reached,⁷ section 182(b)(1) planning requirements are no longer considered to be applicable for purposes of redesignation as long as the area

continues to attain the standard. If EPA finalizes approval of the redesignation of the Illinois portion of the Greater Chicago area, EPA will take no further action on the ozone attainment demonstration and RFP plan submitted by Illinois for this area.

VOC RACT. Section 182(b)(2) requires states with moderate ozone nonattainment areas to implement RACT under section 172(c)(1) with respect to each of the following: (1) All sources covered by a Control Technology Guideline (CTG) document issued between November 15, 1990, and the date of attainment; (2) all sources covered by a CTG document issued prior to November 15, 1990; and, (3) all other major non-CTG stationary sources.⁸

As required under the 1-hour ozone standard, Illinois submitted VOC RACT rules covering the second and third source categories above. EPA approved these VOC RACT rules on February 21, 1980 (45 FR 11472), November 21, 1987 (52 FR 45333), and September 9, 1994 (59 FR 46562).

EPA issued CTGs for five source categories in September 2006, three source categories in September 2007, and five source categories in September 2008. States with ozone nonattainment areas classified as moderate and above were required to submit VOC RACT for the source categories covered by these CTGs within one year after the release of each CTG, by September 2007, September 2008, and September 2009, respectively.

Illinois submitted a SIP revision to address all of the new CTGs on July 29, 2010, September 16, 2011, and September 29, 2011. EPA is taking action on these revisions in a separate rulemaking action. Full approval of IEPA's VOC RACT submittals is a prerequisite for approval of the redesignation of the Illinois portion of the Greater Chicago area to attainment of the 1997 8-hour ozone standard.

NO_x RACT. Section 182(f) of the CAA establishes NO_x requirements for ozone nonattainment areas. Section 182(f)(1) generally requires major sources of NO_x to be covered by the same levels of emission controls as required for major sources of VOC. Since moderate (or above) ozone nonattainment areas are required to be covered by RACT rules for major VOC sources, these ozone nonattainment areas are also required to have NO_x RACT rules. Section 182(f)(1) of the CAA, however, also provides that the requirement for such NO_x emission

⁷ EPA proposed, on September 24, 2009 (74 FR 48703), to find that the Greater Chicago nonattainment area had attained the 1997 8-hour ozone standard. EPA finalized this determination of attainment on March 12, 2010 (75 FR 12088).

⁸ In moderate ozone nonattainment areas, major stationary sources of VOC are those that have a potential emit 100 tons VOC per year or more.

controls does not apply (can be waived) in an area if the Administrator determines that net air quality benefits are greater in the absence of the NO_x emission reductions. The NO_x emission control requirements can also be waived if the Administrator determines that additional reductions of NO_x emissions would not contribute to attainment of the ozone NAAQS.

In its July 29, 2010, submittal, IEPA requested a waiver from the NO_x RACT requirements based on the fact that the 1997 8-hour ozone standard had been attained in the Greater Chicago area and additional NO_x emission reductions in this area are not needed to attain the ozone standard. Based on a clean air determination for this area for the 1997 8-hour ozone standard, EPA granted Illinois a waiver from NO_x RACT for this area on February 22, 2011 (76 FR 9655).

Stage II Vapor Recovery. Section 182(b)(3) of the CAA requires states with moderate nonattainment areas to submit Stage II vapor recovery rules (requiring the capture of gasoline vapor at service stations during vehicle refueling). EPA approved Illinois' Stage II vapor recovery regulations on January 12, 1993 (58 FR 3841). Illinois has implemented and continues to implement Stage II vapor recovery rules in the Illinois portion of the Greater Chicago area.

Vehicle Inspection and Maintenance (I/M). Section 182(b)(4) of the CAA and EPA's final I/M regulations in 40 CFR part 85 require states with moderate (or above) ozone nonattainment areas to submit a fully adopted I/M programs as a revision of the SIP. EPA approved Illinois' enhanced I/M program on February 22, 1999 (64 FR 8517).

Thus, as discussed above, with EPA approval of the 2002 base year emission inventories and Illinois' VOC RACT submittals, the Illinois portion of the Greater Chicago area will satisfy the requirements applicable for purposes of redesignation under section 110 and part D of the CAA.

2. The Illinois Portion of the Greater Chicago Area Has a Fully Approved SIP for Purposes of Redesignation Under Section 110 of the CAA

If EPA issues a final approval of the 2002 base year emission inventories and the Illinois VOC RACT submittals, EPA will have fully approved the Illinois SIP for the Illinois portion of the Greater Chicago area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals when rulemaking on 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 25412, 25426 (May 12, 2003).

Since the passage of the CAA of 1970, Illinois has adopted and submitted, and EPA has fully approved, SIP provisions addressing various required SIP elements under the 1-hour ozone standard. In this action, EPA is proposing to approve Illinois' 2002 base year emission inventories for the Illinois portion of the Greater Chicago area as meeting the requirement of section 182(a)(1) of the CAA. As noted above, in a separate rule, EPA is proposing action on the Illinois VOC RACT submittals.

No SIP provisions for the Illinois portion of the Greater Chicago area are currently disapproved, conditionally approved, or partially approved.

3. The Illinois Portion of the Greater Chicago Area Has a Fully Approved SIP and Meets Anti-Backsliding Requirements Under the 1-Hour Ozone Standard

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe 1-hour ozone NAAQS requirements that continue to apply after the revocation of the 1-hour ozone NAAQS for former 1-hour ozone nonattainment areas. 40 CFR 51.905(a)(1) provides that:

The area remains subject to the obligations to adopt and implement the applicable requirements defined in 40 CFR 51.900(f), except as provided in paragraph (a)(1)(iii) of this section and except as provided in paragraph (b) of this section.

40 CFR 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), provides that:

Applicable requirements means that for an area that the following requirements, to the extent such requirements applied to the area for the area's classification under section 181(a)(1) of the CAA for the one-hour NAAQS at the time of designation for the eight-hour NAAQS, remain in effect:

- (1) RACT.
- (2) I/M.
- (3) Major source applicability cut-offs for purposes of RACT.
- (4) ROP reductions.
- (5) Stage II vapor recovery.
- (6) Clean fuels fleet program under section 182(c)(4) of the CAA.
- (7) Clean fuels for boilers under section 182(e)(3) of the CAA.
- (8) TCMs during heavy traffic hours as provided under section 182(e)(4) of the CAA.
- (9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.
- (10) TCMs under section 182(c)(5) of the CAA.

(11) VMT provisions of section 182(d)(1) of the CAA.

(12) NO_x requirements under section 182(f) of the CAA.

(13) Attainment demonstration or alternative as provided under 40 CFR 51.905(a)(1)(ii).

In addition to applicable requirements listed under 40 CFR 51.900(f) and as discussed above, the state must also comply with the 1-hour anti-backsliding requirements discussed in the Court's decisions in *South Coast Air Quality Management Dist. v. EPA*: (1) NSR requirements based on the area's 1-hour ozone nonattainment classification; (2) section 185 source penalty fees; (3) contingency measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA for areas not making reasonable further progress toward attainment of the 1-hour ozone NAAQS, or for failure to attain the 1-hour ozone NAAQS; and, (4) transportation conformity requirements for certain types of Federal actions.

Pursuant to 40 CFR 51.905(c), the Illinois portion of the Greater Chicago area is subject to the obligations set forth in 40 CFR 51.905(a) and 40 CFR 51.900(f). The following paragraphs address the 1-hour ozone SIP requirements applicable to the Illinois portion of the Greater Chicago area pursuant to these anti-backsliding requirements and those discussed in the Court's decision in *South Coast Air Quality Management Dist. v. EPA*. Note that Illinois commits to continue to comply with these requirements unless revised through SIP revisions approved by EPA.

Prior to the revocation of the 1-hour ozone standard on June 15, 2005, the Greater Chicago area was classified as a severe nonattainment area for the 1-hour ozone standard with an attainment deadline of November 15, 2007, and, therefore, was subject to ozone SIP requirements for severe 1-hour ozone nonattainment areas (sections 182(a) through 182(d) of the CAA). In reviewing Illinois' ozone redesignation request for the Illinois portion of the Greater Chicago area, we assessed whether the area satisfied the CAA requirements under the 1-hour ozone standard. We conclude that this area and the State of Illinois have satisfied all anti-backsliding CAA requirements applicable to a severe ozone nonattainment area by complying with all applicable 1-hour ozone SIP requirements. The following discusses how the applicable CAA requirements have been met in the Illinois portion of the Greater Chicago area.

40 CFR 51.900(f)(1) RACT

Section 182(a)(2)(A) of the CAA requires RACT corrections. Section 182(b)(2) requires RACT for each category of VOC sources covered by a CTG and for all other major sources of VOC within an ozone nonattainment area. Section 182(d) specifies requirements for severe ozone nonattainment areas, including a major source emissions cut-off of 25 tons per year. Section 182(f), as discussed above in section V.B.2, requires major sources of NO_x in an ozone nonattainment area to be covered by emission control requirements equivalent to those required for major sources of VOC, unless EPA waives the NO_x emission control requirements as provided in section 182(f). The section 182(f) NO_x emission control requirements include NO_x RACT in ozone nonattainment areas required to implement VOC RACT for 1-hour ozone nonattainment areas classified as moderate or above.

Under the 1-hour ozone standard, EPA fully approved Illinois' VOC RACT regulations as SIP revisions for CTG sources and for major non-CTG sources through rulemakings on the following dates: February 21, 1980 (45 FR 11472); November 21, 1987 (52 FR 45333); and, September 9, 1994 (59 FR 46562). As noted elsewhere in this proposed rule, on September 16, 2011, Illinois EPA submitted final, adopted VOC emission control regulations covering CTG-source categories not yet addressed and covered by the Illinois ozone SIP. As noted above, on July 29, 2010, Illinois submitted a NO_x RACT waiver request for the Illinois portion of the Chicago area. On February 22, 2011, at 76 FR 9655, we approved Illinois' NO_x RACT waiver request for this area based on an ozone clean air determination. This suspended the NO_x RACT requirement for the Illinois portion of the Greater Chicago area for as long as the Greater Chicago area continues to attain the 1997 8-hour ozone standard, and becomes permanent for the 1997 8-hour ozone standard if EPA approves the redesignation of the Illinois portion of the Greater Chicago area to attainment of this standard.

As noted elsewhere in this proposed rule, we cannot approve Illinois' ozone redesignation request in a final rule until we can also approve all of Illinois' required VOC RACT rules through a final rule. With these new final rule approvals, we can conclude that Illinois has met all RACT requirements under the 1-hour ozone standard, as well as the 1997 8-hour ozone standard.

40 CFR 51.900(f)(2) Vehicle I/M

Through rulemaking on February 22, 1999 (64 FR 8517), EPA fully approved Illinois' vehicle I/M program as meeting the enhanced I/M requirements of section 182(c)(3) of the CAA. Therefore, the Illinois portion of the Greater Chicago area meets the I/M requirements for severe 1-hour ozone nonattainment areas.

40 CFR 51.900(f)(3) Major Source Size Cutoff for RACT

We have determined that Illinois' VOC RACT rules for CTG source categories already incorporated into Illinois' ozone SIP and the new CTG-based VOC RACT rules currently being reviewed by the EPA cover source size cut-offs that are well below CTG-recommended major source cut-offs for severe ozone nonattainment areas. In addition, Illinois' major non-CTG source RACT rule covers all sources with the potential to emit VOC at or in excess of 25 tons per year. Therefore, Illinois' RACT rules meet the major source size cut-off requirement of section 182(d) of the CAA.

40 CFR 51.900(f)(4) ROP

Sections 182(b)(1)(A) and 182(c)(2)(B) of the CAA establish the ROP requirements for ozone nonattainment areas. EPA has fully approved Illinois' SIP revisions that demonstrate that Illinois achieved ROP in the Illinois portion of the Greater Chicago area. On December 18, 1997, at 62 FR 66279, EPA approved Illinois' plan to achieve a 15 percent reduction in VOC emissions in the Illinois portion of the Greater Chicago area, as required in section 182(b) of the CAA. On December 18, 2000, at 65 FR 78961, EPA approved Illinois' plan to achieve ROP between 1996 and 1999 in this area, meeting the ROP requirements of section 182(c) of the CAA. Finally, on November 13, 2001, at 66 FR 56904, EPA approved Illinois' plan to achieve ROP emission reductions for the period of 1999 through 2007. Therefore, Illinois has met all 1-hour ozone ROP requirements for the Illinois portion of the Greater Chicago area.

40 CFR 51.900(f)(5) Stage II Gasoline Vapor Recovery

On January 12, 1993 (58 FR 3841), EPA approved Illinois' Stage II gasoline vapor recovery rules for the Illinois portion of the Greater Chicago area as required by section 182(b)(3) of the CAA.

40 CFR 51.900(f)(6) Clean Fuel Fleet Program

On March 19, 1996, at 61 FR 11139, EPA approved Illinois' clean fuel fleet program rules as required by section 182(c)(4) of the CAA. Therefore, the State of Illinois has met this CAA requirement under the 1-hour ozone standard.

40 CFR 51.900(f)(7) Clean Fuels for Boilers

Section 182(e)(3) of the CAA, which requires clean fuels for boilers, does not apply to the Greater Chicago area. This CAA requirement only applies to extreme ozone nonattainment areas.

40 CFR 51.900(f)(8) Traffic Control Measures During Heavy Traffic Hours

This requirement applies to areas subject to section 182(e)(4) of the CAA, which covers extreme ozone nonattainment areas, and, therefore, does not apply to the Greater Chicago area.

40 CFR 51.900(f)(9) Enhanced Ambient Monitoring

On February 25, 1994, EPA fully approved Illinois' SIP revision establishing an enhanced monitoring program for ozone in the Illinois portion of the Greater Chicago area. Therefore, Illinois has complied with the enhanced monitoring requirement of section 182(c)(1) of the CAA.

40 CFR 51.900(f)(10) Transportation Control Measures

Within six months of November 15, 1990, and every three years thereafter, section 182(c)(5) of the CAA requires states to submit a demonstration that current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant traffic-related and vehicle emissions-related factors (collectively "relevant parameters") are consistent with those used for the area's ozone attainment demonstration for serious and above 1-hour ozone nonattainment areas. If the levels of relevant parameters that are projected in the attainment demonstration are exceeded, a state has 18 months to develop and submit a revision to the SIP to include TCMs to reduce mobile source emissions to levels consistent with the emission levels in the attainment demonstration.

On December 26, 2000, Illinois submitted a SIP revision request consisting of an adopted emissions control strategy and a demonstration that the Greater Chicago area would attain the 1-hour ozone standard by November 15, 2007, the statutory attainment deadline for the area. EPA

approved this requested SIP revision on November 13, 2001 (66 FR 56904). This SIP revision provided base period mobile source information for the Chicago area that can be compared to subsequent mobile source information needed to demonstrate compliance with section 182(c)(5) of the CAA. Through revisions to State's emissions inventory data, submitted to EPA every three years, Illinois has updated the mobile source emissions, and related mobile source data, in the Illinois portion of the Greater Chicago area on a three-year cycle. These updated mobile source emissions can be compared to those documented in the December 26, 2000 Illinois submittal to show the downward trend in mobile source emissions. EPA, therefore, concludes that Illinois has complied with the requirements of section 182(c)(5), has no currently due section 182(c)(5) obligations.

In addition, the section 182(c)(5) requirements are also included in those measures subject to EPA's interpretation under EPA's May 10, 1995, Clean Data Policy memorandum. That is, attainment of the 1-hour ozone standard suspends the need for the State to submit additional TCMs under section 182(c)(5) of the CAA. EPA, therefore, concludes that, since the Greater Chicago area is attaining the 1-hour ozone standard,⁹ any requirement for submitting the section 182(c)(5) measures for the Illinois portion of the Greater Chicago area is suspended. See also 40 CFR 51.918.

40 CFR 51.900(f)(11) Vehicle Miles Travelled

Section 182(d)(1)(A) of the CAA requires severe ozone nonattainment areas to offset the growth in emissions attributed to growth in VMT; to select and implement TCMs necessary to comply with the periodic emission reduction requirements of sections 182(b) and (c); and, to consider TCMs specified in section 108(f) of the CAA, and implement TCMs as necessary to demonstrate attainment with the ozone standard. Through rulemaking on September 21, 1995, at 60 FR 48896, EPA approved Illinois' TCMs as meeting these requirements of the CAA.

40 CFR 51.900(f)(12) NO_x Requirements Under Section 182(f)

As noted above, EPA approved a NO_x emissions control waiver for the Illinois portion of the Greater Chicago area for the 1-hour ozone standard. See 61 FR 2428, January 26, 1996. In addition, we have approved Illinois' NO_x emission

control regulations, adopted in response to EPA's NO_x SIP call. See 66 FR 56449 and 66 FR 56454, both published on November 8, 2001.

40 CFR 51.900(f)(13) Ozone Attainment Demonstration

As noted above, on November 13, 2001, at 66 FR 56904, EPA fully approved Illinois' 1-hour ozone attainment demonstration SIP revision for the Greater Chicago area. Therefore, Illinois has met the ozone attainment demonstration requirements of sections 182(b)(1)(A) and 182(c)(2)(A) of the CAA for the 1-hour ozone standard.

New Source Review

As noted elsewhere in this proposed rule, EPA believes that a part D NSR program is not an applicable requirement for purposes of evaluating an ozone redesignation request. EPA has determined that states with areas being redesignated to attainment need not have an approved part D NSR program, provided that the states demonstrate maintenance of the standard without part D NSR programs in effect.

Nonetheless, as also discussed above, the Court's decision in *South Coast Air Management Dist. v. EPA* preserved 1-hour part D NSR requirements as an anti-backsliding requirement. Section 182(a)(2)(C) of the CAA requires states to adopt part D NSR permit programs and to correct the existing part D NSR permit programs to meet EPA NSR guidance issued prior to 1990. EPA approved Illinois' NSR permit program as meeting EPA's guidance and CAA part D NSR requirements for the 1-hour ozone standard, including the requirements in sections 182(c)(6), (c)(7) and (c)(8), and the source offset requirements in section 182(d)(2), through rulemakings on September 27, 1995 (60 FR 49778).

Regardless of how one views the part D NSR requirements of the CAA for purposes of redesignation, we concluded that Illinois has met the NSR requirements with regard to Illinois' ozone redesignation request. The State has an approved NSR program, and the approval status of this NSR program is not relevant to Illinois' ozone redesignation request.

Section 185 Source Emission Penalty Fees

On December 30, 2008 (73 FR 79652), EPA finalized a determination that the Greater Chicago area had attained the 1-hour ozone standard based on 2005–2007 ozone data. Based on the determination of attainment, the section 185 fee requirements no longer apply to

the Illinois portion of the Greater Chicago area and to the State of Illinois.

Contingency Measures

Sections 172(c)(9) and 182(c)(9) of the CAA require the ozone control portion of SIPs to contain measures to be implemented in the event that any milestone (standard attainment date, rate-of-progress emission reduction milestone dates, etc.) in the SIP is missed. EPA approved Illinois' contingency measures for attainment of the 1-hour ozone standard in the Greater Chicago area in our approval of the State's 1-hour ozone attainment plan. See 66 FR 56904, November 13, 2001.

Transportation Conformity

The transportation conformity portion of the court's ruling in *South Coast Air Quality Management District v. EPA* does not impact the redesignation request for the Illinois portion of the Greater Chicago area because there are no transportation conformity requirements that are relevant to redesignation requests for any standard, including the requirement for a state to submit a transportation conformity SIP.¹⁰ Under longstanding EPA policy, EPA thinks that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because State conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See 40 CFR 51.390. Also see *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation, and 60 FR 62748 (December 7, 1995) (Tampa, Florida ozone redesignation).

Conclusions

For the above reasons, EPA concludes that Illinois has met all applicable part D SIP requirements for the 1-hour ozone standard as addressed in the court's and EPA's anti-backsliding requirements for the purposes of redesignation of the Illinois portion of the Greater Chicago area to attainment of the 1997 8-hour ozone standard. It is again noted that the State of Illinois has committed in its maintenance plan to maintain the VOC and NO_x emission controls already in place and included in Illinois' ozone SIP, as approved by EPA.

¹⁰CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from MVEBs that are established in control strategy SIPs and maintenance plans.

⁹ See 73 FR 79652 (December 30, 2008).

C. Are the air quality improvements in the Greater Chicago area due to permanent and enforceable emission reductions?

EPA finds that Illinois has demonstrated that the observed air quality improvement in the Greater Chicago area is due to permanent and enforceable reductions in emissions resulting from the implementation of the Illinois and Indiana SIPs, Federal measures, and other State-adopted measures. As discussed below, Illinois made this demonstration by considering VOC and NO_x emissions in the entire Greater Chicago area as well as emission reductions in upwind areas (primarily resulting from the implementation of EPA's NO_x SIP call) contributing to pollution transport into the Greater Chicago area.

In making this demonstration, Illinois first determined and documented the changes in VOC and NO_x emissions in the Illinois portion of the Greater Chicago area between 2002 (a standard-violation year) and 2008 (an attainment year). Second, the State documented the VOC and NO_x emission controls that have been implemented in the Greater Chicago area. Illinois demonstrated that the reductions in emissions and the corresponding improvement in air quality over the intervening period (2002–2008) can be attributed to a number of regulatory control measures that the Greater Chicago area and upwind areas have implemented in recent years.

1. Permanent and Enforceable Controls Implemented

The following is a discussion of the permanent and enforceable emission control measures that have been implemented in the Greater Chicago area and in upwind areas that have resulted in VOC and NO_x emission reductions subsequent to the ozone standard violation period (2001–2003) in the Greater Chicago area.

a. Attainment Demonstration Emission Control Measures

On March 18, 2009, IEPA submitted an ozone attainment demonstration plan for the Greater Chicago area to EPA. Even though EPA has not taken action on this attainment demonstration as a revision of the Illinois SIP,¹¹ Illinois notes that the VOC and NO_x emission controls contained in the attainment plan have been implemented, resulting

in VOC and NO_x emission reductions that have contributed to attainment of the 1997 8-hour ozone standard in the Greater Chicago area. The implemented emission control measures include the following:

- NO_x SIP call emission controls
- New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPS), and Maximum Available Control Technology (MACT) standards for new sources
- VOC Solvent Category Emission Controls: Aerosol Coatings; Architectural and Industrial Maintenance (AIM) Coatings; and Consumer Solvents
- Enhanced Vehicle Inspection and Maintenance
- Reformulated Gasoline
- Federal Tier 2 Motor Vehicle Emission Standards and Gasoline Sulfur Control Requirements
- Federal On-Highway Heavy-Duty Engine and Vehicle Standards, and Federal Highway Diesel Fuel Sulfur Control Requirements
- Federal Off-Road Mobile Source Emission Control Programs Incorporated into EPA's NONROAD Emissions Model, including EPA's Nonroad Diesel Emissions Control Rule and Evaporative Large Spark Ignition and Recreational Vehicle Standards
- Federal Tier 4 Nonroad Diesel Engine Standards and Diesel Fuel Sulfur Content Restrictions
- Marine Compression-Ignition Engine Standards and Locomotive Engine Standards
- Consent Decrees requiring emission controls for: Dynergy Midwest Generation; Conoco Phillips; CITGO; Exxon-Mobil; Marathon Ashland; and Archer Daniels Midland.

All of these emission controls are permanent and are currently being enforced by the State or by the Federal government.

b. Reasonable Further Progress (RFP)

Since the Greater Chicago area was classified as a moderate nonattainment area for the 1997 8-hour ozone standard, Illinois was required to achieve a 15 percent net reduction in VOC emissions in the Illinois portion of the Greater Chicago area between 2002 and 2008 to meet the RFP requirements of CAA section 182(b)(1)(A). These emission reductions were primarily achieved through the implementation of the emission controls listed above for the ozone attainment demonstration plan. These emission controls resulted in a 15.7 percent reduction in VOC emissions in the Illinois portion of the Greater Chicago area between 2002 and

2008, and continued to provide additional VOC emission controls in 2009 and 2010. IEPA estimates that these VOC emission controls resulted in a VOC emission reduction of 210 tons per day between 2002 and 2008 in the Illinois portion of the Greater Chicago area.

c. Reasonably Available Control Technology

RACT is required for all major stationary sources of VOC in the Greater Chicago area. Since the Greater Chicago area was designated as a moderate nonattainment area for ozone under the 1997 8-hour ozone standard, a major stationary source is any source that has a potential to emit VOC equal to or greater than 100 tons per year. EPA defines RACT as the lowest emission limitation that a source is capable of meeting by the application of control technology that is reasonably available considering technological feasibility and economic reasonableness (70 FR 71612, November 29, 2005). The sum of emissions from all emission units at a source facility determines if the source facility is a major source and, therefore, subject to RACT requirements.

Sections 172 and 182(b)(2) of the CAA required implementation of VOC RACT for sources that are subject to CTGs that have been published by the EPA. In addition to CTG source categories, major VOC sources that are not covered by any CTG must also be covered by State RACT regulations.

Illinois has adopted and implemented all required VOC RACT regulations with the exception of source categories covered by CTGs published in 2006, 2007, and 2008. The State has documented that the implemented VOC RACT rules have reduced VOC emissions in the Illinois portion of the Greater Chicago area, contributing to the attainment of the 1997 8-hour ozone standard in the Greater Chicago area.

d. Additional Emission Control Measures

In addition to VOC emission reductions resulting from the implementation of VOC RACT in the Illinois portion of the Greater Chicago area, IEPA points out that additional VOC emission reductions were achieved in this area as the result of the implementation of MACT and achieving NESHAPS for VOC sources that also emit toxic chemicals, and implementation of NSPS for new VOC sources. Illinois believes that all of these emission control requirements are more stringent than RACT, and, therefore, have resulted in additional VOC

¹¹ Since EPA has determined that the Greater Chicago nonattainment area has attained the 1997 8-hour ozone standard (March 12, 2010, 75 FR 12088), EPA concludes that it is not necessary for it to take action on Illinois' ozone attainment demonstration.

reductions in the Illinois portion of the Greater Chicago area.¹²

e. 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. 40 CFR part 86, subpart S. 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. 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. Although some of these emission reductions occurred by the attainment years (2006–2008) in the Greater Chicago area, additional emission reductions will occur during the maintenance period for the Illinois portion of the Greater Chicago area. For example, the Tier 2 emission standards

for passenger vehicles weighing over 8,500 pounds were not implemented until 2008 or later.

Heavy-Duty Diesel Engine Rule. EPA issued this rule in January 2001 (66 FR 5002). 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 parts per million, 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 buses.

Non-Road Diesel Rule. EPA issued this rule in June 2004 (69 FR 38958), which 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. The non-road diesel rule was fully implemented by 2010.

NSPS, NESHAPS, and MACT. A broad range of emission sectors are subject to Federal NSPS, NESHAPS, and MACT standards with compliance deadlines that led to VOC emission reductions after 2002 and prior to 2008/2009.

f. Controls To Remain in Effect

Illinois commits to maintain all of the current emission control measures for VOC and NO_x after the Illinois portion of the Greater Chicago area is redesignated to attainment. Illinois also

commits to submit any emission control revisions needed for maintenance of the ozone standard in the Greater Chicago area to the EPA as requested SIP revisions. Illinois has the legal authority and necessary resources to actively enforce against any violations of the State's air pollution emission control rules.

2. Emission Reductions

Illinois chose 2008 (the end of the 3-year period in which the Greater Chicago area first attained the 1997 8-hour ozone standard) as the attainment year. IEPA compared 2002 and 2008 VOC and NO_x emissions to show that emission reductions have occurred in the area, explaining the ozone air quality improvement in the area.

As required by sections 172(c)(3) and 182(a)(1) of the CAA and EPA's Phase 2 ozone implementation rule (November 29, 2005, at 70 FR 71612), IEPA prepared comprehensive VOC and NO_x emission inventories for 2002. These emission inventories and their documentation were submitted to the EPA in June 2006. Table 2 summarizes the 2002 VOC and NO_x emissions by source category and by pollutant for the Illinois portion of the Greater Chicago area. For a discussion of emission inventory preparation methods used to develop these emission inventories, see the discussion of 2002 base year emission inventories below in section VII of this proposed rule.

TABLE 2—TOTAL ANTHROPOGENIC VOC AND NO_x EMISSIONS IN THE ILLINOIS PORTION OF THE GREATER CHICAGO AREA IN 2002

[Tons per ozone season weekday]

Source category	VOC	NO _x
Point Sources	76.62	307.73
Area Sources	520.21	42.93
On-Road Mobile Sources	168.06	540.13
Off-Road Mobile Sources	233.77	326.65
Total	998.66	1217.44

To demonstrate that VOC and NO_x emissions have decreased between a standard violation year and the attainment year, IEPA documented the VOC and NO_x emissions in the Illinois portion of the Greater Chicago area for 2008 and compared these emissions to those in 2002.

For the attainment year, point source emissions were compiled from 2008 annual emission reports submitted to

the IEPA, in compliance with the State's point source emission statement reporting regulations, and from EPA's Clean Air Markets Division emissions database for electric utilities. Area sources were projected from the 2002 area source emissions using source type-specific growth factors. On-road mobile source emissions were calculated using EPA's MOVES emissions model and vehicle miles travelled data provided by

the Illinois Department of Transportation. Off-road emissions were calculated using EPA's NONROAD emissions model. These emission estimation procedures are consistent with those used to develop the 2002 emission inventories. Biogenic emissions were not included in the 2008 emission inventories (and also not in the 2002 emission inventories) because it was assumed that these emissions are

¹² It should be noted that Illinois' VOC RACT rules generally exclude sources subject to MACT, NSPS, and NESHAPS from VOC RACT rules'

emission reduction requirements. Nonetheless, we agree that additional emission reduction

requirements have further lowered VOC emissions in the subject area.

approximately constant over the time period (2002–2008) considered.

Table 3 summarizes the 2008 VOC and NO_x emissions in the Illinois portion of the Greater Chicago area. From this table and table 2, it can be seen that VOC and NO_x emissions have decreased significantly in the Illinois portion of the Greater Chicago area between 2002 and 2008. IEPA concludes that the decrease in VOC and NO_x emissions during the 2002–2008 period are primarily due to the implementation of permanent and enforceable emission controls, and are the primary cause (along with emission reductions in the Indiana portion of the Greater Chicago area) of the ozone air quality improvement in the Greater Chicago area. We concur with the State's conclusion.

TABLE 3—TOTAL ANTHROPOGENIC VOC AND NO_x EMISSIONS IN THE ILLINOIS PORTION OF THE GREATER CHICAGO AREA IN 2008

[Tons per ozone season weekday]

Source category	VOC	NO _x
Point Sources ...	53.27	154.50
Area Sources	351.51	38.56
On-Road Mobile Sources	117.23	373.52
Off-Road Mobile Sources	265.44	330.18
Total	787.45	896.76

One must also consider the total VOC and NO_x emissions for the Greater Chicago area. EPA has consistently concluded that emissions from all portions of ozone nonattainment areas have the potential to contribute to ozone standard violations anywhere within the ozone nonattainment areas. Therefore, for the Greater Chicago area, it is important to also consider the changes in VOC and NO_x emissions from the Indiana portion of the Greater Chicago area. In a March 12, 2010, proposed rulemaking (75 FR 12090) addressing an ozone redesignation request from the State of Indiana, we discussed the 2002, 2006, and 2010 VOC and NO_x emissions for Lake and Porter Counties, Indiana. Table 2 of that proposed rule (75 FR 12103) lists 2002 VOC and NO_x emissions for Lake and Porter Counties, and table 7 of that proposed rulemaking (75 FR 12106) lists 2006 and 2010 VOC and NO_x emissions for these counties. The 2006 and 2010 emissions may be interpolated to estimate the 2008 emissions for Lake and Porter Counties. Adding 2002 and estimated 2008 Lake and Porter Counties' emissions to those in tables 2 and 3 for the Illinois portion

of the Greater Chicago area above gives the total 2002 and 2008 VOC and NO_x emissions for the Greater Chicago area. The total 2002 and 2008 VOC and NO_x emissions for the Greater Chicago area are listed in table 4 of this proposed rule. The change in emissions between 2002 and 2008 emissions for the Greater Chicago area shows that VOC and NO_x emissions have significantly decreased in this area between 2002 and 2008. We conclude that these emission reductions have contributed to attainment of the ozone standard in this area.

TABLE 4—2002 AND 2008 VOC AND NO_x EMISSIONS TOTALS IN THE GREATER CHICAGO AREA

[Tons per ozone season/summer weekday]

Source category	VOC 2002	VOC 2008
Point Sources ...	101.18	71.87
Area Sources	555.30	382.15
On-Road Mobile Sources	188.06	129.65
Off-Road Mobile Sources	268.86	281.06
Total VOC ..	1113.4	864.7
	NO _x 2002	NO _x 2008
Point Sources ...	494.17	272.82
Area Sources	48.65	45.08
On-Road Mobile Sources	595.13	422.89
Off-Road Mobile Sources	365.26	360.02
Total NO _x ..	1503.2	1100.8

Besides the 2002–2008 reductions in VOC and NO_x emissions in the Illinois and Indiana portions of the Greater Chicago area, IEPA also notes that upwind areas have lowered their VOC and NO_x emissions during this period. Illinois, however, has not documented these emission reductions in the redesignation request.

D. Does Illinois have a fully approvable ozone maintenance plan?

1. Maintenance Plan Requirements

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 maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue to be maintained for 10 years following the initial 10-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 standard violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of maintenance plans. The memorandum clarifies that an ozone maintenance plan should, at minimum, address the following: (1) The attainment VOC and NO_x emission inventories; (2) a maintenance demonstration showing maintenance for the 10-year maintenance period; (3) a commitment to maintain the existing monitoring network; (4) factors and procedures to be used for verification of continued attainment of the NAAQS; and, (5) a contingency plan to prevent or correct future violations of the NAAQS.

2. Attainment Inventory

As noted above, 2008 is the final year of the 3-year period (2006–2008) in which all ozone monitors in the Greater Chicago nonattainment area recorded attainment of the 1997 8-hour ozone standard. Therefore, IEPA chose 2008 as an attainment year. The discussion above describes how Illinois derived the 2008 VOC and NO_x emission inventories for the Illinois portion of the Greater Chicago area.

3. Has the State documented maintenance of the ozone standard in the Illinois portion of the Greater Chicago area?

The maintenance plan, as revised in the State's September 16, 2011, submittal, shows maintenance of the 1997 8-hour ozone standard through 2025 by showing that future (2015, 2020, and 2025) VOC and NO_x emissions for the Illinois portion of the Greater Chicago area remain at or below attainment year (2008) emission levels.¹³

Point source emissions in the Illinois portion of the Greater Chicago area were projected to 2015, 2020, and 2025 using 2002 and 2008 point source emissions and source category-specific growth factors. Area source emissions were similarly projected to 2015, 2020, and 2025 using the 2002 and 2008 area source emissions and source category-specific growth factors. Area source category emissions, determined using county populations, were projected by

¹³ A maintenance demonstration need not be based on ozone modeling. See *Wall v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), and 68 FR 25413, 25430–25432 (May 12, 2003).

using projected growth in county-specific populations. Off-road mobile source emissions were projected using the 2002 emissions and growth factors contained in EPA's NONROAD model. On-road mobile source emissions were estimated using projected VMT levels and the MOVES model. The projected mobile source emissions assumed the

continued use of reformulated gasoline, the phase-in of Tier 2 motor vehicle emission standards, and the operation of an enhanced vehicle inspection and maintenance program in the Illinois portion of the Greater Chicago area.

Table 5 compares the VOC and NO_x emissions estimated for the Illinois portion of the Greater Chicago area for

2008 with those for 2015, 2020, and 2025 by source category. The projected VOC and NO_x emissions show that VOC and NO_x emissions in Illinois portion of the Greater Chicago area are expected to remain below the attainment levels throughout the 10-year-plus maintenance period.

TABLE 5—2008 AND PROJECTED VOC AND NO_x EMISSIONS IN THE ILLINOIS PORTION OF THE GREATER CHICAGO AREA [Tons per ozone season weekday]

Source Category	VOC 2008	VOC 2015	VOC 2020	VOC 2025
Point Sources	53.27	62.02	67.63	72.79
Area Sources	351.51	363.86	385.73	406.96
On-Road Mobile Sources	117.23	50.33	37.98	41.35
Off-Road Mobile Sources	265.44	90.83	84.16	90.25
Total	787.45	567.04	575.50	611.85
	NO _x 2008	NO _x 2015	NO _x 2020	NO _x 2025
Point Sources	154.50	150.06	171.13	180.13
Area Sources	38.56	39.85	40.57	41.35
On-Road Mobile Sources	373.52	197.14	116.69	108.93
Off-Road Mobile Sources	330.18	106.36	84.34	96.70
Total	896.76	493.41	412.73	427.11

Illinois has successfully demonstrated maintenance of the 1997 8-hour ozone standard between 2008 and 2025. In addition, VOC and NO_x emissions in the Greater Chicago area are projected to decline between 2006 and 2020 (see table 8 in the proposed rule to redesignate Lake and Porter Counties, Indiana to attainment of the 1997 8-hour ozone standard, March 12, 2010, 75 FR 12106).

IEPA has demonstrated maintenance of the 1997 8-hour ozone standard during the 10-year ozone maintenance period for the Illinois portion of the Greater Chicago area through projected VOC and NO_x emissions that show that the emissions will remain below the 2008 attainment levels during the maintenance period.

4. What is the Contingency Plan for the Illinois Portion of the Greater Chicago Area?

Section 175A of the CAA requires the maintenance plan to include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that might occur after redesignation. The maintenance plan must identify the contingency measures to be considered for possible adoption, a schedule and procedure for adoption and implementation of the selected 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 pollutant(s) that were controlled through the SIP before the redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Illinois has adopted a contingency plan to address possible future ozone air quality problems. The contingency plan has two levels of actions/responses depending on whether a violation of the 1997 8-hour ozone standard is only threatened (Level I) or has actually occurred (Level II).

A Level I response will be triggered whenever: (1) An annual (1-year) fourth-high daily maximum 8-hour ozone concentration of 84 parts per billion (ppb) (0.084 ppm) is monitored at any site in the Greater Chicago area; or, (2) the Illinois portion of the Greater Chicago area's NO_x or VOC emissions increase more than 5 percent above the 2006 emissions levels.¹⁴ A Level I action

¹⁴ Illinois commits to compiling VOC and NO_x emission inventories every three years for the duration of the maintenance period to facilitate emission trends analyses. The 2006 emissions levels were derived as part of the three-year cycle of updating emission estimates. Although 2008 is the year used to demonstrate the emission reductions leading to the attainment of the 1997 8-hour ozone standard and as the base year for the demonstration of maintenance of this ozone

will consist of a study of whether adverse air quality or adverse emission trends are likely to continue. If so, Illinois will determine what and where emission controls will be needed to avoid a violation of the 1997 8-hour ozone standard. The study will be completed within 9 months after the action is triggered. If necessary, emission control measures will be adopted within 18 months of determination of the Level I triggering and implemented as expeditiously as practicable, taking into consideration the ease of implementation and the technical and economic feasibility of the selected measures.

A Level II response will be triggered when a violation of the 1997 8-hour ozone standard is monitored at any monitoring site in the Greater Chicago area. If triggered, the IEPA will conduct a thorough study to determine the appropriate emission control measures to address the cause of the ozone standard violation. Analysis will be completed within 6 months of the triggering of the Level II response. Selected emission control measures will be implemented within 18 months of the determination of the ozone standard violation.

standard, IEPA chose the 2006 emissions levels as the base year for the Level I contingency emissions growth trigger. 2006 is part of the 2006–2008 period in which the Greater Chicago area first attained the 1997 8-hour ozone standard.

Adoption of any additional emission control measures prompted by either of the contingency triggers will be subject to the necessary administrative and legal processes dictated by State law. This process will include publication of public notices, public hearings, and other measures required by Illinois law.

Contingency measures contained in the maintenance plan are those emission controls or other measures that the State chooses to adopt and implement in response to either of the contingency triggers discussed above. Possible contingency measures contained in Illinois' contingency plan include, but are not limited to, the following:

- Illinois' Multi-Pollutant Program for electric generating units.
- NO_x RACT.
- Cross-State Air Pollution Rule.
- Best Available Retrofit Technology.
- Broader geographic applicability of existing measures.
- Tier 2 vehicle standards and low sulfur fuel.
- High-enhanced vehicle I/M.
- Federal railroad/locomotive standards.
- Federal commercial marine vessel engine standards.
- Portable fuel containers (replacement with low leak containers)
- AIM Coatings
- Commercial and consumer products standards
- Aerosol coatings standards
- Other measures to be identified.

5. Monitoring Network and Verification of Continued Attainment

In the State's ozone redesignation request and maintenance plan, IEPA has committed to continue to monitor ozone levels in the Illinois portion of the Greater Chicago area according to an EPA-approved monitoring plan. Should changes in the locations of ozone monitors become necessary, IEPA commits to work with EPA to ensure the adequacy of the ozone monitoring network in this area. Illinois remains obligated to continue to quality assure ozone monitoring data in accordance with 40 CFR part 58 and to enter all ozone data into EPA's Air Quality System in accordance with Federal guidelines.

Application of Illinois' ozone maintenance plan for the Illinois portion of the Greater Chicago area and continued attainment of the 1997 8-hour ozone standard in the Greater Chicago area depend, in part, on the State's efforts in tracking of ozone monitoring data to verify continued attainment of the ozone standard. IEPA's plan for verifying continued attainment of the

1997 8-hour ozone standard in the Greater Chicago area (Indiana is similarly tracking continued attainment of the standard in this area) consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. IEPA will also continue to develop, review, and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 19602, June 10, 2002) to track future levels of emissions.

VI. Has the State adopted approvable motor vehicle emission budgets?

Under the CAA, States are required to submit, at various times, SIP revisions, such as ozone attainment demonstrations and RFP plans, and ozone maintenance plans for applicable areas (for ozone nonattainment areas and for areas seeking redesignation to attainment of the ozone standard). These SIP revisions, including ozone maintenance plans, must create and document MVEBs based on on-road mobile source emissions allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment and maintenance of the ozone NAAQS.

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 (MVEBs may also be specified for additional years during the maintenance period). The MVEB serves as a ceiling on emissions that would result from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble describes how to establish the MVEB in the SIP and how to revise the MVEB if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the 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. CAA section 176(c)(1). 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. 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) making a finding of adequacy. The process for determining the adequacy of a submitted MVEB is codified at 40 CFR 93.118.

The ozone maintenance plan submitted by Illinois for the Illinois portion of the Greater Chicago area, as revised in Illinois' September 16, 2011, supplemental submittal, contains new VOC and NO_x MVEBs for the Illinois portion of the Greater Chicago area for 2008 and 2025. The availability of the SIP submission with MVEBs was announced for public comment on EPA's Adequacy Web site on September 26, 2011, at: <http://www.epa.gov/otaq/stateresources/tansconf/cursips.htm>, which provided a 30-day public comment period. The comment period for this notification ended on October 26, 2011, and EPA received no comments from the public. Note, however, that a second mechanism is also provided for EPA review and public comment on MVEBs, as described in 40 CFR 93.118(f)(2). This mechanism provides for EPA's review of the adequacy of an implementation plan MVEB simultaneously with its review and approval and disapproval of the implementation plan itself. In this action, EPA used the web notification discussed above to solicit public comments on the adequacy of Illinois' MVEBs for the Illinois portion of the Greater Chicago area, but is taking comment on the approvability of the submitted MVEBs through this proposed rule.

Illinois' ozone maintenance plan for the Illinois portion of the Greater Chicago area contains VOC and NO_x MVEBs for 2008 and 2025. Any and all comments on the approvability of the MVEBs should be submitted during the comment period stated in the **DATES** section of this notice.

EPA intends to approve 2008 and 2025 MVEBs for the Illinois portion of the Greater Chicago area for transportation conformity purposes in the final rulemaking on Illinois' ozone redesignation request. If EPA approves the MVEBs in the final rulemaking action, the new MVEBs must be used in future transportation conformity determinations for the Illinois portion of the Greater Chicago area. The new MVEBs, if approved in the final rulemaking, will be effective on the date of EPA's final rulemaking in the **Federal Register**. For required regional emission analysis years that involve 2013 (the year after EPA is expected to approve the ozone maintenance plan and Illinois' VOC and NO_x MVEBs) or beyond, the applicable VOC and NO_x MVEBs for the Chicago area are defined in table 6.

TABLE 6—MVEBS FOR THE ILLINOIS PORTION OF THE GREATER CHICAGO AREA

[Tons per ozone season weekday]

Year	VOC	NO _x
2008	117.23	373.52
2025	48.13	125.27

The MVEBs are the on-road mobile source VOC and NO_x emissions for the Illinois portion of the Greater Chicago area for 2008 and 2025, including 15 percent safety margins for 2025. The MVEBs are compatible with the 2008 and 2025 on-road mobile source VOC and NO_x emissions included in Illinois' 2008 and 2025 VOC and NO_x emission inventories, as summarized above in table 5. The derivation of the MVEBs is thoroughly discussed in appendix B of IEPA's April 5, 2009, ozone maintenance plan and in Illinois' September 16, 2011, supplement to the ozone maintenance plan.

EPA is proposing to approve the MVEBs for 2008 and 2025 as part of Illinois' 1997 8-hour ozone standard maintenance plan. EPA has determined that the MVEB emission targets are consistent with emission control measures in the SIP and that the Greater Chicago area can maintain attainment of the 1997 8-hour ozone NAAQS.

VII. 2002 Emissions Inventories

Section 182(a)(1) of the CAA requires States with ozone nonattainment areas to submit a comprehensive, accurate, and current inventory of actual emissions (emissions of VOC and NO_x) from all sources in the nonattainment areas, in accordance with guidance provided by the EPA. On June 21, 2006, IEPA submitted 2002 base year

emissions inventories for the Illinois portion of the Greater Chicago nonattainment area. Emissions contained in that 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 source-specific descriptions of emission calculation procedures and sources of input data.

IEPA prepared the point source emissions using source-reported actual 2002 emissions data for VOC and NO_x. The emissions were adjusted for a typical summer day at each emissions unit within the source facilities. The annual emission reports provided ozone season hourly emissions and operating schedules that enabled the calculations of ozone season weekday emissions.

Illinois used several methods to estimate area source activity levels and emissions, including applying local activity levels, apportioning national or statewide activity levels to the local level, and applying per capita emission factors considering county-specific populations. The documentation supplied in the emissions inventory submittal shows how the county-specific emissions were calculated for each area source category.

Non-road mobile source emissions were generated using EPA's NONROAD model. In addition, separate emission estimates were developed for commercial marine vessels, aircraft, and railroads, non-road source categories not included in the NONROAD model.

On-road mobile source emissions contained in the June 21, 2006, submittal were prepared by the IEPA using EPA's MOBILE6 emissions model and daily VMT and speed estimates provided by the Illinois Department of Transportation. Note, however, that the 2002 on-road mobile source emissions documented in the September 16, 2011, submittal were derived using the MOVES mobile source emissions model rather than MOBILE6. MOVES is the currently EPA-accepted model for the determination of on-road mobile source emissions.

Illinois' September 16, 2011, submittal documents 2002 emissions for the Illinois portion of the Greater Chicago area in units of tons per summer day. These emissions were modified relative to those included in the June 21, 2006, submittal, reflecting revised mobile source emissions calculated using MOVES (the mobile source emissions included in the June 21, 2006 submittal were calculated using MOBILE6 mobile source emission factors). The 2002 emissions are

summarized in table 2 above in section V.C.

EPA is proposing to approve this 2002 base year emissions inventory, as revised in the September 16, 2011, submittal, as meeting the requirements of section 182(2)(1) of the CAA.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is 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.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is 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);
- Is 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
- Does 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, Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

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

Dated: January 31, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012-2991 Filed 2-8-12; 8:45 am]

BILLING CODE 6560-50-P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Parts 821 and 826

[Docket No. NTSB-GC-2011-0001]

Rules of Practice in Air Safety Proceedings; Rules Implementing the Equal Access to Justice Act of 1980

AGENCY: National Transportation Safety Board (NTSB or Board).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The NTSB proposes various amendments to our regulations, which sets forth rules of procedure for the NTSB's review of certificate actions taken by the Federal Aviation Administration (FAA); and rules of procedure concerning applications for fees and expenses under the Equal Access to Justice Act of 1980 (EAJA). The NTSB previously issued an advance notice of proposed rulemaking (ANPRM) and has carefully considered comments submitted in response to the ANPRM concerning these procedural rules. This document contains both a discussion of the comments and explanations for the changes proposed herein.

DATES: Send your comments on or before April 9, 2012.

ADDRESSES: You may send comments identified by Docket ID Number NTSB-GC-2011-0001 using any of the following methods:

Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

Mail: Send comments to NTSB Office of General Counsel, 490 L'Enfant Plaza East, SW., Washington, DC 20594-2003.

Facsimile: Fax comments to 202-314-6090.

Hand Delivery: Bring comments to 490 L'Enfant Plaza East, SW., 6th Floor, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: David Tochen, General Counsel, (202) 314-6080.

SUPPLEMENTARY INFORMATION:

I. Background—Advance Notice of Proposed Rulemaking

On December 22, 2010, the NTSB published an ANPRM inviting public comments concerning the NTSB procedural rules codified at 49 CFR parts 821 and 826. 75 FR 80452. The NTSB specifically sought comments concerning the standard of review for emergency determinations, discovery and exchanges of information between parties, and electronic filing of documents in air safety enforcement cases before the Board. The NTSB also sought comments concerning outdated rules in 49 CFR part 826, governing claims brought under the EAJA.

The ANPRM included a discussion of the rationale for the Board's procedure for handling certain aspects of emergency cases. The FAA issues emergency orders when it determines the interests of aviation safety require that the order take effect immediately, and, in those cases, the certificate holder may not exercise certificate privileges during the pendency of an appeal with the NTSB. Section 716 of the Aviation Investment and Reform Act for the 21st Century¹ (hereinafter, "the Act") amended 49 U.S.C. 44709 by granting the NTSB authority to review such emergency determinations. The ANPRM sought comments concerning this review process. Specifically, the NTSB described the considerations, including Federal court rulings and comments received in response to the NTSB's Interim Rule (published on July

11, 2000 (64 FR 42637), initially implementing section 716 of the Act) resulting in the adoption, in the Final Rule (published on April 29, 2003 (68 FR 22623)), of the standard of review found in 49 CFR 821.54(e). Section 821.54(e) directs NTSB's law judges to dispose of petitions for review of the FAA's emergency determinations by "consider[ing] whether, based on the acts and omissions alleged in the Administrator's order, and assuming the truth of such factual allegations, the Administrator's emergency determination was appropriate under the circumstances, in that it supports a finding that aviation safety would likely be compromised by a stay of the effectiveness of the order during the pendency of the respondent's appeal." 75 FR at 80452-80453. The aspect of the standard relating to the law judges' assumption of the truth of the FAA's allegations of fact prompted much feedback from commenters.

The ANPRM also sought comments pertaining to other matters. With regard to discovery and the parties' exchanges of information, the ANPRM requested feedback as to whether law judges should routinely issue prehearing orders to govern discovery, and whether a standard sanction should apply if parties fail to comply with a prehearing order or discovery obligation. *Id.* at 80453. On the subject of the electronic filing of documents, the ANPRM sought comments as to how to fashion electronic filing rules that could apply to *pro se* litigants, who may not have computer or Internet access. Finally, with regard to procedural rules applicable to applications for attorney's fees and expenses under the EAJA, the ANPRM sought general comments concerning updates to outdated provisions in 49 CFR part 826. For example, the ANPRM cited 49 CFR 826.40, which provides incorrect contact information for the FAA office overseeing the payment of fee awards under the EAJA. *Id.* at 80453-80454. The language of the ANPRM indicated, however, that the Board welcomed all comments relating to the procedural rules found in 49 CFR parts 821 and 826.

II. Comments Received

The NTSB received 20 relevant comments in response to the ANPRM, which are available at <http://www.regulations.gov> (Docket No. NTSB-GC-2011-0001). The Board has carefully reviewed and considered all comments it received, and greatly appreciates the time and thought the commenters devoted to providing detailed comments, as the comments

¹ Public Law 106-181, section 716 (2000) (codified at 49 U.S.C. 44709(e)(3)).