provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, 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 (Public Law 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 disproportionate human health or environmental effects with practical, appropriate, 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 3, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(165)(i)(B)(*2*) and (c)(381)(i)(G)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(165) * * *

(i) * * *

(B) * * *

(*2*) Rule 1140, ''Abrasive Blasting,'' amended on August 2, 1985.

* * * * *

(381) * * *

(i) * * *

(G) * * *

(*3*) Rule 403, ''Fugitive Dust,'' amended on April 20, 2010.

* * * * *

[FR Doc. 2014–28802 Filed 12–9–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[EPA–R05–OAR–2012–0989; FRL 9920–14-Region 5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Lake and Porter Counties to Attainment of the 2008 Eight-Hour Ozone Standard

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is disapproving a December 5, 2012, request from the state of Indiana to redesignate Lake and Porter Counties to attainment of the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) because Indiana has not demonstrated that the Chicago-Naperville, Illinois-Indiana-Wisconsin (IL-IN-WI) ozone nonattainment area (Chicago nonattainment area), which includes Lake and Porter Counties, has attained this NAAQS. EPA is also disapproving Indiana's ozone maintenance plan and Motor Vehicle Emission Budgets (MVEBs) for Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X), submitted with Indiana's ozone redesignation request.

DATES: This final rule is effective January 9, 2015.

ADDRESSES: EPA has established a docket for this action: Docket ID No. EPA EPA–R05–OAR–2012–0989. All

documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Edward Doty, Environmental Scientist, 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), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *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:

Table of Contents

I. What is the background for this action?

The background for this action is discussed in detail in EPA's June 30, 2014, proposed rule (79 FR 36692). In that proposed rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 2008 ozone standard is violated when the three-year average of the annual fourth-highest daily maximum eight-hour ozone concentrations at any monitoring site in the subject area [1] is greater 0.075 parts per million parts of air (ppm). See 77 FR 30088 (May 21, 2012) for further information regarding area designations for the 2008 ozone standard and 77 FR 34221 (June 11, 2012) for information regarding the designation of the Chicago-Naperville, IL-IN-WI area for the 2008 ozone standard. See 40 CFR 50.15 and appendix P to 40 CFR part 50 regarding the ozone data requirements for a determination of whether an area has attained the 2008 ozone standard. Under section 107(d)(3)(E) of the Clean Air Act (CAA), EPA may redesignate a nonattainment area (or a portion thereof) to attainment if sufficient complete, quality-assured data are available to demonstrate that the nonattainment area as a whole has attained the standard and if all other requirements of section 107(d)(3)(E) have been met.

The Indiana Department of Environmental Management (IDEM) submitted a request for the redesignation of Lake and Porter Counties to attainment of the 2008 ozone standard on December 5, 2012. The redesignation request included summarized ozone data for all monitors in the Chicago-Naperville, IL-IN-WI ozone nonattainment area along with other information specific to Lake and Porter Counties to demonstrate that all requirements of section 107(d)(3)(E) of the CAA have been satisfied. The June 30, 2014, proposed disapproval provides a detailed discussion of the ozone data for the period of 2006 through 2013 (see tables 1 and 2 in the June 30, 2014, proposed rule at 79 FR 36694), which show a violation of the 2008 ozone standard in the Chicago-Naperville, IL-IN-WI area based on current, quality-assured ozone data. It does not, however, discuss in detail other components of Indiana's submittal because EPA believes that Indiana failed to meet the most basic requirement for redesignation, a demonstration that the Chicago-Naperville, IL-IN-WI ozone nonattainment area has attained the 2008 ozone standard. We proposed to disapprove Indiana's ozone redesignation request based on the violation of the 2008 ozone standard, but we proposed no action on Indiana's MVEBs and ozone maintenance demonstration for the 2008 ozone standard.

II. What comments did we receive on the proposed rule?

During the public comment period for the June 30, 2014, proposed rule, we received two sets of comments, which we summarize and address here. One set of comments was submitted by IDEM and the other set was submitted by an industrial corporation with a facility in Gary, Indiana.

Comment 1: Both commenters objected to EPA's proposed disapproval of Indiana's ozone redesignation request based on violations of the 2008 ozone standard at several monitoring sites in the Chicago-Naperville, IL-IN-WI ozone nonattainment area, but outside of Lake and Porter Counties (no violations of the 2008 ozone standard were recorded in Lake and Porter Counties), during the period of 2011–2013 (the most recent three-year period with quality-assured, state-certified ozone monitoring data).[2] These objections are based on the commenters' view that section 107(d)(3)(E) of the CAA provides for the redesignation of a portion of a nonattainment area as well as for the entire nonattainment area. Both commenters contend that, since all monitors in Lake and Porter Counties have monitored attainment of the 2008 ozone standard and since Indiana's ozone redesignation request only applies to Lake and Porter Counties, EPA has erred in its interpretation of section 107(d)(3)(E) and in its insistence of judging Indiana's redesignation request based on the current ozone data for all ozone monitors in the Chicago-Naperville, IL-IN-WI nonattainment area.

IDEM makes two additional points in support of this comment. First, IDEM asserts that the plain language of section 107(d)(3)(E) does not mandate that EPA use as a prerequisite for approval of a redesignation request that all monitors in a nonattainment area show attainment of the NAAQS. IDEM contends that EPA misreads section 107(d)(3)(E) with regard to the word ''area'' contained in subsection 107(d)(3)(E)(i). IDEM argues that this subsection cannot be parsed from section 107(d)(3)(E) as a whole, and that a reading of section 107(d)(3)(E) as a whole shows that the word ''area'' in subsection 107(d)(3)(E)(i) may apply to a portion of the nonattainment area, as covered by the state's redesignation request, in this case Lake and Porter Counties, since other subsections of section 107(d)(3)(E) and the lead-in clauses of section 107(d)(3)(E) (of general applicability to all of section 107(d)(3)(E) and its subsections) can apply to a portion of the nonattainment area.[3] IDEM cites two cases, *Kokoszka* v.

[1] In this case, the Chicago-Naperville, IL-IN-WI ozone nonattainment area for the 2008 eight-hour ozone NAAQS. This area is composed of Lake and Porter Counties in Indiana; Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Aux Sable and Goose Lake Townships in Grundy County, and Oswego Township in Kendall County in Illinois; and the area east of and including the Interstate 94 corridor in Kenosha County in Wisconsin.

[2] As noted in the June 30, 2014, proposed rule, Chicago-Naperville, IL-IN-WI ozone nonattainment area has experienced a violation of the 2008 ozone standard for every three-year period from 2009 to 2013.

[3] The leading clauses of section 107(d)(3)(E) refer to the ''nonattainment area (or portion thereof).'' In addition, the term ''area'' in subsections 107(d)(3)(E)(ii), (iv), and (v) can be applied to a sub-portion of a nonattainment area, generally to a state's portion of a multi-state nonattainment area.

Bellford, 417 U.S. 642, 650 (1974), and *Dada* v. *Mukasey,* 544 U.S. 1 (2008), for the principle that ''When interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute . . .''. IDEM argues that this legal principle supports its view that interpretation of ''the area'' in subsection 107(d)(3)(E)(i) must be informed and modified by ''a nonattainment area (or portion thereof)'' as provided in the lead-in clauses of section 107(d)(3)(E).

Second, IDEM cites EPA's approval of the redesignation of Kentucky's portion of the Cincinnati-Hamilton, Ohio-Kentucky (OH-KY) nonattainment area to attainment of the 1990 ozone standard in further support of its position. IDEM notes that EPA approved a redesignation request for the Kentucky portion even though the Ohio portion of this ozone nonattainment area was denied redesignation. IDEM points out that in doing so, EPA interpreted the term ''area'' in subsection 107(d)(3)(E)(ii) to mean a portion of the nonattainment area, rather than the nonattainment area as a whole. Similarly, IDEM notes that, in EPA's subsequent final rule approving the redesignation of the Kentucky portion of the nonattainment area, EPA said that it had the authority to redesignate the Kentucky portion of the nonattainment area independent of whether Ohio had met all of the requirements for a fully approved State Implementation Plan (SIP) for its portion of the nonattainment area. IDEM believes that EPA's interpretation of ''area'' in subsection 107(d)(3)(E)(ii) in the redesignation of the Kentucky portion of the Cincinnati-Hamilton, OH-KY nonattainment area is the correct interpretation and should apply to subsection 107(d)(3)(E)(i) to support the approval of Indiana's ozone redesignation request for Lake and Porter Counties.

Response 1: Section 107(d)(3)(E) of the CAA specifies five criteria for evaluating the adequacy of a state's redesignation request. A key element of these criteria is contained in subsection 107(d)(3)(E)(i), which requires that the Administrator (EPA) determine that ''the area has attained the national ambient air quality standard.'' EPA has consistently interpreted ''area'' in this subsection to mean the entire nonattainment area and has required that all monitors in the subject nonattainment area have monitored attainment of the subject air quality standard. This is true for multi-state nonattainment areas, such as the Chicago-Naperville, IL-IN-WI nonattainment area, and for single state nonattainment areas. See, *e.g.,* 77 FR 6743, February 9, 2012, (proposed redesignation of the Illinois portion of the Chicago-Gary-Lake County, IL-IN nonattainment area for the 1997 ozone standard); 76 FR 79579, December 22, 2011, (proposed redesignation of the Illinois portion of the St. Louis, Missouri-Illinois nonattainment area for the 1997 ozone standard); 72 FR 26759, May 11, 2007, (proposed redesignation of the Kentucky portion of the Huntington-Ashland, Kentucky-West Virginia nonattainment area for the 1997 ozone standard); 72 FR 1474, January 12, 2007, (proposed redesignation of the West Virginia portion of the Parkersburg-Marietta, West Virginia-Ohio nonattainment area for the 1997 ozone standard); and 75 FR 12090, March 12, 2010, (proposed redesignation of the Indiana portion of the Chicago-Gary-Lake County, Illinois-Indiana nonattainment area for the 1997 ozone standard).

The commenters assert that section 107(d)(3)(E) criteria allow the redesignation of a portion of a nonattainment area. We agree with these commenters that EPA can, and has under certain circumstances, redesignated portions of a nonattainment area to attainment of the NAAQS while leaving other portions of the nonattainment area designated as nonattainment. See the above list of proposed rules for proposed partial area redesignations. However, regardless of whether EPA considers a redesignation of a part of a nonattainment area or the redesignation of an entire nonattainment area, EPA considers the air quality data for the entire nonattainment area to establish compliance with the air quality requirements of subsection 107(d)(3)(E)(i). EPA has consistently taken this approach because to do otherwise could result in the stripping of source areas that are otherwise attaining the NAAQS away from the remainder of a nonattainment area that continues to violate the NAAQS. This would clearly undermine the CAA's intent for nonattainment areas to include both the violating areas and the source areas that contribute to the violations of the NAAQS, as expressed in subsection 107(d)(1)(A)(i) of the CAA. Redesignating portions of nonattainment areas when the areas, as wholes, are not attaining the NAAQS would also interfere with the CAA's emission control requirements that are designed to bring the nonattainment areas back into attainment of the NAAQS by controlling emissions in source areas within the nonattainment areas.

EPA disagrees with IDEM that the CAA compels EPA to interpret the word ''area'' in subsection 107(d)(3)(E)(i) to mean a nonattainment area or a portion of a nonattainment area. The language of section 107(d)(3)(E) and its subsections, read with the CAA as a whole, does not lend itself to a clear and unambiguous interpretation of the term ''area'' in subsection 107(d)(3)(E)(i).

IDEM argues that EPA must interpret ''area'' in subsection 107(d)(3)(E)(i) in light of the CAA as a whole. EPA agrees, and believes that, contrary to IDEM's position, this legal principle supports EPA's reading of the statute. As noted above, if EPA were to interpret ''area'' in subsection 107(d)(3)(E)(i) to permit the agency to approve a redesignation where the air quality standard was not being attained in all portions of the nonattainment area, the agency would contravene Congress' intent that nonattainment areas include not only areas that do not meet the air quality standard but also areas ''that contribute [ ] to ambient air quality in a nearby area that does not meet'' the standard. 42 U.S.C. 7407(d)(1)(A)(i). Interpreting the statute in the manner suggested by IDEM would allow a portion of a nonattainment area, which itself is not violating the NAAQS but is contributing to nonattainment in that area, to be redesignated to attainment immediately after being designated as part of the nonattainment area under CAA subsection 107(d)(1)(A)(i) if the state could demonstrate compliance with the provisions of subsections 107(d)(3)(E)(ii)–(v). This is not a reasonable reading of the statute, and thus EPA disagrees with IDEM that, in reading the statute as a whole, the word ''area'' in subsection 107(d)(3)(E)(i) should be interpreted to include ''a portion of the nonattainment area.''

In fact, the requested redesignation at issue illustrates precisely the hypothetical example set out above. On June 11, 2012, EPA finalized its designation of Lake and Porter Counties as part of the Chicago-Naperville, IL-IN-WI ozone nonattainment area (77 FR 34221). EPA explained in that rule that Lake and Porter Counties were included in the ozone nonattainment area designation based on their emissions and contribution to high ozone concentrations in other parts of the nonattainment area. See EPA's final technical support document (TSD) for the designation of the Chicago-Naperville, IL-IN-WI area (available at *http://www.epa.gov/ozonedesignations/2008standards/documents/*

R5_Chicago_TSD_Final.pdf). In particular, in the TSD, EPA noted that Lake and Porter Counties account for 10.4 percent of the total VOC emissions and 18.8 percent of the total NO_X emissions for the entire Chicago consolidated statistical area. *Id.* at 9. In the TSD, EPA also noted that other county-specific factors, including population levels, traffic levels (vehicle miles of travel), and meteorology during high ozone days in the Chicago-Naperville, IL-IN-WI area also supported the inclusion of Lake and Porter Counties in the Chicago-Naperville, IL-IN-WI ozone nonattainment area for the 2008 ozone standard.

In the designations process, Indiana objected to the inclusion of Lake and Porter Counties in the ozone nonattainment area, and EPA responded to those comments. See EPA's ''ADDENDUM to Response to Significant Comments on the State and Tribal Designation Recommendations for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) for Section 3.2.5.1. Chicago-Naperville, IL-IN-WI area'' (RTC Addendum), (available at *http://www.epa.gov/ozonedesignations/2008standards/documents/20120531chicagortc.pdf*). In both the TSD and the RTC Addendum, EPA discussed ozone modeling analyses conducted by the Lake Michigan Air Directors Consortium (LADCO) that demonstrate that Lake and Porter Counties' ozone precursor emissions significantly contributed to high ozone levels at the Zion, Illinois monitoring site (the worst-case ozone design value monitoring site considered during ozone designation process for the Chicago-Naperville, IL-IN-WI area) during the high ozone days modeled by LADCO (TSD at 17–19 and RTC Addendum at 10–12).

EPA's inclusion of Lake and Porter Counties as part of the Chicago-Naperville, IL-IN-WI ozone nonattainment area for the 2008 ozone standard is also consistent with section 107(d)(1) of the CAA and EPA's interpretation of the statute as it pertains to ozone designations as expressed in a December 4, 2008, EPA policy memorandum (''Area Designations for the 2008 Revised Ozone National Ambient Air Quality Standards,'' from Robert J. Meyers, Principal Deputy Assistant Administrator, to Regional Administrators, Regions I–X). As noted in that memorandum, because ''[g]round-level ozone and ozone precursor emissions are pervasive and readily transported . . . EPA believes it is important to examine ozone-contributing emissions across a relatively broad geographic area.'' *Id.* at 3.

Indiana requested redesignation of the Lake and Porter Counties portion of the Chicago-Naperville, IL-IN-WI nonattainment area in December 2012, six months after the initial designation of the nonattainment area was finalized. The state's request is based on the same years of air quality data that were used to designate the area nonattainment. Thus, interpreting ''area'' in section 107(d)(3)(E) as IDEM suggests would have the effect of immediately reversing the designation of the nonattainment area, an outcome that Congress could not have intended. Indiana has objected to the inclusion of Lake and Porter Counties in the Chicago nonattainment area and it has filed a petition for judicial review of that decision.[4] The redesignation process, however, is not the proper forum in which to challenge EPA's designation decisions.

IDEM's assertion that EPA's redesignation of the Kentucky portion of the Cincinnati-Hamilton, OH-KY nonattainment area for the 1990 ozone standard is inconsistent with EPA's action here is also mistaken. In that redesignation, EPA clearly considered ozone data for all ozone monitoring sites in the entire Cincinnati-Hamilton nonattainment area, and not just for the portion of the area that was being redesignated, in determining that the Kentucky portion of the area had met the criteria for redesignation. 65 FR 3630 (January 24, 2000) and 65 FR 37879 (June 19, 2000). IDEM accurately notes that EPA interpreted the word ''area'' for purposes of subsection 107(d)(3)(E)(ii) to mean the state-specific portion of the nonattainment area in the Cincinnati-Hamilton redesignation, consistent with EPA's long-standing interpretation of that provision.

EPA acknowledges that the meaning of the word ''area'' in section 107(d)(3)(E) is ambiguous. In the Cincinnati-Hamilton redesignation cited by IDEM, and in other actions, EPA has consistently interpreted the word ''area'' in subsections 107(d)(3)(E)(ii), (iv), and (v) to include the single-state portions of multi-state nonattainment areas in addition to entire nonattainment areas seeking redesignation. Subsection 107(d)(3)(E)(ii) requires that an area have a fully approved applicable SIP, subsection 107(d)(3)(E)(iv) requires that an area have a fully approved maintenance plan, and subsection 107(d)(3)(E)(v) requires an area to have met all applicable requirements under section 110 and part D. These subsections are distinguishable from subsection 107(d)(3)(E)(i) in that interpreting ''area'' in these subsections to include a single-state portion of a multi-state area does not interfere with any other requirement of the CAA. Furthermore, EPA interprets ''area'' in subsections 107(d)(3)(E)(ii), (iv), and (v) to include portions of nonattainment areas because those provisions all relate to SIP revision requirements, and each state is independently responsible for obtaining approval of the applicable SIP provisions for redesignation.

EPA does not think it is necessary to require one state to wait for another state to complete its SIP actions before becoming eligible for redesignation if the nonattainment area as a whole is attaining the NAAQS. On the other hand, although EPA will determine that a state containing a portion of a multi-state nonattainment area has satisfied subsection 107(d)(3)(E)(iv) where only that state has submitted a fully approved maintenance plan, EPA requires as a matter of course that the state communicate with the other states governing the multi-state nonattainment area and demonstrate projected maintenance of the NAAQS in the other portions of the nonattainment area, even in the absence of fully approved maintenance plans from those other states. EPA has, therefore, been consistent in interpreting ''area'' in 107(d)(3)(E) to mean the entire nonattainment area with respect to air quality concerns, even where the Agency has interpreted the term ''area'' to include single-state portions of multi-state nonattainment areas when the requirement is limited to SIP submission and processing.

In conclusion, EPA believes that interpreting the word ''area'' in subsection 107(d)(3)(E)(i) to mean a portion of a nonattainment area contravenes the CAA mandate in subsection 107(d)(1)(A)(i) for the nonattainment area to include both the violating areas and the source areas that contribute to the violations of the NAAQS. Even if EPA believed that it could redesignate a portion of an area when another portion of the area is violating the NAAQS, we would decline to take that approach as a policy matter because we believe that our current interpretation of subsection 107(d)(3)(E)(i) is most protective of human health and the environment.

Comment 2: IDEM requests that EPA re-evaluate Indiana's December 5, 2012, redesignation request in total, after consideration of its arguments as summarized in comment 1, to determine

[4] *Mississippi Commission on Environmental Quality, et al.* v. *EPA* (D.C. Cir. No. 12–1309 and consolidated cases).

whether the request as a whole conforms to the requirements of section 107(d)(3)(D).

Response 2: As explained in response to Comment 1 above, we disagree with IDEM's interpretation of ''area'' in subsection 107(d)(3)(E)(i) and have determined that this subsection requires attainment of the 2008 ozone standard in the entire Chicago-Naperville, IL-IN-WI nonattainment area. Since the 2008 ozone standard has not been attained in the entire nonattainment area, as evidenced by the ozone monitoring data summarized in the June 30, 2014, proposed rule (see tables 1 and 2 at 79 FR 36692, 36694–36695), we conclude that the Chicago-Naperville, IL-IN-WI area and Indiana's ozone redesignation request for Lake and Porter Counties have not met the most basic requirement for redesignation, attainment of the 2008 ozone NAAQS.

Since attainment of the NAAQS is a prerequisite for development of an acceptable attainment emissions inventory (and the MVEBs derived thereof) and for demonstrations of maintenance, we cannot approve these components of Indiana's ozone redesignation request for Lake and Porter Counties. In our June 30, 2014, proposed rule, we explained that rather than acting on these components of Indiana's redesignation request, which would almost certainly have resulted in proposed disapproval on the grounds of the failure of the Chicago-Naperville, IL-IN-WI area to attain the 2008 ozone standard, we chose to take no action on these components (79 FR 36692, 36696). In so doing, we explained that an approvable ozone maintenance plan must contain an ozone attainment emissions inventory documenting VOC and NO_X emissions for the period in which the area has attained the ozone standard. We concluded that ''[s]ince the Chicago ozone nonattainment area continues to violate the 2008 eight-hour ozone standard, we cannot conclude that Indiana has developed an acceptable attainment year emissions inventory. This means that the ozone maintenance demonstration portion of the ozone maintenance plan is unacceptable.'' *Id.* Similarly, with regard to Indiana's proposed MVEBs for VOCs and NO_X, we explained that ''since the estimation of the VOC and NO_X MVEBs depends on the determination of mobile source emissions that, along with other emissions in the nonattainment area, provide for attainment of the ozone standard, and since the Chicago nonattainment area continues to violate the 2008 eight-hour ozone standard, we conclude that Indiana's estimates of the VOC and NO_X MVEBs are also not acceptable.'' *Id.*

Subsequently, IDEM submitted its comment requesting that we take action on the remaining components of its submittal in light of our re-evaluation of our interpretation of ''area'' in subsection 107(d)(3)(E)(i). We had proposed to take no action on those remaining components; but based on our earlier findings that those components are not approvable and on IDEM's comment urging us to take action on its request as a whole, we now conclude that we cannot approve the remaining portions of Indiana's request—its maintenance plan and its proposed MVEBs. As a result, we are in this action disapproving these remaining portions of Indiana's submission. We believe this disapproval is a logical outgrowth of our proposal, because we included in that notice not only our explanation for why these elements were not approvable, but also indicated that ''if we were to propose actions on these ozone redesignation request elements, we would find it necessary to propose disapproval.'' 79 FR 36692, 36696. We believe this alerted commenters that we were considering disapproval of the maintenance plan and MVEBs. Therefore, we are determining that the MVEBs and ozone maintenance plan included with Indiana's ozone redesignation request must be disapproved on the basis that the Chicago-Naperville, IL-IN-WI area continues to violate the 2008 ozone NAAQS.

Comment 3: The corporate commenter asserted that EPA's failure to redesignate the portions of nonattainment areas that meet the NAAQS unnecessarily burdens economic development in such areas. The commenter objected to the implementation of (nonattainment) New Source Review (NSR) requirements in these areas on the basis that such implementation unjustly burdens the sources in these areas.

Response 3: Since the Chicago-Naperville, IL-IN-WI area continues to violate the 2008 ozone standard, it is imperative that NSR continue to be applied in all parts of the nonattainment area to avoid exacerbation of the existing ozone air quality problem. The ''attainment'' portions of nonattainment areas that the commenter refers to are in this case source areas contributing to violations of the NAAQS in other portions of the nonattainment area. See also our response to Comment 1, above. Therefore, it is inappropriate to redesignate the attaining portions of the nonattainment areas and to remove NSR requirements, including new source offsets, in these attaining portions while violations of the NAAQS continue in other portions of the nonattainment areas.

III. What action is EPA taking?

We are disapproving a December 5, 2012, request from the state of Indiana to redesignate Lake and Porter Counties to attainment of the 2008 ozone NAAQS because Indiana has not demonstrated that the Chicago-Naperville, IL-IN-WI ozone nonattainment area, which includes Lake and Porter Counties, has attained this NAAQS, as required by subsection 107(d)(3)(E)(i) of the CAA. EPA is also disapproving Indiana's ozone maintenance plan and MVEBs, submitted with Indiana's ozone redesignation request, because Indiana has failed to successfully present MVEBs and an ozone maintenance plan which reflect attainment and maintenance of the 2008 ozone standard in the Chicago-Naperville, IL-IN-WI ozone nonattainment area as evidenced by the continued violation of this ozone standard in this ozone nonattainment area.

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely disapproves state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule disapproves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as

described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely disapproves a state rule, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it disapproves a state rule.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely disapproves certain state requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: November 25, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. Section 52.777 is amended by adding paragraph (ss), to read as follows:

§ 52.777 Control strategy: photochemical oxidents (hydrocarbons).

* * * * *

(ss) *Disapproval.* EPA is disapproving Indiana's December 5, 2012, ozone redesignation request for Lake and Porter Counties for the 2008 ozone standard. EPA is also disapproving Indiana's motor vehicle emission budgets and ozone maintenance plan submitted with the redesignation request.

[FR Doc. 2014–28799 Filed 12–9–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0601; FRL–9918–88]

Alpha-cypermethrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of alpha-cypermethrin in or on food