Revision to the Motor Vehicle Emissions Budgets Included in the Chicago 1997 8-hour Ozone Maintenance Plan

February 14, 2014

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The transportation conformity requirement, Section 176(c) of the Clean Air Act of 1990 (CAA), was included in the CAA due to the large contribution of motor vehicle emissions to the nonattainment problem in urban areas and the desire to ensure that the implementation of future transportation network improvements do not contribute to increased emissions, undermining the intent of the SIP to improve air quality and meet the national ambient air quality standards. Section 176(c) requires that long-range transportation plans and Transportation Improvement Programs (TIPs) conform to air quality State Implementation Plans (SIPs) in nonattainment (NAA) and maintenance areas. The CAA also requires air quality agencies to include a maximum level of allowable motor vehicle emissions, or budget, in each of its control strategy and maintenance plan SIPs. The CAA, and related metropolitan planning requirements implemented by the U. S. Department of Transportation (USDOT) (23 CFR Part 450), requires metropolitan planning organizations (MPOs) in NAA and maintenance areas to project the total amount of motor vehicle emissions resulting from the implementation of the proposed plan or TIP. Projected emissions from such plans must be at or below the adopted SIP motor vehicle emissions budgets in order for the plans to conform and be approved by the USDOT.

In the August 13, 2012 Federal Register (77 FR 48062), Attachment 1, the U. S. Environmental Protection Agency (USEPA) approved the redesignation of the Illinois portion of the Chicago-Gary-Lake County, Illinois-Indiana area (the Greater Chicago area) to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). In addition to approving the redesignation request, the USEPA approved the State's plan for maintaining the 1997 8-hour ozone NAAQS through 2025 ("Maintenance Plan"). The Maintenance Plan included a demonstration that total ozone precursor emissions in the Greater Chicago area would remain below the 2008 attainment year level through the end of the Maintenance Plan, the year 2025.

The Maintenance Plan also contained volatile organic compound (VOC) and oxides of nitrogen (NOx) motor vehicle emissions budgets for the years 2008 and 2025 for use in conducting transportation conformity determinations. These budgets were developed based on key motor vehicle parameters, such as vehicle age distribution, vehicle fuel and vehicle inspection and maintenance plan requirements, reflective of the year 2008. Vehicle miles of travel were projected to increase by 1.5% per year from 2008 to 2025. The vehicle age distribution is one of the key planning assumptions that are part of the MPO's conformity analysis. The vehicle age distribution is a fractional representation of the regional fleet, by 13 vehicle types, and for the 30 previous model years. This distribution is estimated from a combination of Illinois Secretary of State registration data and default information from the USEPA's MOtor Vehicle Emissions Simulator (MOVES) model.

The transportation conformity rules require that the planning assumptions are "current," which means, in the case of the vehicle age distribution, no older than five years. During the update of that data set to the year 2013, the Illinois EPA and the Chicago Metropolitan Agency for Planning (CMAP), the MPO for the northeastern Illinois area, recognized a significant reduction in the purchase of new motor vehicles beginning in 2008, reflecting the national economic downturn. The federal government attempted to address the recession in general, and the impacts on the auto industry specifically, through the implementation of the American Recovery and Reinvestment Act of 2009 as well as incentives for the purchase of new vehicles and even financial support for financially troubled domestic automakers. This decrease in new car sales resulted in an increase in the average age of the vehicle fleet as motorists continued to drive their vehicles longer. Incorporating the 2013 vehicle age distribution data in the MOVES model resulted in an increase in projected emissions. CMAP's preliminary emissions analyses also

reflected this increase and thus a potential inability to meet the current Maintenance Plan emissions budget for their 2040 analysis year.

Another factor potentially affecting the estimation of motor vehicle emissions is travel activity outputs from the MPO's travel demand model. These model outputs include miles and hours of vehicle travel, categorized by time of day, speed, vehicle type, and facility type. A number of factors unrelated to changes in a region's transportation plan and program can affect the model output. Thus, changes can occur in emissions estimates that do not reflect an actual change in a region's emissions. Such model changes include:

- updated versions of the model software;
- changes in network coding outside the region, reflecting a choice of which roads to include in the model, not changes in the actual road network;
- changes in input file generation methods; and
- changes in modeling methods, such as changes to the traffic analysis zones (e.g., splitting or combining zones).

One of the critical components of a maintenance plan is the comparison of the area's emissions in the attainment year to those projected for the final year of the maintenance plan. The following table reflects the Chicago Maintenance Plan's 2008 attainment year total emissions from point, area and mobile sources of volatile organic compounds (VOC) and oxides of nitrogen (NOx), those projected to the year 2025, and the amount of excess emissions reductions, also referred to as a "safety margin."

Table 1
Chicago 1997 8-Hour Ozone Maintenance Plan
Emissions Estimates
(in tons per day)

	2008 Attainment Year Emissions	2025 Final Year Emissions Projection	Total Safety Margin
Volatile Organic Compounds	787.45	611.95	175.60
Oxides of Nitrogen	896.76	427.11	469.65

The USEPA transportation conformity regulations (40 CFR 93.124) allow for the use of some or all of the safety margin in the development of motor vehicle emissions budgets for maintenance plans (58 FR 62188). As indicated in Table 1, VOC and NOx emissions were projected to be 175.60 and 469.65 tons per day lower in 2025 than in 2008, respectively. This safety margin allowed the Illinois EPA to allocate a portion into the year 2025 motor vehicle emissions budgets established in the Maintenance Plan. However, the increase in estimated emissions resulting from the use of the 2013 vehicle age distribution exceeds that budget. Therefore, the Illinois EPA is proposing to revise the 2025 motor vehicle emissions budgets contained in the Chicago 1997 8-hour Ozone Maintenance Plan as detailed in Table 2 below.

Table 2

Proposed Revised
Chicago 1997 8-Hour Ozone Maintenance Plan
Motor Vehicle Emissions Budgets
(in tons per day)

	2025 Approved Maintenance Plan Budget	Proposed Allocation of Safety Margin	Proposed 2025 Maintenance Plan Budget
Volatile Organic Compounds	48.13	12.00	60.13
Oxides of Nitrogen	125.27	25.00	150.27

The proposed allocation of a portion of the safety margin is well below the level of the total safety margin between the attainment year 2008 emissions and the emissions projected for 2025 identified in Table 1. Therefore, the total year 2025 emissions including the additional allocated emissions for motor vehicles will remain below the 2008 attainment level of total emissions for the Chicago area. By maintaining emissions well below the 2008 attainment year level, the revised motor vehicle emissions budgets and the Maintenance Plan will ensure continued maintenance, and will not interfere with any applicable CAA requirements, including Section 110(l). Section 110(l) requires that the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act.

The proposed revision of the motor vehicle emissions budgets was discussed at the February 13, 2014 meeting of the CMAP Tier II Consultation team. This group includes representatives of CMAP, the USEPA, the USDOT, the Illinois Department of Transportation, the Regional Transportation Authority; the City of Chicago; and, the Illinois EPA. A 30-day public comment period on this proposal is being held from February 14 to March 17, 2014. If requested, a public hearing will be held at 1 p.m. on March 24, 2014, at the Illinois EPA offices in Springfield, IL.

Attachment 1

USEPA Final Approval (77 FR 48062) of Illinois' Request to Redesignate the Illinois Portion of the Greater Chicago area to Attainment of the 1997 8-hour Ozone National Ambient Air Quality Standard

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the amendatory instructions and paragraph heading regarding EPA's limited approval of Pennsylvania's Regional Haze State Implementation Plan (SIP).

DATES: *Effective Date:* August 13, 2012.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814–2096 or by email at *linden.melissa@.epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA. On July 13, 2012 (77 FR 41279), we published a final rulemaking action announcing our limited approval of Pennsylvania's Regional Haze SIP. In this document, we inadvertently provided an incorrect amendatory instruction on page 41284 regarding the addition of an entry to § 52.2020(e)(1), and also omitted a paragraph heading. This action corrects both the erroneous amendatory instruction and the omitted paragraph heading in part 52 for this paragraph.

In rule document 2012–16428, published in the **Federal Register** on July 13, 2012 (77 FR 41279), the following corrections are made:

§ 52.2020 [Corrected]

■ 1. On page 41284 in the third column, amendatory instruction number 2 is revised to read as follows:

"2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for Regional Haze Plan at the end of the table to read as follows:"

■ 2. On page 41284 in the third column, the paragraph designation is revised from "(e)" to "(e)(1)."

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of August 13, 2012. 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**. This correction for 40 CFR part 52, subpart NN (Pennsylvania) is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: July 23, 2012.

W.C. Early,

Acting Regional Administrator, EPA Region III.

[FR Doc. 2012–19044 Filed 8–10–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0666; FRL–9712–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request from the State of Illinois to redesignate the Illinois portion of the Chicago-Gary-Lake County, Illinois-Indiana (IL–IN) area (the Greater Chicago area) to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard). 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 on September 16, 2011. In addition to approval of Illinois' ozone redesignation request, EPA is: (1) Approving the State's plan for maintaining the 1997 8-hour ozone standard through 2025 and the State's 2002 Volatile Organic Compound (VOC) and Nitrogen Oxides (NOx) emission inventories, as revisions to the Illinois State Implementation Plan (SIP) for the Illinois portion of the Greater Chicago area; and (2) approving and finding adequate the State's 2008 and 2025 VOC and NOx Motor Vehicle Emission Budgets (MVEBs).

DATES: This final rule is effective August 13, 2012.

ADDRESSES: EPA has established a docket for this action: Docket ID No. EPA–R05–OAR–2009–0666. 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 material is 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, 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:

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I. What is the background for this rule?
II. What comments did we receive on the proposed rule?
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I. What is the background for this rule?

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million (ppm) (85 parts per billion (ppb) or higher exceeds the standard). EPA published a final rule designating and classifying areas under the 1997 8-hour ozone NAAQS on April 30, 2004 (69 FR 23857). In that rulemaking, the Greater Chicago area was designated as nonattainment for the ozone standard. This area was classified as a moderate nonattainment area under subpart 2 of the Clean Air Act (CAA).

On July 23, 2009, IEPA requested redesignation of the Illinois portion of the Greater Chicago area to attainment of the 1997 8-hour ozone standard based on ozone data for the period of 2006–2008. On September 16, 2011, IEPA supplemented the original ozone redesignation request, submitting ozone data for the period of 2008–2010, revising the mobile source emission estimates using EPA's on-road mobile source emissions model, MOVES, and extending the demonstration of maintenance of the ozone standard through 2025, with new MVEBs, but without emission reductions resulting from implementation of EPA's Clean Air Interstate Rule (CAIR).

On March 12, 2010, EPA issued a final rulemaking determining that the entire Chicago-Gary-Lake County, IL-IN area had attained the 1997 8-hour ozone NAAQS based on three years of complete, quality-assured ozone data for the period of 2006–2008, and continuing through 2009[1] (75 FR 12088). On May 11, 2010, EPA issued a final rulemaking redesignating the Indiana portion (Lake and Porter Counties) of the Chicago-Gary-Lake County, IL-IN area to attainment of the 1997 8-hour ozone NAAQS (75 FR 26118).

On February 9, 2012 (77 FR 6743), EPA issued a notice of rulemaking proposing to approve Illinois' request to redesignate the Illinois portion of the Greater Chicago area to attainment of the 1997 8-hour ozone standard, as well as proposing to approve Illinois' ten-year ozone maintenance plan for the area, VOC and NOx MVEBs, and 2002 VOC and NOx emission inventories as revisions of the Illinois SIP. This proposed rulemaking sets forth the basis for determining that Illinois' redesignation request meets the CAA requirements for redesignation for the 1997 8-hour ozone NAAQS. Complete, quality-assured air quality monitoring data in the Greater Chicago area for 2008–2010 and for 2009–2011 show that this area is currently attaining the 1997 8-hour ozone NAAQS. Preliminary data available to date for 2012 are consistent with continued attainment of the 1997 8-hour ozone NAAQS. The quality-assured ozone data in the Greater Chicago area were discussed in the February 9, 2012, proposed rule for this rulemaking (77 FR 6747). Table 1 summarizes the 2009–2011 annual fourth high ozone concentrations and 2009–2011 ozone design values (three-year averages of the annual fourth high daily maximum 8-hour ozone concentrations) for each of the monitoring sites in the Greater Chicago area. These and other ozone data for the Greater Chicago area are also documented at EPA's Web site *http://www.epa.gov/airdata/ad_rep_mon.html*.

TABLE 1—ANNUAL FOURTH HIGH OZONE CONCENTRATIONS AND THREE-YEAR AVERAGES FOR 2009–2011 (CONCENTRATIONS IN PARTS PER MILLION (PPM))

Site Name (site code)	County	2009	2010	2011	Three-year average
4500 W. 123rd Street, Alsip (170310001)	Cook	0.069	0.073	0.071	0.071
3300 E. Cheltenham, Chicago (170310032)	Cook	0.065	0.074	0.079	0.073
Wacker At Adams, Chicago (170310042)	Cook	0.076	0.077	No Data	
5720 S. Ellis Avenue, Chicago (170310064)	Cook	0.060	0.071	0.074	0.068
1000 E. Ohio, Chicago (170310072)	Cook	0.062	0.075	0.074	0.070
7801 Lawndale, Chicago (1703100760	Cook	0.067	0.068	0.073	0.069

[1] The area continued to attain the 1997 8-hour ozone standard based on quality assured ozone data for 2010. See February 9, 2012, proposed rule (77 FR 6743).

TABLE 1—ANNUAL FOURTH HIGH OZONE CONCENTRATIONS AND THREE-YEAR AVERAGES FOR 2009–2011 (CONCENTRATIONS IN PARTS PER MILLION (PPM))—Continued

Site Name (site code)	County	2009	2010	2011	Three-year average
6545 W. Hurlbut, Chicago (170311003)	Cook	0.064	0.070	0067	0.067
729 Houston, Lemont (170311601)	Cook	0.067	0.073	0.069	0.070
1820 S. 51st Avenue, Cicero (170314002)	Cook	0.067	0.068	0.072	0.069
9511 W. Harrison Street, Chicago (170314007)	Cook	0.057	0.064	0.065	0.062
750 Dundee Road, Northbrook (170314201)	Cook	0.069	0.072	0.076	0.072
531 E. Lincoln, Evanston (170317002)	Cook	0.064	0.067	0.078	0.070
Route 53 (170436001)	DuPage	0.059	0.064	0.068	0.064
665 Dundee Road, Elgin (170890005)	Kane	0.068	0.069	0.070	0.069
Golf and Jackson Streets, Waukegan (170971002)	Lake	0.057	0.074	No Data	
Illinois Beach State Park, Zion (170971007)	Lake	0.075	0.078	0.076	0.076
First Street and Three Oaks Road, Cary (171110001)	McHenry	0.066	0.065	0.071	0.67
36400 S. Essex Road (171971011)	Will	0.063	0.065	0.061	0.063
201 Mississippi Street, Gary (180890022)	Lake	0.058	0.064	0.066	0.063
1751 Oliver Street, Whiting (180890030)	Lake	0.062	0.069	0.069	0.067
1300 141 Street, Hammond (180892008)	Lake	0.065	0.069	0.072	0.069
84 Diana Road, Ogden Dunes (181270024)	Porter	0.067	0.067	0.068	0.067
1000 Wesley/Valparaiso Water Department (181270026)	Porter	0.064	0.061	0.063	0.063
Chiwaukee Prairie, Pleasant Prairie (550590019)	Kenosha	0.071	0.081	0.081	0.078

The primary background for today's action is contained in EPA's February 9, 2012, proposal to approve Illinois' redesignation request, and in EPA's March 12, 2010, final rulemaking determining that the area has attained the 1997 8-hour ozone NAAQS. In these rulemakings, we noted that, under EPA regulations at 40 CFR 50.10 and 40 CFR part 50, appendix I, the 1997 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm at all ozone monitoring sites in an area. See 69 FR 23857 (April 30, 2004) for further information. To support the redesignation of the area to attainment of the NAAQS, the area must show attainment based on complete, quality-assured data for the most recent three-year period. The data completeness requirement, for any given monitoring site, is met when the three-year average of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness, as determined in accordance with appendix I of 40 CFR part 50. Under the CAA, EPA may redesignate a nonattainment area to attainment if sufficient, complete, quality-assured data are available demonstrating that the area has attained the standard and if the State meets all applicable redesignation requirements specified in section 107(d)(E) and section 175A of the CAA.

The February 9, 2012, proposed rule provides a detailed discussion of how Illinois' ozone redesignation request meets the CAA requirements. Complete, quality-assured and certified air quality monitoring data in the Greater Chicago area for 2009–2011 and preliminary data available for 2012 show that this area is currently attaining the 1997 8-hour ozone NAAQS. With the final approval of its VOC and NOx emission inventories, Illinois has met all CAA requirements for redesignation of the Illinois portion of the Greater Chicago area to attainment for the 1997 8-hour ozone NAAQS. Illinois has demonstrated that attainment of the 1997 8-hour ozone NAAQS will be maintained in the Greater Chicago area through 2025 with or without the implementation of EPA's CAIR. Finally, Illinois has adopted 2008 and 2025 MVEBs that are supported by Illinois' ozone maintenance demonstration and adopted ozone maintenance plan.

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

EPA provided a 30-day review and comment period for the February 9, 2012, proposed rule. During the comment period, we received one comment set from an individual representing the Sierra Club. These comments are summarized and addressed below.

Comment 1: The commenter argues that it is inappropriate to redesignate the Illinois portion of the Greater Chicago area to attainment under the 1997 8-hour ozone standard when EPA intends to designate this area as nonattainment under the 2008 8-hour ozone standard, and asserts that EPA is delaying the implementation of the 2008 8-hour ozone standard.

Response 1: We disagree with the commenter. The area's status with respect to the 2008 8-hour ozone standard is not relevant to the area's attainment status under the 1997 8-hour ozone standard. It would be inappropriate to defer or reject the redesignation of the area under the 1997 8-hour ozone standard based on EPA's designation of the area under the 2008 8-hour ozone standard.

On June 11, 2012, EPA published its designation for the Chicago-Naperville, IL-IN-WI area for the 2008 ozone standards. 77 FR 34221. EPA designated the Chicago-Naperville, IL-IN-WI area as nonattainment with a classification of marginal for the 2008 ozone standards. The area's status with respect to the 2008 ozone standards, however, does not affect or prevent redesignation of the area to attainment for the 1997 ozone standard. The 1997 ozone standard currently remains in effect, and, thus, EPA continues to evaluate the area's designation status with respect to that standard. Until the 1997 8-hour ozone standard is revoked, it remains in effect and independent of the 2008 8-hour ozone standards, and EPA continues to evaluate and act upon states' redesignation requests with respect to the 1997 ozone standard.

EPA has in the past continued to redesignate areas under existing standards even after the adoption of new standards for the same pollutant. After adopting the 1997 8-hour ozone standard, EPA continued to redesignate areas for the 1-hour ozone standard

until the 1-hour ozone standard was revoked. See, for example the Cincinnati ozone redesignation for the 1-hour ozone standard, 70 FR 35946 (June 21, 2005) and the Atlanta ozone redesignation for the 1-hour ozone standard, 70 FR 34660 (June 15, 2005).

Subsequent to the adoption of the 2008 8-hour ozone standard and designation of areas for this standard, EPA has continued to redesignate areas to attainment for the 1997 8-hour ozone standard. See, for example, the Detroit, Michigan redesignation, 74 FR 30950 (June 29, 2009); Clearfield and Indiana Counties, Pennsylvania redesignation, 74 FR 11674 (March 19, 2009); Kewaunee County, Wisconsin redesignation, 73 FR 29436 (May 21, 2008); and, Door and Manitowoc Counties, Wisconsin redesignation, 75 FR 39635 (July 12, 2010). Also see the redesignation of the Illinois portion of the St. Louis area for the 1997 8-hour ozone standard, 77 FR 34819 (June 12, 2012).

Comment 2: The commenter argues that EPA has failed to consider ambient monitoring data from 2011 even though Illinois has already submitted and certified these data. The commenter asserts that the EPA must include these data in its consideration of Illinois' ozone redesignation request and provide the public with the opportunity to review and comment on these data before making any final decision on Illinois' ozone redesignation request.

Response 2: At the time EPA prepared the proposed rule for rulemaking on Illinois' ozone redesignation request, EPA had not yet received Illinois' certification of the 2011 ozone data. At the time of EPA's proposed redesignation of the area, the 2008–2010 ozone data were the most recent three years of State-certified data available to EPA. Illinois has subsequently certified its 2011 ozone data for the Illinois portion of the Greater Chicago area.

Indiana has certified its 2011 ozone data for the Indiana portion of the Greater Chicago area. In addition, Wisconsin has certified the 2011 ozone data for the Chiwaukee Prairie monitoring site in Kenosha County, generally considered to be the peak ozone design value site attributable to emissions in the Greater Chicago area.

The complete, certified 2011 ozone data, along with ozone data for 2009 and 2010, show that the Greater Chicago area continues to attain the 1997 8-hour ozone standard. The highest 8-hour ozone design value for the 2009–2011 period was recorded at the Chiwaukee Prairie monitoring site, with a value of 0.077 parts per million. All of these data show that the area continued to attain the 1997 8-hour ozone standard during the 2009–2011 period. Preliminary ozone data for 2012 for the Greater Chicago area and for Chiwaukee Prairie are consistent with the Greater Chicago area's continued attainment of the 1997 8-hour ozone standard. EPA has, thus, considered these data, which reflect continued attainment of the 1997 8-hour ozone standard. Although the 2011 data were not certified at the time of proposal, these data were available to the public through EPA's Air Quality System and commenters could have reviewed the data and addressed them in comments.

Comment 3: The commenter asserts that the consideration of the 2011 data is particularly important because 2008 (the attainment year used by the IEPA to document the emissions reduction-basis for the attainment of the ozone standard in the Chicago-Gary-Lake County, IL–IN area and the base year for the 10-year ozone standard maintenance demonstration) was the first year of a major recession. The commenter contends that emission reductions leading to the observed air quality improvement were the result of temporary economic conditions rather than the result of permanent emission reductions.

Response 3: First, as set forth in EPA's response to comment 2 above, EPA has considered the complete, quality assured and certified monitoring data for the bi-state nonattainment area for 2011. These data show that the area has continued to attain the 1997 8-hour ozone standard, and preliminary data for 2012 are consistent with continued attainment. A determination of attainment is based solely on air quality considerations, and, therefore, underlying economic conditions are not relevant to the limited inquiry that results in a determination. In another portion of this rulemaking, and with respect to a separate and independent criterion for redesignation under section 107(d)(3)(E)(iii), EPA examines whether attainment is due to permanent and enforceable emission reductions. See discussion in the proposed rulemaking (77 FR 6743, February 9, 2012) and elsewhere in these responses to comments.

The commenter provides no data to demonstrate that the economic recession of recent years had any impact on emissions in 2008. The commenter merely speculates that there was such an impact. Lacking any data to the contrary, we see no reason to assume that the lower emissions of 2008 (relative to those of the base nonattainment year of 2002) were exclusively or predominantly an artifact of temporary emission reductions resulting from the economic recession.

In addition, the Chicago-Gary-Lake County, IL–IN area has continued to attain the 1997 ozone standard over an extended period (over a number of sequential three-year periods, 2006–2008, 2007–2009, 2008–2010, and now 2009–2011), with general downward trends in ozone design values at most monitoring sites in the area (see Table 1 in the proposed rule for this rulemaking action, 77 FR 6747). Given the downward trend in ozone design values and the ozone design values below the 0.085 ppm ozone standard violation level, we see no reason to believe that a reversal in the economic situation in this area will cause a return to violation of the 1997 8-hour ozone standard in this area in the foreseeable future.

Comment 4 General: The commenter argues that Illinois and EPA have failed to comply with the ozone redesignation requirement of section 107(d)(3)(E)(iii) of the CAA, which requires that the observed improvement in air quality be due to permanent and enforceable emission reductions resulting from the State's implementation of its SIP and implementation of applicable Federal air pollution control requirements and other permanent and enforceable emission reductions. The commenter argues, in particular, that EPA relied on several emission control programs that are not permanent and enforceable. These questioned emission controls are specified in the following:

Comment 4a: The commenter asserts that the NO_X SIP call is not permanent and enforceable. The commenter notes that EPA found that the NO_X emission reductions leading to attainment in the Greater Chicago area were due, in part, to the implementation of the NO_X SIP call. The commenter argues that the NO_X SIP call cannot be assumed to be permanent and enforceable because it has been replaced, and, therefore, no longer exists. In addition, the NO_X SIP call is implemented through a cap-and-trade program, which means that no actual NO_X emission reduction may have been required for any specified source upwind of the high ozone areas in the Greater Chicago area. The commenter cites a 2009 decision by the D.C. Circuit Court of Appeals, which the commenter believes held that EPA cannot use cap-and-trade programs to satisfy an area-specific statutory mandate. See *NRDC* v. *EPA*, 571 F.3d 1245, 1257 (D.C. Cir. 2009).

Response 4a: EPA disagrees with the commenter's position that emission reductions associated with the NO_X SIP call cannot be considered to be

permanent and enforceable. The commenter's first argument—that the NO_X emission reductions are not permanent and enforceable because the NO_X SIP call has been replaced—is based on a misunderstanding of the relationship between the CAIR and the NO_X SIP call. While the CAIR ozone-season trading program replaced the ozone-season NO_X trading program developed in the NO_X SIP call (70 FR 25290), nothing in the CAIR relieved states of their NO_X SIP call obligations. In fact, in the preamble to CAIR, EPA emphasized that the states and certain units covered by the NO_X SIP call but not by CAIR must still satisfy the requirements of the NO_X SIP call. EPA provided guidance regarding how such states could meet these obligations.[2] In no way did EPA suggest that states could disregard their NO_X SIP call obligations. (70 FR 25290). For NO_X SIP call states, the CAIR NO_X ozone season program provides a way to continue to meet the NO_X SIP call obligations for electric generating units (EGUs) and large non-electric generating units (nonEGUs). In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP call, including the statewide NO_X emission budgets, continue to apply.

In summary, the requirements of the NO_X SIP call remain in force. They are permanent and enforceable as are state regulations developed to implement the requirements of the NO_X SIP call.

EPA also disagrees with the commenter's second argument—that the emission reductions associated with the NO_X SIP call cannot be considered permanent and enforceable because the NO_X SIP call provides for a trading program. There is no support for the commenter's argument that EPA must ignore all emission reductions achieved by the NO_X SIP call simply because the mechanism used to achieve the emission reductions is an emissions trading program. As a general matter, trading programs establish mandatory caps on emissions and permanently reduce the total emissions allowed by sources subject to the programs. The emission caps and associated controls are enforced through the associated SIP rules or Federal Implementation Plans (FIPs). Any purchase of allowances and increase in emissions by a utility necessitates a corresponding sale of allowances and results in an emission reduction by another utility. Given the regional nature of ozone formation and transport, the emission reductions will have an air quality benefit that will compensate, at least in part, for the impact of any emission increase.

In addition, the case cited by the commenter, *NRDC* v. *EPA*, 571 F.3d 1245 (D.C. Cir. 2009), does not support the commenter's position. The case addressed EPA's determination that the CAA nonattainment area RACT requirement was satisfied by the NO_X SIP call trading program. The court held that, because EPA had not demonstrated that the trading program would result in sufficient emission reductions within a nonattainment area, its determination that the program satisfied RACT was not supported. Id. 1256–58. The court explicitly noted that EPA might be able to reinstate the provision providing that compliance with the NO_X SIP call satisfies NO_X RACT for EGUs for particular nonattainment areas if, upon conducting a technical analysis, it could demonstrate that the NO_X SIP call results in greater emissions reductions in a nonattainment area than would be achieved if RACT-level controls were installed in that area. Id. at 1258. In this case, EPA's comparison of emissions in 2002 and 2008 in this rulemaking necessarily looked only at changes in emissions "in the nonattainment area." As such, the commenter's reliance on *NRDC* v. *EPA* is misplaced.

Comment 4b: The commenter contends that EPA cannot rely on the Cross State Air Pollution Rule (CSAPR) to provide permanent and enforceable emission reductions because the implementation of this rule has been stayed by the U.S. Court of Appeals for the District of Columbia Circuit. The commenter contends that this stay makes CSAPR neither permanent nor enforceable. In addition, the commenter notes that CSAPR is to be implemented through a cap-and-trade program, and, therefore, as summarized in Comment 4a, CSAPR cannot be relied on to produce permanent and enforceable emission reductions. Further, EPA cannot take credit for the promise of any emission control program that would replace CSAPR should the Court remand or vacate CSAPR.

Response 4b: Illinois has not relied on CSAPR to demonstrate that attainment was due to permanent and enforceable emission reductions or to demonstrate that it will maintain the standard. EPA did not credit Illinois with NO_X emission reductions from the implementation of CSAPR for attainment or maintenance of the 1997 ozone standard. While CSAPR was listed by the State as a possible contingency measure in the State's ozone maintenance plan, EPA did not credit Illinois with NO_X emission reductions resulting from the implementation of CSAPR, nor did the State take credit for any such emission reduction when demonstrating maintenance of the 1997 ozone standard. As such, the stay of CSAPR is not relevant here.

In addition, modeling performed by EPA during the CSAPR rulemaking process also demonstrates that the counties in the Greater Chicago area will have ozone levels below the 1997 8-hour ozone standard in both 2012 and 2014 without emission reductions from CSAPR or CAIR, with the highest value for any county in the area projected to be 81.1 ppb without the implementation of CSAPR/CAIR-based emission controls. See "Air Quality Modeling Final Rule Technical Support Document," Appendix B, pages B–9, B–10, B–11, and B–33, which is available in the docket for this rulemaking.

Although Illinois did list the "Cross-State Air Pollution Rule" as a possible contingency measure in the ozone maintenance plan, this measure is only one of many that may be selected should the contingency plan be triggered. EPA has concluded, in its consideration of the ozone maintenance plan contingency measures, that there are other contingency measures sufficient to satisfy the requirements of section 175A of the CAA, without the consideration of CSAPR.

With regard to the commenter's assertion that EPA cannot rely on the emission reductions resulting from the implementation of CSAPR because CSAPR would be implemented through the application of an emissions trading program, see our response to the commenter's similar comment with regard to emissions trading under EPA's NOx SIP call in the response to comment 4a above. In addition, CSAPR contains assurance provisions that guarantee that emission reductions will occur in specific states.

Comment 4c: The commenter asserts that Illinois emission control rules are not permanent and enforceable. To support this assertion, the commenter argues that Illinois' Consumer Products and Architectural and Industrial Coatings (AIM) rules have been adopted only by the State, and that, until these rules are approved by the EPA and incorporated into the SIP they cannot be relied upon for redesignation.

Response 4c: EPA in fact finalized approval of Illinois' consumer products and AIM rules on June 7, 2012, at 77 FR 33659. Thus, the commenter's concern

[2] EPA guidance regarding the NO_X SIP call transition to CAIR can be found at *http://www.epa.gov/airmarkets/progsregs/cair/faq-10.html*. EPA guidance regarding the NO_X SIP call transition for the Cross-State Air Pollution Rule (CSAPR) can be found at *http://www.epa.gov/crossstaterule/faqs.html*.

is moot. Moreover, EPA wishes to note that it is not necessary for every change in emissions between the nonattainment year (in this case 2002) and the attainment year (2008) to be permanent and enforceable. Rather, the improvement in air quality necessary for the area to attain must be reasonably attributable to permanent and enforceable reductions in emissions. As discussed in the proposed rule at 77 FR 6754 (February 9, 2012), Illinois and upwind areas have implemented a number of permanent and enforceable regulatory control measures which have reduced emissions and have resulted in a corresponding improvement in ozone air quality. Even if EPA did not finalize action on Illinois' consumer products and AIM rules before completing action on the State's ozone redesignation request, these emission reductions are not necessary to demonstrate that the improvement in air quality is reasonably attributable to permanent and enforceable emission reductions.

Comment 4d: The commenter asserts that the use of 2008 air quality data is inappropriate to demonstrate that the attainment of the 1997 8-hour ozone standard is due to the implementation of permanent and enforceable emission reductions. The commenter claims that EPA simply documented the changes in emissions between 2002 and 2008 to demonstrate that the observed ozone air quality improvement is due to permanent and enforceable emission reductions during this period. The commenter contends that this is unacceptable for a number of reasons.

First, the commenter asserts that EPA has done nothing to connect the emission changes with air quality impacts. The commenter claims that EPA has conducted no analyses to prove that emission reductions between 2002 and 2008 have led to reduced ozone concentrations and attainment of the 1997 8-hour ozone standard.

Second, the commenter argues that using a single attainment year, 2008, is arbitrary because, as explained in preceding comments, the impact of cap-and-trade emission control programs, such as the NO_X SIP call and CSAPR, can cause emissions to vary over time and location as sources buy, sell, and trade emission allowances.

Third, the commenter characterizes the choice of 2008 is further problematic because 2008 marked the beginning of a large economic recession in this country. The commenter contends that this resulted in decreased electricity demand, decreased automobile, truck, and shipping traffic, and decreased factory production. The commenter contends that EPA makes the "unsupported and implicit conclusion" that monitored changes in ozone levels between 2002 and 2008 were due to the implementation of permanent and enforceable emission controls rather than to changes in meteorology, economic conditions, temporary, or voluntary (not enforceable) emission controls. The commenter asserts that EPA provides no analysis showing that the recession was not the cause of the 2002–2008 emission reduction and observed ozone air quality improvement.

Finally, the commenter argues that EPA has not shown that the 2008 emissions inventory reflects permanent and enforceable emission reductions occurring between 2002 and 2008. The 2008 emissions inventory appears to be the "actual" or the "projected" emissions from an unidentified group of sources. The commenter argues that there is a significant difference between what sources actually emit and what sources are allowed to emit, and that the IEPA and EPA have incorrectly assumed that allowable emissions are equal to actual emissions.

Response 4d: EPA's conclusion here is fully supported by the facts and applicable legal criteria. EPA policy[3] and longstanding practice allows states to demonstrate permanent and enforceable emission reductions by comparing emissions occurring during the nonattainment period (represented by emissions during one of the years in the three-year period used to designate an area as nonattainment,[4] in this case 2002) with emissions occurring during the attainment period (represented by emissions during one of the three attainment years, in this case 2008, which is part of the three-year period, 2006–2008, in which Chicago-Gary-Lake County, IL–IN area first attained the 1997 8-hour ozone standard). In EPA's determination of attainment and proposed approval of the redesignation request, EPA considered data for the 2008–2010 time period, which was then the most recent quality-assured, certified three years of data available. See 77 FR 6743, 6746 (February 9, 2012). Therefore, selecting 2008 as the representative attainment year and comparing emissions for this year to those of the representative violation year, 2002, is an appropriate and long-established approach that demonstrates emission reductions in the period between the years of nonattainment and attainment. These emission reductions, therefore, can be reasonably seen to account for the observed air quality improvement.

EPA disagrees with the commenter's assertion that EPA has conducted no analyses to prove that emission reductions between 2002 and 2008 led to reduced ozone concentrations. EPA's analyses included comparison of emissions for the representative nonattainment year to the emissions for the representative attainment year. This comparison, which established the existence of significant emission reductions that resulted in attainment, and also linked these emission reductions to control measures, is consistent with longstanding practice and EPA policy for making such a demonstration. As noted in the proposed rulemaking for this redesignation (77 FR 6754, February 9, 2012), the State of Illinois documented changes in VOC and NO_X emissions between 2002 and 2008 in the Illinois portion of the Greater Chicago area and the emission control measures that have been implemented in the Illinois portion of the Greater Chicago area. These emission control measures resulted from the State's adoption and implementation of regulations, including regulations to: Control NO_X emissions at electric generating utilities and large industrial combustion sources under EPA's NO_X SIP call; control emissions and implement New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPS), and Maximum Available Control Technology (MACT) standards for new sources; control VOC solvent emissions for aerosol coatings and AIM coatings and consumer solvents; control vehicle emissions through the implementation of enhanced vehicle inspection and maintenance; control vehicle refueling emissions; and control vehicle evaporative emissions through use of low volatility fuels and reformulated gasoline. In addition to the State's implementation of state-specific emission control measures, Federal emission control measures have also been implemented in the Greater Chicago area, including: Tier 2 emission standards for vehicles; Tier 4 nonroad diesel engine standards; marine compression-ignition engine standards; and locomotive engine standards. As noted in the February 9, 2012, proposed rule, all of these emission controls have been implemented since the 2001–2003 ozone standard violation period for the Greater Chicago area. Therefore, it is

[3] See September 4, 1992, memorandum from John Calcagni entitled "Procedures for Processing Requests to Redesignate Areas to Attainment," pp. 4 and 8–9.

[4] The nonattainment designation of the Greater Chicago area for the 1997 8-hour ozone standard was based on 2001–2003 ozone data.

reasonable to conclude that the emission reductions resulting from these emission controls contributed to the attainment of the 1997 8-hour ozone standard in the Greater Chicago area. See the February 9, 2012, proposed rule (77 FR 6754 and 6759) for discussions of implemented emission control measures and how Illinois derived the 2002 and 2008 VOC and NO_X emissions, demonstrating emission reductions between the 2002 violation year and 2008 attainment year.

The State demonstrated that the implementation of these emission controls along with other ongoing emission controls resulting from continued implementation of the Illinois SIP have led to the emission reductions used to demonstrate the emissions reduction in this area. To derive the 2008 emissions, the State determined source category-specific emission control factors associated with the implemented emission controls. Note that the State applied emission control factors only for those source categories covered by State or Federal emission control requirements and for specific sources subject to permanent, enforceable source closures. The State took no credit for temporary or non-permanent emission reductions resulting from voluntary emission control measures or source activity downturn resulting from the current downturn in the economy. The source category-specific emission control factors, along with source category-specific growth factors, were applied to the 2002 base year emissions to project the 2008 emissions. Emission reductions resulting from source closures occurring between 2002 and 2008 and determined to be permanent (including forfeiture of source permits) were also considered and factored into the emission projections, but produced relatively small emission reductions compared to the impacts of implemented emission controls. Since most source categories had positive growth factors, almost all projected emission reductions can be attributed to the impacts of implemented emission controls. Therefore, the State has demonstrated that the derived emission reduction that occurred between 2002 and 2008 is due to the implementation of emission controls.

The CAA does not specifically require the use of ozone modeling to make a demonstration that the observed ozone air quality improvement is due to permanent and enforceable emission reductions resulting from the implementation of emission controls. It has not been the general practice of states to do so in demonstrating emission reductions for purposes of ozone redesignation requests.

EPA disagrees with the commenter's contention that using emissions from a single attainment year is arbitrary due to the year-to-year variation in emission levels resulting from the implementation of cap-and-trade programs. As a general matter, trading programs establish mandatory caps on emissions and permanently reduce total emissions allowed for sources subject to the programs. The emission caps and associated controls are enforced through the associated SIP rules and FIPs. Any purchase of emission allowances and increase in emissions by a utility necessitates a corresponding sale of emission allowances and reduction in emissions by another utility. Given the regional nature of ozone formation and transport, the emissions reduction will have an ozone air quality benefit that will compensate, at least in part, for the impact of any emission increase.

With respect to NO_X SIP call emission reductions within the Greater Chicago area, there is no evidence of significant temporal variation in emissions levels. In fact, actual emissions from NO_X SIP call sources in the Chicago area have not varied much from year-to-year over the 2003–2011 time period. Some of the largest emitters in the Greater Chicago area that are covered by the NO_X SIP call are operating near full capacity. In addition, an analysis of ozone season NO_X emission rates and total operating hours for all NO_X SIP call sources in this area shows that annual levels of NO_X emission rates (tons per hour of operation) have generally trended downward subsequent to 2003 as a result of the implementation of emission controls.

While the commenter expressed concerns that an economic downturn was responsible for the observed air quality improvement, the commenter has made no demonstration that the reduction in emissions and observed improvement in air quality is due to an economic recession, changes in meteorology, or temporary or voluntary emission reductions. In addition, as noted previously, the CAA does not require modeling to make any such demonstration. There are no data demonstrating that the observed air quality improvement is due to the economic downturn, temporary changes in meteorology, or voluntary emission reductions, and, as discussed above, EPA's modeling for the CSAPR demonstrates that the Greater Chicago area would attain the NAAQS in 2012 and 2014 with or without implementation of CAIR, which is place only temporarily. We, thus, have no reason to believe that factors other than permanent and enforceable emission reductions let to attainment of the 1997 8-hour ozone standard in the Greater Chicago area.

Finally, with regard to consideration of actual versus allowable/permitted emission levels, longstanding practice and EPA policy allows for the use of actual emissions when demonstrating permanent and enforceable emission reductions. Sources seldom emit at maximum allowable emission levels, and assuming that all sources simultaneously operate at maximum capacity would grossly overestimate emission levels. For this reason, EPA believes actual emissions are the appropriate emission levels to consider when comparing nonattainment year emissions with attainment year emissions to demonstrate the basis for improvements in peak ozone levels. EPA also notes that the certified monitoring data establish that the area has been attaining the 1997 8-hour ozone standard continuously during the periods of 2006–2008, 2007–2009, 2008–2010, and 2009–2011, and that EPA's modeling demonstrates that the Greater Chicago area would have attainment air quality in 2012 and 2014 with or without the implementation of CAIR. Emissions reductions have continued during this extended period as the State has continued to implement and enforce emission controls in addition to those required by CAIR.

Comment 5: The commenter claims that EPA has not conducted an adequate analysis of the effect redesignation to attainment will have on attainment and maintenance of other NAAQS under section 110(l) of the CAA. The commenter complains that EPA has failed to conduct an adequate analysis of the ozone redesignation impacts with respect to the 1997 annual fine particulate ($PM_{2.5}$) NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, the 1-hour nitrogen dioxide (NO_2) NAAQS, the 1-hour sulfur dioxide (SO_2) NAAQS, and 2008 8-hour ozone NAAQS.

Response 5: Section 110(l) of the CAA provides in part: "the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of this chapter." As a general matter, EPA must and does consider section 110(l) requirements for every SIP revision, including whether the revision would "interfere with" any applicable requirement. See, e.g., 70 FR 53, 57 (January 3, 2005); 70 FR 17029, 17033 (April 4, 2005); 70 FR 28429,

28431 (May 18, 2005); and 70 FR 58119, 58134 (October 5, 2005).

The Illinois redesignation request and maintenance plan for the 1997 8-hour ozone standard neither revises nor removes any existing emission control requirements. On that basis, EPA concludes that the redesignation will not interfere with attainment or maintenance of any of the air quality standards. Moreover, the maintenance plan itself demonstrates that the emission emissions of NO_X and VOC in the Greater Chicago area will remain at or below the attainment year (2008) levels through 2025, thus demonstrating non-interference with other pollutants, in particular fine pollutants, that are formed through reactions and processes involving NO_X and/or VOC. In addition, contingency measures, if subsequently activated, can be selected to ensure non-interference through lowered emission levels.

The commenter does not provide any information in the comment to indicate that approval of this redesignation would have any impact on the area's ability to comply with any of the referenced NAAQS. In fact, the ozone maintenance plan provided with the State's redesignation request demonstrates a decline in VOC and NO_X emissions over the timeframe of the 10-plus year maintenance period. This reflects the fact that the redesignation does not relax any existing emission control rules or emission limits, nor will the redesignation alter the status quo air quality. The commenter has not explained why the redesignation might interfere with attainment of any standard or with satisfaction of any other CAA requirement, and EPA finds no basis under section 110(l) for EPA to disapprove the SIP revision (ozone maintenance plan and emissions inventories) at issue or to disapprove the requested ozone redesignation.

Comment 6: The commenter asserts that EPA cannot approve Illinois' 2002 emissions inventory as meeting the emission inventory requirement of section 182(a)(1) of the CAA for a number of reasons. In particular, the commenter believes that Illinois' mobile source emission inventories, based on the use of EPA's MOVES model, does not account for the increase VOC and NO_X emissions that would result from the use of up to 15 percent ethanol content in gasoline recently approved by the EPA. The commenter argues that many car and light-duty truck emission control systems are not designed to control vehicle emissions with blends of 15 percent ethanol (Ethanol 15 or E15). The commenter believes that EPA has not accounted for the extra VOC and NO_X emissions that would result from the use of E15.

Response 6: First, it is noted that this comment was directed at EPA's proposed approval of Illinois' 2002 base period emissions. The commenter's concern is not relevant to approval of the 2002 base year emission inventories because the EPA-approved use of E15 fuels was not in place during 2002. The use of E15 fuels was approved by EPA well after 2002. Therefore, the mobile source emissions for 2002 could not have reflected the future use of E15 fuels.

With regard to the use of E15 fuels in later years, it is noted that, in 2010 and 2011, EPA granted partial waivers for the use of E15 fuels in Model Year (MY) 2001 and newer light-duty motor vehicles (75 FR 68094, November 4, 2010 and 76 FR 4662, January 26, 2011). As discussed in the waiver decisions, there may be some small emission impacts for the use of E15. E15 is expected to cause a small immediate emissions increase in NO_X emissions. However, due to its lower volatility than the E10 fuels currently in use, its use is also expected to result in lower evaporative emissions. Other possible emissions impacts may be from the misfueling of E15 in vehicles or engines for which its use is not approved, i.e., MY 2000 and older motor vehicles, heavy-duty engines and vehicles, motorcycles and all non-road engines, vehicles, and equipment. EPA has promulgated a separate rule dealing specifically with the mitigation of misfueling to reduce potential emissions impacts from misfueling (76 FR 44406, July 25, 2011).

EPA's partial waiver for E15 is based on extensive studies done by the Department of Energy, as well as EPA's engineering assessment, to determine the effects on exhaust and evaporative emissions for the vehicle fleet prior to and after the partial waiver. The criteria for granting the waiver was not that there are no emission impacts for E15, but rather that vehicles operating on E15 would not be expected to violate their emission standards in-use.

The E15 partial waivers do not require that E15 be made or sold, and it is unclear if and to what extent E15 may even be used in Illinois. Even if E15 is introduced into commerce in Illinois, considering the likely small and offsetting direction of the emission impacts, the limited set of motor vehicles approved for its use, and the measures required to mitigate misfueling, EPA believes that any potential emission impacts of E15 will be less than the margin of safety by which Illinois shows maintenance of the 1997 ozone standard.

Comment 7: The commenter argues that EPA has not accounted for the effects of changes in weather in its analysis of Illinois' ozone redesignation request. The commenter asserts that EPA should have adjusted monitored ozone levels to account for the varying impacts of meteorology. The commenter contends that EPA cannot approve Illinois' ozone resignation request without a weather adjusted analysis. In addition, the commenter believes that EPA has erred in not considering the impacts that climate change will have on ozone formation during the maintenance period.

Response 7: A determination that an area has attained the 1997 8-hour ozone standard is based on an objective review of the air quality data for a specified period. There are no provisions in the CAA for considering the impacts of changing meteorology and adjusting monitored ozone concentrations to reflect a standardized set of meteorological data or some historical range of meteorological data. Therefore, we disagree with the commenter's argument that EPA should have adjusted ozone levels to assess the impacts of meteorology during the attainment period versus meteorology more reflective of historical high ozone periods. In addition, it should be noted that the very nature of the three-year averaging of ozone concentrations used to assess compliance with the 1997 8-hour ozone standard is used, in part, to negate the impacts of year-to-year variations in meteorology on ozone formation.

By the same reasoning, we also disagree with the commenter that EPA must, in the context of a redesignation rulemaking, consider the impact of climate change on future ozone formation. While EPA agrees that climate change is a serious environmental issue, at this time EPA does not believe that an area-specific climate change analysis must occur in the context of rulemaking on a redesignation request and maintenance plan. Even if EPA chose to make such an assessment, it is virtually impossible, especially given the relatively limited spatial and temporal focus of a redesignation request and related maintenance plan, to project or predict the local meteorological changes that might result from climate change. Current modeling uncertainties result in conflicting projections of the spatial patterns of future changes in meteorological variables and the specific regional distributions of future ozone changes across the United States.

Modeling guidance is not yet available for the type of area-specific analysis of effects or climate change on ozone concentrations required for SIP planning. EPA, therefore, believes it is premature to require a precise mathematical accounting in the SIP process for the effect of higher ambient temperatures due to climate change on ozone concentrations. EPA is ready to reevaluate this position when the state of science and confidence in projection improve. Given the above, at this time, EPA is not in a position to forecast the impact climate change may have on future ozone considerations with the specificity needed for evaluating a state's ozone maintenance demonstration. See EPA's similar reasoning in its approval of Kentucky's section 110(a)(1) maintenance for Huntington-Ashland, Kentucky, 76 FR 21853 (April 14, 2011). Finally, EPA notes that the Greater Chicago area has continued to attain the 1997 8-hour ozone standard since the 2006–2008 monitoring period, and that its attainment of the standard has withstood the challenges of meteorological variability for many years longer than required. Elsewhere in this notice, EPA has addressed extensively its reasoning for concluding, as required for redesignation, that attainment is due to permanent and enforceable emissions reductions, rather than to unduly favorable meteorology.

Conclusion of Comment Review and Response

We conclude that none of the comments discussed above provides a basis for precluding EPA from finalizing the actions we proposed on February 9, 2012.

III. What actions is EPA taking?

After reviewing Illinois' ozone redesignation request, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) f the CAA. Therefore, EPA is approving the redesignation of the Illinois portion of the Greater Chicago area to attainment of the 1997 8-hour ozone NAAQS. EPA is also approving Illinois' ozone maintenance plan for the Illinois portion of the Greater Chicago area as a revision of the Illinois SIP based on Illinois' demonstration that the plan meets the requirements of section 175A of the CAA. EPA is approving the 2002 VOC and NO_X emission inventories for the Illinois portion of the Greater Chicago area as meeting the requirements of section 182(a)(1) of the CAA. Finally, EPA is also approving and finding adequate Illinois' 2008 and 2025 VOC and NO_X MVEBs for the Illinois portion of the Greater Chicago area. For 2008, these MVEBs are 117.23 tons per ozone season weekday for VOC and 373.52 tons per ozone season weekday for NO_X. For 2025, these MVEBs are 48.13 tons per ozone season weekday for VOC and 126.27 tons per ozone season weekday for NO_X.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking activities may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the State of planning requirements for this 8-hour ozone nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews

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

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

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

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 12, 2012. 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. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

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

Dated: July 27, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.726 is amended by adding paragraphs (mm)(2) and (nn) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(mm) * * *

(2) Approval—Illinois' 2002 volatile organic compounds and nitrogen oxides emission inventories satisfy the emissions inventory requirements of section 182(a)(1) of the Clean Air Act for the Illinois portion of the Chicago-Gary-Lake County, Illinois-Indiana area under the 1997 8-hour ozone standard.

(nn) Approval—On July 23, 2009, and September 16, 2011, Illinois submitted a request to redesignate the Illinois portion of the Chicago-Gary-Lake County, Illinois-Indiana area to attainment of the 1997 8-hour ozone standard. The Illinois portion of the Chicago-Gary-Lake County, Illinois-Indiana 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. As part of the redesignation request, the State submitted a plan for maintaining the 1997 8-hour ozone standard through 2025 in the area as required by section 175A of the Clean Air Act. Part of the section 175A maintenance plan includes a contingency plan. The ozone maintenance plan establishes 2008 motor vehicle emissions budgets for the Illinois portion of the Chicago-Gary-Lake County, Illinois-Indiana area of 117.23 tons per day (tpd) for volatile organic compounds (VOC) and 373.52 tpd for nitrogen oxides (NO_X). In addition, the maintenance plan establishes 2025 motor vehicle emissions budgets for the Illinois portion of the Chicago-Gary-Lake County, Illinois-Indiana area of 48.13 tpd for VOC and 125.27 tpd for NO_X.

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.314 is amended by revising the entry for Chicago-Gary-Lake County, IL-IN in the table entitled "Illinois—1997 8-Hour Ozone NAAQS (Primary and Secondary)" to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—1997 8-HOUR OZONE NAAQS (PRIMARY AND SECONDARY)

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
Chicago-Gary-Lake County, IL-IN:				
Cook County	8/13/2012			
DuPage County		Attainment.		
Grundy County (part).				
Aux Sable Township.				
Goose Lake Township.				
Kane County.				
Kendall County (part).				
Oswego Township.				
Lake County.				
McHenry County.				
Will County.				
* * * * * * *				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

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[FR Doc. 2012–19556 Filed 8–10–12; 8:45 am]

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