ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0730; FRL–9702–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Wisconsin; Redesignation of the Milwaukee-Racine Area to Attainment for 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request from the Wisconsin Department of Natural Resources (WDNR) to redesignate the Milwaukee-Racine area to attainment for the 1997 8-hour National Ambient Air Quality Standard (NAAQS or standard). The Milwaukee-Racine area includes Milwaukee, Ozaukee, Racine, Washington, Waukesha, and Kenosha Counties. WDNR submitted this request on September 11, 2009, and supplemented the submittal on November 16, 2011. These submittals also requested the redesignation of the Sheboygan area (Sheboygan County) to attainment for the 1997 8-hour ozone NAAQS. EPA proposed to approve the redesignation of both areas on February 9, 2012, and provided a 30-day review and comment period. EPA received comments submitted on behalf of Sierra Club and Midwest Environmental Defense Center and from the Wisconsin Manufacturers and Commerce. EPA is not taking final action on the Sheboygan redesignation request at this time because preliminary 2012 ozone monitoring data indicate that the area has violated the 1997 standard. In addition to approving the redesignation of the Milwaukee-Racine area, EPA is taking several other related actions. EPA is approving, as a revision to the Wisconsin State Implementation Plan (SIP), the State's plan for maintaining the 1997 8-hour ozone standard through 2022 in the Milwaukee-Racine area. EPA is approving the 2005 emissions inventories for the Milwaukee-Racine and Sheboygan areas as meeting the comprehensive emissions inventory requirement of the Clean Air Act (CAA or Act). Finally, EPA finds adequate and is approving the State's 2015 and 2022 Motor Vehicle Emission Budgets (MVEBs) for the Milwaukee-Racine area.

DATES: *Effective Date:* This rule is effective on July 31, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2009–0730. 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 through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

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

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). 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 Milwaukee-Racine area was designated as nonattainment for the 1997 8-hour ozone standard and classified as a moderate nonattainment area under subpart 2 of part D of the CAA (69 FR 23857, 23947).

On September 11, 2009, WDNR requested redesignation of the Milwaukee-Racine and Sheboygan areas to attainment of the 1997 8-hour ozone standard based on ozone data for the period of 2006–2008. On November 16, 2011, WDNR supplemented the original ozone redesignation requests, 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 2022, with new MVEBs, but without relying on emission reductions resulting from implementation of EPA's Clean Air Interstate Rule (CAIR) or Cross-State Air Pollution Rule (CSAPR).

On March 1, 2011 (76 FR 11080), EPA issued a final rulemaking determining that the Milwaukee-Racine and Sheboygan areas had attained the 1997 8-hour ozone NAAQS based on three years of complete, quality-assured ozone data for the 2006–2008, 2007–2009, and 2008–2010 time periods.[1]

On February 9, 2012 (77 FR 6727), EPA issued a rulemaking action proposing to approve Wisconsin's requests to redesignate the Milwaukee-Racine and Sheboygan areas to attainment of the 1997 8-hour ozone standard, as well as proposing to approve Wisconsin's maintenance plans for the areas, volatile organic compound (VOC) and nitrogen oxides (NO_X) MVEBs, and VOC and NO_X emissions inventories. This proposed rulemaking sets forth the basis for determining that Wisconsin's redesignation request meets the CAA requirements for redesignation of the Milwaukee-Racine area to attainment for the 1997 8-hour ozone NAAQS. Air quality monitoring data in the Milwaukee-Racine and Sheboygan areas for 2007–2009, 2008–2010, and 2009–2011 show attainment of the 1997 8-hour ozone NAAQS. Preliminary data available for the Milwaukee area for 2012 are consistent with continued attainment. Preliminary 2012 data for the Sheboygan area, however, indicate that the area is currently violating the 1997 8-hour ozone standard. For this reason, EPA is not finalizing action on the State's request to redesignate the Sheboygan area at this time. The primary background for today's action is contained in EPA's February 9, 2012, proposal to approve Wisconsin's redesignation requests, and in EPA's March 1, 2011, final rulemaking determining that the areas have attained the 1997 8-hour ozone NAAQS, based on complete, quality-assured monitoring

[1] Certified ozone data for 2011 demonstrates that the areas continued to attain the 1997 8-hour ozone standard in 2011. EPA recognizes that the ozone data for 2007–2009 as well as the data for 2010 and 2011 are impacted by emission reductions associated with the CAIR, which was promulgated in 2005, but remanded to EPA in 2008. The fact that the data reflect some reductions associated with the remanded and therefore not permanent CAIR, however, is not an impediment to redesignation in the circumstances presented here where WDNR's demonstration and EPA's own modeling demonstrates that the areas do not need reductions associated with the CAIR to attain the 1997 ozone NAAQS.

data for 2006–2008, 2007–2009, and 2008–2010 time periods. 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 3-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 the area. *See* 69 FR 23857 (April 30, 2004) for further information. To support the redesignation of an area to attainment of the NAAQS, the ozone data must be complete for the three attainment years. The data completeness requirement is met when the 3-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 the other CAA redesignation requirements specified in section 107(d)(3)(E) and section 175A.

The February 9, 2012, proposed redesignation rulemaking provides a detailed discussion of how Wisconsin's ozone redesignation request for the Milwaukee-Racine area meets the CAA requirements for redesignation to attainment. With the final approval of its VOC and NO_X emissions inventories, and its VOC Reasonably Available Control Technology (RACT) regulations, Wisconsin has met all applicable CAA requirements for redesignation to attainment of the area for the 1997 8-hour ozone NAAQS. Complete, quality-assured, and certified air quality monitoring data in the Milwaukee-Racine area for 2009–2011, and preliminary data for 2012, show that this area continues to attain the 1997 8-hour ozone NAAQS. In the maintenance plan it submitted for this area, Wisconsin has demonstrated that attainment of the 1997 8-hour ozone NAAQS will be maintained in the Milwaukee-Racine area through 2022, with or without the implementation of CAIR or CSAPR. In addition, modeling conducted by EPA during the CSAPR rulemaking demonstrates that in both 2012 and 2014, even without taking into account reductions associated solely with CAIR or CSAPR, the counties in the Milwaukee-Racine nonattainment area will have air quality that attains the 1997 ozone NAAQS. Finally, Wisconsin has adopted 2015 and 2022 MVEBs that are supported by Wisconsin's ozone maintenance demonstrations and Wisconsin has adopted an ozone maintenance plan.

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

EPA provided a 30-day comment period for the February 9, 2012, proposed rule. During the comment period, Wisconsin Manufacturers and Commerce submitted comments in support of the actions and we received one set of comments objecting to the redesignation of the Milwaukee-Racine area submitted on behalf of the Sierra Club and the Midwest Environmental Defense Center. The adverse comments are summarized and addressed below.

Comment 1: The commenter asserts that the redesignation of the Milwaukee-Racine area to attainment of the 1997 8-hour ozone standard would violate the CAA because the State of Wisconsin and EPA have not ensured that nonattainment area New Source Review (NSR) would apply after redesignation. The commenter contends that such a situation conflicts with the language of section 107(d)(3)(E)(v) of the CAA, which requires the State to have met all requirements of part D of the CAA, since part D includes requirements for NSR. The commenter argues that the requirements of section 107(d)(3)(E)(v) make no sense if the State's NSR program is not required to apply in the area after redesignation. The commenter further argues that, at a minimum, a requirement for NSR should be included in the State's ozone maintenance plan as a contingency measure to be implemented if the area subsequently violates the 1997 8-hour ozone standard. The commenter contends that EPA cannot rely on certain policy memoranda to support its approval of the State's ozone redesignation request and ozone maintenance plan without the requirement for the implementation of the NSR program in the Milwaukee-Racine area after redesignation.

Response 1: As clearly stated in EPA's October 14, 1994, policy memorandum from Mary D. Nichols entitled ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' ''EPA believes it is reasonable to interpret 'measure,' as used in section 175A(d), not to include part D NSR.'' Congress used the undefined term ''measure'' differently in different provisions of the Act, which indicates that the term is susceptible to more than one interpretation and that EPA has the discretion to interpret it in a reasonable manner in the context of section 175A. *See Greenbaum* v. *EPA,* 370 F.3d 527, 535–38 (6th Cir. 2004). (Court ''find[s] persuasive the EPA's argument that the very nature of the NSR permit program supports its interpretation that it is not intended to be a contingency measure pursuant to section 175A(d).'') It is reasonable to interpret ''measure'' to exclude part D NSR in this context because Prevention of Significant Deterioration (PSD), a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR upon redesignation. PSD requires that new sources demonstrate that emissions from their construction and operation will not cause or contribute to a violation of any NAAQS or PSD increment. The State has demonstrated that the areas will be able to maintain the standard without Part D NSR in effect, and the State's PSD program will become effective in the areas upon redesignation to attainment. *See* the rationale set forth at length in the Nichols Memorandum. *See* also the discussions of why full approval and retention of NSR is not required in redesignation actions in the following redesignation rulemakings: 60 FR 12459, 12467–12468 (March 7, 1995) (Detroit, MI); 61 FR 20458, 20469–20470 (May 7, 1996) (Cleveland-Akron-Lorrain, OH); 66 FR 53665, 53669 (October 23, 2001) (Louisville, KY); 61 FR 31831, 31836–31837 (June 21, 1996) (Grand Rapids, MI); 73 FR 29436, 29440–29441 (May 21, 2008) (Kewaunee County, WI); 77 FR 34819, 34826–34827 (June 12, 2012) (Illinois portion of St. Louis, MO–IL).

Comment 2: The commenter contends that the State of Wisconsin does not have a complete PSD program. Therefore, the commenter argues that EPA cannot rely on Wisconsin's PSD program being effective and immediately applicable upon redesignation of the Milwaukee-Racine area. For this reason, and the argument set forth in comment 1 above, the commenter contends that Wisconsin's ozone redesignation request and ozone maintenance plan do not meet the requirements of section 107(d)(3)(E) of the CAA.

The commenter gives the following reasons (*see* Comments 2(a)–2(c)) for its assertion that Wisconsin's PSD and NSR programs are inadequate for purposes of redesignation to attainment.

Comment 2(a): The commenter contends that Wisconsin's PSD program does not comply with the requirement in EPA's 1997 8-hour ozone implementation phase 2 rule that NO_X be considered as an ozone precursor under PSD. The commenter argues that the definition in Wisconsin's NSR and PSD regulations specifies only VOC to

be regulated as an ozone precursor. The commenter claims that this allows new or modified sources to add or increase NO_X emissions without analyzing their impacts on ozone levels. The commenter contends that EPA has recently found similar SIPs to be deficient on this basis, and cites EPA's rulemaking at 75 FR 79300 (December 20, 2010, Mississippi PSD rules).

Response 2(a): EPA believes that the commenter is mistaken in its view, and that in fact Wisconsin interprets and implements its NSR and PSD regulations to include NO_X as a precursor for ozone. Wisconsin has an approved PSD program that includes ozone as a regulated NSR pollutant. *See* NR 405.02(25i), Wisconsin Administrative Code. While the commenter is correct in stating that Wisconsin's rule does not specifically list NO_X as a precursor for ozone, the rule does define ''regulated NSR air contaminant'' to include ''any air contaminant for which a national ambient air quality standard has been promulgated and any constituents or precursors for the air contaminants identified by the administrator * * *.'' *See* NR 405.02(25i)(a). EPA has identified both VOCs and NO_X as precursors to ozone in the definition of ''Regulated NSR Pollutant.'' *See* 40 CFR 51.166(b)(49)(i)(a), 52.21(b)(50)(i)(a).

Wisconsin also sets a table of significant emissions rates for individual pollutants in the definition of significant at NR 405.02(27)(a). This table sets the significant emissions rate for ozone at 40 tons per year (tpy) of VOCs and separately sets the significant emissions rate for NOx at 40 tpy. Wisconsin interprets its 40 tpy significant emissions rate for nitrogen oxides contained in NR 405.02(27)(a) to apply to require both NO_2 and ozone air quality analyses when emissions meet or exceed that emissions rate. Therefore, an increase in NO_X emissions of 40 tpy or more will trigger the requirements to: (1) Obtain a PSD permit for ozone; (2) to perform an air quality analysis that demonstrates that the proposed source or modification will not cause or contribute to a violation of the ozone NAAQS; and (3) to apply best available control technology (BACT) for NO_X. Wisconsin has confirmed this interpretation in a May 18, 2012, letter (hereafter, ''Sponseller letter'') and a June 6, 2012, email from Bart Sponseller, Director of the Bureau of Air Management, WDNR to Douglas Aburano, Chief of the Attainment Planning and Maintenance Section, Air Programs Branch, EPA Region 5. Although EPA is requiring Wisconsin to make revisions to its PSD regulations to specifically address NO_X as a precursor to ozone for infrastructure SIP purposes, this interpretation means that Wisconsin is, in practice, requiring air quality analyses for ozone under its state PSD regulations consistent with Federal PSD regulations.

Accordingly, the fact that Wisconsin's approved PSD SIP does not yet explicitly identify NO_X as a precursor to ozone as required by EPA's Phase 2 ozone implementation rule does not prevent the program from addressing and helping to assure maintenance of the ozone standard in accordance with CAA section 175A.

EPA notes that Wisconsin is currently in the process of adopting permanent rules for submission to EPA to add NO_X as an explicit precursor to ozone consistent with the Federal regulations. Irrespective of the State's ongoing regulatory actions, EPA concludes that the features of Wisconsin's currently approved PSD program cited by the commenter do not detract from the program's adequacy for purposes of maintenance of the standard and redesignation of the area. In light of the assurances provided to EPA in the Sponseller letter and email, Wisconsin's currently approved PSD program is adequate for purposes of assuring maintenance of the 1997 8-hour ozone standard as required by section 175A.

Comment 2(b): The commenter asserts that the State of Wisconsin does not conduct ambient air quality analyses for ozone standard compliance when issuing PSD permits, and that WDNR does not model ozone impacts, nor does it conduct other analyses of ozone impacts when issuing permits. The commenter therefore argues that Wisconsin's PSD program does not ensure that new and modified sources will not cause additional ozone standard violations.

Response 2(b): As discussed in response 2(a), Wisconsin has communicated to EPA that the State is implementing its existing regulations consistent with the requirements of the Federal PSD regulations that require an air quality analysis for ozone if a significant emissions rate of 40 tpy for VOC and/or NO_X is reached or exceeded.

Furthermore, Federal PSD regulations at 40 CFR 51.166(k), (l) and (m) and 40 CFR 52.21(k), (l) and (m) contain requirements for ambient impact analyses for proposed major stationary sources and major modifications to obtain a PSD permit. These requirements apply for ozone when such sources or modifications trigger PSD review for ozone, but do not necessarily require quantitative modeling for ozone in all cases.[2] *See* Letter from Gina McCarthy, EPA Assistant Administrator, Office of Air and Radiation, to Robert Ukeiley (Jan. 4, 2012) at 2; In Re CF&I Steel, L.P. dba EVRAZ Rocky Mountain Steel, Petition Number VIII–2011–01 (Order on Petition) (May 31, 2012) at 21–22. The regulations at 40 CFR 51.166(l) state that for air quality models the SIP shall provide for procedures which specify that all applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in appendix W of part 51 (Guideline on Air Quality Models). Where an air quality model specified in appendix W of part 51 (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific State program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in § 51.102. *See* also 40 CFR 52.21(l).

The above-referenced parts of 40 CFR part 51 and 52 contain the umbrella components for ambient air quality and source impact analyses for PSD permitting. PSD requirements for SIPs are found in 40 CFR 51.166. As discussed above, sections 51.166(l) and 52.21(l), and Wisconsin rule NR 405.10, refer to 40 CFR part 51, appendix W for the appropriate method to utilize for the ambient impact assessment. 40 CFR part 51, appendix W is the Guideline on Air Quality Models and Section 1.0.a. states that the *Guideline* recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP) revisions for existing sources and to new source review (NSR), including prevention of significant deterioration (PSD). {footnotes not included} Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, State and local agencies, and by industry. The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when support by sound scientific judgment.

[2] Wisconsin's rules at NR 405.09, NR 405.10 and NR 405.11 meet the requirements of 40 CFR 51.166(k), (l), and (m), respectively.

Appendix W, section 5.2.1 includes the Guideline recommendations for models to be utilized in assessing ambient air quality impacts for ozone. Specifically, Section 5.2.1.c states that choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2).

Appendix W, section 5.2.1.c provides that the state and local permitting authorities and permitting applicants should work with the appropriate EPA Regional Office on a case-by-case basis to determine an adequate method for performing an air quality analysis for assessing ozone impacts. Due to the complexity of modeling ozone and the dependency on the regional characteristics of atmospheric conditions, EPA believes this is an appropriate approach, rather than specifying a method for assessing single source ozone impacts, which may not be appropriate in all circumstances.[3] Instead, the choice of method ''depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis'' appendix W, section 5.2.1.c. Thus, appendix W allows flexibility through the consultation process to determine either modeling based or other analysis techniques may be acceptable. Based on an evaluation of the source, its emissions and background ozone concentrations, an ozone impact analysis other than modeling may be required. Therefore, permitting authorities should consult and work with EPA Regional Offices as described in appendix W, including section 3.0.b and c, 3.2.2, and 3.3, to determine the appropriate approach to assess ozone impacts for each PSD required evaluation. Although EPA has not selected one particular preferred model in appendix A of appendix W (Summaries of Preferred Air Quality Models) for conducting ozone impact analyses for individual sources, permitting authorities in Wisconsin must comply with the appropriate PSD SIP requirements with respect to ozone.

EPA has previously approved the State's PSD program.[4] EPA expects Wisconsin to consult with staff in the Region 5 Office on a case-by-case basis for permitting purposes to determine appropriate methods for assessing the impacts from specific sources on ozone concentrations. An example of such consultation is the permitting action for Aarrowcast, Inc. in Shawano, Wisconsin.

Comment 2(c): The commenter contends that the Wisconsin SIP is deficient because it contains an unacceptable definition of ''major modification'' for purposes of NSR and PSD for sources involving fuel change. The commenter cites a June 17, 2009, letter from EPA to WDNR noting this definition problem in the Wisconsin SIP. The commenter asserts that because of this problem, emissions can increase as a result of non-exempt fuel changes without going through a PSD analysis, meaning that PSD provides no protection for the ozone NAAQS in some situations.

Response 2(c): ''Major modification'' as it relates to PSD is generally defined in NR 405.02(21) of Wisconsin's SIP. The exemptions to ''physical change'' or ''change in the method of operation'' are contained at NR 405.02(21)(b). One exemption is the ability of a source capable of accommodating different types of fuels before 1975 to switch the type of fuel burned, unless prohibited by a restriction in a permit established after 1975.

EPA regulations contained at 40 CFR 51.166(b)(2)(iii)(e)(1) and (2) specifically prescribe when use of an alternative fuel is not considered a physical change for purposes of defining a ''major modification.'' These regulations require that a physical change or change in the method shall not include use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any Federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, or 40 CFR 51.166; or the source is approved to use the fuel under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166.

The Wisconsin regulations set out the conditions for the fuel change exemption as follows:

> The source was capable of accommodating the alternative fuel or raw material before January 6, 1975, unless the change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to this chapter or ch. NR 406 or 408 or under an operation permit issued pursuant to ch. NR 407.
>
> [Or, t]he source is approved to use the alternative fuel or raw material under any permit issued under this chapter or ch. NR 406, 407, or 408. *See* NR 405.02(21)(b)(5).

The Wisconsin rule is similar to the Federal rule, but differs by substituting references to Wisconsin Administrative Code sections, and omitting reference to permits issued under the Federal program at 40 CFR 52.21.

The commenter raised concerns that failure to cite Federal regulations results in the loss of prohibitions on fuel use exemptions that may have been contained in Federally-issued PSD permits, issued prior to EPA's approval of Wisconsin's PSD SIP, resulting in more exemptions to the definition of ''major modification'' than allowed by the Federal rules.

WDNR states that under its title V operating permit program, all applicable requirements to a source are included in its operation permit. As a result, WDNR states that it clearly recognizes that requirements contained in a Federally-issued PSD permit would be applicable requirements to the source and that they would be included in the source's title V operating permit, therefore making the requirements fully enforceable under State and Federal law. WDNR has taken the position that this is a very narrow issue and has asserted that ''to its knowledge it is not aware of a single situation where an omission has occurred in practice.'' *See* Sponseller letter. While the commenter contends that emissions can ''increase from non-exempt fuel changes without going through a PSD analysis,'' the commenter has not provided information to support this assertion nor has he identified any instance where any such emissions increase has actually occurred.

Although EPA is requiring Wisconsin to revise its PSD regulations to specifically address this issue for

[3] EPA has explained that given the complexities of ozone formation, its judgment has been that it was not technically sound to designate with particularity specific models that must be used to assess the impacts of a single source on ozone concentrations, but rather has provided a consultation process in appendix W for determining particular models or other analytical techniques that should be used on a case-by-case basis. *See* Letter from Gina McCarthy, EPA Assistant Administrator, Office of Air and Radiation to Robert Ukeiley (Jan. 4, 2012) at 2. However, EPA granted a petition for rulemaking on January 4, 2012, stating that it would engage in a rulemaking process to consider whether updates to EPA's *Guideline on Air Quality Models* as published in appendix W are warranted, and, as appropriate, to incorporate new analytical techniques or models for ozone. *Id* at 1.

[4] *See,* ''Approval and Promulgation of Implementation Plans; Wisconsin,'' 64 FR 28745 (May 27, 1999). While the Phase 2 Rule obligates states to make explicit regulatory changes in order to clarify and remove any ambiguity concerning the requirement that NO_X be treated as a precursor to ozone in permitting contexts, the State has authority in its PSD SIP to treat NO_X as a precursor to ozone in permitting decisions, and the State is correctly interpreting its PSD and NSR regulations with regard to inclusion of NO_X as a precursor to ozone as discussed in Response 2(a).

infrastructure SIP purposes, EPA agrees with WDNR that this issue is a very narrow one, and that an omission in practice is perhaps nonexistent. EPA recognizes that in practice, WDNR has the authority and means to ensure adherence to the prohibitions on fuel use exemptions in certain instances, consistent with our own definition of ''major modification.'' Therefore, EPA concludes that the features of Wisconsin's current PSD program cited by the commenter do not detract from the program's adequacy for purposes of maintenance of the standard and redesignation of the area.

Comment 3: The commenter asserts that, besides PSD and NSR deficiencies, the Wisconsin SIP contains several other deficiencies that are contrary to the requirements of section 110 of the CAA.

The commenter claims that the Wisconsin SIP contains a source startup and shutdown excess emissions exemption that EPA has found to be not approvable and in conflict with section 110 of the CAA. The commenter also asserts that the Wisconsin SIP contains ''illegal'' Director's Discretion provisions and that EPA has interpreted section 110 as prohibiting such SIP provisions. The commenter claims that the Wisconsin Administrative Code contains such provisions at NR 436.03(2), NR 436.04, and NR 436.06. The commenter asserts that, historically, EPA has determined that it cannot approve SIPs as being adequate when they contain such Director's Discretion provisions that have the potential to change the stringency of the SIP.

Response 3: The issue before EPA in the current rulemaking action is a redesignation for the Milwaukee-Racine area for the 1997 8-hour ozone standard, including the maintenance plan, and comprehensive emissions inventories. The SIP provisions identified by the commenter are not currently being proposed for revision as part of the redesignation submittals. Because the rules cited by the commenter are not pending before EPA and/or are not the subject of this rulemaking action, EPA did not undertake a full SIP review of the individual provisions. It has long been established that EPA may rely on prior SIP approvals in approving a redesignation request plus any additional measures it may approve in conjunction with a redesignation action. *See e.g.,* page 3 of the September 4, 1992, memorandum from John Calcagni entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni Memorandum); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001); *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984 (6th Cir. 1998); 68 FR 25413, 25426 (May 12, 2003) (St. Louis redesignation). The CAA does not require EPA in the context of a redesignation to attainment to revisit and address existing SIP provisions, and envisions that EPA may address such issues separately and outside the context of action on a redesignation request.

The CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These statutory tools allow EPA to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[5] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[6]

Comment 4: The commenter argues that EPA has not demonstrated that the reduction in ozone pollution in the Milwaukee-Racine area is due to permanent and enforceable emission reductions. The bases for the commenter's assertion are set forth in comments 4(a) through (f).

Comment 4a: The commenter asserts that comparing 2005 and 2008 emissions in the Milwaukee-Racine ozone nonattainment area is not an adequate method to demonstrate that the ozone air quality improvement in this area is due to the implementation of permanent and enforceable emission control measures, in keeping with section 107(d)(3)(E)(iii) of the CAA. The commenter contends that the calculated change in VOC and NO_X emissions between 2005 and 2008 does not show that the emission changes were due to permanent and enforceable emission reductions, as opposed to temporary emission reductions and/or emission reductions due to factory output slowdowns (under utilization of factory capacity) or recession-related output and transportation declines.

To support the commenter's assertion, the commenter compares 2008 permitted (allowable) NO_X emissions for electric power plants in the Milwaukee-Racine area with the total point source NO_X emissions documented by EPA for this area in EPA's Milwaukee-Racine area ozone redesignation proposed rule. The commenter shows that the permitted NO_X emissions from only the electric power plants in the Milwaukee-Racine area exceed the actual 2008 NO_X emissions for all point sources in the Milwaukee-Racine area reported by EPA in the proposed rule for the redesignation of the Milwaukee-Racine area to attainment of the 1997 8-hour ozone standard, 77 FR 6738. The commenter contends that the comparison of permitted NO_X emissions (electric generating plants) and actual, reported NO_X emissions (all point sources) shows that facilities can lawfully emit at much higher rates. Therefore, the commenter asserts that EPA has not properly considered permanent and enforceable emission reductions.

Response 4a: EPA's longstanding practice and policy [7] provide for states to demonstrate permanent and enforceable emissions reductions by comparing nonattainment area emissions occurring during the nonattainment period with emissions in the area during the attainment period. Therefore, selecting 2008 as a representative attainment year, and comparing emissions for this year to those of a representative year during the nonattainment period, 2005, is an appropriate and long-established approach to demonstrate that emission reductions occurred in the area between the years of nonattainment and attainment. These reductions, therefore, can be seen to account for the observed air quality improvement.

As discussed in the proposed rule at 77 FR 6727, 6737–6738 (February 9, 2012), Wisconsin and upwind areas have implemented a number of permanent and enforceable regulatory control measures which have reduced emissions and resulted in a corresponding improvement in air quality. These controls include regulations to control NO_X emissions at electric utilities and large industrial combustion sources and establish NO_X emissions standards for new sources;

[5] For example, EPA has recently issued a SIP call in Utah to rectify a specific SIP deficiency related to a startup, shutdown and malfunction issue. *See,* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011).

[6] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See,* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See, e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[7] *See* Calcagni memorandum, pp. 4 and 8–9.

Tier 2 emission standards for vehicles; and the nonroad diesel rule. In addition a broad range of emission sectors were required to reduce ozone precursors as a result of being subject to Federal new source performance standards, national emissions standards for hazardous air pollutants, and maximum achievable control technology standards with compliance requirements that take effect over the relevant time period. Further, Federal control measures as well as the NO_X SIP Call have resulted in reduced ozone precursors being transported into the area. While the commenter expressed concerns that the emissions reductions may be temporary and/or due to factory output slowdowns (underutilization of factory capacity) or recession-related output and transportation declines, the commenter has made no demonstration that this is the case.

With regard to consideration of actual versus allowable/permitted emission levels, longstanding practice and EPA policy support the use of actual emissions when demonstrating permanent and enforceable emission reductions.[8] Changes in actual emissions are more reflective of emission reductions that in reality contribute to improvements in monitored ozone concentrations. Sources seldom, if ever, emit at maximum allowable emission levels, and assuming that all sources simultaneously operate at maximum capacity would result in a gross overestimation of 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.

Comment 4b: The commenter contends that neither EPA nor the State of Wisconsin made any calculation of the amounts of emission reduction that actually resulted from the implementation of permanent and enforceable emission controls. The commenter asserts that there was no connection between the reported change in actual emissions and the enforceable emission reduction requirements implemented in the Milwaukee-Racine area.

The commenter objects to EPA's listing of implemented emission control requirements as a demonstration that such emission control requirements have resulted in the observed ozone air quality improvement in the Milwaukee-Racine area. The commenter states that EPA has not estimated the emission impacts of each of the implemented emission control requirements and contends that EPA has not tied such emissions impacts to the reported change in actual emissions between 2005 and 2008.

Response 4b: EPA's conclusion here is fully supported by the facts and applicable legal criteria. EPA's longstanding practice and policy [9] provides for states to demonstrate permanent and enforceable emissions reductions by comparing nonattainment area emissions occurring during the nonattainment period with emissions in the area during the attainment period. *See* response 4a.

Therefore, selecting 2008 as a representative attainment year, and comparing emissions for this year to those for a representative year during the nonattainment period, 2005, is an appropriate and long-established approach to establish that emission reductions occurred in the area between the years of nonattainment and attainment. These emission reductions, therefore, can be seen to account for the observed air quality improvement.

In developing the attainment year emissions inventory, the State took into account permanent and enforceable emissions control programs being implemented when estimating emissions. The change in emissions from 2005 to 2008 is shown in Table 4 in the proposed rule (77 FR 6727, 6738).

For point sources, the State's emissions estimates factored in process information, operation information and control factors. Wisconsin adopted NO_X RACT regulations to control NO_X emissions at electric utilities and large industrial combustion sources and established NO_X emissions standards for new sources. The regulation of existing sources was estimated to achieve a 30 ton per day (tpd) reduction in NO_X by 2003 and a 55 tpd reduction by 2007, *i.e.,* approximately a 25 tpd reduction between 2003, a nonattainment year and 2007, an attainment year.

For area sources, emissions are strongly associated with population levels. Therefore, although controls were considered in area source calculations, emissions grew slightly between 2005 and 2008 as a result of population growth.

Reductions in VOC and NO_X emissions have occurred as a result of Federal mobile source emission control measures, with additional emission reductions expected to occur over the maintenance period. These measures include Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards, the Heavy-Duty Diesel Engine Rule, and the Nonroad Diesel Rule. Emissions reductions from these permanent and enforceable programs were quantified by the State in its calculation of the nonroad and onroad mobile sector emissions inventories.

For nonroad mobile sources, it is standard and accepted practice for states to estimate emissions using an EPA-approved emissions model. Wisconsin ran EPA's approved emissions model, National Mobile Inventory Model (NMIM), which estimates emissions while taking into account the effect of Federal nonroad mobile control programs and fleet turnover. The NMIM model showed that between 2005 and 2008, total nonroad VOC and NO_X emissions in the Milwaukee-Racine area were reduced by approximately 17 percent and 10 percent, respectively. The emissions estimates generated by NMIM quantify permanent and enforceable emissions reductions from nonroad mobile control programs; it is not necessary for the state to identify the portion of these reductions attributable to each individual control measure.

For onroad mobile sources, it is standard and accepted practice for states to estimate emissions using an EPA-approved emissions model and daily vehicle miles traveled data. Wisconsin ran EPA's approved onroad mobile emissions model, MOVES2010a, which takes into account the effect of Federal motor vehicle control programs and fleet turnover when calculating emissions estimates. Between 2005 and 2008, onroad VOC and NO_X emissions in the Milwaukee-Racine area were reduced by approximately 22 percent and 21 percent, respectively. The emissions estimates generated by the MOVES model quantify permanent and enforceable emissions reductions from all Federal motor vehicle control programs; it is not necessary for the state to identify the portion of these reductions attributable to each individual control measure.

Permanent and enforceable emissions reductions in upwind areas also contributed to attainment of the 1997 8-hour ozone standard in the Milwaukee-Racine area. While Wisconsin did not quantify these upwind emissions reductions by state, overall emissions reductions estimates, by program, are available. Under the NO_X SIP Call, ozone season NO_X emissions were reduced by approximately 68,000 [10] tons between 2005 and 2008. In addition, permanent and enforceable reductions in VOC and NO_X emissions have

[8] *See* Calcagni Memorandum, pp. 4 and 8–9.

[9] *See* Calcagni memorandum, pp. 4 and 8–9.

[10] *See* 2008 NOx Budget Trading Program Progress Report, *http://www.epa.gov/airmarkets/progress/NBP_4.html.*

occurred in upwind areas from Federal motor vehicle control programs. Overall emissions reductions from the implementation of these programs have been estimated as follows: Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards, 69–95 percent reduction in NO_X and 12–18 percent reduction in VOCs, depending on vehicle class; the Heavy-Duty Diesel Engine Rule, 95 percent reduction in NO_X; and the Nonroad Diesel Rule, 90 percent reduction in NO_X. Some of these emission reductions occurred by the attainment period and additional emission reductions will occur during the maintenance period as the fleet turns over.

It is not necessary for every change in emissions between the nonattainment year and the attainment year to be permanent and enforceable. Rather, the improvement in air quality necessary for the area to attain the relevant NAAQS must be reasonably attributable to permanent and enforceable reductions in emissions. In summary, the State has identified a number of permanent and enforceable regulatory control measures which have been implemented in Wisconsin as well as in upwind areas and has documented significant emissions reductions resulting from these programs. These documented permanent and enforceable emissions reductions in combination with four three-year periods of monitoring data showing that the Milwaukee-Racine area is attaining the 1997 8-hour ozone NAAQS (2006–2008, 2007–2009, 2008–2010, and 2009–2011) represents an adequate demonstration that the improvement in air quality can reasonably be attributed to the significant reduction in emissions resulting from permanent and enforceable emissions control programs.

Comment 4c: The commenter objects to EPA's statement that emission reductions resulted from Wisconsin's implementation of the Rate-Of-Progress (ROP) plan under the previous 1-hour ozone standard. The commenter claims that the ROP plan was implemented well before 2005, the base year of EPA's emission comparison, and that implementation preceded the years the area violated the 1997 8-hour ozone standard.

Response 4c: The commenter's objection is unfounded. EPA mentioned Wisconsin's ROP plan under the 1-hour ozone standard in the context of its discussion of Wisconsin's stationary source NO_X emission control rules. *See* 77 FR 6737. Wisconsin estimated that the State's stationary NO_X emission control rules, which include emission controls applied at electric utilities and large industrial combustion sources, would produce NO_X emission reductions between 2005 and 2007. Wisconsin estimated that these emission controls would achieve a 30 tpd reduction in NO_X emissions by 2003 and a 55 tpd reduction by 2007, *i.e.,* approximately a 25 tpd additional reduction between 2003 and 2007.

The fact that the State adopted the NO_X control rules in the State's ROP plan under the 1-hour ozone standard and that it began implementing the ROP plan prior to 2005 does not preclude NO_X emission reductions from these NO_X control rules from occurring after 2005. The implementation of these rules was phased in over time, resulting in additional emission reductions for a number of years after the State's adoption of the NO_X emissions control regulations.

Comment 4d: The commenter objects to EPA's citing of EPA's 2004 non-road diesel engine rule and 2000 and 2007 heavy duty diesel rules without acknowledging that the emissions reduction estimates for these rules are national calculations of the possible emission impacts once the rules are fully implemented. The commenter argues that, since these rules rely on fleet turnover, they did not result in major emission reductions between 2005 and 2008. The commenter believes that EPA erred in not making an emission reduction estimate for the local impacts of these rules during the period of 2005–2008.

Response 4d: There is no basis for EPA to conclude that the Federal diesel emission controls cited by the commenter have had a smaller impact, on a percentage emission reduction basis, in the Milwaukee-Racine area than in other parts of the United States. EPA has cited national emission reduction estimates on a percentage basis for these controls, with the implication that similar emission reduction percentages have occurred in the Milwaukee-Racine area. The commenter has provided no independent emission reduction estimates localized to the Milwaukee-Racine area to refute EPA's assumption that such emission reductions have occurred in the Milwaukee-Racine area. Lacking such estimates, EPA continues to believe that the Federal diesel emission control requirements have resulted in reduced NO_X and VOC emissions in the Milwaukee-Racine area, resulting in lower peak ozone concentrations in this area.

Furthermore, for nonroad mobile sources, it is a standard and accepted practice for states to estimate emissions using an EPA-approved emissions model. Wisconsin ran EPA's approved emissions model, NMIM, which takes into account the affect of Federal nonroad mobile control programs and fleet turnover when calculating emissions estimates. Between 2005 and 2008, total nonroad VOC and NO_X emissions in the Milwaukee-Racine area were reduced by approximately 17 percent and 10 percent, respectively.

For onroad mobile sources, it is standard and accepted practice for states to estimate emissions using an EPA-approved emissions model and daily vehicle miles traveled data. Wisconsin ran EPA's approved onroad mobile emissions model, MOVES2010a, which takes into account the affect of Federal motor vehicle control programs and fleet turnover when calculating emissions estimates. Between 2005 and 2008, onroad VOC and NO_X emissions in the Milwaukee-Racine area were reduced by approximately 22 percent and 21 percent, respectively.

Comment 4e: The commenter objects to EPA's reference to the NO_X SIP Call since EPA failed to mention that Wisconsin sources were not included in this regulation. The commenter asserts that the NO_X emission reductions resulting for sources upwind of the Milwaukee-Racine area are not permanent and enforceable because the NO_X SIP Call has been replaced and its replacement has been stayed by the United States Court of Appeals for the District of Columbia Circuit (D.C. Appeals Court). Finally, the commenter argues that the NO_X SIP Call cannot be relied on to produce permanent and enforceable NO_X emission reductions because the NO_X SIP Call provides for the use of a cap-and-trade emission control program, which the D.C. Appeals Court has held cannot satisfy area-specific statutory emission control requirements. *NRDC* v. *EPA,* 571 F.3d 1245, 1257 (D.C. Cir. 2009).

Response 4e: The commenter's assertion that EPA failed to mention that Wisconsin sources were not covered by the NO_X SIP Call is incorrect. The proposal included a footnote explicitly noting that the State of Wisconsin was not included in the NO_X SIP Call (77 FR 6732 n.3). EPA also did not propose to rely on and is not relying on any reductions associated with the NO_X SIP Call in the State of Wisconsin or in the Milwaukee-Racine ozone nonattainment area. With regard to NO_X emission reductions in the Milwaukee-Racine ozone nonattainment area, we note here that Wisconsin has adopted and implemented NO_X RACT rules for major NO_X sources in the Milwaukee-Racine ozone nonattainment area. These NO_X RACT rules were approved into the

Wisconsin SIP by the EPA on October 19, 2010, 75 FR 64155. Wisconsin's NO_X RACT rules became effective on August 1, 2007, and required source compliance with the rules by May 1, 2009. Although sources had until May 1, 2009, to fully comply with the NO_X RACT rules, EPA believes that some sources began implementation of the required NO_X emission controls well ahead of this implementation deadline, resulting in NO_X emission reductions in the Milwaukee-Racine ozone nonattainment area by 2008. These NO_X emission controls are permanent and enforceable.

While the NO_X SIP Call did not cover the State of Wisconsin, it did require the District of Columbia and 22 states to reduce emissions of NO_X and, as EPA noted in the proposal, these reductions resulted in lower concentrations of transported ozone entering the Milwaukee-Racine area. 77 FR 6737. Because the area is impacted by the transport of ozone and its precursors, upwind reductions in NO_X resulting from the NO_X SIP Call are relevant to these redesignation actions. EPA disagrees with the commenter's position that NO_X emission reductions in areas upwind of the Milwaukee-Racine area and 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 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 CAIR must still satisfy the requirements of the NO_X SIP Call. EPA provided guidance regarding how such states could meet these obligations.[11] EPA did not suggest that states could disregard their NO_X SIP Call obligations. (70 FR 25290). For states covered by the NO_X SIP Call, 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 sum, 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. Further, the fact that the CSAPR which was to replace CAIR was stayed by the D.C. Appeals Court is not relevant since neither CAIR nor the CSAPR replace the requirements of the NO_X SIP Call, and EPA has determined that the area does not need any additional reductions from CAIR or the CSAPR to remain in attainment.

EPA also disagrees with the commenter's argument that the emission reductions in upwind areas 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 in upwind areas that were 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 (DC 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 did not assume that the NO_X SIP Call led to any reductions within the nonattainment area. As such, the *NRDC* v. *EPA* decision is not relevant here.

Comment 4f: The commenter asserts that neither EPA nor the State of Wisconsin have attempted to demonstrate the connection between the reported emission reductions and the observed ozone air quality improvement in the Milwaukee-Racine area. No modeling or other acceptable analyses, including temporal analyses of emission changes and ozone changes, have been done to demonstrate that the emission reductions are responsible for the observed air quality improvement. No correlation between emission changes and ozone changes has been established. Therefore, EPA has failed to prove that permanent and enforceable emission reductions have caused the observed ozone air quality improvement in the Milwaukee-Racine area.

Response 4f: EPA's conclusion that the ozone improvement in the Milwaukee-Racine area is due to the implementation of emission controls is fully supported by the facts and applicable legal criteria. As discussed in greater detail in response 4(b), EPA's longstanding practice and policy provides for states to demonstrate permanent and enforceable emissions reductions by comparing nonattainment area emissions occurring during the nonattainment period with the emissions in the area during the attainment period. Therefore, selecting 2008 as a representative attainment year, and comparing emissions for this year to those for a representative year during the nonattainment period, 2005, is an appropriate and long-established approach that demonstrates the occurrence of emission reductions in the area between the years of nonattainment and attainment. These emission reductions, therefore, can be seen to account for the observed air quality improvement.

With respect to the commenter's assertion that EPA has not conducted analyses to prove that emission reductions between 2005 and 2008 led to reduced ozone concentrations, as noted above, comparing emissions for a representative nonattainment year to emissions for a representative attainment year is such a demonstration. The CAA does not specifically require the use of modeling in making any such demonstration and it has not been the general practice to do so. The State has

[11] 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 CSAPR can be found at *http://www.epa.gov/crossstaterule/faqs.html.*

identified a number of permanent and enforceable regulatory control measures that have been implemented in Wisconsin as well as in upwind areas, and has documented significant emissions reductions resulting from these programs. These documented permanent and enforceable emissions reductions in combination with four three-year periods of monitoring data showing that the Milwaukee-Racine area is attaining the 1997 8-hour ozone NAAQS (2006–2008, 2007–2009, 2008–2010, and 2009–2011) represents an adequate demonstration that the improvement in air quality can reasonably be attributed to the significant reduction in emissions resulting from permanent and enforceable emissions control programs.

Comment 5: The commenter contends that EPA has not conducted an adequate analysis of the effect the ozone redesignation will have on other NAAQS. The commenter claims that EPA has failed to comply with the requirements of section 110(l), which requires EPA to conduct such an analysis whenever it approves a revision in a state air quality plan.

Response 5: Section 110(l) 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 Wisconsin maintenance plan and redesignation for the 1997 8-hour ozone standard do not revise or remove any existing emissions limit for any NAAQS, nor do they alter any existing control requirements. On that basis, EPA concludes that the redesignation will not interfere with attainment or maintenance of any air quality standards. The commenter does not provide any information to demonstrate that approval of this redesignation would have any impact on the area's ability to comply with the any NAAQS. In fact, the maintenance plan provided with the State's submission demonstrates a decline in ozone precursor emissions over the timeframe of the initial maintenance period. As a result, the redesignation will not relax any existing rules or limits, nor will the redesignation alter the status quo air quality. The commenter has not provided any reason that the redesignation might interfere with attainment of any standard or with satisfaction of any other requirement of the CAA, and EPA finds no basis under section 110(l) for EPA to disapprove the SIP revision.

III. What actions is EPA taking?

EPA is approving a request from the State of Wisconsin to redesignate the Milwaukee-Racine area to attainment of the 1997 8-hour ozone standard. EPA is also taking several other related actions. EPA is approving, as a revision to the Wisconsin SIP, the State's plan for maintaining the 1997 8-hour ozone standard through 2022 in the area. EPA is approving the 2005 emissions inventories as meeting the comprehensive emissions inventory requirement of the CAA for the Milwaukee-Racine and Sheboygan areas. Finally, EPA finds adequate and is approving the State's 2015 and 2022 MVEBs for the Milwaukee-Racine area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions 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 actions 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 these actions to become effective on the date of publication of these actions.

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. These actions do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these actions:

- Are 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);
- 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 Clean Air Act; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by

Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands. However, because there are tribal lands located in Milwaukee County, we provided the affected tribe with the opportunity to consult with EPA on the redesignation. The affected tribe raised no concerns with the redesignation.

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 1, 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 dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

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

Dated: July 11, 2012.

Susan Hedman,

Regional Administrator, Region 5.

Therefore, 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 52.2585 is amended by adding paragraphs (z) and (aa) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(z) Approval—Wisconsin submitted 2005 VOC and NO_X emissions inventories for the Milwaukee-Racine and Sheboygan areas on September 11, 2009, and supplemented the submittal on November 16, 2011. Wisconsin's 2005 inventories satisfy the emissions inventory requirements of section 182(a)(1) of the Clean Air Act for the Milwaukee-Racine and Sheboygan areas under the 1997 8-hour ozone standard.

(aa) Approval—On September 11, 2009, Wisconsin submitted a request to redesignate the Milwaukee-Racine area to attainment of the 1997 8-hour ozone standard. The state supplemented this submittal on November 16, 2011. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. The ozone maintenance plan also establishes 2015 and 2022 Motor Vehicle Emission Budgets (MVEBs) for the area. The 2015 MVEBs for the Milwaukee-Racine area is 21.08 tpd for VOC and 51.22 tpd for NO_X. The 2022 MVEBs for the Milwaukee-Racine area is 15.98 tpd for VOC and 31.91 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 81.350 is amended by revising the entries for Milwaukee-Racine, WI in the table entitled Wisconsin—1997 8-Hour Ozone NAAQS (Primary and Secondary) to read as follows:

§ 81.350 Wisconsin.

* * * * *

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

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* *	*	* *	*	*
Milwaukee-Racine, WI:				
Kenosha County	7/31/12	Attainment.		
Milwaukee County.				
Ozaukee County.				
Racine County.				
Washington County.				
Waukesha 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.

* * * * *

[FR Doc. 2012–18091 Filed 7–30–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified
Unincorporated Areas of Solano County, California Docket No.: FEMA–B–1200				
California	Unincorporated Areas of Solano County.	Sweany Creek	Approximately 375 feet upstream of the McCune Creek confluence.	+64
			Approximately 930 feet upstream of Timm Road	+149

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Solano County

Maps are available for inspection at the Solano County Public Works Department, 675 Texas Street, Suite 5500, Fairfield, CA 94533.