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- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

#### *B. Where Can I Get a Copy of This Document and Other Related Information?*

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web (WWW). Following signature by the EPA Administrator, a copy of this notice will be posted in the regulations and standards section of our NSR home page located at <http://www.epa.gov/nsr> and on the tribal air home page at <http://www.epa.gov/oar/tribal>.

Dated: August 21, 2007.

**Lydia Wegman,**

*Acting Director, Office of Air Quality Planning and Standards.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 52 and 81**

[EPA-R04-OAR-2007-0549-200727; FRL-8461-7]

#### **Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Georgia: Redesignation of the Murray County 8-Hour Ozone Nonattainment Area to Attainment for Ozone**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On June 15, 2007, the State of Georgia, through the Georgia Environmental Protection Division (EPD), submitted a request to redesignate the Murray County 8-hour ozone nonattainment area (Murray County Area) to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Murray County Area. The Murray County 8-hour nonattainment ozone area is a partial county area, comprised of the portion of Murray County that makes up the Chattahoochee National Forest. In this action, EPA is proposing to approve Georgia's 8-hour ozone redesignation request for the Murray County Area. Additionally, EPA is proposing to approve the 8-hour ozone maintenance plan for the Murray County Area, including the regional motor vehicle emissions budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs). This proposed approval of Georgia's redesignation request is based on EPA's determination that Georgia has demonstrated that the Murray County Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the Murray County 8-hour ozone nonattainment area has attained the 8-hour ozone standard. In this action, EPA is also describing the status of its transportation conformity adequacy determination for the new regional MVEBs for 2018 that are contained in the 8-hour ozone maintenance plan for the Murray County Area.

**DATES:** Comments must be received on or before September 28, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2007-0549, by one of the following methods:

(a) [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

(b) *E-mail:* [Harder.Stacy@epa.gov](mailto:Harder.Stacy@epa.gov).

(c) *Fax:* (404) 562-9019.

(d) *Mail:* EPA-R04-OAR-2007-0549, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

(e) *Hand Delivery or Courier:* Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2007-0549. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stacy Harder of the Regulatory Development Section at the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. Harder's telephone number is (404) 562-9042. She can also be reached via electronic mail at [harder.stacy@epa.gov](mailto:harder.stacy@epa.gov).

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**I. What Proposed Actions Is EPA Taking?**

EPA is proposing to take two related actions, which are summarized below and described in greater detail throughout this notice of proposed rulemaking: (1) to redesignate the Murray County Area to attainment for the 8-hour ozone NAAQS; and (2) to approve Georgia's 8-hour ozone

maintenance plan into the Georgia SIP, including the associated MVEBs. EPA is also notifying the public of the status of EPA's adequacy determination for the Murray County Area MVEBs.

First, EPA is proposing to determine that the Murray County Area has attained the 8-hour ozone standard, and that the Murray County Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is now proposing to approve a request to change the legal designation of the Murray County Area from nonattainment to attainment for the 8-hour ozone NAAQS.

Second, EPA is proposing to approve Georgia's 8-hour ozone maintenance plan for the Murray County Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Murray County Area in attainment with the 8-hour ozone NAAQS through 2018. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2018 regional MVEBs for NO<sub>x</sub> and VOCs. Therefore, EPA is proposing to approve into the Georgia SIP the 2018 regional MVEBs that are included as part of Georgia's maintenance plan. These regional MVEBs apply to the Murray County Area.

In this proposed rulemaking, EPA is notifying the public of the status of EPA's adequacy process for the newly established 2018 MVEBs for the Murray County Area. The adequacy comment period for the Murray County Area's 2018 MVEBs began on June 21, 2007, with EPA's posting of the availability of this submittal on EPA's Adequacy Web Site (<http://www.epa.gov/otaq/stateresources/transconf/currrips.htm>). The adequacy comment period for these MVEBs closed on July 23, 2007. No adverse comments were received on this submittal during the adequacy public comment period. Please see section VIII of this proposed rulemaking for further explanation of this process, and for more details on the MVEBs.

Today's notice of proposed rulemaking is in response to Georgia's June 15, 2007, SIP submittal. The June 15, 2007, submittal requests redesignation of the Murray County Area, and included a SIP revision addressing the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

**II. What Is the Background for EPA's Proposed Actions?**

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO<sub>x</sub> and VOCs react in the presence of

sunlight to form ground-level ozone. NO<sub>x</sub> and VOCs are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). (See, 69 FR 23857 (April 30, 2004) for further information.) Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent 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 Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "Comparisons with the Primary and Secondary Ozone Standards" states:

The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The Murray County 8-hour ozone nonattainment area was designated using 2001-2003 ambient air quality data. The **Federal Register** document making these designations was signed on April 15, 2004, and published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as

“basic” nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as “classified” nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other 8-hour ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA’s Phase 1 8-hour ozone implementation rule (69 FR 23857) (Phase 1 Rule), signed on April 15, 2004, and published April 30, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour ambient air quality design values.

On April 30, 2004, EPA designated the Murray County Area as a “basic” 8-hour ozone nonattainment area (see, 69 FR 23857, April 30, 2004). Thus, on June 15, 2007, when Georgia submitted its final redesignation request, the Murray County Area was classified under subpart 1 of the CAA, and was obligated to meet only the subpart 1 requirements.

Various aspects of EPA’s Phase 1 8-hour ozone implementation rule were challenged in court. On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated EPA’s Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD) v. EPA*, 472 F.3d 882 (D.C.Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8th decision left intact the Court’s rejection of EPA’s reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA’s revocation of the 1-hour standard

and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area’s 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the Court’s reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour MVEBs until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA’s conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

This section sets forth EPA’s views on the potential effect of the Court’s rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court’s rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court’s December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of the Murray County Area to attainment. Even in light of the Court’s decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

With respect to the 8-hour standard, the Court’s ruling rejected EPA’s reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this Area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon (1) EPA’s longstanding policy of evaluating redesignation requests in accordance with the requirements due at the time the request is submitted; and (2)

consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Murray County Area was classified under subpart 1 and was obligated to meet only subpart 1 requirements. Under EPA’s longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. See, September 4, 1992, Calcagni Memorandum (“Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division). See also, Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan). See, *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See, e.g. also, 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit Court has recognized the inequity in such retroactive rulemaking (*Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002)), in which the Court upheld a district court’s ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated, “Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club’s proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.” *Id.* at 68. Similarly here, it would be unfair to penalize the area by applying to it for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

As noted earlier, in 2004, the ambient ozone data for the Murray County Area indicated no further violations of the 8-hour ozone NAAQS, using data from the 3-year period of 2002–2004 to demonstrate attainment. As a result, on June 15, 2007, Georgia requested redesignation of the Murray County

Area to attainment for the 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (March 1st until October 31st) of 2002–2004, indicating that the 8-hour ozone NAAQS has been achieved for the Murray County Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

### III. What Are the Criteria for Redesignation?

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

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G. T. Helms, Chief, Ozone/Carbon

Monoxide Programs Branch, June 1, 1992;

4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "Calcagni Memorandum");

5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

6. "Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

### IV. Why Is EPA Proposing These Actions?

On June 15, 2007, Georgia requested redesignation of the Murray County 8-hour ozone nonattainment area to attainment for the 8-hour ozone standard. EPA's evaluation indicates that Georgia has demonstrated that the Murray County Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA. EPA is also announcing the status of its adequacy determination for the 2018 regional

MVEBs, which is relevant to the requested redesignation.

### V. What Is the Effect of EPA's Proposed Actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Georgia's redesignation request would change the legal designation of the Murray County Area for the 8-hour ozone NAAQS found at 40 CFR part 81. Approval of Georgia's request would also incorporate into the Georgia SIP, a plan for the Murray County Area for maintaining the 8-hour ozone NAAQS in the area through 2018. This maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS. The maintenance plan also establishes regional MVEBs for the year 2018 of 0.0117 tons per day (tpd) for VOCs and 0.0129 tpd for NO<sub>x</sub>, for the Murray County Area. Approval of Georgia's maintenance plan would also result in approval of the regional MVEBs. Additionally, EPA is notifying the public of the status of its adequacy determination for the 2018 regional MVEBs, pursuant to 40 CFR 93.118(f)(1).

### VI. What Is EPA's Analysis of the Request?

EPA is proposing to make the determination that the Murray County Area has attained the 8-hour ozone standard, and that all other redesignation criteria have been met for the Murray County Area. The basis for EPA's determination for the area is discussed in greater detail below.

#### *Criteria (1)—The Murray County Area Has Attained the 8-Hour Ozone NAAQS*

EPA is proposing to determine that the Murray County Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally

should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed ozone monitoring data from the ambient ozone monitoring station in the Murray County Area for the ozone season from 2002–2004. This data has been quality assured and is

recorded in AQS. The fourth high average for 2002, 2003, and 2004, and the 3-year average of these values (i.e., design values), are summarized in the following table:

TABLE 1.—ANNUAL 4TH MAX HIGH AND DESIGN VALUE CONCENTRATION FOR 8-HOUR OZONE FOR THE MURRAY COUNTY AREA (IN PARTS PER MILLION)

Site name	4th highest value (ppm)							3-year average
	2000	2001	2002	2003	2004	2005	2006	2002–2004
Fort Mountain .....	0.091	0.080	0.092	0.085	0.074	0.080	0.074	0.084

As discussed above, the design value for an area is the highest design value recorded at any monitor in the area. Therefore, the design value for the Murray County Area is 0.084 ppm, which meets the standard as described above. As discussed in more detail below, Georgia has committed to continue monitoring in this area in accordance with 40 CFR part 58. The data submitted by Georgia provides an adequate demonstration that the Murray County Area has attained the 8-hour ozone NAAQS. Additional data for 2005 and 2006 show continued attainment; however, the analysis for EPD’s submittal was initiated prior to the certification of 2005 and 2006 data, which provides an even greater margin of compliance.

*Criteria (2)—Georgia Has a Fully Approved SIP Under Section 110(k) For the Murray County Area and Criteria (5)—Has Met All Applicable Requirements Under Section 110 and Part D of the CAA*

Below is a summary of how these two criteria were met.

EPA has determined that Georgia has met all applicable SIP requirements for the Murray County Area under section 110 of the CAA (general SIP requirements). EPA has also determined that the Georgia SIP satisfies the criterion that it meet applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 basic 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. The Murray County Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992, Calcagni Memorandum (see “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA’s interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also, Michael Shapiro Memorandum, (“SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992,” September 17, 1993), and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). Applicable requirements of the CAA that come due subsequent to the area’s submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See, section 175A(c) of the CAA; *Sierra Club*, 375 F.3d 537; see also, 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

*General SIP requirements.* Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a

SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (NO<sub>x</sub> SIP Call, Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) to meet the interstate transport requirements of section 110(a)(2)(D)(i). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area’s designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area’s designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that the CAA’s interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan

submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See, Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also, the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no part D requirements for 8-hour standard became due prior to submission of the redesignation request. Therefore, as discussed above, for purposes of redesignation, they are not considered applicable requirements. Nonetheless, EPA notes it has previously approved provisions in the Georgia SIP addressing section 110 elements under the 1-hour ozone NAAQS (See, 70 FR 34660, June 15, 2005). EPA believes that the section 110 SIP approved for the 1-hour ozone NAAQS is also sufficient to meet the requirements under the 8-hour ozone NAAQS (as well as satisfying the issues raised by the D.C. Circuit Court in the *SCAQMD* case).

**Part D requirements.** EPA has also determined that the Georgia SIP meets applicable SIP requirements under part D of the CAA since no requirements became due prior to the submission of the Area's redesignation request. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Subpart 2

is not applicable to the Murray County Area.

**Part D, subpart 1 applicable SIP requirements.** For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498). No requirements applicable for purposes of redesignation under part D became due prior to the submission of the redesignation request, and therefore none are applicable to the Area for purposes of redesignation. For example, the requirements for an attainment demonstration that meets the requirements of section 172(c)(1) are not yet applicable, nor are the requirements for Reasonably Achievable Control Technology (RACT) and Reasonably Available Control Measures (RACM) (section 172(c)(1)), reasonable further progress (RFP) (section 172(c)(2)), and contingency measures (section 172(c)(9)).

In addition to the fact that no part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and NSR requirements as not requiring approval prior to redesignation.

**Section 176 Conformity Requirements.** Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d), because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See, *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), (upholding this interpretation). See also,

60 FR 62748 (December 7, 1995, Tampa, Florida).

**NSR Requirements.** EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment." Georgia has demonstrated that the Murray County Area will be able to maintain the standard without a part D NSR program in effect, and therefore, Georgia need not have a fully approved part D NSR program prior to approval of the redesignation request. Georgia's PSD program will become effective in the Murray County Area upon redesignation to attainment. See, rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Loraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the Murray County Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. The Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Georgia SIP for the portion of Murray County affected by today's proposed redesignation, under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426, plus any additional measures it may approve in conjunction with a redesignation action. See, 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Georgia has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in Murray County, Georgia (See, 70 FR 34660, June 15, 2005).

As indicated above, EPA believes that the section 110 elements not connected

with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation.

*Criteria (3)—The Air Quality Improvement in the Murray County Area is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions*

EPA believes that Georgia has demonstrated that the observed air

quality improvement in the Murray County Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. Additionally, new emissions control programs for fuels and motor vehicles will help ensure a continued decrease in emissions throughout the region.

TABLE 2

## Murray county area emission reductions programs

Onboard Refueling Vapor Recovery for Light-Duty Vehicles.  
Architectural and Industrial Maintenance Coatings.  
Automobile Refinishing.  
The National Emission Standards for Hazardous Air Pollutants (NESHAP); the majority of which are also VOCs.  
Phase II Acid Rain Program for NO<sub>x</sub>.  
Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements.  
Regional NO<sub>x</sub> SIP Call.

Although the NO<sub>x</sub> SIP Call is stayed in Georgia, this regional program implemented in neighboring states, has resulted in measurable emissions reductions that have lowered pollution transported into Murray County.

*Criteria (4)—The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA*

In its request to redesignate the Murray County Area to attainment, EPD submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State of Georgia must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone

violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, Georgia's maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

Georgia selected 2004 as "the attainment year" for the Murray County Area for the purposes of demonstrating attainment of the 8-hour ozone NAAQS. This attainment inventory identifies the level of emissions in the area, which is sufficient to attain the 8-hour ozone standard. Georgia began development of this attainment inventory by first developing a baseline emissions inventory for the Murray County Area. The year 2002 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2002, 2009, and 2018. Non-road mobile emissions estimates were based on EPA's NONROAD2005 model. On-road mobile source emissions were calculated using EPA's

MOBILE6.2 emission factors model. The 2004 VOCs and NO<sub>x</sub> emissions, as well as the emissions for other years, for the Murray County Area were developed consistent with EPA guidance, and are summarized in Tables 3 and 4 in the following subsection.

c. Maintenance Demonstration

The June 15, 2007, final submittal includes a maintenance plan for the Murray County Area. This demonstration:

(i) Shows compliance and maintenance of the 8-hour ozone standard by providing information to support the demonstration that current and future emissions of VOCs and NO<sub>x</sub> remain at or below attainment year 2004 emissions levels. The year 2004 was chosen as the attainment year because it is one of the most recent three years (i.e., 2002, 2003, and 2004) for which the Murray County Area has clean air quality data for the 8-hour ozone standard.

(ii) Uses 2004 as the attainment year and includes future emission inventory projections for 2002, 2009, and 2018.

(iii) Identifies an "out year" at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, MVEBs were established for the last year (2018) of the maintenance plan. See, section VII below.

(iv) Provides the following actual and projected emissions inventories for the Murray County Area. See, Tables 3 and 4.

TABLE 3.—MURRAY COUNTY AREA EMISSIONS OF VOCs  
[Tons per summer day]

Source category	2002	2009	2018
Area*	0.0209	0.0204	0.0240
Mobile**	0.0171	0.0126	0.0075
Nonroad	0.0050	0.0033	0.0031
Total	0.0430	0.0363	0.0346
Safety Margin***	N/A	0.0067	0.0084

\*Scaled according to the population of the partial county area.

\*\* Calculated using MOBILE6.2.

\*\*\* After assigning 0.0042 TPD of the 2018 VOCs safety margin to the MVEB, the revised 2018 safety margin will be 0.0042 TPD.

TABLE 4.—MURRAY COUNTY AREA NO<sub>x</sub> EMISSIONS  
[Tons per summer day]

Source category	2002	2009	2018
Area*	0.0070	0.0072	0.0076
Mobile**	0.0156	0.0119	0.0073
Nonroad	0.0054	0.0040	0.0020
Total	0.0280	0.0231	0.0169
Safety Margin***	N/A	0.0049	0.0111

\*Scaled according to the population of the partial county area.

\*\* Calculated using MOBILE6.2.

\*\*\* After assigning 0.0056 TPD of the 2018 NO<sub>x</sub> safety margin to the MVEB, the revised 2018 safety margin will be 0.0055 TPD.

A safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Georgia has decided to allocate a portion of the available safety margin to the regional 2018 MVEBs for NO<sub>x</sub> and VOCs for the Murray County Area, and has calculated the safety margin in its submittal. See, Tables 3 and 4 above. This allocation and the resulting available safety margin for the Murray County Area are discussed further in section VII of this proposed rulemaking.

d. Monitoring Network

There is currently one monitor measuring ozone in the Murray County Area. Murray County has committed in the maintenance plan to continue operation of this monitor in compliance with 40 CFR part 58, and has addressed the requirement for monitoring.

e. Verification of Continued Attainment

Georgia has the legal authority to enforce and implement the requirements of the ozone maintenance plan for the Murray County Area. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Georgia will track the progress of the maintenance plan by performing future reviews of actual emissions for the Area using the latest emissions factors, models and methodologies. For these periodic inventories Georgia will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, Georgia will re-project emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the June 15, 2007, submittal, Georgia affirms that all programs instituted by the State and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the Murray County Area. In the submittal, if there is a measured violation of the 8-hour ozone NAAQS in the Murray County Area, contingency measures would be adopted and implemented as expeditiously as possible, but no later than eighteen to twenty four months after the triggering event. The proposed schedule for these actions would be as follows:

- Six months to perform a comprehensive analysis;
- Three months to identify potential sources for reductions;
- Three months to identify applicable control measures;
- Three months to initiate a stakeholder process;
- Three months to draft SIP regulations; and
- Six months to initiate the rulemaking process. This step would include the time required to hold a public comment period, hearing, and board adoption, and submit the final plans to EPA. This process may be initiated simultaneously with drafting the regulations.

Georgia will consider one or more of the following contingency measures to re-attain the standard.

- RACM for all sources of NO<sub>x</sub>



- RACT for all existing point sources of NO<sub>x</sub>
- Expansion of RACM/RACT to area(s) of transport within the State
- Mobile Source Measures
- Additional NO<sub>x</sub> reduction measures yet to be identified

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Georgia for the Murray County Area meets the requirements of section 175A of the CAA and is approvable.

#### VII. What Are the Proposed Regional MVEBs for the Murray County Area?

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (reasonable further progress SIPs and attainment demonstration SIPs, etc.) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB is established for the last year of the maintenance plan. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See, 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB.

Georgia, after interagency consultation with the transportation partners for the Murray County Area, has elected to develop regional MVEBs for NO<sub>x</sub> and VOCs for this Area. Georgia is developing these MVEBs, as required, for the last year of its maintenance plan (2018). The MVEBs reflect the total on-road emissions for 2018, plus an allocation from the available VOCs and NO<sub>x</sub> safety margin. Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. These MVEBs and allocation from the safety margin were developed in consultation with the

transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled (VMT) and new emission factor models. The regional MVEBs for the Murray County Area are defined in Table 5 below.

TABLE 5.—MURRAY COUNTY AREA MVEBs  
[Tons per day]

	2018*
NO <sub>x</sub> .....	0.0129
VOCs .....	0.0117

\* Includes an allocation for the available NO<sub>x</sub> and VOCs safety margins.

As mentioned above, Georgia has chosen to allocate a portion of the available safety margin to the 2018 MVEBs. This allocation is 0.0056 tpd for NO<sub>x</sub> and 0.0042 tpd for VOCs. The 2018 regional MVEBs are derived as follows for NO<sub>x</sub>: (0.0073 tpd for total mobile emissions) + (0.0056 tpd from available safety margin) = 0.0129 tpd; and for VOCs: (0.0075 tpd for total mobile emissions) + (0.0042 tpd from available safety margin) = 0.0117 tpd. Thus, the remaining safety margin in 2018 is 0.0055 tpd for NO<sub>x</sub> and 0.0042 tpd for VOCs.

Through this rulemaking, EPA is proposing to approve the 2018 regional MVEBs for NO<sub>x</sub> and VOCs for the Murray County Area because EPA has determined that the Area maintains the 8-hour ozone standard with the emissions at the levels of the budgets. As mentioned above, these MVEBs are regional MVEBs for the Murray County Area. Once the new regional MVEBs for the Murray County Area (the subject of this rulemaking) are approved or found adequate (whichever is done first), they must be used for future conformity determinations. As is discussed in greater detail below, EPA is also announcing the status of its adequacy determination for the proposed 2018 MVEBs for the Murray County Area pursuant to 40 CFR 93.118(f)(1).

#### VIII. What Is the Status of EPA's Adequacy Determination for MVEBs for the Year 2018 for the Murray County Area?

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (*i.e.*, be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely

attainment of the NAAQS. If a transportation plan does not "conform," most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and Federal agencies in determining whether proposed transportation projects "conform" to the SIP as required by section 176(c) of the Clean Air Act.

EPA's substantive criteria for determining "adequacy" of an MVEB are set out in 40 CFR 93.118(e)(4). The process for determining "adequacy" consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance was finalized in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

Georgia's maintenance plan submission contained new regional MVEBs for VOCs and NO<sub>x</sub> for the Murray County Area for the year 2018. The availability of the Georgia SIP submission with the Murray County MVEBs was available for public comment on EPA's adequacy Web site on June 21, 2007, at: <http://>

[www.epa.gov/otaq/stateresources/transconf/currstips.htm](http://www.epa.gov/otaq/stateresources/transconf/currstips.htm). The EPA public comment period on adequacy of the 2018 regional MVEBs for the Murray County Area closed on July 23, 2007. EPA did not receive any comments, or requests for the submittal.

EPA intends to make its determination of the adequacy of the 2018 MVEBs for the Murray County Area for transportation conformity purposes in the final rulemaking on the redesignation of the Murray County Area. If EPA finds the 2018 MVEBs adequate and approves these MVEBs in the final rulemaking action, the new MVEBs must be used for future transportation conformity determinations. The new 2018 MVEBs, if found adequate and approved in the final rulemaking, will be effective on the date of publication of EPA's final rulemaking in the **Federal Register**. For required regional emissions analysis years that involve the year 2017 or before, the State will use the interagency consultation group for this Area to determine the appropriate interim test to use to demonstrate conformity. For required regional emissions analysis years that involve 2018 or beyond, the applicable budgets will be the new 2018 MVEBs. The 2018 MVEBs are defined in section VII of this rulemaking.

#### **IX. Proposed Actions on the Redesignation Request and the Maintenance Plan SIP Revision Including Proposed Approval of the 2018 MVEBs**

EPA is proposing to make the determination that the Murray County Area has met the criteria for redesignation from nonattainment to attainment for the 8-hour ozone NAAQS. Further, EPA is proposing to approve Georgia's redesignation request for the Murray County Area. After evaluating Georgia's SIP submittal requesting redesignation, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Murray County Area has attained, and will continue to maintain the 8-hour ozone standard.

EPA is also proposing to approve the June 15, 2007, SIP revision containing Georgia's 8-hour ozone maintenance plan for the Murray County Area. The maintenance plan includes regional MVEBs for 2018, among other requirements. EPA is proposing to approve the 2018 MVEBs for the Murray County Area, because the maintenance plan demonstrates that expected emissions for all other source categories

will continue to maintain the 8-hour ozone standard.

Further, as part of today's action, EPA is describing the status of its adequacy determination for the 2018 MVEBs in accordance with 40 CFR 93.118(f)(1). If transportation conformity is implemented in this Area, the transportation partners will need to use these new MVEBs pursuant to 40 CFR 93.104(e) as effectively amended by section 172(c)(2)(E) of the CAA as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005.

#### **X. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is 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). This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Redesignation of an area to attainment under section 107(d)(3)(e) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not have substantial direct effects on the states,

on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. 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. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects**

##### *40 CFR Part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

##### *40 CFR Part 81*

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

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

Dated: August 16, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7-17133 Filed 8-28-07; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2007-0182; FRL-8143-3]

#### Dibasic Esters (CAS Reg. No. 95481-62-2); Proposed Pesticide Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to establish an exemption from the requirement of a tolerance for residues of dibasic esters (DBE; CAS Reg. No. 95481-62-2) under 40 CFR 180.1277 when used as an inert ingredient solvent material/anti-freeze microencapsulated at 10% weight/weight (W/W) or less in pesticide formulations with the active ingredient cyfluthrin. Whitmire Micro-Gen Research Laboratories, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. New data were received by EPA after the publication of the petitioner's Notice of Filing, therefore, EPA is providing the public with an additional opportunity to comment on the petitioner's request in this proposed rule.

**DATES:** Comments must be received on or before October 29, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2007-0182, by one of the following methods:

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

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for

deliveries of boxed information. The Docket telephone number is (703) 305-5805.

**Instructions:** Direct your comments to docket ID number EPA-HQ-OPP-2007-0182. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The Federal [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA.

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#### FOR FURTHER INFORMATION CONTACT:

Tracy Ward, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460-0001; telephone number: (703) 308-9361; e-mail address: [ward.tracyh@epa.gov](mailto:ward.tracyh@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the