

predominance. For example, the provision allows for the declaration “fish protein (contains one or more of the following: Pollock, cod, and/or pacific whiting).” Given the concerns that industry has expressed with respect to impracticability of the agency’s proposed labeling requirement (see section III.A of this document), we seek comment on the need for and appropriateness of a similar provision for the labeling of fluid UF milk that is used interchangeably with milk, as needed and when economically and logistically practical, in the manufacture of standardized cheeses and related cheese products.

The agency seeks public comment on whether the labeling requirement that the agency proposed would be misleading or deceptive to consumers. Specifically, the agency seeks comment on the following questions:

1. Considering that the products of ultrafiltration, as defined in proposed § 133.3(f) and (g) in the 2005 proposed rule, are significantly different in composition from milk and nonfat milk, is it or is it not appropriate to require that they must be identified by a common or usual name other than “milk” and “nonfat milk,” respectively?

2. If it is appropriate to permit fluid UF milk and fluid UF nonfat milk to be declared by the collective terms “milk” and “nonfat milk,” respectively, when used in standardized cheeses and related cheese products, what is the scientific and legal justification?

3. Is there a need to consider the declaration of fluid UF milk and fluid UF nonfat milk by a term(s) other than their specific, individual common, or usual names when they are used as ingredients in standardized cheeses and related cheese products? Should this consideration be extended to fluid UF milk and fluid UF nonfat milk when they are used as ingredients in other foods? If they are required to be declared by different terms when used in standardized cheeses as compared to other foods, what would be the scientific and legal basis for the different labeling requirements?

4. Is there a need for the agency to consider providing for “and/or” labeling (similar to such provisions in § 101.4(b)) when fluid UF milk or fluid UF nonfat milk are used as ingredients in standardized cheeses and related cheese products? What is the scientific and legal justification for such a provision?

#### IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document.

Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

#### V. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. Johnson, M.E. and J.A. Lucey, “Major Technological Advances and Trends in Cheese,” *Journal of Dairy Science*, 89:1174–1178, 2006.

2. Dudlicek, J., “Cutting Edge: Innovative Processes Keep Dairy Manufacturing Moving,” in the February 2006 ed. of *Dairy Field* (<http://www.dairyfield.com/content.php?s=DF/2006/02&p=10>), accessed July 2, 2007.

3. Tamime, A.Y. and B.A. Law (Eds.), *Mechanisation and Automation in Dairy Technology*, pp. 1–29 and 204–295, Sheffield Academic Press Ltd., Sheffield, England, 2001.

4. Derby, B.M., Memorandum to Nalubola, R., Consumer Research on Ultrafiltered Milk Labeling, February 10, 2006.

5. Derby, B.M., Memorandum to Nalubola, R., Kraft Consumer Research on Ultrafiltered Milk Labeling, August 16, 2006.

Dated: December 3, 2007.

**Leslye M. Fraser,**

*Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.* [FR Doc. E7–23981 Filed 12–10–07; 8:45 am]

**BILLING CODE 4160–01–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA–R05–OAR–2007–0957; FRL–8504–1]

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Wisconsin; Redesignation of Kewaunee County Area to Attainment for Ozone

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to make a determination under the Clean Air Act (CAA) that the nonattainment area of Kewaunee County has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on quality-assured ambient air quality monitoring data for the 2004–2006 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. Preliminary monitoring data for 2007 continue to show monitored attainment of the NAAQS.

EPA is proposing to approve a request from the State of Wisconsin to redesignate the Kewaunee County area to attainment of the 8-hour ozone NAAQS. The Wisconsin Department of Natural Resources (WDNR) submitted this request on June 12, 2007. In proposing to approve this request EPA is also proposing to approve, as a revision to the Wisconsin State Implementation Plan (SIP), the State’s plan for maintaining the 8-hour ozone NAAQS through 2018 in the area. EPA also finds adequate and is proposing to approve the State’s 2012 and 2018 Motor Vehicle Emission Budgets (MVEBs) for the Kewaunee County area.

**DATES:** Comments must be received on or before January 10, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0957, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax*: (312) 886–5824.

4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77

West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2007-0957. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or e-mail. 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://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 legal 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, Criteria Pollutant 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](mailto: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:

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- V. Why Is EPA Proposing To Take These Actions?
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- VII. What is EPA's Analysis of the Request?
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### I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

### II. What Action Is EPA Proposing To Take?

EPA is proposing to take several related actions. EPA is proposing to make a determination that the Kewaunee County nonattainment area has attained the 8-hour ozone standard and that this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Wisconsin's request to change the legal designation of the Kewaunee County area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve Wisconsin's maintenance plan SIP revision for Kewaunee County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Kewaunee County area in attainment of the ozone NAAQS through 2018. Additionally, EPA is proposing to approve the newly-established 2012 and 2018 MVEBs for the Kewaunee County area. The adequacy comment period for the MVEBs began on September 24, 2007, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>). The adequacy comment period for these MVEBs ended on October 24, 2007. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. In a letter dated November 6, 2007, EPA informed WDNR that we had found the 2012 and 2018 MVEBs to be adequate for use in transportation conformity analyses. Please see the Adequacy section of this rulemaking for further explanation on this process. Therefore, we find adequate, and are proposing to approve, the State's 2012 and 2018 MVEBs for transportation conformity purposes.

### III. What Is the Background for These Actions?

#### A. What Is the General Background Information?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (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. Before promulgation of the current 8-hour standard, the ozone NAAQS was based on a 1-hour standard. On November 6, 1991 (56 FR 56693 and 56852), the Kewaunee County area was designated as a moderate nonattainment area under the 1-hour ozone NAAQS. The area was subsequently redesignated to attainment of the 1-hour standard on August 26, 1996 (61 FR 43668). At the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005, the Kewaunee County area was designated as attainment under the 1-hour ozone 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 standard. On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. 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 air quality data, 2001–2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in Title I, part D, 42 U.S.C. 7501–7509a and 7511–7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment areas.

Under EPA's 8-hour ozone implementation rule, (69 FR 23951 (April 30, 2004)), an area was classified under subpart 2 based on its 8-hour ozone design value (i.e. the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The Kewaunee County area was designated as a subpart 1, 8-hour ozone nonattainment area by EPA on April 30, 2004 (69 FR 23857, 23947) based on air quality monitoring data from 2001–2003 (69 FR 23860).

40 CFR 50.10 and 40 CFR part 50, Appendix I provide that the 8-hour ozone standard is attained 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, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. See 40 CFR Part 50, Appendix I, 2.3(d).

On June 12, 2007, Wisconsin requested that EPA redesignate the Kewaunee County area to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2004 through 2006, indicating the 8-hour NAAQS for ozone had been attained for the Kewaunee County area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are 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).

#### *B. What Is the Impact of the December 22, 2006 United States Court of Appeals Decision Regarding EPA's Phase 1 Implementation Rule?*

##### 1. Summary of Court Decision

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit 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. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist. v. EPA*, Docket No. 04 1201, in response to several petitions for rehearing, the DC Circuit 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 Act 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 8 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 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain four 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; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, 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; and (4) certain transportation conformity requirements for certain types of federal actions. The June 8 decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation or 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 this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

##### 2. Requirements Under the 8-Hour Standard

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 cannot now go forward. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements 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 Kewaunee 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. 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). 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).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking. In *Sierra Club v. Whitman*, 285 F. 3d 63 (DC Cir. 2002), the DC Circuit 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.

### 3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the Kewaunee County area was an attainment area subject to a CAA section 175A maintenance plan under the 1-hour standard. The DC Circuit's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court in its June 8 decision clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance

plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR Part 93.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, the Kewaunee County area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to section 172(c)(9) or 182(c)(9)) and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus, the decision in South Coast Air Quality Management Dist. should not alter requirements that would preclude EPA from finalizing the redesignation of this area.

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

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided 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.

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: "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from William G. Laxton, Director Technical Support Division, June 18, 1990;

"Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

"Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

"Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

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

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

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

"Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1-10, dated November 30, 1993.

"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

"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.

**V. Why Is EPA Proposing To Take These Actions?**

On June 12, 2007, Wisconsin requested redesignation of the Kewaunee County area to attainment for the 8-hour ozone standard. EPA believes that the area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA.

**VI. What Is the Effect of These Actions?**

Approval of the redesignation request would change the official designation of the area for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Wisconsin SIP a plan for maintaining the 8-hour ozone NAAQS through 2018. The maintenance plan includes contingency measures to remedy future violations of the 8-hour NAAQS. It also establishes MVEBs of 0.43 and 0.32 tons per day (tpd) VOC and 0.80 and 0.47 tpd NO<sub>x</sub> for the years 2012 and 2018, respectively.

**VII. What Is EPA's Analysis of the Request?**

*A. Attainment Determination and Redesignation*

EPA is proposing to make a determination that the Kewaunee County area has attained the 8-hour ozone standard and that the area has met all other applicable section 107(d)(3)(E) redesignation criteria. The basis for EPA's determination is as follows:

**1. The Area Has Attained the 8-Hour Ozone NAAQS (Section 107(d)(3)(E)(i))**

EPA is proposing to make a determination that the Kewaunee 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 part 50, Appendix I, 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 Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

WDNR submitted ozone monitoring data for the 2004 to 2006 ozone seasons. The WDNR quality-assured the ambient monitoring in accordance with 40 CFR 58.10, and recorded it in the AIRS database, thus making the data publicly available. The data meet the completeness criteria in 40 CFR 50, Appendix I, which requires a minimum completeness of 75 percent annually and 90 percent over each three year period. Preliminary 2007 monitoring data show that the area continues to meet the 8-hour ozone NAAQS. Monitoring data is presented in Table 1 below.

**TABLE 1.—KEWAUNEE COUNTY ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGE OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS.**

Monitor	2004 4th high (ppm)	2005 4th high (ppm)	2006 4th high (ppm)	2004–2006 average 4th high (ppm)
55-061-0002 .....	0.073	0.088	0.077	0.079

In addition, as discussed below with respect to the maintenance plans, WDNR has committed to continue monitoring ozone levels in Kewaunee County and to discuss with EPA any changes in the siting that may become necessary. WDNR will continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System on a timely basis in accordance with federal guidelines. In summary, EPA believes that the data submitted by Wisconsin provide an adequate demonstration that the Kewaunee County area has attained the 8-hour ozone NAAQS.

**2. The Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))**

We have determined that Wisconsin has met all currently applicable SIP requirements for purposes of

redesignation for the Kewaunee County area under Section 110 of the CAA (general SIP requirements). We have also determined that the Wisconsin SIP meets all SIP requirements currently applicable for purposes of redesignation under part D of Title I of the CAA (requirements specific to subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, we have determined that the Wisconsin SIP is fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). In making these determinations, we have ascertained what SIP requirements are applicable to the area for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

**a. The Kewaunee 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) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993 Michael Shapiro memorandum and 60 FR 12459, 12465-66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable

until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

*General SIP requirements.* Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it includes enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provides for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provides for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; includes provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; includes criteria for stationary source emission control measures, monitoring, and reporting; includes provisions for air quality modeling; and provides for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO<sub>x</sub> SIP Call,<sup>1</sup> Clean Air Interstate Rule (CAIR) (70 FR 25162)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. When the transport SIP submittal requirements are applicable to a state, they will continue to apply to the state regardless of the attainment designation

of any one particular area in the state. Therefore, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation. Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh ozone redesignation (66 FR 50399, October 19, 2001).

As discussed above, we believe that section 110 elements which are not linked to the area's nonattainment status are not applicable for purposes of redesignation. Because there are no section 110 requirements linked to the part D requirements for 8-hour ozone nonattainment areas that have become due, as explained below, there are no part D requirements applicable for purposes of redesignation under the 8-hour standard.

*Part D Requirements.* EPA has determined that the Wisconsin SIP meets applicable SIP requirements under part D of the CAA, since no requirements applicable for purposes of redesignation became due for the 8-hour ozone standard prior to WDNR's submission of the redesignation request for the Kewaunee County area. Under part D, an area's classification determines the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets 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. The Kewaunee County area was classified as a subpart 1 nonattainment area, and, therefore, subpart 2 requirements do not apply.

*Part D, subpart 1 applicable SIP requirements.* For purposes of evaluating these redesignation requests, the applicable part D, subpart 1 SIP requirements for the Kewaunee County area 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, April 16, 1992).

No requirements applicable for purposes of redesignation under part D became due prior to submission of the redesignation request, and, therefore, none are applicable to the areas for purposes of redesignation. Since the State of Wisconsin has submitted a complete ozone redesignation request for the Kewaunee County area prior to the deadline for any submissions required for purposes of redesignation, we have determined that these requirements do not apply to the Kewaunee County area for purposes of redesignation.

Furthermore, EPA has determined that, since PSD requirements will apply after redesignation, 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 NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Wisconsin has demonstrated that the area to be redesignated will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the Kewaunee County area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

*Section 176 conformity requirements.* Section 176(c) of the CAA requires states to establish criteria and

<sup>1</sup> On October 27, 1998 (63 FR 57356), EPA issued a NO<sub>x</sub> SIP call requiring the District of Columbia and 22 states to reduce emissions of NO<sub>x</sub> in order to reduce the transport of ozone and ozone precursors. Wisconsin was not included in EPA's NO<sub>x</sub> SIP call.

procedures to ensure that federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other federally-supported or funded projects (general conformity). State conformity revisions must be consistent with federal conformity regulations relating to consultation, enforcement and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of federally-approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida).

EPA approved Wisconsin's general and transportation conformity SIPs on July 29, 1996 (61 FR 39329) and August 27, 1996 (61 FR 43970), respectively. Wisconsin has submitted onroad motor vehicle budgets for the Kewaunee County area of 0.43 and 0.32 tpd VOC and 0.80 and 0.47 tpd NO<sub>x</sub> for the years 2012 and 2018, respectively. The area must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval. Thus, the Kewaunee County area has satisfied all applicable requirements under section 110 and part D of the CAA.

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

EPA has fully approved the Wisconsin SIP for the Kewaunee County area 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 the September 4, 1992 John Calcagni memorandum, page 3, *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998), *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Wisconsin has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to the Kewaunee County area under the 1-hour ozone standard. No Kewaunee County area SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. The Improvement in Air Quality 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 (Section 107(d)(3)(E)(iii))

EPA finds that Wisconsin has demonstrated that the observed air quality improvement in the Kewaunee County area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state-adopted measures.

In making this demonstration, the State has calculated the change in emissions between 2002, one of the years used to designate the area as nonattainment, and 2005, one of the years the Kewaunee County area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Kewaunee County and upwind areas have implemented in recent years. The Kewaunee County area is impacted by the transport of ozone and ozone precursors from upwind areas. Therefore, local controls as well as controls implemented in upwind areas are relevant to the improvement in air quality in the Kewaunee County area.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

*NO<sub>x</sub> rules.* Wisconsin adopted NO<sub>x</sub> controls for large existing sources and established emissions standards for new sources as part of their rate of progress plan under the 1-hour ozone standard.

*Federal Emission Control Measures.* Reductions in VOC and NO<sub>x</sub> emissions have occurred statewide and in upwind areas as a result of federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include: Maximum Achievable Control Technology Standards, the National Low Emission Vehicle (NLEV) program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards. In addition, in 2004, EPA issued the Clean Air Non-road Diesel Rule (69 FR 38958 (July 29, 2004)). EPA expects this rule to reduce off-road diesel emissions through 2010, with emission reductions starting in 2008.

*Control Measures in Upwind Areas.* On October 27, 1998 (63 FR 57356), EPA issued a NO<sub>x</sub> SIP call requiring the District of Columbia and 22 states to reduce emissions of NO<sub>x</sub>. The reduction in NO<sub>x</sub> emissions has resulted in lower concentrations of transported ozone entering the Kewaunee County area. Emission reductions resulting from regulations developed in response to the NO<sub>x</sub> SIP call are permanent and enforceable.

b. Emission Reductions

Wisconsin is using 2002 for the nonattainment inventory and 2005, one of the years used to demonstrate monitored attainment of the NAAQS, for the attainment inventory. WDNR prepared comprehensive inventories for both 2002 and 2005 for Kewaunee County as part of a larger inventory effort. Point source inventories were developed using source specific data. Area source emissions were estimated based on various activity data compiled by the Census Bureau, the Energy Information Administration, the Bureau of Economic Analysis, and several Wisconsin State agencies. Nonroad mobile emissions were generated using EPA's National Mobile Inventory Model (NMIM) and adding emissions estimates for aircraft, commercial marine vessels, and railroads, three nonroad categories not included in NMIM. Onroad mobile

emissions were calculated using MOBILE6.2.

Using the inventories described above, Wisconsin's submittal documents changes in VOC and NO<sub>x</sub>

emissions from 2002 to 2005 for the Kewaunee County area. Because Kewaunee County is impacted by transport, WDNR also documented emissions reductions for the upwind

Wisconsin areas of Milwaukee-Racine, Sheboygan, and Manitowoc County. Emissions data are shown in Tables 3 through 5 below.

TABLE 3.—VOC AND NO<sub>x</sub> EMISSIONS FOR NONATTAINMENT YEAR 2002 (tpd)

	Kewaunee County		Milwaukee-Racine		Sheboygan		Manitowoc County		Wisconsin upwind areas total	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
	Point .....	0.3	0.05	14.7	114.9	2.5	26.1	1.6	2.9	18.8
Area .....	1.3	0.1	120.6	12.1	10.9	0.9	5.1	0.4	136.6	13.4
Nonroad .....	1.7	2.1	62.1	52.2	5.6	4.5	3.7	4.2	71.4	60.9
Onroad .....	0.8	1.2	45.4	101.6	4.1	8.2	3.6	7.4	53.1	117.2
Total .....	4.1	3.5	242.8	280.8	23.1	39.7	14.0	14.9	279.9	335.4

TABLE 4.—VOC AND NO<sub>x</sub> EMISSIONS FOR ATTAINMENT YEAR 2005 (TPD)

	Kewaunee County		Milwaukee-Racine		Sheboygan		Manitowoc County		Wisconsin upwind areas total	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
	Point .....	0.2	0.01	13.8	68.6	2.3	13.2	1.3	3.2	17.4
Area .....	1.3	0.1	107.5	13.4	7.8	1.1	4.9	0.5	120.2	15.0
Nonroad .....	1.6	1.7	54.0	49.1	5.4	4.1	3.4	3.8	62.8	57.0
Onroad .....	0.6	1.2	36.0	86.2	2.9	7.8	2.6	7.4	41.5	101.4
Total .....	3.7	3.0	211.3	217.3	18.4	26.2	12.2	14.9	241.9	258.4

TABLE 5. COMPARISON OF 2002 AND 2005 VOC AND NO<sub>x</sub> EMISSIONS (TPD)

Sector	Kewaunee County						Wisconsin upwind areas total					
	VOC			NO <sub>x</sub>			VOC			NO <sub>x</sub>		
	2002	2005	Net change (2002–2005)	2002	2005	Net change (2002–2005)	2002	2005	Net change (2002–2005)	2002	2005	Net change (2002–2005)
Point .....	0.3	0.2	–0.1	0.05	0.01	–0.04	18.8	17.4	–1.4	143.9	85.0	–58.9
Area .....	1.3	1.3	0.0	0.1	0.1	0.0	136.6	120.2	–16.4	13.4	15.0	1.6
Nonroad .....	1.7	1.6	–0.1	2.1	1.7	–0.4	71.4	62.8	–8.6	60.9	57.0	–3.9
Onroad .....	0.8	0.6	–0.2	1.2	1.2	0.0	53.1	41.5	–11.6	117.2	101.4	–15.8
Total ..	4.1	3.7	–0.4	3.45	3.01	–0.4	279.9	241.9	–38.0	335.4	258.4	–77.0

Table 5 shows that the Kewaunee County area reduced VOC emissions by 0.4 tpd and NO<sub>x</sub> emissions by 0.4 tpd between 2002 and 2005. In addition, upwind areas in Wisconsin reduced VOC emissions by 38.0 tpd and NO<sub>x</sub> emissions by 77.0 tpd between 2002 and 2005. Based on the information summarized above, Wisconsin has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175a of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with its request to redesignate the Kewaunee County nonattainment area to attainment status, Wisconsin submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the area through 2018.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must

demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a



maintenance plan. The memorandum clarifies that an ozone maintenance plan should address the following items: The attainment VOC and NO<sub>x</sub> emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The WDNR developed an emissions inventory for 2005, one of the years Wisconsin used to demonstrate monitored attainment of the 8-hour

NAAQS, as described above. The attainment level of emissions is summarized in Table 4, above.

c. Demonstration of Maintenance

Wisconsin submitted with the redesignation request a revision to the 8-hour ozone SIP to include a maintenance plan for the Kewaunee County area, in compliance with section 175A of the CAA. This demonstration shows maintenance of the 8-hour ozone standard through 2018 by assuring that current and future emissions of VOC and NO<sub>x</sub> for the Kewaunee County area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall v. EPA*, 265 F.3d

426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Wisconsin is using projected emissions inventories for the years 2012 and 2018 to demonstrate maintenance. Point and area source emissions were projected from the 2005 base year using growth factors. Nonroad mobile emissions were generated for 2012 and 2018 using NMIM and grown emissions for aircraft, commercial marine vessels, and railroads were added in. Onroad mobile source emissions projections were created using MOBILE6.2. Emissions estimates are presented in Table 6 below.

TABLE 6.—KEWAUNEE COUNTY: COMPARISON OF 2005–2018 VOC AND NO<sub>x</sub> EMISSIONS (TPD)

Sector	VOC				NO <sub>x</sub>			
	2005	2012	2018	Net change 2005–2018	2005	2012	2018	Net change 2005–2018
Point .....	0.2	0.3	0.3	0.10	0.01	0.01	0.0	–0.01
Area .....	1.3	1.4	1.3	0.00	0.1	0.1	0.1	0.00
Nonroad .....	1.6	1.3	1.2	–0.40	1.7	1.5	1.4	–0.30
Onroad .....	0.6	0.43	0.32	–0.28	1.2	0.80	0.47	–0.73
Total .....	3.7	3.43	3.12	–0.58	3.01	2.41	1.97	–1.04

The emission projections show that WDNR does not expect emissions in the Kewaunee County area to exceed the level of the 2005 attainment year inventory during the maintenance period. In the Kewaunee County area, WDNR projects that VOC and NO<sub>x</sub> emissions will decrease by 0.58 tpd and 1.04 tpd, respectively.

As part of its maintenance plan, the State elected to include a “safety margin” for the area. 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 which continues to demonstrate attainment of the standard. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The Kewaunee County area attained the 8-hour ozone NAAQS during the 2004–2006 time period. Wisconsin used 2005 as the attainment level of emissions for the area. In the maintenance plan, WDNR projected emission levels for 2018. For Kewaunee County, the emissions from point, area, nonroad, and mobile sources in 2005 equaled 3.7 tpd of VOC. WDNR projected VOC emissions for the year 2018 to be 3.12 tpd of VOC. The SIP submission

demonstrates that the Kewaunee County area will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 0.58 tpd of VOC for 2018. By this same method, 1.04 tpd (i.e., 3.01 tpd less 2.41 tpd) is the safety margin for NO<sub>x</sub> for 2018. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

d. Monitoring Network

Wisconsin currently operates one ozone monitor in Kewaunee County. Wisconsin has committed to continue to operate and maintain an approved ozone monitoring network in Kewaunee. WDNR has also committed to consult with EPA regarding any changes in siting that may become necessary in the future. WDNR will continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System on a timely basis in accordance with federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Kewaunee County area depends, in part, on the State’s efforts toward tracking indicators of continued attainment during the maintenance period. Wisconsin’s plan for verifying continued attainment of the 8-hour standard in the Kewaunee County area consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. The State will also evaluate future VOC and NO<sub>x</sub> emissions inventories for increases over 2005 levels.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. 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 of the contingency measures, and a time limit for action by

the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Wisconsin has adopted a contingency plan for the Kewaunee area to address possible future ozone air quality problems. A contingency plan response will be triggered whenever a three-year average fourth-high monitored value of 0.085 ppm or greater is monitored within the maintenance area. When a response is triggered, WDNR will determine whether a special event, malfunction, or non-compliance with permit conditions or rule requirements resulted in high ozone concentrations in order to immediately address needed corrective measures. The WDNR will also review meteorological conditions during high ozone episodes. The State will conduct this review within 6 months following the close of the ozone season. If the high values were found not to be prompted by an exceptional event, malfunction, or non-compliance with a permit condition or rule requirement, WDNR will evaluate existing but not fully implemented, on-the way, and, if necessary, new control measures necessary to return the area to attainment within 18 months. EPA is interpreting this commitment to mean that the measure will be in place within 18 months. In addition, it is EPA's understanding that to acceptably address a violation of the standard, existing and on-the way control measures must be in excess of emissions reductions included in the projected maintenance inventories.

In its maintenance plan, WDNR included the following list of potential contingency measures:

- i. Broaden the application of the NO<sub>x</sub> RACT program by including a larger geographic area, and/or including sources with potential emissions of 50 tons per year, and/or increasing the cost-effectiveness thresholds utilized as a basis for Wisconsin's NO<sub>x</sub> RACT Program; and/or
- ii. Broaden the geographic area for the idling control program for mobile sources targeting diesel vehicles; and/or
- iii. Reduced VOC content in Architectural, Industrial and Maintenance coatings rule; and/or

iv. Reduced VOC content in commercial and consumer products; and/or

v. Reduced VOC content from federal motor vehicle toxics rule; and/or  
Control measures identified as RACM in a regional attainment demonstration for ozone control.

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, Wisconsin commits to submit to the EPA updated ozone maintenance plans eight years after redesignation of the Kewaunee County area to cover an additional 10-year period beyond the initial 10-year maintenance period. As required by section 175(A) of the CAA, Wisconsin has committed to maintaining the existing controls after redesignation unless the State demonstrates that the standard can be maintained without one or more controls. Wisconsin also commits that any changes to its rules or emission limits applicable to VOC and/or NO<sub>x</sub> sources, as required for maintenance of the ozone standard in the Kewaunee County area as well as contingency measures adopted under the section 175A maintenance plan, will be submitted to EPA for approval as a SIP revision. Wisconsin has also asserted that the WDNR has the necessary resources to actively enforce any violations of its rules or permit provisions.

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 Wisconsin for the Kewaunee County area meets the requirements of section 175A of the CAA.

#### *B. Adequacy of Wisconsin's MVEBs*

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard. These emission control strategy SIP revisions (e.g., reasonable further progress SIP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that,

together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR Part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. 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 how to revise the MVEB if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the part of the SIP that addresses emissions from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA's finding of adequacy. The process of 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 codified in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM 2.5 National Ambient

Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,” published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Kewaunee County area’s maintenance plan contains new VOC and NO<sub>x</sub> MVEBs for the years 2012 and 2018. The availability of the SIP submission with these 2012 and 2018 MVEBs was announced for public comment on EPA’s Adequacy Web page on September 24, 2007 at: <http://www.epa.gov/otaq/stateresources/transconf/currrips.htm>. The EPA public comment period on adequacy of the 2012 and 2018 MVEBs for the Kewaunee County area closed on October 24, 2007. No requests for this submittal or adverse comments on the submittal were received during the adequacy comment period. In a letter dated November 6, 2007, EPA informed WDNR that we had found the 2012 and 2018 MVEBs to be adequate for use in transportation conformity analyses.

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in the Kewaunee County area because EPA has determined that the area can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. WDNR has determined the 2012 MVEBs for the Kewaunee County area to be 0.43 tpd for VOC and 0.80 tpd for NO<sub>x</sub>. WDNR has determined the 2018 MVEBs for the area to be 0.32 tpd for VOC and 0.47 tpd for NO<sub>x</sub>. These MVEBs are consistent with the onroad mobile source VOC and NO<sub>x</sub> emissions projected by MDEQ for 2012 and 2018, as summarized in Table 6 above (“onroad” source sector). Wisconsin has demonstrated that the Kewaunee County area can maintain the 8-hour ozone NAAQS with mobile source emissions of 0.43 tpd and 0.32 tpd of VOC and 0.80 tpd and 0.47 tpd of NO<sub>x</sub> in 2012 and 2018, respectively, since emissions will remain under attainment year emission levels.

#### VIII. What Action Is EPA Taking?

EPA is proposing to make a determination that the Kewaunee County area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the Kewaunee County area. EPA’s proposed approval of the maintenance plan is based on Wisconsin’s demonstration that the plan meets the requirements of section 175A

of the CAA, as described more fully above. After evaluating Wisconsin’s redesignation request, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve the redesignation of the Kewaunee County area from nonattainment to attainment for the 8-hour ozone NAAQS. The final approval of this redesignation request would change the official designation for the Kewaunee County area from nonattainment to attainment for the 8-hour ozone standard. Finally, EPA is proposing to approve the 2012 and 2018 MVEBs submitted by Wisconsin in conjunction with the redesignation request.

#### IX. Statutory and Executive Order Reviews

##### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a “significant regulatory action” and, therefore, is not subject to review by the Office of Management and Budget.

##### *Paperwork Reduction Act*

This 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.*).

##### *Regulatory Flexibility Act*

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 rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

##### *Unfunded Mandates Reform Act*

Because this rule 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).

##### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, does not impose any new requirements on sources, or allows 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.

##### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

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).

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

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.

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

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

##### *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program

submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. 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.

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 81

Air Pollution Control, Environmental protection, National parks, Wilderness areas.

Dated: November 29, 2007.

**Walter W. Kovalick,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E7-23949 Filed 12-10-07; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R01-RCRA-2007-0999; FRL-8504-3]

#### Rhode Island: Proposed Authorization of State Hazardous Waste Management Program Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The State of Rhode Island has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Rhode Island. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through an immediate final action.

**DATES:** Comments must be received on or before January 10, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. PA-R01-

RCRA-2007-0999, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.

- *E-mail*: [biscaia.robin@epa.gov](mailto:biscaia.robin@epa.gov).

- *Fax*: (617) 918-0642, to the

attention of Robin Biscaia.

- *Mail*: Robin Biscaia, Hazardous Waste Unit, EPA New England—Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114-2023.

- *Hand Delivery or Courier*: Deliver your comments to: Robin Biscaia, Hazardous Waste Unit, Office of Ecosystem Protection, EPA New England—Region 1, One Congress Street, 11th Floor, (CHW), Boston, MA 02114-2023. Such deliveries are only accepted during the Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

For further information on how to submit comments, please see today's immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Robin Biscaia, Hazardous Waste Unit, U.S. EPA New England—Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114-2023, telephone number: (617) 918-1642; fax number: (617) 918-0642, e-mail address: [biscaia.robin@epa.gov](mailto:biscaia.robin@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing these changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect adverse comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written adverse comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take immediate effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you should do so at this time.

Dated: November 2, 2007.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

[FR Doc. E7-23947 Filed 12-10-07; 8:45 am]

**BILLING CODE 6560-50-P**

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 102-39

[FMR Case 2007-102-1; Docket 2007-0001; Sequence 3]

RIN 3090-A138

#### Federal Management Regulation; FMR Case 2007-102-1, Replacement of Personal Property Pursuant to the Exchange/Sale Authority

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration is proposing to amend the Federal Management Regulation (FMR) by updating coverage on the replacement of personal property pursuant to the exchange/sale authority. The proposed changes were prompted by recommendations of the Federal Asset Management Evaluation (FAME) interagency working group led by GSA.

**DATES:** Interested parties should submit comments in writing on or before January 10, 2008 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FMR case 2007-102-1 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting "General Services Administration" as the agency of choice. At the "Keyword" prompt, type in the FMR case number (for example, FMR Case 2007-102-1) and click on the "Submit" button. You may also search for any document by clicking on the "Advanced search/document search" tab at the top of the screen, selecting from the agency field "General Services Administration", and typing the FMR case number in the keyword field. Select the "Submit" button.

- Fax: 202-501-4067.

- Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FMR case 2007-102-1 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Robert Holcombe, Office of