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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2017-0212; FRL-9982-29-Region 5]

Air Plan Approval; Wisconsin; Reasonable further progress plan and other plan elements for the moderate nonattainment Chicago area for the 2008 ozone standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Wisconsin State Implementation Plan (SIP) to meet the base year emissions inventory, reasonable further progress (RFP), RFP contingency measure, nitrogen oxides (NO_x) reasonably available control technology (RACT), and motor vehicle inspection and maintenance (I/M) requirements of the Clean Air Act (CAA) for the Wisconsin portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin nonattainment area (Chicago area) for the 2008 ozone National Ambient Air Quality Standards (NAAQS or standards). EPA is also proposing to approve the 2017 and 2018 transportation conformity motor vehicle emissions budgets (MVEBs) for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS. EPA is proposing to approve this SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations because it satisfies the emission

inventory, RFP, RFP contingency measure, NO_x RACT, I/M, and transportation conformity requirements for the Wisconsin portion of the Chicago area, which is classified as moderate nonattainment for the 2008 ozone NAAQS.

DATES: Comments must be received on or before **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2017-0212, at http://www.regulations.gov, or via email to Aburano.Douglas@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA

public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6832, Liljegren.Jennifer@epa.gov.

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

I. What Is the Background for This Action?

A. Background on the 2008 Ozone NAAQS

On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm).[1] Promulgation of a revised NAAQS triggers a requirement for EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standards. For the ozone NAAQS, this also involves

[1] 73 FR 16436.

classifying any nonattainment areas at the time of designation.[2] Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's "design value," which represents air quality in the area for the most recent 3 years). The classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme.[3]

Areas that EPA designates nonattainment for the ozone NAAQS are subject to certain requirements, including the general nonattainment area planning requirements of CAA section 172 and the ozone-specific nonattainment planning requirements of CAA section 182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, a state is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions statements from stationary sources in the area, and implement a nonattainment new source review (NSR) program for the relevant ozone NAAQS.[4] For moderate areas, a state needs to comply with the marginal area requirements, plus additional moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later

[2]CAA sections 107(d)(1) and 181(a)(1).
[3]CAA section 181(a)(1).
[4]CAA section 182(a).

than 6 years after designation, the requirement to submit an RFP plan, the requirement to adopt and implement certain emissions controls, such as RACT and I/M, and the requirement for greater emissions offsets for new or modified major stationary sources under the state's nonattainment NSR program.[5]

B. Background on the Chicago 2008 Ozone Nonattainment Area

On June 11, 2012,[6] EPA designated the Chicago area as a marginal nonattainment area for the 2008 ozone NAAQS. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and part of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and the eastern portion of Kenosha County in Wisconsin. On May 4, 2016,[7] pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 ozone NAAQS by the July 20, 2015, marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas.

II. EPA's Evaluation of Wisconsin's SIP Submission

Wisconsin submitted a SIP revision on April 17, 2017, and supplemental information on January 23, 2018, to address the

[5]CAA section 182(b).
[6]77 FR 34221, effective July 20, 2012.
[7]81 FR 26697.

moderate nonattainment area requirements for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS. The submission contained several nonattainment plan elements, including a revised 2011 base year emissions inventory for the two ozone-forming precursor pollutants, volatile organic compounds (VOC) and NO_x, a 15% RFP plan, a 3% RFP contingency measure plan, 2017 and 2018 VOC and NO_x MVEBs, and an enhanced I/M program certification. The submission also included an attainment demonstration, a nonattainment NSR certification, and a VOC RACT certification, which will be addressed in a separate action(s).

A. Revised 2011 Base Year Emissions Inventory

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require states to develop and submit, as SIP revisions, comprehensive, accurate, and complete emissions inventories for all areas designated as nonattainment for the ozone NAAQS. An emissions inventory for ozone is an estimation of actual emissions of VOC and NO_x from all sources located in the relevant designated nonattainment area. For the 2008 ozone NAAQS, EPA has recommended that states use 2011 as a base year for the emissions estimates.[8] EPA approved on March 7, 2016,[9] the 2011 base year emissions inventory, which Wisconsin

[8] 78 FR 34178 at 34190.
[9] 81 FR 11673.

submitted on November 14, 2014, for the Wisconsin portion of the Chicago area. In its April 17, 2017, submission, supplemented on January 23, 2018, Wisconsin included a revised 2011 base year emissions inventory submission. Relative to its original inventory, Wisconsin's revised 2011 base year emissions inventory modifies the emissions estimates for the point, on-road mobile, and non-road mobile sector, with emissions estimates for the area source sector remaining unchanged.

The methodology differences between Wisconsin's modified inventory and original inventory are summarized in Table 1 and the emissions difference are shown in Table 2. Relative to the original inventory, the modified inventory includes a more conservative (worst-case) emissions estimate from the one electric generating unit (EGU) in the Wisconsin portion of the area. Wisconsin estimated the modified inventory on-road emissions using the Motor Vehicle Emissions Simulator (MOVES) model version 2014a, whereas it estimated the original inventory on-road mobile sector emissions with an older version of the model— MOVES version 2010b. Finally, Wisconsin estimated the modified inventory non-road mobile sector "MAR" emissions, which include commercial marine, aircraft, and rail locomotive, using EPA's 2014 National Emissions Inventory (NEI) version 2 and it estimated the "non-MAR" emissions, which are the non-road mobile emissions sources excluding commercial marine, aircraft, and

rail locomotive, using MOVES 2014a, whereas the original inventory relied on the older NEI version 1 and National Mobile Inventory Model (NMIM), respectively. Because the modifications to the original EPA-approved inventory are based on updated resources and information as summarized above, EPA finds the updated inventory approvable and is proposing to approve the revised 2011 base year emissions inventory as a revision to the Wisconsin SIP.

Table 1. Methodology differences between Wisconsin's modified inventory and Wisconsin's original EPA-approved inventory

Sector	Original Inventory	Modified Inventory
Point	EGUs & non-EGUs: WI AEI for an average day in the third quarter	EGUs: CAMD for a maximum day non-EGU: WI AEI for an average day in the year
Area	NEI v2	NEI v2
Onroad	MOVES 2010b (Min/Max Temps: 70/94 °F)	MOVES 2014a (Min/Max Temps: 70/94 °F)
Nonroad	air & rail: NEI v1 com.mar.: LADCO/NEI v1 non-MAR: NMIM model	MAR: NEI v2 non-MAR: MOVES 2014a

CAMD = EPA's Clean Air Markets Division database, com.mar. = commercial marine, EGU = electric generating unit, MAR = commercial marine, aircraft and rail locomotive, MOVES = Motor Vehicle Emissions Simulator, NEI = National Emissions Inventory, NMIM = National Mobile Inventory Model, WI AEI = Wisconsin's Air Emissions Inventory (which is used to develop NEI emissions).

Table 2. Emissions differences between Wisconsin's modified inventory and Wisconsin's original EPA-approved inventory

	VOC		NO_x	
Sector	Approved Inventory	RFP Inventory	Approved Inventory	RFP Inventory
Point	0.70	0.72	8.80	11.16

Area	4.78	4.78	1.09	1.09
On-road	2.14	2.42	4.67	5.15
Non-road	2.42	1.51	2.33	2.07
TOTAL	**10.04**	**9.43**	**16.89**	**19.47**

B. 15% RFP Plan and 3% Contingency Plan

The CAA requires that states with areas designated as nonattainment for ozone achieve RFP toward attainment of the ozone NAAQS. CAA section 172(c)(2) contains a general requirement that nonattainment plans must provide for emission reductions that meet RFP. For areas classified moderate and above, section 182(b)(1) imposes a more specific RFP requirement that a state had to meet through a 15% reduction in VOC emissions from the baseline anthropogenic emissions within 6 years after November 15, 1990. The state must meet the 15% requirement by the end of the 6-year period, regardless of when the nonattainment area attains the NAAQS. As with other nonattainment plan requirements for more recent iterations of the ozone NAAQS, EPA has promulgated regulations and guidance to interpret the statutory requirements of the CAA.

EPA's final rule to implement the 2008 ozone NAAQS (SIP Requirements Rule),[10] addressed, among other things, the RFP requirements as they apply to areas designated nonattainment and classified as moderate for the 2008 ozone NAAQS.[11] EPA

[10]80 FR 12264.
[11]80 FR 12264 at 12271 and 40 CFR 51.1110.

interprets the 15% VOC emission reduction requirement in CAA section 182(b)(1) such that a state that has already met the 15% requirement for VOC for an area under either the 1-hour ozone NAAQS or the 1997 8-hour ozone NAAQS would not have to fulfill that requirement through reductions of VOC again. Instead, EPA is interpreting CAA section 172(c)(2) to require states with such areas to obtain 15% ozone precursor emission reductions (VOC and/or NO_X) over the first 6 years after the baseline year for the 2008 ozone NAAQS. Wisconsin previously met the 15% VOC reduction requirement of CAA section 182(b)(1) for Kenosha County for the 1-hour ozone NAAQS.[12] Therefore, the state may rely upon NO_X and/or VOC emissions reductions to meet the RFP requirement for the 2008 ozone NAAQS.

EPA's SIP Requirements Rule indicates the base year for the 2008 ozone NAAQS, for which areas were designated nonattainment effective July 20, 2012, can be 2011 or a different year of the

[12]For both the 1-hour ozone NAAQS and the 1997 ozone NAAQS, the entirety of Kenosha County was part of the 6-county Milwaukee nonattainment area. For the 2008 ozone NAAQS, Kenosha County (partial) is part of the Chicago nonattainment area, since the statistical area delineated based on U.S. Census Bureau data was updated to include Kenosha County as part of the Chicago statistical area. Wisconsin met the 15% VOC reduction requirement for the Milwaukee area for the 1-hour ozone NAAQS, which included the entirety of Kenosha County, therefore, the Wisconsin portion of the 2008 Chicago nonattainment area (Kenosha County inclusive and east of I-94) has already met the 15% VOC reduction requirement.

states' choosing.[13] However, EPA required that states selecting a pre-2011 alternate baseline year must achieve 3% emission reductions each year after the initial 6-year period has concluded up to the beginning of the attainment year. For a multi-state area, states must agree on the same base year. Wisconsin, Illinois, and Indiana have all selected the EPA-recommended base year of 2011.

States may not take credit for VOC or NO_X reductions occurring from sources outside the nonattainment area for purposes of meeting the 15% RFP and 3% RFP requirements of CAA sections 172(c)(2), 182(b)(1) and (c)(2)(B). Wisconsin's 15% RFP represents emissions reductions which occurred in Wisconsin's portion of the nonattainment area in the time period from 2011 to 2017 thereby satisfying this requirement.

Except as specifically provided in CAA section 182(b)(1)(D) of the CAA, all state control measures approved into the SIP or Federal measures that provide emissions reductions that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements, provided that the reductions meet the standard requirements for creditability which include

[13]In South Coast Air Quality Management District v. EPA, No. 15-1115, decided February 16, 2018, the United States Court of Appeals for the D.C. Circuit ruled to reverse the portion of the rule that allowed for alternate years. However, since all 3 states for this multi-state area chose the default of 2011 as the base year, the decision has no impact here.

being enforceable, quantifiable, permanent, and surplus in terms of not having previously been counted toward RFP.

States must also include contingency measures in their nonattainment plans. The contingency measures required for areas classified as moderate and above under CAA sections 172(c)(9) and 182(c)(9) must provide for the implementation of specific measures if the area fails to attain or to meet any applicable RFP milestone. The state must submit these measures for approval by EPA into the SIP as adopted measures that would take effect without further rulemaking action by the state or EPA upon a determination that an area failed to attain or to meet the applicable milestone. Per EPA guidance for purposes of the ozone NAAQS, contingency measures should represent one year's worth of RFP progress, amounting to reductions of at least 3% of the baseline emissions inventory for the nonattainment area. The purpose of the contingency measures is to provide additional emission reductions in the event of a failure to attain or meet any applicable milestone, which would occur while the state is revising its SIP for the area.[14]

Regarding the contingency measures, EPA's prior guidance for purposes of the ozone NAAQS specifies that some portion of the contingency measures must include VOC reductions. This previous limitation is no longer necessary in all areas. In

[14]80 FR 12264 at 12285.

particular, EPA has concluded that states with nonattainment areas classified moderate and above that have already completed the initial 15% VOC reduction required by CAA section 182(b)(1)(A)(i), can meet the contingency measures requirement based entirely on NO_X controls if that is what the state's analyses have demonstrated would be most effective in bringing the area into attainment. There is no minimum VOC requirement. Also, EPA is continuing its long-standing policy that allows promulgated Federal measures to be used as contingency measures as long as they provide emission reductions in the relevant years in excess of those needed for attainment or RFP.[15]

Wisconsin submitted documentation showing that emission reductions in the Wisconsin portion of the Chicago area met the 15% RFP and 3% contingency requirements. Table 3 shows Wisconsin's estimated reductions from all sectors. Table 3 shows that the area's total VOC emissions decreased by 13.04% from 2011 to 2017 and 2.20% from 2017 to 2018. Table 3 shows the area's total NO_x emissions decreased by 15.41% from 2011 to 2017 and 2.25% from 2017 to 2018.

Table 3. Wisconsin's source sector emissions in tons per summer day (tpsd) for eastern Kenosha County

	VOC			NO_x		
Sector	**2011**	**2017**	**2018**	**2011**	**2017**	**2018**
Point	0.72	0.87	0.87	11.16	10.87	10.87

[15] 80 FR 12264 at 12285.

Area	4.78	4.77	4.74	1.09	1.08	1.08
Onroad	2.42	1.56	1.44	5.15	3.05	2.75
Nonroad	1.51	1.00	0.96	2.07	1.47	1.40
TOTAL	**9.43**	**8.20**	**8.02**	**19.47**	**16.47**	**16.10**
(% decrease from 2011-2017 and 2017-2018)		**13.04%**	**2.20%**		**15.41%**	**2.25%**

Wisconsin is able to meet the RFP and RFP contingency requirements entirely through Federal permanent and enforceable control measures within the mobile source sectors. Table 4 specifically contains the calculations showing Wisconsin's mobile source emissions reductions meet the RFP and RFP contingency requirements. The MOVES model for the on-road and non-road sectors assumed increases of 11-13% in vehicle or equipment population and usage while projecting a 34-41% reduction in ozone precursor emissions from 2011 to 2017. The estimated emissions reductions, therefore, cannot be attributed to reductions in source activity. Table 4 shows that of the 14.95% total VOC reductions from 2011-2018, 14.63%[16] came from the mobile sector. Table 4 also shows that of the 17.31% total NO_x reductions from 2011-2018, 15.77% came from the mobile sector. Wisconsin is choosing to count 5% VOC reductions and 10% NO_x reductions from 2011-2017 to meet the 15% RFP requirement, and 1% VOC reductions and 2% NO_x reductions from 2011-2018 to meet the 3% RFP contingency requirement. In other

[16] net the increase in emissions from the point source sector from 2011-2017 (see Table 3)

words, 6% VOC reductions and 12% NO_x reductions for a total of 18% to satisfy the 15% RFP and 3% RFP contingency requirements.

Table 4. Wisconsin's mobile source emissions reductions from 2011-2017 are sufficient to meet the 15% RFP requirement and Wisconsin's mobile source emissions reductions from 2017-2018 are sufficient to meet the 3% RFP contingency requirement for Wisconsin's portion of the Chicago area

	VOC			NO_x		
	2011	**2017**	**2018**	**2011**	**2017**	**2018**
total emissions (tpsd)	9.43	8.20	8.02	19.47	16.47	16.10
% reduction from base year emissions from 2011-2017 and 2017-2018, respectively		13.04%	1.91%		15.41%	1.90%
total		14.95%			17.31%	
mobile sector (onroad + nonroad) emissions (tpsd)	3.93	2.56	2.40	7.22	4.52	4.15
% reductions attributable to the mobile sector from base year emissions from 2011-2017[17] and 2017-2018, respectively		12.94%	1.70%		13.87%	1.90%
total		14.63%			15.77%	
Wisconsin's choice for 15% RFP requirement		5%	1%		10%	2%

[17] net the increase in emissions from the point source sector from 2011-2017 (see Table 3)

and 3% RFP contingency requirement, respectively						
total		6%			12%	

The MOVES model incorporates a number of Federal emissions control programs into its projections. These emissions reduction measures are permanent and enforceable and are implemented everywhere, including in the nonattainment area. Tables 5 and 6 list the Federal permanent and enforceable control programs modeled by the MOVES model for the on-road sector and the non-road sector, respectively.

Table 5. Permanent and enforceable control programs modeled by the MOVES model for the onroad sector

On-road Control Program	Pollutants	Model year*	Regulation
Passenger vehicles, SUVs, and light duty trucks – emissions and fuel standards	VOC & NO_x	2004-09+ (Tier 2) 2017+ (Tier 3)	40 CFR Part 85 & 86
Light-duty trucks and medium duty passenger vehicle – evaporative standards	VOC	2004-10	40 CFR Part 86
Heavy-duty highway compression engines	VOC & NO_x	2007+	40 CFR Part 86
Heavy-duty spark ignition engines	VOC & NO_x	2005-08+	40 CFR Part 86
Motorcycles	VOC & NO_x	2006-10 (Tier 1 & 2)	40 CFR Part 86
Mobile Source Air Toxics – fuel formulation, passenger vehicle emissions, and portable container emissions	Organic Toxics & VOC	2009-15**	40 CFR Part 59, 80, 85, & 86

Light duty vehicle corporate average fuel economy standards	Fuel efficiency (VOC & NO_x)	2012-16 & 2017-25	40 CFR Part 600

* The range in model years affected can reflect phasing of requirements based on engine size or initial years for replacing earlier tier requirements.

** The range in model years reflects phased implementation of fuel, passenger vehicle, and portable container emission requirements as well as the phasing by vehicle size and type.

Table 6. Permanent and enforceable control programs modeled by the MOVES model or considered in development of the MAR inventory for the nonroad sector

Nonroad Control Program*	Pollutants	Model Year**	Regulation
Aircraft	VOC & NO_x	2000 – 2005+	40 CFR Part 87
Compression Ignition	VOC & NO_x	2000 – 2015+ (Tier 4)	40 CFR Part 89 & 1039
Large Spark Ignition	VOC & NO_x	2007+	40 CFR Part 1048
Locomotive Engines	VOC & NO_x	2012 – 2014 (Tier 3) 2015+ (Tier 4)	40 CFR Part 1033
Marine Compression Ignition	VOC & NO_x	2012 – 2018	40 CFR Part 1042
Marine Spark Ignition	VOC & NO_x	2010+	40 CFR Part 1045
Recreational Vehicle	VOC & NO_x	2006 – 2012 (Tier 1 – 3)	40 CFR Part 1051
Small Spark Ignition Engine < 19 Kw – emission standards	VOC & NO_x	2005 – 2012 (Tier 2 & 3)	40 CFR Part 90 & 1054
Small Spark Ignition Engine < 19 Kw – evaporative standards	VOC	2008 – 2016	40 CFR Part 1045, 54, & 60

* Compression ignition applies to diesel non-road compression engines including engines operated in construction, agricultural, and mining equipment. Recreational vehicles include snowmobiles, off-road motorcycles, and all-terrain vehicles. Small spark ignition engines include engines operated in lawn and hand-held equipment.
** The range in model years affected can reflect phasing of requirements based on engine size or initial years for replacing earlier tier requirements.

These emissions reductions are surplus, meaning that Wisconsin has not previously claimed them for the purposes of other ozone NAAQS requirements. These emission reductions are also permanent, enforceable, and occurred during the 6-year attainment planning time period, which started with the 2011

base year. Wisconsin has demonstrated that these emissions reductions result in at least an 18% reduction (15% for RFP and 3% for the RFP contingency measure requirements, respectively) from the 2011 base year inventory emissions net of growth (and including a MVEB safety margin of 7.5% which will be discussed in more detail below). Thus, EPA is proposing to approve these emissions reductions as satisfying the 15% RFP and 3% RFP contingency measure requirements for the moderate nonattainment plan for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS.

EPA notes that the measures Wisconsin is relying upon to meet the contingency measures requirement are already implemented. Contingency measures may include Federal measures and local measures already scheduled for implementation, as long as the resulting emission reductions are in excess of those needed for attainment or to meet RFP in the nonattainment plan. EPA interprets the CAA not to preclude a state from implementing such measures before they are triggered by a failure to meet RFP or failure to attain. For more information on contingency measures, see the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (April 16, 1992, 57 FR 13498, 13510) and the 2008 Ozone Implementation Rule (March 6, 2015, 80 FR 12264, 12285).

The appropriateness of relying on already-implemented reductions to meet the contingency measures requirement has been addressed in two Federal circuit court decisions. *See Louisiana Environmental Action Network (LEAN) v. EPA*, 382 F.3d 575, 586 (5th Cir. 2004), *Bahr v. United States EPA*, 836 F.3d 1218 (9th Cir. 2016), *cert. denied*, 199 L. Ed. 2d 525, 2018 U.S. LEXIS 58 (Jan. 8, 2018). EPA believes that the language of section 172(c)(9) and 182(c)(9) is ambiguous with respect to this issue, and that it is reasonable for the agency to interpret the statutory language to allow approval of already implemented measures as contingency measures, so long as they meet other parameters such as providing excess emissions reductions that the state has not relied upon to meet RFP or for attainment in the nonattainment plan for the NAAQS at issue. Until the *Bahr* decision, under EPA's longstanding interpretation of CAA section 172(c)(9) and 182(c)(9), states could rely on control measures that were already implemented (so called "early triggered" contingency measures) as a valid means to meet the Act's contingency measures requirement. The Ninth Circuit decision in *Bahr* leaves a split among the Federal circuit courts, with the Fifth Circuit upholding the Agency's interpretation of section 172(c)(9) to allow early triggered contingency measures and the Ninth Circuit rejecting that interpretation. The Seventh Circuit in which Wisconsin is located has not addressed the

issue, nor has the Supreme Court or any other circuit court other than the Fifth and Ninth.

Because there is a split in the Federal circuits on this issue, EPA expects that states located in circuits other than the Ninth may elect to rely on EPA's longstanding interpretation of section 172(c)(9) allowing early triggered measures to be approved as contingency measures, in appropriate circumstances. EPA's revised Regional Consistency regulations pertaining to SIP provisions authorize the Agency to follow this interpretation of section 172(c)(9) in circuits other than the Ninth. *See* 40 CFR part 56. To ensure that early triggered contingency measures appropriately satisfy all other relevant CAA requirements, the EPA will carefully review each such measure, and intends to consult with states considering such measures early in the attainment plan development process.

As shown above, the emissions reductions projected through 2018 are sufficient to meet the requirements for contingency measures, consistent with EPA's interpretation of the CAA to allow approval of already implemented control measures as contingency measures in states outside the Ninth Circuit. Therefore, we propose approval of the contingency measures submitted by the state in the nonattainment plan for the Wisconsin portion of the Chicago area.

C. Motor Vehicle Emissions Budgets

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must "conform" to (i.e., be consistent with) the SIP. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. Under the CAA, states are required to submit, at various times, control strategy plans for nonattainment areas and maintenance plans for areas that qualify for redesignation to attainment of the ozone standards (maintenance areas).[18] These control strategy plans (including reasonable further progress plans and attainment plans for purposes of the ozone NAAQS) and maintenance plans must include MVEBs for the relevant criteria pollutant or its precursor pollutants (VOC and NO_x for ozone) to address pollution from on-road transportation sources. The MVEBs are the portion 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 meet an RFP milestone or provide for attainment or maintenance of the NAAQS.[19] The MVEB serves as a

[18] See the SIP requirements for the 2008 ozone standards in EPA's March 6, 2015 implementation rule (80 FR 12264).
[19] 40 CFR 93.101.

ceiling on emissions from an area's planned transportation system.[20]

When reviewing submitted control strategy or maintenance plan submissions, EPA must affirmatively find that the MVEBs contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, then the MVEBs must 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 CAA.

EPA's substantive criteria for determining adequacy of a 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; provision for a public comment period; and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and $PM_{2.5}$ National

[20] 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, subsequent to initially establishing a MVEB in the SIP.

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.[21] Additional information on the adequacy process for transportation conformity purposes is available in a June 30, 2003, proposed rule titled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes."[22]

On January 16, 2015, Wisconsin submitted an early progress SIP submission with MVEBs for its portion of the Chicago 2008 ozone nonattainment area. On April 1, 2015, EPA found Wisconsin's MVEBs adequate for use in transportation conformity determinations.[23] As part of its nonattainment plan submitted on April 17, 2017, and supplemented on January 23, 2018, Wisconsin submitted new 2017 and 2018 NO_x and VOC MVEBs, which are lower than Wisconsin's previous MVEBs found adequate by EPA. Wisconsin's 2017 and 2018 MVEBs include a safety margin that Wisconsin applied in the form of a 7.5% greater mobile source activity than actually projected for 2017 and 2018, respectively. By applying this additional 7.5% on the front end of the analysis, Wisconsin's MOVES model output estimates of NO_x and VOC emissions for 2017 and 2018 include a built-in safety

[21] 69 FR 40004.
[22] 68 FR 38974, 38984.
[23] 80 FR 17428.

margin. States typically do this in an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast. As shown in Table 4 above, Wisconsin has demonstrated that the Wisconsin portion of the Chicago area can meet the 15% RFP and 3% RFP contingency measure emission reduction requirements for the 2008 ozone NAAQS with mobile source (onroad + nonroad) emissions, which include an onroad budget of 1.56 tpsd VOC and 3.05 tpsd NO_x in 2017 and 1.44 tpsd VOC and 2.75 tpsd NO_x in 2018 (Table 7 below), and these emissions will remain under 2017 and 2018 RFP plus contingency measure target levels, even with the inclusion of the added 7.5% safety margin.

Wisconsin's 2017 and 2018 MVEBS were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBS were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with the 15% RFP and 3% contingency measure emission reduction requirements for the 2008 8-hour ozone NAAQS for this area. Therefore, EPA is proposing to approve Wisconsin's revised 2017 and 2018 MVEBs into the Wisconsin SIP. If EPA finalizes this approval, these MVEBs will replace the MVEBs previously established for the 2008 ozone NAAQS early progress plan and Wisconsin must use these updated MVEBs for future transportation conformity

determinations for the Wisconsin portion of the Chicago nonattainment area. The 2017 and 2018 MVEBs are listed in Table 7.

Table 7. Motor vehicle emissions budgets (MVEBs) for eastern Kenosha County for 2017 and 2018.

Year	Emissions (tons per summer day)	
	VOC	NO_x
2017	1.56	3.05
2018	1.44	2.75

D. Motor Vehicle I/M Program Certification

The requirement to adopt a motor vehicle I/M program for moderate ozone nonattainment areas is described in CAA section 182(b)(4) and the regulations for basic and enhanced I/M programs are found at 40 CFR part 51, subpart S. Under these cumulative requirements, states with areas classified as moderate nonattainment for ozone with 1990 Census-defined urbanized populations of 200,000 or more are required to adopt basic I/M programs, while serious and higher classified ozone nonattainment areas outside of the northeast ozone transport region with 1980 Census-defined urbanized populations of 200,000 or more are required to adopt enhanced I/M programs. The Chicago area meets the criteria for mandatory I/M under the 2008 ozone NAAQS and the Wisconsin portion of the Chicago area is already operating an enhanced I/M program due to being designated nonattainment and classified as serious or above under an earlier ozone NAAQS. EPA initially approved on August

16, 2001,[24] Wisconsin's I/M program and later approved on September 19, 2013,[25] revisions to Wisconsin's I/M program. Wisconsin's approved enhanced I/M program in the SIP is consistent with the requirements of 40 CFR part 51, subpart S for the alternate low enhanced performance standards. In its April 17, 2017, submission, Wisconsin certified that it still meets the Federal enhanced I/M performance requirement. Therefore, EPA is proposing to find that Wisconsin has met the I/M requirement for its portion of the Chicago area for the 2008 ozone NAAQS.

E. NO_x RACT Certification

Section 182(f) of the CAA requires RACT level controls for major stationary sources of NO_x located in moderate ozone nonattainment areas. "RACT" is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[26] Section 302 of the CAA defines a major stationary source as any facility which has the potential to emit 100 tons per year of any air pollutant. EPA approved Wisconsin's NO_x RACT program into the SIP on October 19, 2010,[27] for purposes of the 1997 ozone NAAQS.

[24] 66 FR 42949.
[25] 78 FR 57501.
[26] 44 FR 53762.
[27] 75 FR 64155.

Wisconsin's NO_x RACT requirements are codified at NR 428.20 to 428.26 of the Wisconsin Administrative Code. Wisconsin's NO_x RACT rules are applicable to major stationary sources of NO_x located in Wisconsin's moderate ozone nonattainment areas, including Kenosha County. The only major source of NO_x in the portion of Kenosha County that is designated nonattainment for the 2008 ozone NAAQS is Wisconsin Electric Power Company, D/B/A We Energies-Pleasant Prairie Power Plant. This source has selective catalytic reduction (SCR) technology for controlling NO_x emissions from each of its two coal-fired boilers and has been subject to an emission limit of 0.10 pounds of NO_x per Million British Thermal Unit (MMBTU) since May 1, 2009. Because Wisconsin has EPA-approved NO_x RACT rules applicable to Kenosha County sources in its SIP, and EPA considers the current control technology and limit at the major stationary source in the 2008 ozone NAAQS nonattainment portion of Kenosha County to be RACT for NO_x, EPA is proposing to find that Wisconsin has satisfied the NO_x RACT requirements for its moderate nonattainment plan for the 2008 ozone NAAQS for the Wisconsin portion of the Chicago nonattainment area, which is the portion of Kenosha County inclusive and east of Highway 94.

F. Emissions Statement Certification

For marginal ozone nonattainment areas, states must adopt SIP provisions requiring emissions statements from stationary

sources of VOC and NO_x.[28] States may waive this requirement for sources emitting less than 25 tons per year of VOC and less than 25 tons per year of NO_x.[29] Under NR 438 of the Wisconsin Administrative Code, Wisconsin requires annual NO_x and VOC emission reporting from any facility in the state that emits NO_x above 10,000 pounds (5 tons) per year and VOC above 6,000 pounds (3 tons) per year. This includes facilities in nonattainment areas such as the Wisconsin portion of the Chicago nonattainment area for the 2008 ozone NAAQS. EPA previously approved NR 438 into the Wisconsin SIP on December 6, 1993.[30]

As part of a moderate ozone nonattainment plan, states should certify that the proper emissions statement reporting requirements are in place. If an area has a previously approved emission statement provision in the SIP in force for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, then such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS. The state should review the existing rule to ensure it is adequate and, if it is, may rely on it to meet the emission statement requirement for the 2008 ozone NAAQS. In cases when an existing emission statement requirement is still adequate to meet the requirements

[28]CAA section 182(a)(3)(B)(i).
[29]CAA section 182(a)(3)(B)(ii).
[30]58 FR 64155.

of the implementation rule for the 2008 ozone standard, states can provide the rationale for that determination to EPA in a written statement in its SIP submission to meet this requirement.[31]

In a separate submission to EPA on August 15, 2016, Wisconsin included a certification that its emissions statement provision in the SIP is still adequate to meet the requirements for the Wisconsin portion of the Chicago 2008 ozone nonattainment area. In Wisconsin's January 23, 2018, supplemental submission to EPA regarding Wisconsin's moderate area ozone nonattainment plan for the Chicago area, Wisconsin requested that EPA act on its August 15, 2016, emission statement certification as part of the action on Wisconsin's nonattainment plan elements included in this proposal. Because Wisconsin has an EPA approved SIP provision requiring stationary sources to report annually their NO_x and VOC emissions at least as high as 25 tons per year for each precursor, EPA proposes that Wisconsin has satisfied the emissions statement requirement for its nonattainment plan for the Chicago area for the purposes of the 2008 ozone NAAQS.

III. What Action Is EPA Proposing?

EPA is proposing to approve revisions to Wisconsin's SIP pursuant to section 110 and part D of the CAA and EPA's

[31] 80 FR 12264 at 12291.

regulations because Wisconsin's April 17, 2017, nonattainment plan submissions and January 23, 2018, supplement along with a prior submission on August 15, 2016, satisfy the emission inventory, RFP, RFP contingency measure, NO_x RACT, emissions statement, I/M, and transportation conformity requirements for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS.

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

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

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: August 1, 2018.

James Payne,
Acting Deputy Regional Administrator, Region 5.

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