

Dated: July 25, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7-15055 Filed 8-1-07; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R04-OAR-2007-0548-200728; FRL-8449-4]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** On June 15, 2007, the State of Georgia, through the Georgia Environmental Protection Division (EPD), submitted a request to redesignate the Macon 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Macon Area. The Macon 8-hour ozone area is comprised of Bibb County, and a portion of Monroe County located in middle Georgia (hereafter referred to as the "Macon Area"). In this action, EPA is proposing to approve Georgia's 8-hour ozone redesignation request for the Macon Area. Additionally, EPA is proposing to approve the 8-hour ozone maintenance plan for the Macon Area, including the regional motor vehicle emissions budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs). This proposed approval of Georgia's redesignation request is based on EPA's determination that Georgia has demonstrated that the Macon Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire Macon 8-hour ozone nonattainment area has attained the 8-hour ozone standard. In this action, EPA is also describing the status of its transportation conformity adequacy determination for the new regional MVEBs for 2020 that are contained in the 8-hour ozone maintenance plan for the Macon Area.

**DATES:** Comments must be received on or before September 4, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2007-0548, by one of the following methods:

(a) <http://www.regulations.gov>:

Follow the on-line instructions for submitting comments.

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

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

(d) *Mail:* EPA-R04-OAR-2007-0548, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

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

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OAR-2007-0548. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <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 <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or

viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

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

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

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

EPA is proposing to take three related actions which are summarized below and described in greater detail throughout this notice of proposed

rulemaking: (1) To redesignate the Macon Area to attainment for the 8-hour ozone NAAQS; (2) to approve Georgia's 8-hour ozone maintenance plan into the Georgia SIP, including the associated MVEBs; and (3) to notify the public of the status of EPA's adequacy determination for the Macon Area MVEBs.

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

Second, EPA is proposing to approve Georgia's 8-hour ozone maintenance plan for the Macon Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Macon Area in attainment for the 8-hour ozone NAAQS through 2020. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2020 regional MVEBs for NO<sub>x</sub> and VOCs. Therefore, EPA is proposing to approve into the Georgia SIP the 2020 regional MVEBs that are included as part of Georgia's maintenance plan. These regional MVEBs apply to the entire Macon Area.

Third, EPA is notifying the public of the status of EPA's adequacy process for the newly-established 2020 MVEBs for the Macon Area. The adequacy comment period for the Macon Area's 2020 MVEBs began on June 21, 2007, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (<http://www.epa.gov/otaq/stateresources/transconf/cursips.htm>). The adequacy comment period for these MVEBs closed on July 23, 2007. No adverse comments were received on this submittal during the adequacy public comment period. Please see section VIII of this rulemaking for further explanation of this process, and for more details on the MVEBs.

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

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

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO<sub>x</sub> and VOCs react in the presence of sunlight to form ground-level ozone. NO<sub>x</sub> and VOCs are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). (See, 69 FR 23857 (April 30, 2004) for further information.) Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "Comparisons with the Primary and Secondary Ozone Standards" states:

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

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The Macon 8-hour ozone nonattainment area was designated using 2001–2003 ambient air quality data. The **Federal Register** document making these designations was signed on April 15, 2004, and published on April 30, 2004 (69 FR 23857). The CAA contains two sets of provisions—subpart 1 and subpart 2—

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

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

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

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

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

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

redesignation requests in accordance with the requirements due at the time the request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Macon Area was classified under subpart 1 and was obligated to meet only subpart 1 requirements. Under EPA's long-standing 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, Michigan). See, *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See, e.g. also, 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

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

As noted earlier, in 2005, the ambient ozone data for the Macon Area indicated no further violations of the 8-hour ozone

NAAQS, using data from the 3-year period of 2003-2005 to demonstrate attainment. As a result, on June 15, 2007, Georgia requested redesignation of the Macon Area to attainment for the 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (March 1st until October 31st) of 2003-2005, indicating that the 8-hour ozone NAAQS has been achieved for the entire Macon Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

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

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

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

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

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

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

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

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

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

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

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

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

10. "Reasonable Further Progress, Attainment Demonstration, and Related

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

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

On June 15, 2007, Georgia requested redesignation of the Macon 8-hour ozone nonattainment area to attainment for the 8-hour ozone standard. EPA's evaluation indicates that Georgia has demonstrated that the Macon Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA. EPA is also announcing the status of its adequacy determination for the 2020 regional MVEBs, which is relevant to the requested redesignation.

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

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Georgia's redesignation request would change the official designation of the Macon Area for the 8-hour ozone NAAQS found at 40 CFR part 81. Approval of Georgia's request would also incorporate into the Georgia SIP, a plan for the Macon Area for maintaining the 8-hour ozone NAAQS in the area through 2020. This maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS. The maintenance plan also establishes regional MVEBs for the year 2020 of 7.8744 tpd for VOCs and 14.7712 tpd for NOx, for the Macon Area. Approval of Georgia's maintenance plan would also result in approval of the regional MVEBs. Additionally, EPA is notifying the public of the status of its adequacy determination for the 2020 regional MVEBs, pursuant to 40 CFR 93.118(f)(1).

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

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

*Criteria (1)—The Macon Area Has Attained the 8-hour Ozone NAAQS*

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

EPA reviewed ozone monitoring data from the ambient ozone monitoring station in the Macon Area for the ozone season from 2003–2005. This data has been quality assured and is recorded in AQS. The fourth high average for 2003, 2004, and 2005, and the 3-year average of these values (i.e., design values), are summarized in Table 1 below. The 2006 data continues to demonstrate attainment.

**TABLE 1.—ANNUAL 4TH MAX HIGH AND DESIGN VALUE CONCENTRATION FOR 8-HOUR OZONE FOR THE MACON AREA**  
(In parts per million)

Site name	4th Highest value (ppm)				3-year average	
	2003	2004	2005	2006	2003–2005	2004–2006
Macon SE .....	0.081	0.086	0.082	0.077	0.083	0.082

As discussed above, the design value for an area is the highest design value recorded at any monitor in the area. Therefore, the design value for the Macon Area is (0.083) ppm, which meets the standard as described above.

As discussed in more detail below, Georgia has committed to continue monitoring in this area in accordance with 40 CFR part 58. The data submitted by Georgia provides an adequate

demonstration that the Macon Area has attained the 8-hour ozone NAAQS.

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

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

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

*a. The Macon Area has met all applicable requirements under section 110 and part D of the CAA.*

The September 4, 1992, Calcagni Memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also, Michael Shapiro Memorandum, ("SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992," September 17, 1993), and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See, section 175A(c) of the CAA; *Sierra Club*, 375 F.3d 537 (7th Cir. 2004); see also, 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP,

which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

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

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110

and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See, Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also, the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania redesignation (66 FR 50399, October 19, 2001).

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

Part D requirements. EPA has also determined that the Georgia SIP meets applicable SIP requirements under part D of the CAA since no requirements became due prior to the submission of the area's redesignation request. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas.

Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Subpart 2 is not applicable to the Macon Area.

Part D, subpart 1 applicable SIP requirements. For purposes of evaluating this redesignation request,

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

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

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

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See, *Wall*, 265 F.3d 426 (upholding this interpretation). See also, 60 FR 62748 (December 7, 1995, Tampa, Florida.)

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to

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

*b. The area has a fully approved applicable SIP under section 110(k) of the CAA.*

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

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area’s nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are

therefore not applicable requirements for purposes of redesignation.

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

EPA believes that Georgia has demonstrated that the observed air quality improvement in the Macon Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state adopted measures. Additionally, new emissions control programs for fuels and motor vehicles will help ensure a continued decrease in emissions throughout the region.

TABLE 2.—MACON AREA EMISSION REDUCTIONS PROGRAMS

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

Notably, no credit specific emission reduction is being claimed in the SIP for the NO<sub>x</sub> SIP Call reductions although this program has resulted in measurable emissions reductions.

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

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

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State of Georgia must submit a revised

maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, Georgia's maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

Georgia selected 2005 as "the attainment year" for the Macon Area for the purposes of demonstrating attainment of the 8-hour ozone NAAQS. This attainment inventory identifies the level of emissions in the area which is sufficient to attain the 8-hour ozone standard. Georgia began development of this attainment inventory by first developing a baseline emissions inventory for the Macon Area. The year 2003 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2005, 2008, 2011, 2014, 2017, and 2020. Non-road mobile emissions estimates were based on the EPA's NONROAD2005 model. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2005 VOCs and NO<sub>x</sub> emissions, as well as the emissions for other years, for the Macon Area were developed consistent with EPA guidance, and are summarized in Tables 3 and 4 in the following subsection.

c. Maintenance Demonstration

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

(i) Shows compliance and maintenance of the 8-hour ozone standard by providing information to support the demonstration that current and future emissions of VOCs and NO<sub>x</sub> remain at or below attainment year 2005 emissions levels. The year 2005 was chosen as the attainment year because it is one of the most recent three years (i.e., 2003, 2004, and 2005) for which the Macon Area has clean air quality data for the 8-hour ozone standard.

(ii) Uses 2005 as the attainment year and includes future emission inventory projections for 2005, 2008, 2011, 2014, 2017, and 2020.

(iii) Identifies an "out year," at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, MVEBs were established for the last year (2020) of the maintenance plan. See, section VII below.

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

TABLE 3.—MACON AREA EMISSIONS OF VOCs

[Tons per summer day]

Source category	2003	2005	2008	2011	2014	2017	2020
Non-EGU .....	5.4752	4.9767	4.2290	4.1672	4.4484	4.7295	4.8890
EGU .....	1.0197	0.9818	0.9249	0.9060	0.9060	0.9060	0.9060
Area .....	16.7094	16.6437	16.5452	17.1532	18.1145	19.0758	19.1643
Mobile* .....	16.1605	14.7602	12.6598	10.5215	8.3645	6.6906	5.2581
Nonroad .....	4.5063	4.4556	4.3797	4.1626	3.8751	3.5875	3.1884
<b>Total .....</b>	<b>43.8711</b>	<b>41.8180</b>	<b>38.7385</b>	<b>36.9105</b>	<b>35.7084</b>	<b>34.9894</b>	<b>33.4058</b>
Safety Margin** .....	N/A	2.0531	5.1326	6.9606	8.1627	8.8817	10.4653

\*Calculated using MOBILE 6.2.

\*\*After assigning 2.6163 TPD of the 2020 VOCs safety margin to the MVEB, the revised 2020 safety margin will be 7.8490 TPD.

TABLE 4.—MACON AREA NO<sub>x</sub> EMISSIONS

[Tons per summer day]

Source category	2003	2005	2008	2011	2014	2017	2020
Non-EGU .....	5.9471	5.6213	5.1325	5.0792	5.2435	5.4079	5.5590
EGU .....	74.9781	67.7887	57.0046	53.4099	53.4099	53.4099	53.4099
Area .....	1.5008	1.5136	1.5328	1.5641	1.6013	1.6385	1.6609
Mobile* .....	18.4512	16.8661	14.4883	11.8974	9.2000	7.2225	5.6051
Nonroad .....	4.1467	3.9555	3.6687	3.3229	2.9475	2.5722	2.1246
<b>Total .....</b>	<b>105.0239</b>	<b>95.7452</b>	<b>81.8270</b>	<b>75.2734</b>	<b>72.4022</b>	<b>70.2509</b>	<b>68.3595</b>
Safety Margin** .....	N/A	9.2787	23.1969	29.7505	32.6217	34.7730	36.6644

\*Calculated using MOBILE 6.2.

\*\*After assigning 9.1661 TPD of the 2020 NO<sub>x</sub> safety margin to the MVEB, the revised 2020 safety margin will be 27.4983 TPD.

A safety margin is the difference between the attainment level of

emissions (from all sources) and the projected level of emissions (from all

sources) in the maintenance plan. The attainment level of emissions is the

level of emissions during one of the years in which the area met the NAAQS. Georgia has decided to allocate a portion of the available safety margin to the regional 2020 MVEBs for NO<sub>x</sub> and VOCs for the Macon Area, and has calculated the safety margin in its submittal. See, Tables 3 and 4 above. This allocation and the resulting available safety margin for the Macon Area are discussed further in section VII of this rulemaking.

d. Monitoring Network

There are currently two monitors measuring ozone in the Macon Area. Only one of the monitors was in place during the 2003–2005 monitoring period. The second monitor was installed and began collecting data for the 2005 ozone season. Georgia has committed in the maintenance plan to continue operation of these monitors in compliance with 40 CFR part 58, and has addressed the requirement for monitoring.

e. Verification of Continued Attainment

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

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

f. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The

maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

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

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

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

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

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

**VII. What Are the Proposed Regional MVEBs for the Macon Area?**

Under the CAA, states are required to submit, at various times, control strategy

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

Georgia, after interagency consultation with the transportation partners for the Macon Area, has elected to develop regional MVEBs for NO<sub>x</sub> and VOCs for this entire area. Georgia is developing these MVEBs, as required, for the last year of its maintenance plan (2020). The MVEBs reflect the total on-road emissions for 2020, plus an allocation from the available VOCs and NO<sub>x</sub> safety margin. Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. These MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model VMT and new emission factor models. The regional MVEBs for the Macon Area are defined in Table 5, below.

TABLE 5.—MACON AREA MVEBS  
[Tons per day]

	2020*
NO <sub>x</sub> .....	14.7712
VOCs .....	7.8744

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

As mentioned above, Georgia has chosen to allocate a portion of the available safety margin to the 2020 MVEBs. This allocation is 9.1661 tpd for NO<sub>x</sub> and 2.6163 tpd for VOCs. The 2020 regional MVEBs are derived as follows for NO<sub>x</sub>: (5.6051 tpd for total mobile



emissions) + (9.1661 tpd from available safety margin) = 14.7712 tpd; and for VOCs: (5.2581 tpd for total mobile emissions) + (2.6163 tpd from available safety margin) = 7.8744 tpd. Thus, the remaining safety margin in 2020 is 27.4983 tpd for NO<sub>x</sub> and 7.8490 tpd for VOCs.

Through this rulemaking, EPA is proposing to approve the 2020 regional MVEBs for NO<sub>x</sub> and VOCs for the Macon Area because EPA has determined that the Area maintains the 8-hour ozone standard with the emissions at the levels of the budgets. As mentioned above, these MVEBs are regional MVEBs for the entire Macon Area. Once the new regional MVEBs for the Macon Area (the subject of this rulemaking) are approved or found adequate (whichever is done first), they must be used for future conformity determinations. As is discussed in greater detail below, EPA is also announcing the status of its adequacy determination for the proposed 2020 MVEBs for the Macon Area pursuant to 40 CFR 93.118(f)(1).

#### VIII. What Is the Status of EPA's Adequacy Determination for MVEBs for the Year 2020 for the Macon Area?

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not "conform," most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the

submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and Federal agencies in determining whether proposed transportation projects "conform" to the SIP as required by section 176(c) of the Clean Air Act.

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

Georgia's maintenance plan submission contained new regional MVEBs for VOCs and NO<sub>x</sub> for the Macon Area for the year 2020. The availability of the Georgia SIP submission with the Macon MVEBs was available for public comment on EPA's adequacy Web site on June 21, 2007, at: <http://www.epa.gov/otaq/stateresources/transconf/currrips.htm>. The EPA public comment period on adequacy of the 2020 regional MVEBs for the Macon Area closed on July 23, 2007. EPA did not receive any comments or requests for the submittal.

EPA intends to make its determination of the adequacy of the 2020 MVEBs for the Macon Area for transportation conformity purposes in the final rulemaking on the redesignation of the Macon Area. If EPA finds the 2020 MVEBs adequate and approves these MVEBs in the final rulemaking action, the new MVEBs must be used for future transportation conformity determinations. The new 2020 MVEBs, if found adequate and approved in the final rulemaking, will be effective on the date of publication of EPA's final rulemaking in the **Federal Register**. For required regional emissions analysis years that involve the year 2019 or before, the area will continue to use the interagency consultation group for this area to determine the appropriate interim test

to use to demonstrate conformity. For required regional emissions analysis years that involve 2020 or beyond, the applicable budgets will be the new 2020 MVEBs. The 2020 MVEBs are defined in section VII of this rulemaking.

#### IX. Proposed Actions on the Redesignation Request and the Maintenance Plan SIP Revision Including Proposed Approval of the 2020 MVEBs

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

EPA is also proposing to approve the June 15, 2007, SIP revision containing Georgia's 8-hour ozone maintenance plan for the Macon Area. The maintenance plan includes regional MVEBs for 2020 for NO<sub>x</sub> and VOCs, among other requirements. EPA is proposing to approve the 2020 MVEBs for the Macon Area, because the maintenance plan demonstrates that expected emissions for all other source categories will continue to maintain the 8-hour ozone standard.

Further, as part of today's action, EPA is describing the status of its adequacy determination for the 2020 MVEBs in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy finding for the MVEBs, or the publication date for the final rule for this action, the transportation partners will need to demonstrate conformity to these new MVEBs pursuant to 40 CFR 93.104(e) as effectively amended by section 172(c)(2)(E) of the CAA as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005.

#### X. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order

13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997); because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 81

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

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

Dated: July 25, 2007.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

[FR Doc. E7-14983 Filed 8-1-07; 8:45 am]

**BILLING CODE 6560-50-P**

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## LEGAL SERVICES CORPORATION

### 45 CFR Part 1626

#### Restrictions on Legal Assistance to Aliens

**AGENCY:** Legal Services Corporation.

**ACTION:** Termination of Rulemaking and Notice of Proposed Rulemaking.

**SUMMARY:** LSC is terminating a rulemaking it initiated in 2001 to consider broad revisions to its regulation on restrictions on legal assistance. Contemporaneously, LSC is initiating a new rulemaking to consider a proposal of limited scope to amend section 1626.10(a) of this regulation to permit LSC grant recipients to provide legal assistance to otherwise financially

eligible citizens of the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau legally residing in the United States.

**DATES:** The open rulemaking published on September 10, 2001 (66 FR 46977) is terminated as of August 2, 2007. Comments on this NPRM are due on September 4, 2007.

**ADDRESSES:** Written comments on the NPRM may be submitted by mail, fax or e-mail to Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202-295-1624 (ph); 202-337-6519 (fax); [mcohan@lsc.gov](mailto:mcohan@lsc.gov).

**FOR FURTHER INFORMATION CONTACT:** Mattie Cohan, Senior Assistant General Counsel, 202-295-1624 (ph); [mcohan@lsc.gov](mailto:mcohan@lsc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Termination of Open Rulemaking

The LSC Board of Directors identified 45 CFR Part 1626 as an appropriate subject for rulemaking on January 27, 2001. On June 30, 2001, the LSC President and the Chair of the Operations and Regulations Committee made a determination to proceed with the initiation of a Negotiated Rulemaking to consider amendments to Part 1626. In accordance with the LSC Rulemaking Protocol, LSC published a notice in the **Federal Register** formally soliciting suggestions for appointment to the Negotiated Rulemaking Working Group from the regulated community, its clients, advocates, the organized bar and other interested parties (66 FR 46977, September 10, 2001). After receiving submissions of interest, a Working Group was appointed. Each organization which timely requested to participate was appointed to the Working Group. The Working Group met three times without coming to consensus on several issues. Subsequently, work on the 2001 rulemaking was deferred in 2003 by the previous Board of Directors pending the appointment and confirmation of the present Board. No further action on the rulemaking has been taken since that time.

During the past several years as LSC has considered its rulemaking agenda, neither Management nor recipients have suggested reinitiating work on this broad rulemaking. As such, LSC is of the opinion that consideration of broad revision of Part 1626 is no longer necessary or appropriate. Accordingly, with the publication of this notice LSC is terminating the open rulemaking.