

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R05-OAR-2009-0512; FRL-8962-1]

**Determination of Attainment, Approval and Promulgation of Air Quality Implementation Plans; Indiana****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to make a determination, under the Clean Air Act (CAA), that the Chicago-Gary-Lake County, Illinois-Indiana (IL-IN) ozone nonattainment area has attained the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on complete, quality-assured ambient air quality monitoring data for the period of 2006–2008. Preliminary data for 2009 show that the area continues to attain the standard. EPA is also proposing to approve a request from the State of Indiana to exempt sources of Nitrogen Oxides (NO<sub>x</sub>) in Lake and Porter Counties from CAA requirements for Reasonably Available Control Technology (RACT). The State's NO<sub>x</sub> RACT waiver request is based on the most recent three years of complete, quality-assured ozone monitoring data, which demonstrate that additional reduction of NO<sub>x</sub> emissions would not contribute to attainment of the 1997 eight-hour ozone NAAQS in the Chicago-Gary-Lake County, IL-IN area. This action proposes to approve the State's request for a waiver from the NO<sub>x</sub> RACT requirements for Lake and Porter Counties under the CAA. In the Final Rules section of this **Federal Register**, EPA is deferring the imposition of sanctions for the State's failure to submit required NO<sub>x</sub> RACT regulations based on this proposed attainment determination while we complete action on the proposed NO<sub>x</sub> RACT waiver. This deferral of sanctions will continue unless EPA determines that the area is no longer attaining the 1997 eight-hour ozone NAAQS. However, if EPA proposes and takes final action in the future to redesignate the area to attainment, such action will permanently stop the sanctions clock.

**DATES:** Comments must be received on or before October 26, 2009.**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0512, by one of the following methods:

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

- *E-mail:* [mooney.john@epa.gov](mailto:mooney.john@epa.gov).
- *Fax:* (312) 692-2551.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2009-0512. 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 information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. 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 and viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is

not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Edward Doty at (312) 886-6057 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6057.

**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 Should I Consider as I Prepare My Comments for EPA?
- II. What Is the Background for This Action?
- III. State Petition
- IV. EPA Analysis of the Petition
  - A. Has the Chicago-Gary-Lake County, IL-IN Area Attained the 1997 Eight-Hour Ozone NAAQS?
  - B. EPA Analysis of the State's NO<sub>x</sub> RACT Waiver Petition
- V. Sanctions
- VI. What Are the Environmental Effects of This Action?
- VII. EPA's Proposed Action
- VIII. Statutory and Executive Order Reviews

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

When submitting comments, remember to:

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

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

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

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

## II. What Is the Background for This Action?

EPA has determined that ground-level ozone (O<sub>3</sub>) is detrimental to human health. On July 18, 1997 (62 FR 38856), EPA promulgated an eight-hour ozone NAAQS of 0.08 parts per million parts of air (0.08 ppm). This standard is violated in an area when any ozone monitor in the area (or in its downwind environs) records eight-hour ozone concentrations with a three-year average of the annual fourth-highest daily maximum eight-hour ozone concentrations equaling or exceeding 85 parts per billion parts of air (ppb).

Section 107 of the CAA required EPA to designate as nonattainment any area that violated the 1997 eight-hour ozone standard. The **Federal Register** notice promulgating the eight-hour ozone designations and classifications was published on April 30, 2004 (69 FR 23857). In that EPA rulemaking, the Chicago-Gary-Lake County, IL-IN area, which contains Lake and Porter Counties, Indiana, was designated as a nonattainment area for the 1997 eight-hour ozone standard, and the designation became effective on June 15, 2004.

Ground-level ozone is not generally emitted directly by sources. Rather, emitted NO<sub>x</sub> and Volatile Organic Compounds (VOC) react in the presence of sunlight to form ground-level ozone as a secondary compound, along with other secondary compounds. NO<sub>x</sub> and VOC are referred to as “ozone precursors.” Reduction of peak ground-level ozone concentrations is achieved through controlling VOC and NO<sub>x</sub> emissions.

The CAA, title 1, part D contains two sets of provisions—subparts 1 and 2—that address planning and emission control requirements for ozone nonattainment areas. Subpart 1 contains general, less prescriptive requirements for all nonattainment areas of any pollutant governed by a NAAQS. Subpart 2 contains more specific requirements for certain ozone nonattainment areas and applies to ozone nonattainment areas classified under section 181 of the CAA. The Chicago-Gary-Lake County, IL-IN area is classified as a moderate nonattainment

area for the 1997 eight-hour ozone standard.

The subpart 2 ozone plan requirements under the CAA with respect to control of VOC and NO<sub>x</sub> emissions depend on the ozone nonattainment classification of an area. The air quality planning requirements for the reduction of NO<sub>x</sub> emissions are set forth in section 182(f) of the CAA. Section 182(f) requires States with areas designated nonattainment for ozone and classified as moderate and above to adopt and implement the same level of NO<sub>x</sub> emission controls for major stationary sources as apply to major stationary sources of VOC emissions. Section 182(f) also provides that these NO<sub>x</sub> emission reduction requirements do not apply to an area outside of an ozone transport region if EPA determines that additional reductions of NO<sub>x</sub> emissions would not contribute to attainment of the ozone standard in the area. Section 182(f)(1)(A). In areas where the ozone standard is attained, as demonstrated by complete, quality-assured air quality data, without the implementation of the additional section 182(f) NO<sub>x</sub> emission controls, it is clear that the additional NO<sub>x</sub> emission reductions required by section 182(f) did not contribute to attainment of the ozone standard.

On March 17, 2008, EPA notified Thomas W. Easterly, Commissioner, Indiana Department of Environmental Management (IDEM), that EPA had determined that the State of Indiana had failed to submit a NO<sub>x</sub> RACT State Implementation Plan (SIP) revision for Lake and Porter Counties (the Indiana portion of the Chicago-Gary-Lake County, IL-IN ozone nonattainment area for the 1997 eight-hour ozone standard). EPA formalized this finding in the **Federal Register** on March 24, 2008 (73 FR 15416), and that action commenced the sanctions process outlined by section 179 of the CAA and 40 CFR 52.31. See 59 FR 39832, August 4, 1994. Under this process, the new source two-to-one (2:1) emissions offset sanction would take effect in Lake and Porter Counties on September 24, 2009. The sanctions clock would run and any imposed sanctions would remain in effect until either a NO<sub>x</sub> RACT SIP revision is submitted to EPA by the State of Indiana and is affirmatively determined complete by EPA or a NO<sub>x</sub> control exemption (waiver) under section 182(f) is granted by EPA. In the Final Rules section of today's **Federal Register**, EPA has published an interim final rule to defer sanctions for Lake and Porter Counties based on our proposed determination that the Counties are attaining the 1997 eight-hour ozone

NAAQS and that the NO<sub>x</sub> RACT waiver request is approvable.

The criteria established for determining the applicability of section 182(f) NO<sub>x</sub> emission controls and the evaluation of section 182(f) NO<sub>x</sub> emission control waiver requests are set forth in a January 14, 2005, EPA policy memorandum, “Guidance on Limiting Nitrogen Oxides (NO<sub>x</sub>) Requirements Related to 8-Hour Ozone Implementation,” from Stephen D. Page, Director, Office of Air Quality Planning and Standards.

## III. State Petition

On June 5, 2009, IDEM submitted a request for the redesignation of Lake and Porter Counties to attainment of the 1997 eight-hour ozone standard. As part of this ozone redesignation request, IDEM also requested an exemption from NO<sub>x</sub> RACT requirements for Lake and Porter Counties under section 182(f) of the CAA based on the monitoring of ozone, which showed attainment of the 1997 eight-hour ozone standard in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area and at the Chiwaukee Prairie monitoring site in Kenosha County, Wisconsin monitoring site.<sup>1</sup> The NO<sub>x</sub> exemption request is based on ozone air quality monitoring data for the period of 2006–2008, which demonstrate that the 1997 eight-hour ozone NAAQS has been attained in the area without additional reductions of NO<sub>x</sub> emissions.

## IV. EPA Analysis of the Petition

### A. Has the Chicago-Gary-Lake County, IL-IN Area Attained the 1997 Eight-Hour Ozone NAAQS?

An area may be considered to be attaining the 1997 eight-hour ozone standard if there are no violations of the standard, as determined in accordance with 40 CFR 50.10 and appendix I, based on the most recent three complete, consecutive calendar years of quality-assured air quality monitoring data at all ozone monitoring sites in the area and in its nearby downwind environs. To attain this standard, the average of the annual fourth-high daily

<sup>1</sup> Although the Chiwaukee Prairie monitoring site is outside of the Chicago-Gary-Lake County, IL-IN ozone nonattainment area, it is very near the Illinois-Wisconsin border and is considered to be a peak ozone impact site for VOC and NO<sub>x</sub> emissions originating in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area. The fact that the Chiwaukee Prairie ozone monitoring site is the ozone design value site for the Chicago-Gary-Lake County, IL-IN eight-hour ozone nonattainment area is documented in an enclosure to a December 3, 2003 letter from Thomas V. Skinner, Regional Administrator, Region 5, U.S. Environmental Protection Agency to Honorable Rod R. Blagojevich, Governor, State of Illinois.

maximum eight-hour average ozone concentrations measured and recorded at each monitoring site (the monitoring site's ozone design value) over the most recent three-year period must not exceed the ozone standard. Based on an ozone data rounding convention described in 40 CFR 50, appendix I, the eight-hour ozone standard is attained if the area's ozone design value<sup>2</sup> is 0.084 ppm or less. The data must be collected and quality-assured in accordance with 40 CFR 58, and must be recorded in EPA's Air Quality System (AQS). The ozone monitors generally should have remained at the same locations for the duration of the monitoring period required to demonstrate attainment (for three years or more). The data supporting attainment of the standard must be complete in accordance with 40 CFR 50, appendix I.

As part of the June 5, 2009, ozone redesignation request, IDEM summarized the annual fourth-high eight-hour ozone concentrations and the three-year eight-hour ozone design values for the period of 2003–2008 for all ozone monitoring sites in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area. This summary also includes ozone concentration data for the Chiwaukee Prairie monitoring site in Wisconsin. IDEM notes that the 2006–2008 ozone design values for all monitoring sites are below the 0.084 ppm ozone attainment level. We have reviewed the data and agree that the ozone monitoring data for the monitoring sites in the nonattainment area and for the Chiwaukee Prairie, Wisconsin monitoring site show attainment of the 1997 eight-hour ozone standard. The worst-case 2006–2008

ozone design<sup>3</sup> for the Chicago-Gary-Lake County, IL-IN area is found at the Chiwaukee Prairie monitoring site, with a value of 0.078 ppm, below the 0.08 ppm eight-hour ozone standard level. See Table 1 below.

Table 1 summarizes the annual fourth-high daily maximum eight-hour ozone concentrations and three-year (2006–2008) averages of the annual fourth-high daily maximum eight-hour ozone concentrations for all ozone monitoring sites in the Chicago-Gary-Lake County, IL-IN area and for the Chiwaukee Prairie monitoring site. The 2006–2008 monitoring data cover the most recent three years of quality assured ozone monitoring data for this area. These representative peak ozone concentrations are based on 2006–2008 ozone data that have been quality assured and certified by the States of Indiana, Illinois, and Wisconsin.

TABLE 1—ANNUAL FOURTH-HIGH DAILY MAXIMUM EIGHT-HOUR OZONE CONCENTRATIONS IN PARTS PER MILLION (PPM) AND THREE-YEAR AVERAGES

Monitoring site	2006	2007	2008	Three-year average
<b>Indiana Monitoring Sites</b>				
Gary .....	0.073	0.085	0.062	0.073
Hammond .....	0.075	0.077	0.068	0.073
Ogden Dunes .....	0.070	0.084	0.069	0.074
Valparaiso .....	0.071	0.080	0.061	0.070
Whiting .....	0.081	0.088	0.062	0.077
<b>Illinois Monitoring Sites</b>				
Alsip .....	0.078	0.085	0.066	0.076
Chicago-Cheltenham .....	0.075	0.082	0.066	0.074
Chicago-Adams .....	0.073	0.084	0.058	0.071
Chicago-Ellis Avenue .....	0.070	0.079	0.063	0.070
Chicago-Ohio Street .....	0.065	0.075	0.063	0.067
Chicago-Lawndale .....	0.075	0.080	0.066	0.074
Chicago-Hurlbut Street .....	0.077	0.079	0.063	0.073
Lemont .....	0.070	0.085	0.071	0.075
Cicero .....	0.060	0.068	0.060	0.062
Northbrook .....	0.068	0.076	0.063	0.069
Evanston .....	0.072	0.080	0.058	0.070
Lisle .....	0.062	0.072	0.057	0.063
Elgin .....	0.062	0.075	0.061	0.066
Waukegan .....	0.071	0.081	0.061	0.071
Illinois Beach State Park .....	0.068	0.080	0.067	0.071
Cary .....	0.057	0.074	0.063	0.064
Essex Road .....	0.068	0.071	0.057	0.065
<b>Wisconsin Monitoring Site</b>				
Chiwaukee Prairie .....	0.079	0.085	0.069	0.078

Review of the 2006–2008 ozone concentrations and ozone design values summarized in Table 1 shows that all of the ozone monitoring sites for the

Chicago-Gary-Lake County, IL-IN area, plus the Chiwaukee Prairie monitoring site in Wisconsin, were attaining the 1997 eight-hour ozone standard during

this period. Therefore, based on the most recent three years of quality assured ozone monitoring data, the 1997 eight-hour ozone standard has been

<sup>2</sup> The worst-case monitoring site-specific ozone design value in the area and in its downwind environs.

<sup>3</sup> For an individual ozone monitoring site, the ozone design value is the three-year average of the annual fourth-highest daily maximum eight-hour ozone concentrations. For any given area, the area's

ozone design value is the worst-case site-specific ozone design value for all ozone monitoring sites in the area.

attained in this area. Preliminary data for 2009<sup>4</sup> indicate that the area continues to attain the standard. Based on these ozone monitoring data, EPA is proposing here to determine that the Chicago-Gary-Lake County, IL-IN ozone nonattainment area has attained the 1997 eight-hour ozone standard.

#### *B. EPA Analysis of the State's NO<sub>x</sub> RACT Waiver Petition*

EPA's 2005 guidance document, "Guidance on Limiting Nitrogen Oxides (NO<sub>x</sub>) Requirements Related to 8-Hour Ozone Implementation," sets forth the criteria for demonstrating that further NO<sub>x</sub> emission reductions in an ozone nonattainment area will not contribute to ozone attainment. The guidance provides that three consecutive years of monitoring data documenting ozone levels attaining the ozone NAAQS in areas in which a State has not implemented certain NO<sub>x</sub> emission controls (*see* discussion below) is adequate to demonstrate that the additional NO<sub>x</sub> emission reductions will not aid in achieving attainment of the ozone NAAQS. As described in the guidance document, approval of the NO<sub>x</sub> emission control exemption is granted by EPA on a contingent basis. The NO<sub>x</sub> emission control exemption continues only as long as the State(s) continues to monitor attainment of the ozone NAAQS. If, prior to redesignation of the area to attainment of the ozone NAAQS, the area violates the 1997 eight-hour ozone NAAQS, as defined at 40 CFR 50.10 and appendix I, EPA will undertake rulemaking to withdraw the NO<sub>x</sub> RACT emission control exemption for the area. Upon issuance of a final action withdrawing the NO<sub>x</sub> RACT emission control exemption, the area would once again be subject to the NO<sub>x</sub> emission control requirements under section 182(f) of the CAA.

As noted above, IDEM documented the annual fourth-highest daily maximum eight-hour ozone concentrations during the period of 2006–2008 for all ozone monitors in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area and for the Chiwaukee Prairie monitoring site in Kenosha County, Wisconsin in the June 5, 2009, submittal. These data demonstrate that the 1997 eight-hour ozone NAAQS has been attained in the

Chicago-Gary-Lake County, IL-IN ozone nonattainment area.

Indiana has not adopted or implemented the NO<sub>x</sub> RACT emission controls required for Lake and Porter Counties under section 182(f). Based on the most recent ozone air quality data and the absence of these NO<sub>x</sub> RACT emission controls, IDEM has requested exemption from the NO<sub>x</sub> RACT requirements under section 182(f)(1)(A).

EPA's review of the ozone monitoring data and IDEM's NO<sub>x</sub> emission control exemption request shows that Indiana has complied with the requirements for a NO<sub>x</sub> RACT exemption under section 182(f) of the CAA consistent with guidelines contained in EPA's January 14, 2005, guidance document. Therefore, EPA proposes to determine that the State of Indiana qualifies for an exemption from NO<sub>x</sub> RACT requirements for Lake and Porter Counties.

#### **V. Sanctions**

If EPA takes final action approving IDEM's June 5, 2009, NO<sub>x</sub> RACT exemption request, Lake and Porter Counties would not be subject to the NO<sub>x</sub> RACT requirement for the duration of the emission control exemption. Based on our proposed determination that the area has attained the 1997 eight-hour ozone NAAQS and our proposed approval of the NO<sub>x</sub> RACT waiver request, in today's **Federal Register** we are separately issuing an interim final determination that it is more likely than not that the State has corrected the deficiency. That action will defer the imposition of the 2:1 offset sanction that would take effect on September 24, 2009, and defer the imposition of the highway funding sanction that would take effect six months following imposition of the offset sanction. The imposition of sanctions will continue to be deferred if EPA takes final action determining that the area has attained the 1997 eight-hour ozone NAAQS and approves the NO<sub>x</sub> RACT waiver. The area will not be permanently relieved of the possibility of sanctions until such time as EPA approves a redesignation request for the area. If, prior to redesignation of Lake and Porter Counties to attainment of the 1997 eight-hour ozone NAAQS, the NO<sub>x</sub> RACT exemption is revoked due to a monitored violation of the 1997 eight-hour ozone NAAQS anywhere in the Chicago-Gary-Lake County, IL-IN area or at the Chiwaukee Prairie monitoring site, the sanctions clock will restart at the point it stopped and the imposition of sanctions will no longer be deferred. If Lake and Porter Counties are redesignated to attainment of the 1997

eight-hour ozone NAAQS through a final rule by the EPA, the NO<sub>x</sub> RACT waiver will become permanent and the sanctions clock will permanently stop, and any imposed sanctions resulting from Indiana's failure to submit NO<sub>x</sub> RACT regulations for Lake and Porter Counties would no longer apply.

#### **VI. What Are the Environmental Effects of This Action?**

The section 182(f) NO<sub>x</sub> RACT exemption is based on a finding that additional reductions of NO<sub>x</sub> would not contribute to attainment of the 1997 eight-hour ozone NAAQS in the Chicago-Gary-Lake County, IL-IN ozone nonattainment area. This area has three consecutive years of ozone levels attaining the ozone standard even though Indiana has not adopted and implemented NO<sub>x</sub> RACT in Lake and Porter Counties.

While EPA is proposing to waive the requirements to control NO<sub>x</sub> emissions through NO<sub>x</sub> RACT in Lake and Porter Counties on the basis that NO<sub>x</sub> emission reductions would not contribute to attainment of the ozone NAAQS in the Chicago-Gary-Lake County, IL-IN area, EPA recognizes that there are other benefits to controlling NO<sub>x</sub> emissions. These benefits include reducing acid deposition, reducing nitrogen deposition in sensitive wetlands, estuaries, and their watersheds, and mitigating ozone transport to downwind ozone nonattainment areas. Indiana will continue to be required to control NO<sub>x</sub> emissions from certain NO<sub>x</sub> sources under other CAA programs, such as the Acid Rain program in title IV of the CAA, for purposes of achieving these environmental benefits. This proposed NO<sub>x</sub> RACT waiver for Lake and Porter Counties will not affect other existing and pending NO<sub>x</sub> emission control requirements for Lake and Porter Counties needed to achieve these environmental benefits.

In addition, EPA notes that an approval of this waiver request is solely for purposes of the CAA requirements to meet the 1997 eight-hour ozone NAAQS. The waiver would not apply for purposes of the ozone NAAQS promulgated in 2008 (March 27, 2008, 73 FR 16435) or for purposes of any future ozone NAAQS EPA may promulgate. To the extent section 182(f) applies in this area for purposes of the 2008 or any future ozone NAAQS, the State would need to submit a NO<sub>x</sub> RACT SIP or would need to demonstrate that a waiver is appropriate for purposes of that different ozone NAAQS.

<sup>4</sup>Quality-assured ozone data for 2009 are generally only available through June in EPA's Air Quality System for Illinois, Indiana, and Wisconsin, providing an incomplete picture of the peak ozone concentrations for all high ozone months in 2009. Nonetheless, these data, coupled with draft data used to support ozone action alerts, indicate that no violations of the 1997 eight-hour ozone NAAQS have been monitored to date in this area in 2009.

## VII. EPA's Proposed Action

Based on complete, quality-assured ozone data for 2006–2008, and considering 2009 ozone data available to date, EPA is proposing to determine that the Chicago-Gary-Lake County, IL-IN ozone nonattainment area is attaining the 1997 eight-hour ozone standard.

EPA is proposing approval of Indiana's request to exempt Lake and Porter Counties from the section 182(f) NO<sub>x</sub> RACT requirement. This proposed approval is based on EPA's review of the evidence provided by Indiana that the requirements of section 182(f)(1)(A), as elaborated upon in EPA's guidance for section 182(f) exemptions, have been met for Lake and Porter Counties. In the future, if EPA determines that a violation of the 1997 eight-hour ozone NAAQS has occurred in the Chicago-Gary-Lake County, IL-IN area or at the Chiwaukee Prairie monitoring site in Kenosha County, Wisconsin while Lake and Porter Counties are designated as nonattainment for the 1997 eight-hour ozone NAAQS, EPA will take action to revoke the exemption.

Final approval of Indiana's NO<sub>x</sub> RACT exemption request would continue the deferral of the 2:1 new source offset sanction and the highway funding sanction that would have applied based on the finding of failure to submit the NO<sub>x</sub> RACT regulations issued by the EPA on March 24, 2009. The deferral would remain in place contingent upon continued attainment of the 1997 eight-hour ozone NAAQS in the Chicago-Gary-Lake County, IL-IN area. If EPA approves a redesignation request for the area for the 1997 eight-hour ozone NAAQS, the sanctions clock will permanently stop at that time. If EPA determines that there is a violation of the 1997 eight-hour ozone NAAQS while Lake and Porter Counties remain designated as nonattainment for the 1997 eight-hour ozone NAAQS, the NO<sub>x</sub> RACT waiver will no longer be applicable as of the effective date of any such determination by EPA. At that time, the sanctions will no longer be deferred and the sanctions clock will restart at the point at which it stopped. EPA will provide notice in the **Federal Register** of any such waiver revocation and of the restarting of the sanctions clock.

## VIII. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

### 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: September 16, 2009.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E9–23042 Filed 9–23–09; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 0907281181–91191–01]

RIN 0648–AX93

### Fisheries of the Northeastern United States; Modification to the Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Authorization Letter

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** NMFS reopens for 6 days the comment period on the proposed rule to modify the requirements of the Gulf of Maine/Georges Bank (GOM/GB) Herring Midwater Trawl Gear Letter of Authorization (LOA) for midwater trawl vessels issued All Areas and/or Areas 2 and 3 Atlantic herring limited access permits fishing in Northeast (NE) multispecies Closed Area I (CA I).

**DATES:** The deadline for written comments on the September 4, 2009 (74 FR 45798), proposed rule is reopened through September 27, 2009.

**ADDRESSES:** You may submit comments, identified by 0648–AX93, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-rulemaking portal: <http://www.regulations.gov>.

- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2276. Mark the outside of the envelope: "Modification to GOM/GB Midwater Trawl LOA."

- Fax: (978) 281–9135.

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business