



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

**[EPA-R04-OAR-2016-0583; FRL-9962-27-Region 4]**

**Air Plan Approval;**

**Air Plan Approval and Air Quality Designation; GA;**

**Redesignation of the Atlanta, Georgia 2008 8-Hour Ozone Nonattainment Area to Attainment**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On July 18, 2016, the State of Georgia, through the Georgia Environmental Protection Division (GA EPD) of the Department of Natural Resources, submitted a request for the Environmental Protection Agency (EPA) to redesignate the Atlanta, Georgia 2008 8-hour ozone nonattainment area (hereinafter referred to as the “Atlanta Area” or “Area”) to attainment for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Area. EPA is approving the State’s maintenance plan, including the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) for the years 2014 and 2030 for the Area, and redesignating the Area to attainment for the 2008 8-hour ozone NAAQS. Additionally, EPA finds the 2014 and 2030 MVEBs for the Atlanta Area adequate for the purposes of transportation conformity.

**DATES:** This rule will be effective [insert date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2016-0583. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information 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 through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation 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:** Jane Spann, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Spann can be reached by phone at (404) 562-9029 or via electronic mail at [spann.jane@epa.gov](mailto:spann.jane@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background for Final Actions**

Effective July 20, 2012, EPA designated areas as unclassifiable/attainment or

nonattainment for the 2008 8-hour ozone NAAQS that was promulgated on March 27, 2008. *See* 77 FR 30088 (May 21, 2012). The Atlanta Area was designated as nonattainment for the 2008 8-hour ozone NAAQS and classified as a marginal nonattainment area.<sup>1</sup> On July 14, 2016, EPA issued a determination that the Area had attained the 2008 8-hour ozone NAAQS (81 FR 45419). On July 18, 2016, Georgia requested that EPA redesignate the Atlanta Area to attainment for the 2008 8-hour ozone NAAQS and submitted a SIP revision containing the State's plan for maintaining attainment of the 2008 8-hour ozone standard in the Area, including 2014 and 2030 MVEBs for NO<sub>x</sub> and VOC for the Atlanta Area. In a notice of proposed rulemaking (NPRM) published on December 23, 2016 (81 FR 94283), EPA proposed to approve the maintenance plan, including the 2014 and 2030 MVEBs for NO<sub>x</sub> and VOC, and incorporate the plan into the Georgia SIP and to redesignate the Area to attainment for the 2008 8-hour ozone NAAQS. In that notice, EPA also notified the public of the status of the Agency's adequacy determination for the NO<sub>x</sub> and VOC MVEBs for the Atlanta Area. The details of Georgia's submittal and the rationale for EPA's actions are further explained in the NPRM.

## **II. Response to Comments**

EPA received one set of comments on its December 23, 2016, proposed rulemaking actions. Specifically, EPA received adverse comments from the Sierra Club ("Commenter"). These comments are provided in the docket for this final action. *See* Docket number EPA-R04-OAR-2016-0583. A summary of the adverse comments and EPA's responses are provided below.

**Comment 1:** The Commenter contends that EPA may not approve Georgia's request to

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<sup>1</sup> The Atlanta Area consists of Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding and Rockdale Counties in Georgia.

redesignate the Atlanta Area to attainment because, according to the Commenter, the Atlanta Area failed to attain the 2008 8-hour ozone NAAQS. The Commenter believes that the Area failed to attain this NAAQS “by law” because the Cobb County ozone monitor did not meet the 75 percent data completeness requirement for 2014 or the 90 percent data completeness requirement for the 2013-2015 period.

**Response 1:** EPA disagrees with the Commenter that the Area has not attained the 2008 8-hour ozone NAAQS. EPA issued a final determination of attainment on July 14, 2016, based on the same 2013-2015 air quality data it is using as the basis of this redesignation action. *See* 81 FR 45419. EPA took notice and comment on its determination of attainment and the Commenter could have raised its concern to the Agency regarding data from the Kennesaw National Guard monitor (also known as the Cobb County monitor) at that time, but failed to do so. In any case, EPA does not find reason to alter its conclusion that the Area has attained the 2008 ozone NAAQS based on concerns raised in the comment, and the most recent available data and information continues to support this finding. With regard to the Commenter’s concern regarding the 2014 ozone season data from the Kennesaw National Guard monitor, EPA’s technical analysis, available in a technical support document located in the docket for this rulemaking, demonstrates that the 2013-2015 design value would not have violated the standard even assuming the most conservative estimates for the missing data from that monitor.

As described in greater detail in the technical support document, in EPA’s technical judgment, the Area has attained the 2008 8-hour ozone NAAQS. In making its determination, EPA evaluated all valid certified monitoring data collected during 2013-2015 by monitors in or

near the nonattainment area.<sup>2</sup> EPA also conducted the additional technical analysis described in the technical support document for the Kennesaw National Guard monitor, which did not collect complete data during 2014. The results of this technical analysis indicate that even under the most conservative estimates, it is very unlikely that the monitor would have violated the 2008 8-hour ozone NAAQS of 75 ppb.

Following publication of the proposed redesignation, Georgia certified its 2016 data for the Atlanta Area which shows that the Area continues to attain the NAAQS with a 2014-2016 design value of 75 ppb.<sup>3</sup> Incomplete data for the Kennesaw National Guard monitor in 2014 does not affect this conclusion because, as discussed above, EPA conducted an analysis and has concluded that it is very unlikely that the monitor would have violated the NAAQS if it had collected completed data.<sup>4</sup>

**Comment 2:** The Commenter argues that the interstate transport provision at CAA section 110(a)(2)(D)(i)(I) is an applicable requirement for the purposes of redesignation. Therefore, the Commenter does not believe that EPA can redesignate a nonattainment area to attainment unless the state has submitted, and EPA has approved, a SIP revision that contains adequate provisions prohibiting any source located in the state from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any NAAQS. Because Georgia did not submit a SIP revision satisfying the good neighbor provision for the 2008 8-hour ozone NAAQS, the Commenter contends that Georgia has not met all applicable requirements for redesignation of the Area under CAA section

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<sup>2</sup> EPA retrieved data for the monitors in the Atlanta Area and the Georgia Station CASTNET monitoring site in Pike County near the Atlanta Area.

<sup>3</sup> The air quality data is located at <https://www.epa.gov/outdoor-air-quality-data>.

<sup>4</sup> The fourth-highest daily maximum 8-hour average value for 2016 at the Kennesaw National Guard monitor is 70 ppb.

107(d)(3)(E)(v) (requiring the State to have met all applicable requirements under section 110 and Part D) and section 107(d)(3)(E)(ii) (requiring the State to have a fully approved applicable SIP under section 110(k)).

**Response 2:** As discussed in the NPRM and in numerous other redesignation actions, EPA has long interpreted the section 110(a)(2)(D) interstate transport requirements as not applicable for the purposes of redesignation. *See, e.g.*, 81 FR 94283 (December 23, 2016), 78 FR 43096 (July 19, 2013), 76 FR 79579 (December 22, 2011), 74 FR 53198 (October 16, 2009), 72 FR 56312 (October 3, 2007). The Agency has consistently distinguished the section 110 and part D requirements that apply regardless of an area’s attainment designation – such as 110(a)(2)(D) interstate transport requirements, 176(c) conformity requirements, section 184 ozone transport region measures, and section 211(m) oxygenated fuels requirements – from those requirements in section 110 and part D that are linked to the nonattainment designation of an area and thus no longer need be complied with upon redesignation to attainment status. If a requirement applies to an area regardless of whether its designation is nonattainment, maintenance, or attainment, and thus other parts of the CAA will continue to obligate the area to meet the requirement after redesignation, EPA has interpreted the requirement as not “applicable” for purposes of section 107(d)(3)(E)(ii) or (v). *See, e.g.*, 66 FR 53094 (October 19, 2001), 65 FR 37879 (June 19, 2000), 62 FR 24826 (May 7, 1997), 61 FR 53174 (October 10, 1996), 61 FR 20458 (May 7, 1996), 60 FR 62748 (December 7, 1995). Courts have upheld EPA’s authority to interpret what constitutes an “applicable” requirement under section 107(d)(3)(E), and have deferred to EPA’s interpretation that requirements that continue to apply after a redesignation are not “applicable” for purposes of section 107(d)(3)(E)(ii) and (v). *See Sierra Club v. EPA*, 375 F.3d 537 (7<sup>th</sup> Cir.

2004); *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001).

We note that EPA has acted consistently with this interpretation by issuing a number of actions outside the context of area redesignations to address CAA 110(a)(2)(D)(i)(I)'s transport provision. On October 26, 2016, EPA issued a final rulemaking (CSAPR Update) updating the regional NO<sub>x</sub> ozone season trading program established under the original 2011 Cross-State Air Pollution Rule. *See* 81 FR 74504. As described in more detail in the CSAPR Update, EPA conducted air quality modeling and concluded that Georgia did not significantly contribute to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in other states. Therefore, even though, as the Commenter points out, EPA did issue a finding of failure to submit a 110(a)(2)(D)(i)(I) transport SIP to Georgia, the Agency later determined that the State had no substantive obligation to reduce its emissions to meet its transport obligations for the 2008 ozone NAAQS.

**Comment 3:** The Commenter claims that neither Georgia nor EPA have sufficiently shown that the improvement in air quality is due to permanent and enforceable emissions reductions rather than to temporary fluctuations in weather or the economy, from decreased electricity production in the Area, or from impermanent and unenforceable measures. The Commenter believes that EPA did nothing more than cite to and summarize certain applicable pollutant control regulations and that EPA must estimate the percent reduction achieved from each of the cited measures “in order to clearly show that the air quality improvements are indeed the result of implemented permanent and enforceable controls.” The Commenter also states that the Utility Mercury Air Toxics Standards (MATS), listed in the section of the NPRM discussing permanent and enforceable measures, cannot have improved air quality during the relevant time period and that

MATS does not have any relevance for ozone.

**Response 3:** EPA does not agree with the Commenter that the Agency has not properly determined that the Area's attainment is due to permanent and enforceable reductions in emissions, as required by CAA section 107(d)(3)(E)(iii). EPA's approach in this action is consistent with its long-standing interpretation that to satisfy that provision, as set forth in the Calcagni Memorandum cited by the Commenter, EPA must show that the improvement in air quality necessary for an area to attain the relevant NAAQS is *reasonably attributable* to permanent and enforceable reductions in emissions.<sup>5</sup> As recently affirmed by the U.S. Court of Appeals for the Seventh Circuit, EPA's approach to demonstrating that section 107(d)(3)(E)(iii) has been met is a reasonable and appropriate method of meeting the CAA's requirements. *See Sierra Club v. EPA*, 774 F.3d 383 (7<sup>th</sup> Cir. 2014). As noted by the court, it is not necessary for EPA to "prove causation to an absolute certainty," and the Agency is entitled to deference when using its "experience, expertise, and professional judgment" in determining whether the improvement in air quality is reasonably attributable to permanent and enforceable measures. *See Sierra Club*, 774 F.3d at 395-96 (agreeing with EPA that its approach sufficed, and that an "elaborate analytical exercise is not required by the CAA"). In this case, the Commenter claims that EPA's demonstration is inadequate and charges that the Agency must estimate the percent reduction achieved from each of the permanent and enforceable measures in order for the Agency to redesignate an area. In fact, for the measures that were primarily responsible for the improvement in ozone concentrations in the Area, EPA *did* estimate the percentage reduction in emissions. The majority of ozone precursor emissions in the Area are generated by mobile

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<sup>5</sup> Memorandum from John Calcagni, Director, Air Quality Management Division, to EPA regional air directors re: Procedures for Processing Requests to Redesignate Areas to Attainment (September 4, 1992), p.4.

sources, and the vast majority of emission reductions in the Area are similarly associated with the permanent and enforceable mobile source measures identified in the NPRM.<sup>6</sup>

Consistent with the Calcagni Memorandum, Georgia and EPA also took steps in the analysis, as outlined in the NPRM, to ensure that the improvement in air quality was not due to temporary weather conditions. Georgia provided and EPA evaluated ozone season temperature and precipitation data for the Area from 1930 through 2015. *See* 81 FR 94288. This data shows that the average temperature and precipitation in 2013 fluctuates around the average meteorological conditions; the years 2014 and 2015 were hotter than the 1930-2000 average temperature; and precipitation in 2014 was less than the 1930-2000 average. Therefore, EPA proposed to determine that the improvement in ozone air quality was not the result of unusually favorable weather conditions. The Commenter did not provide any climatological data to refute this proposed determination. Although the Commenter claims that EPA and the State must also demonstrate that the improvement in air quality was not due to the economy or decreased electricity production, EPA does not have any information indicating that the improvement was due to these factors and the Commenter has not provided any such information.

Consistent with EPA's long-standing practice and policy, a comparison of nonattainment period emissions with attainment period emissions is relevant in demonstrating permanent and enforceable emissions reductions. EPA has evaluated the ozone precursor emissions data in the Area and found that there were significant reductions in these emissions in multiple source

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<sup>6</sup> In 2011, mobile sources accounted for approximately 84 percent of NO<sub>x</sub> emissions and 53 percent of VOC emissions in the Area. *See* 80 FR 48036 (August 11, 2015). In 2014, mobile sources accounted for approximately 87 percent of NO<sub>x</sub> emissions and 51 percent of VOC emissions. *See* 81 FR 94283. The comparison of the 2011 and 2014 emissions inventories in Table 2, below, shows that mobile source NO<sub>x</sub> emissions decreased by approximately 60 tons per summer day (tpsd) (equating to 72 percent of the total NO<sub>x</sub> emissions reductions) and mobile source VOC emissions decreased by approximately 34 tpsd (equating to 68 percent of the total VOC emissions reductions).

categories from 2011 (a nonattainment year) to 2014 (an attainment year). During this time period, the emissions data show that non-road NOx and VOC emissions decreased, point source NOx emissions decreased, and mobile NOx and VOC emissions decreased. During this time period, mobile source emissions provided the greatest reductions, with NOx emissions decreasing by approximately 60 tons per summer day (tpsd) (equating to 72 percent of the total NOx emissions reductions) and mobile source VOC emissions decreased by approximately 34 tpsd (equating to 68 percent of the total VOC emissions reductions). It is not necessary for every change in emissions between the nonattainment year and the attainment year to be permanent and enforceable. Rather, as discussed above, the CAA requires that improvement in air quality necessary for an area to attain the relevant NAAQS must be reasonably attributable to permanent and enforceable emission reductions in emissions.

**Table 1: NOx Emissions for the Atlanta 2008 8-hour Ozone NAAQS Nonattainment Area (tons per summer day)<sup>7</sup>**

<b>Year</b>	<b>Point Source</b>	<b>Area Source</b>	<b>On-Road</b>	<b>Non-Road</b>	<b>Total</b>
2011	54.63	4.63	214.98	91.92	366.16
2014	31.36	4.88	170.15	76.69	283.08

**Table 2: VOC Emissions for the Atlanta 2008 8-hour Ozone NAAQS Nonattainment Area (tons per summer day)<sup>8</sup>**

<b>Year</b>	<b>Point Source</b>	<b>Area Source</b>	<b>On-Road</b>	<b>Non-Road</b>	<b>Total</b>
2011	10.36	137.06	108.62	60.56	316.60
2014	11.24	119.88	81.76	53.38	266.26

<sup>7</sup> For 2011, Georgia also reported 3.45 tpsd of biogenic emissions not included in this total; for 2014, the area source emissions total includes 0.01 tons per summer day of wild and prescribed fires.

<sup>8</sup> For 2011, Georgia also reported 914.88 tpsd of biogenic emissions that are not included in this total; for 2014, the area source emissions total includes 0.02 tpsd of wild and prescribed fires.

The State calculated the on-road and non-road mobile source emissions summarized in Tables 2 and 3 using EPA-approved models and procedures that account for fleet turnover, increased population, and the federal mobile source measures identified as permanent and enforceable measures in the NPRM such as the Tier 2 vehicle and fuel standards, the large non-road diesel engines rule,<sup>9</sup> heavy-duty gasoline and diesel highway vehicle standards,<sup>10</sup> medium and heavy duty vehicle fuel consumption and greenhouse gas (GHG) standards,<sup>11</sup> non-road spark-ignition engines and recreational engines standards,<sup>12</sup> and the national program for GHG emissions and fuel economy standards.<sup>13, 14</sup> These mobile source measures have resulted in, and continue to result in, large reductions in NOx emissions over time due to fleet turnover (i.e., the replacement of older vehicles that predate the standards with newer vehicles that meet the standards). For example, implementation of the Tier 2 standards began in 2004, and as newer, cleaner cars enter the national fleet, these standards continue to significantly reduce NOx emissions. As discussed in the NPRM, EPA expects that these standards will reduce NOx

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<sup>9</sup> EPA estimated that compliance with this rule will cut NOx emissions from non-road diesel engines by up to 90 percent nationwide.

<sup>10</sup> EPA projects a 2.6 million ton reduction in NOx emissions by 2030 when the heavy-duty vehicle fleet is completely replaced with newer heavy-duty vehicles that comply with these emission standards. 66 FR 5002, 5012 (January 18, 2001).

<sup>11</sup> When fully implemented in 2018, this rule is expected to reduce NOx emissions from the covered vehicles by 20 percent.

<sup>12</sup> When fully implemented, the standards will result in an 80 percent reduction in NOx by 2020.

<sup>13</sup> Georgia used EPA's MOVES2010b and MOVES2014a model to calculate on-road emissions factors and used the NEI2011 and MOVES2014a for non-road emissions.

<sup>14</sup> Georgia used the interagency consultation process required by 40 CFR part 93 (known as the Transportation Conformity Rule) which requires EPA, the United States Department of Transportation, metropolitan planning organizations, state departments of transportation, and State and local air quality agencies to work together to develop applicable implementation plans. The on-road emissions were generated by an aggregate of the vehicle activity (generated from the travel demand model) on individual roadways multiplied by the appropriate emissions factor from MOVES2014. The assumptions which are included in the travel demand model, such as population, were reviewed through the interagency consultation process.

emissions from vehicles by approximately 74 percent by 2030, translating to nearly 3 million tons annually by 2030.<sup>15</sup>

Regarding MATS, EPA acknowledges that it inadvertently included this rule as a permanent and enforceable measure. As the Commenter correctly notes, MATS did not result in permanent and enforceable emissions reductions in the Area during the relevant time period because the State extended the compliance date for the relevant sources in the Area to April 2016.

The SIP-approved state measures resulting in permanent and enforceable emission reductions include Georgia Rule 391-3-1-.02(2)(yy) – Emissions of Nitrogen Oxides, Georgia Rule 391-3-1-.02(2)(jjj) – NOx from EGUs, Georgia Rule 391-3-1-.02(2)(lll) – NOx from Fuel Burning Equipment, Georgia Rule 391-3-1-.02(2)(nnn) – NOx from Stationary Gas Turbines, Georgia Rule 391-3-1-.02(2)(rrr) – NOx from Small Fuel Burning Equipment, and Georgia Rule Chapter 391-3-20 – Enhanced Inspection and Maintenance. The federal measures resulting in permanent and enforceable emission reductions include the Clean Air Interstate Rule (CAIR)/Cross-State Air Pollution Rule (CSAPR), Tier 2 vehicle and fuel standards, large non-road diesel engines rule, medium and heavy-duty vehicle fuel consumption and GHG standards, heavy-duty gasoline and diesel highway vehicle standards, nonroad spark-ignition engines and recreational engines standards, national program for GHG emissions and fuel economy standards, and Boiler and Reciprocating Internal Combustion Engine (RICE) National Emissions Standards for Hazardous Air Pollutants (NESHAP).

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<sup>15</sup> EPA, Regulatory Announcement, EPA420-F-99-051 (December 1999), available at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/regulations-greenhouse-gas-emissions-passenger-cars-and>

The inadvertent inclusion of the MATS Rule in the NPRM does not affect EPA's conclusion that the improvement in ozone air quality is reasonably attributable to the remaining measures identified in the NPRM. Although MATS did not result in permanent and enforceable reductions until April 2016, it is expected to result in further reductions in NO<sub>x</sub> emissions during the maintenance period.<sup>16</sup>

**Comment 4:** The Commenter asserts that Georgia's maintenance plan is inadequate to ensure maintenance of the 2008 8-hour ozone standard in the Area over the next ten years. The specific arguments offered by the Commenter in support of its assertion are summarized in Comments 4(a) through 4(c), below.

**Comment 4a:** The Commenter states that neither Georgia nor EPA can be sure that the attainment inventory for 2014, the attainment year used by the State to demonstrate maintenance throughout the first 10-year maintenance period, is sufficient to attain the standard because "2014 is the year that the ozone season monitoring data for the Cobb County monitor failed to meet either of the statutory completeness requirements for an attainment designation."

**Response 4a:** As discussed above in response to Comment 1, EPA determined that the Area is attaining the standard and has conducted technical analyses to support this determination. For NAAQS based on a three-year averaging period, EPA allows states to develop attainment emissions inventories in their section 175A maintenance plans using any of the three years on which an attainment determination is based. *See, e.g.*, 80 FR 54577 (July 30, 2015), 79 FR 16734 (March 26, 2014), 78 FR 72040 (December 2, 2013), 78 FR 38648 (June 27, 2013). This approach is consistent with the guidance provided to states in preparing attainment inventories

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<sup>16</sup> *See* Regulatory Impact Analysis for Final Mercury and Air Toxics Standards, EPA-452/R-11-011/December 2011. Available at <https://www.epa.gov/sites/production/files/2015-11/documents/matsriafinal.pdf>

for 110(a)(1) maintenance plans for the 1997 8-hour ozone NAAQS. *See* Memorandum from Lydia Wegman, Director, Air Quality Strategies and Standards Division, to Air Division Directors, re: Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas under Section 110(a)(1) of Clean Air Act (May 20, 2005), p.4. Therefore, it is appropriate to use 2014 as the attainment year in the maintenance demonstration for the Atlanta Area. Also, the Commenter has not raised any issues regarding the accuracy of the emissions inventory that was developed for 2014.

**Comment 4b:** The Commenter claims that the implementation schedules in the maintenance plan for the Tier I and Tier II contingency measures, allowing for up to 24 months for implementation, are “unacceptably long and fail to satisfy the prompt response timing required by CAA Section 175A” to correct “potential monitored violations.” The Commenter believes that Georgia should commit to selecting and implementing Tier I and Tier II contingency measures within 12 months of a trigger. The Commenter also states that “[t]his issue is compounded by the fact that Georgia’s most recent ozone monitoring data from 2016 demonstrate that a number of the Atlanta Area monitors continues to record annual fourth highest daily maximum 8-hour average ozone concentrations above the NAAQS.”

**Response 4b:** EPA disagrees with the Commenter’s contention that the maintenance plan’s implementation schedules for contingency measures fail to satisfy the “prompt response” requirement in CAA section 175A(d). This section of the CAA requires that a maintenance plan include such contingency provisions as the Administrator deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of an area. Thus,

Congress gave EPA discretion to evaluate and determine the contingency measures that EPA “deems necessary” to assure that the state will promptly correct any subsequent violation.

Section 175A does not establish any deadlines for implementation of contingency measures after redesignation to attainment. It also provides far more latitude than does section 172(c)(9), which applies to a different set of contingency measures applicable to nonattainment areas. Section 172(c)(9) contingency measures must “take effect . . . without further action by the State or [EPA].” By contrast, section 175A(d) allows EPA to take into account the need of a state to assess, adopt, and implement contingency measures if and when a violation occurs after an area’s redesignation to attainment. As noted by the U.S. Court of Appeals for the Sixth Circuit in *Greenbaum v. EPA*, 370 F.3d 527, 540 (6<sup>th</sup> Cir. 2004), EPA “has been granted broad discretion by Congress in determining what is ‘necessary to assure’ prompt correction” under section 175A, and “no pre-determined schedule for adoption of the measures is necessary in each specific case.” In making this determination, EPA accounts for the time that is required for states to analyze data and address the causes and appropriate means of remedying a violation. EPA also considers the time required to adopt and implement appropriate measures in assessing what “promptly” means in this context.

In the case of the Atlanta Area, EPA believes that the contingency measures set forth in the submittal, combined with the State’s commitment to implement contingency measures as expeditiously as practicable but no later than 24 months of a trigger, provide assurance that the State will promptly correct a future violation. Given the uncertainty regarding the nature of the contingency measures required to address a violation, the State may need up to 24 months to enact new statutes; develop new or modified regulations and complete notice and comment

rulemaking; or take actions authorized by current state law that require the purchase and installation of equipment (e.g., diesel retrofits) or the development and implementation of new programs. In addition, EPA has previously approved implementation of contingency measures within 24 months of a violation to comply with the requirements of section 175A in several instances. *See, e.g.*, 81 FR 76891 (November 4, 2016), 80 FR 61775 (October 14, 2015), 79 FR 67120 (November 12, 2014), 78 FR 44494 (July 24, 2013), 77 FR 34819 (June 12, 2012), 76 FR 59512 (Sept. 27, 2011), 75 FR 2091 (January 14, 2010). EPA also notes that the Commenter did not provide any rationale for concluding that a 12-month implementation period is necessary to satisfy section 175A and that the Tier I response is not subject to section 175A(d) because it is triggered before any violation has occurred.

The Commenter's statement that "this issue is compounded by" fourth-highest daily maximum 2016 ozone concentrations "above the NAAQS" is unclear. In accordance with 40 CFR part 50, appendix I, the determination as to whether the Area meets the NAAQS is based on the three-year average of the annual fourth-highest readings at a monitor, not on a monitor's fourth-highest ozone value in a single year. No monitored value in a single year can itself be a violation. The Area has attained the NAAQS, as discussed in the response to Comment 1, and met the other criteria necessary for redesignation. Once the redesignation is effective, the State will follow its maintenance plan and implement contingency measures pursuant to that plan. If Georgia observes a fourth highest value of 0.076 ppm or greater at a single monitor for which the previous ozone season had a fourth highest value of 0.076 ppm or greater, a Tier 1 trigger will be activated and the State will take action consistent with the Tier I procedure described in the maintenance plan.

**Comment 4c:** The Commenter believes that the maintenance plan is “likely inadequate” to maintain the 2008 8-hour ozone NAAQS because, according to the Commenter, the assumptions underlying Georgia’s maintenance determination “likely underestimate the level of ozone reductions actually required to maintain the standard in light of increasingly warming temperatures to come.”

**Response 4c:** EPA does not agree that the maintenance plan is inadequate because it does not specifically consider the impacts of climate change on future ozone concentrations. EPA believes that the broad range of potential future climate outcomes and variability of projected response to these outcomes limits EPA’s ability to develop specific actionable SIP policies for any specific location. Additionally, EPA generally believes that the natural variability in meteorological patterns will have a larger influence on ozone concentrations than climate influences over the relatively short-term SIP maintenance period. Thus, EPA believes it is appropriate to rely upon the existing technical guidance and applicable CAA provisions to ensure that ozone maintenance areas do not violate the NAAQS.

### **III. Final Action**

EPA is taking two separate, but related, final actions. First, EPA is approving the maintenance plan for the Atlanta Area, including the NO<sub>x</sub> and VOC MVEBs for 2014 and 2030, and incorporating it into the Georgia SIP. The maintenance plan demonstrates that the Area will continue to maintain the 2008 8-hour ozone NAAQS, and the MVEBs meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5).

Second, EPA is approving Georgia’s redesignation request for the 2008 8-hour ozone NAAQS for the Atlanta Area. Approval of the redesignation request changes the official

designation of Bartow County, Cherokee County, Clayton County, Cobb County, Coweta County, DeKalb County, Douglas County, Fayette County, Forsyth County, Fulton County, Gwinnett County, Henry County, Newton County, Paulding County, and Rockdale County in the Atlanta Area for the 2008 8-hour ozone NAAQS from nonattainment to attainment, as found at 40 CFR part 81.

EPA is also notifying the public that EPA finds the newly-established NO<sub>x</sub> and VOC MVEBs for the Atlanta Area adequate for the purpose of transportation conformity. Within 24 months from this final rule, the transportation partners will need to demonstrate conformity to the new NO<sub>x</sub> and VOC MVEBs pursuant to 40 CFR 93.104(e).

EPA has determined that these actions are effective immediately upon publication under the authority of 5 U.S.C. 553(d)(1) and (d)(3). The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Section 553(d)(1) allows an effective date less than 30 days after publication if a substantive rule “relieves a restriction.” These actions qualify for the exception under section 553(d)(1) because they relieve the State of various requirements for the Area. Furthermore, section 553(d)(3) allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” EPA finds good cause to make these actions effective immediately pursuant to section 553(d)(3) because they do not create any new regulatory requirements such that affected parties would need time to prepare before the actions take effect.

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

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 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, these actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects***40 CFR Part 52*

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

*40 CFR Part 81*

Environmental protection, Air pollution control.

Dated: April 27, 2017.

V. Anne Heard,  
Acting Regional Administrator,  
Region 4.

40 CFR parts 52 and 81 are amended as follows:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

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

**Subpart L--Georgia**

2. In §52.570, the table in paragraph (e) is amended by adding the entry “2008 8-hour ozone Maintenance Plan for the Atlanta Area” at the end of the table to read as follows:

**§52.570 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

EPA-Approved Georgia Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* * *	* * * *			
2008 8-hour ozone Maintenance Plan for the Atlanta Area	Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding and Rockdale Counties	7/18/2016	<b>[insert date of publication in Federal Register], [insert Federal Register citation]</b>	

**PART 81--DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

3. The authority citation for part 81 continues to read as follows:

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

4. In §81.311, the table entitled “Georgia-2008 8-Hour Ozone NAAQS (Primary and secondary)” is amended by revising the entry for “Atlanta, GA: <sup>2</sup>” to read as follows:

**§81.311 Georgia.**

\* \* \* \* \*

Georgia-2008 8-Hour Ozone NAAQS (Primary and secondary)

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Atlanta, GA: <sup>2</sup>	[insert date of publication in the Federal Register]	Attainment		
Bartow County		<u>Attainment</u>		
Cherokee County		<u>Attainment</u>		
Clayton County		<u>Attainment</u>		
Cobb County		<u>Attainment</u>		
Coweta County		<u>Attainment</u>		
DeKalb County		<u>Attainment</u>		
Douglas County		<u>Attainment</u>		
Fayette County		<u>Attainment</u>		
Forsyth County		<u>Attainment</u>		
Fulton County		<u>Attainment</u>		
Gwinnett County		<u>Attainment</u>		
Henry County		<u>Attainment</u>		
Newton County		<u>Attainment</u>		
Paulding County		<u>Attainment</u>		
Rockdale County		<u>Attainment</u>		
**	**	*	*	*

<sup>1</sup> This date is July 20, 2012, unless otherwise noted.

<sup>2</sup> Excludes Indian country located in each area, unless otherwise noted.

\* \* \* \* \*

[FR Doc. 2017-10934 Filed: 6/1/2017 8:45 am; Publication Date: 6/2/2017]