



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2018-0383; FRL-9985-09-Region 5]**

**Air Plan Approval; Illinois; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve, as a State Implementation Plan (SIP) revision, Illinois' certification that its SIP satisfies the nonattainment new source review (NNSR) requirements of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standard (NAAQS or Standard). Final approval of the Illinois NNSR certification SIP will permanently stop the Federal Implementation Plan (FIP) clocks triggered by EPA's February 3 and December 11, 2017 findings that Illinois failed to submit an NNSR plan for the Illinois portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin area (Chicago Nonattainment Area).

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2018-0383 at <https://www.regulations.gov>, or via

email to [damico.genevieve@epa.gov](mailto:damico.genevieve@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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

I. Background

II. Summary of the State's Submittal

III. What is EPA's Analysis?

IV. Proposed Action

V. Statutory and Executive Order Reviews

**I. Background**

*A. 2008 8-Hour Ozone NAAQS*

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). See 73 FR 16436 (March 27, 2008). Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data available at the conclusion of the designation process. For ozone NAAQS, EPA must also classify any nonattainment areas at the time of designation based on the severity of their ozone levels (as determined based on the

area's "design value"<sup>1</sup>). See CAA sections 107(d)(1) and 181(a)(1) and 77 FR 34225. The possible classifications are "Marginal," "Moderate," "Serious," "Severe," and "Extreme." Nonattainment areas with a lower classification (such as marginal areas) have ozone levels that are closer to meeting the standard than areas with a higher classification (such as Extreme areas). See CAA section 181(a)(1).

On March 6, 2015, EPA issued a final rule titled "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" (SIP Requirements Rule), which detailed the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS. See 80 FR 12264 (March 6, 2015).<sup>2</sup> Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (i.e., July

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<sup>1</sup> Under 40 CFR 50.15, the "design value" for the 2008 8-hour ozone NAAQS is the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations.

<sup>2</sup> The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

20, 2015), based on 2012-2014 monitoring data. See 40 CFR 51.1103.

Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182. States in the Ozone Transport Region (OTR)<sup>3</sup> are additionally subject to the requirements outlined in CAA section 184. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For a marginal area, a state is required to submit a baseline emissions inventory, adopt a SIP requiring emissions statements from stationary sources, and implement a NNSR program for the relevant ozone standard. See CAA section 182(a). For each higher ozone nonattainment classification, a state must comply with all lower area classification requirements, plus additional emissions controls and more expansive NNSR offset requirements. For example, the state must comply with all marginal area classification

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<sup>3</sup> The OTR is comprised of the following states: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia. 42 U.S.C. 7511c(a). States in the OTR are required to submit SIP revisions addressing reasonably available control technology (RACT) requirements for the pollutants that form ozone, even if the areas in the state meet the ozone standards.

requirements plus it must submit SIP revisions to: 1) provide for reductions of emissions of volatile organic compounds (VOC) and nitrogen oxides (NOx) of at least 15 percent from baseline emissions over 6 years; 2) require the implementation of reasonably available control technology (RACT); 3) provide for a vehicle emissions inspection and maintenance (I/M) program; 4) include contingency measures for failure to attain; and 5) include stage II gasoline vapor recovery requirements. See 42 U.S.C. 7511a(b) and 7502.

EPA classified the Chicago-Naperville, Illinois-Indiana-Wisconsin area (Chicago Nonattainment Area) as a marginal nonattainment area for the 2008 8-hour ozone NAAQS on June 11, 2012 (effective July 20, 2012) using certified ambient air quality monitoring data from calendar years 2009-2011. See 77 FR 34221. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and parts of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and part of Kenosha County in Wisconsin.

On May 4, 2016, pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 8-hour ozone NAAQS by the July 20, 2015, marginal area attainment deadline and did not meet the CAA section 181(a)(5) criteria, as interpreted in 40 CFR 51.1107, for a 1-year

attainment date extension. See 81 FR 26697 (May 4, 2016).

Thus, EPA reclassified this area by operation of law as moderate for the 2008 ozone NAAQS. *Id.*<sup>4</sup> In that action, EPA established January 1, 2017, as the due date for the state to submit all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas.

As explained in the SIP Requirements Rule, Illinois was required to develop a SIP revision addressing NNSR requirements for its marginal ozone nonattainment areas by July 20, 2015. See 80 FR 12266 (March 6, 2015). Additionally, because the Chicago area was reclassified to moderate nonattainment, Illinois was required to submit a moderate area NNSR SIP by January 1, 2017. See 81 FR 26697 (May 4, 2016).<sup>5</sup> NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area. See CAA sections 172(c)(5), 173 and 182. The specific NNSR requirements for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.160-165.

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<sup>4</sup> The Metro-East area also did not attain the 2008 8-hour ozone NAAQS by July 20, 2015; however, EPA found this area to be eligible for a 1-year attainment date extension, for a new attainment date of July 20, 2016. See 81 FR 26697 (May 4, 2016).

<sup>5</sup> Illinois' obligation to submit the NNSR SIP was not affected by the D.C. Circuit Court's February 16, 2018 decision on portions of the SIP Requirements Rule in *South Coast Air Quality Mgmt. Dist. v. EPA*, No. 15-1115, 2018 U.S. App. LEXIS 3636 (D.C. Cir. Feb. 16, 2018).

B. 2017 Findings of Failure to Submit SIPs for the 2008  
8-Hour Ozone NAAQS

On February 3, 2017, EPA found that 15 states and the District of Columbia failed to submit SIP revisions to satisfy certain nonattainment plan requirements for the 2008 ozone NAAQS. See 82 FR 9158. EPA found, *inter alia*, that Illinois failed to timely submit a SIP revision to satisfy NNSR requirements for the Chicago and Metro-East<sup>6</sup> ozone nonattainment areas. In addition, on December 11, 2017, EPA found, *inter alia*, that Illinois failed to timely submit a revision to its SIP to satisfy moderate NNSR requirements for the Chicago area. See 82 FR 58118.

These findings established certain deadlines for the imposition of sanctions if a state does not submit a timely SIP revision addressing the requirements for which EPA made the findings and the requirement for EPA to promulgate a FIP to address any outstanding SIP requirements. Specifically, Illinois was required to submit a complete SIP addressing the deficiencies that were the basis for each finding within 18 months of the effective dates of the findings (i.e., September

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<sup>6</sup> The Metro-East area includes the Illinois portion of the St. Louis-St. Charles-Farmington, Missouri-Illinois ozone nonattainment area, which includes Madison, Monroe and St. Clair Counties in Illinois, and Franklin, Jefferson, St. Charles, and St. Louis Counties and the City of St. Louis in Missouri.

6, 2018 and July 10, 2019, respectively) so as to avoid triggering, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) in the affected nonattainment area. Additionally, these rules triggered the requirement for EPA to promulgate a FIP for the affected nonattainment area if EPA does not take final action to approve the state's submittal within 2 years of the effective date of the findings (*i.e.*, March 6, 2019, and January 10, 2020, respectively).

On March 1, 2018, EPA redesignated the Metro-East area to attainment for the 2008 8-hour ozone NAAQS because EPA found this area to have met the statutory requirements for redesignation to attainment under the CAA. See 83 FR 8756 (March 1, 2018). In that action, EPA also approved, as a revision to the Illinois SIP, Illinois' plan for maintaining the 2008 ozone NAAQS through calendar year 2030 in the Metro-East area. NNSR SIP revisions are no longer required if an area is redesignated to attainment; the CAA's Prevention of Significant Deterioration (PSD) program requirements apply in lieu of NNSR. See 82 FR 9160. Therefore, the finding of failure to submit no longer applies to areas that have been redesignated to attainment. Because the Metro-East area is now designated attainment, a NNSR SIP is not required for this area.

On May 23, 2018, the Illinois Environmental Protection Agency (IEPA) submitted a SIP revision addressing the NNSR requirements of the CAA for areas designated as nonattainment for the 2008 ozone NAAQS. On July 12, 2018, EPA found that Illinois' NNSR SIP submission fulfilled the completeness criteria in 40 CFR part 51, appendix V.<sup>7</sup> Through the completeness finding, EPA determined that the deficiencies which formed the basis for the February 3, 2017 and December 11, 2017 findings had been corrected and, as a result, the sanctions clock was permanently stopped. Final approval of Illinois' May 23, 2018 NNSR SIP revision would permanently stop the FIP clocks triggered by the February 3, 2017 and December 11, 2017 findings.

## **II. Summary of the State's Submittal**

On May 23, 2018, IEPA submitted a SIP revision requesting EPA's approval of Illinois' certification that its existing SIP-approved NNSR regulations fully satisfy the NNSR requirements set forth in 40 CFR 51.165 for both marginal and moderate ozone nonattainment areas for the 2008 ozone NAAQS. IEPA indicates that its NNSR SIP submission is intended to respond to the February 3 and December 11, 2017 findings for the Chicago and

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<sup>7</sup> Letter from Edward Nam, Director, Air & Radiation Division, EPA Region 5 to Julie Armitage, Chief, Bureau of Air, IEPA.

Metro-East areas. Specifically, Illinois is certifying that its existing NNSR program covering its ozone nonattainment areas for the 2008 8-hour ozone NAAQS, including the Chicago Nonattainment Area, contains the NNSR elements required by 40 CFR 51.165, as amended by the SIP Requirements Rule, for ozone and its precursors.

Illinois' submittal includes a document titled, "Illinois' Compliance With Nonattainment New Source Review Requirements For The 2008 Ozone Standard" (NNSR checklist), which contains Illinois' detailed assessment of how its SIP-approved NNSR regulations address each of the NNSR requirements for the 2008 ozone NAAQS as codified at 40 CFR 51.165. Illinois certifies that it already complies with CAA sections 172(c)(5) and 182(a)(2)(C), which require states that have been designated nonattainment for an ozone NAAQS to submit plans or plan revisions containing certain required elements, including permit programs for the construction and operation of new or modified stationary sources in the nonattainment area. Specifically, Illinois has certified that its existing State regulations in Title 35 of Illinois Administrative Code Part 203 (35 IAC Part 203) fully satisfy the NNSR requirements set forth in 40 CFR 51.165 for both marginal and moderate ozone nonattainment areas because they contain all NNSR SIP elements required by 40 CFR

51.165 for its ozone nonattainment areas. EPA proposes to find that Illinois' submittal addresses the State's obligations as described in the February 3 and December 11, 2017 findings.

### **III. What is EPA's Analysis?**

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.165. See 40 CFR 51.1114. These NNSR program requirements include those promulgated in the "Phase 2 Rule" implementing the 1997 8-hour ozone NAAQS (75 FR 71018, November 29, 2005) and the SIP Requirements Rule implementing the 2008 8-hour ozone NAAQS. Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: set major source thresholds for NOx and VOC pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)-(iv) and (2); classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NOx as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NOx as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A) -

(C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)-(2); provide that the requirements applicable to VOC also apply to NOx pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NOx pursuant to 40 CFR 51.165(a)(9)(i)-(iii) (renumbered as (a)(9)(ii)-(iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS). Under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105. See 40 CFR 51.165(a)(12).

Illinois' NNSR rules, as set forth in 35 IAC Part 203, Major Stationary Sources Construction And Modification, are designed to ensure that the construction of a major new source of air pollution or a large increase of emissions at an existing source does not interfere with the attainment demonstration and does not delay timely achievement of the ambient air quality standards. The rules require owners or operators of major projects to: 1) apply the Lowest Achievable Emission Rate (LAER) or, for certain existing sources, the Best Available Control Technology (BACT) on emissions of the nonattainment pollutant

from the major project; 2) offset the emissions of the nonattainment pollutant from a major project by emission reductions from other sources in the nonattainment area; 3) demonstrate that other sources in the State which are under common ownership or control with the person proposing the project are in compliance with the CAA; and 4) analyze alternatives to the particular project to determine whether the benefits of the project outweigh the environmental and social costs.

EPA last approved revisions to Illinois' NNSR SIP on May 13, 2003. See 68 FR 25504 (May 13, 2003).<sup>8</sup> In that action, EPA approved amendments to 35 IAC 203 to better track the language of CAA sections 182(c)(6), (7), and (8). See 68 FR 25505. The changes dealt with how one determines whether a proposed change at a source is a major modification.

Based on our review of the NNSR checklist that Illinois incorporated into the SIP submittal, and the version of 35 IAC 203 approved into the Illinois SIP, we propose to find that Illinois' SIP-approved NNSR program at 35 IAC 203 contains the minimum required NNSR elements as specified in 40 CFR 51.165 for Illinois' ozone nonattainment areas. We are proposing to

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<sup>8</sup> For other relevant approvals, see 45 FR 11470 (February 21, 1980); 46 FR 44172 (September 3, 1981); 50 FR 38803 (September 25, 1985); 51 FR 10837 (March 31, 1986); 57 FR 59928 (December 17, 1992); and 60 FR 49778 (September 27, 1995).

approve Illinois' certification that 35 IAC 203 is consistent with 40 CFR 51.165 and meets the requirements of CAA sections 172(c)(5), 173, 110(a)(2), 182(a)(4) and 182(b)(5) under the 2008 ozone standard for the Illinois portion of the Chicago Ozone Nonattainment Area. Final approval of Illinois' NNSR certification would address the deficiencies that were the basis for the February 3 and December 11, 2017 findings, and would turn off the FIP clock for the Illinois portion of the Chicago Nonattainment Area. While some of Illinois' regulations are worded or organized differently than the Federal counterparts, EPA proposes to find that these differences do not affect the relative stringency of such provisions.

The following table lists the specific provisions of Illinois' NNSR rules that address the required elements of the Federal NNSR rules:

<b>Federal Rule</b>	<b>Illinois Rule</b>
40 CFR 51.165(a)(1)(iv)(A)(1)(i)-(iv), (2)	35 IAC 203.206(b)
40 CFR 51.165(a)(1)(iv)(A)(3)	35 IAC 203.206(c)
40 CFR 51.165(a)(1)(v)(E)	35 IAC 203.207(b)
40 CFR 51.165(a)(1)(v)(F)	35 IAC 203.207(f)
40 CFR 51.165(a)(1)(x)(A)-(C); (E)	35 IAC 203.207(d), (e) and (f), and 203.209(a) and (b)
40 CFR 51.165(a)(3)(ii)(C)(1)-(2)	35 IAC 203.302(a), 203.303(b) and (f), 203.602, and 203.701
40 CFR 51.165(a)(8)	35 IAC 203.206(b), 203.207(b), (d), (e) and (f), 203.209(a) and (b), 203.301(e) and (f), and

	203.302
40 CFR 51.165(a)(9)(ii), (iv)	35 IAC 203.302(a)

A. *Major Source Thresholds for Ozone - 40 CFR*

*51.165(a)(1)(iv)(A)(1)(i)-(iv) and (2)*

The major source thresholds for both VOC and NOx (i.e., ozone precursors) are defined in 40 CFR 51.165(a)(1)(iv)(A)(1)(i)-(iv) and (2). The applicable thresholds vary depending on the classification of the ozone nonattainment area. For marginal and moderate ozone nonattainment areas, a major stationary source of ozone is a source that emits, or has the potential to emit, 100 tons per year or more of VOC or NOx. Different emissions thresholds apply for Serious, Severe, and Extreme ozone nonattainment areas and for areas located in an OTR.

Illinois has certified that the Federal requirements for major source thresholds for VOC and NOx are addressed by 35 IAC 203.206(b). Under 35 IAC 203.206(b), for an area designated as nonattainment for ozone, a major stationary source is a stationary source which emits or has the potential to emit VOC<sup>9</sup> or NOx in an amount equal to or greater than 1) 100 tons per year in an area classified as marginal or moderate nonattainment

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<sup>9</sup> The Illinois SIP also refers to VOC as volatile organic material (VOM). See 35 IAC 211.7150.

for ozone; 2) 50 tons per year in an area classified as serious nonattainment for ozone; 3) 25 tons per year in an area classified as severe nonattainment for ozone; and 4) 10 tons per year in an area classified as extreme nonattainment for ozone. Illinois' thresholds are consistent with the Federal thresholds; therefore, we propose to find that Illinois' NNSR provisions at 35 IAC 203.206(b) satisfy the requirements of 40 CFR 51.165(a) (1) (iv) (A) (1) (i)-(iv) and (2).

*B. Change Constitutes Major Source by Itself - 40 CFR 51.165(a) (1) (iv) (A) (3)*

Under 40 CFR 51.165(a) (1) (iv) (A) (3), any physical change that would occur at a stationary source not qualifying as a major stationary source becomes a major stationary source, if the change would constitute a major stationary source by itself. Illinois has certified that this requirement is addressed by 35 IAC 203.206(c), which provides that any physical change that occurs at a stationary source which does not qualify as a major stationary source will be considered a major stationary source, if the change would constitute a major stationary source by itself. Illinois' provisions at 35 IAC 203.206(c) for what constitutes a major source are consistent with the Federal provisions at 40 CFR 51.165(a) (1) (iv) (A) (3); therefore, we propose to find that the Illinois SIP at 35 IAC 203.206(c)

satisfies the requirements of 40 CFR 51.165(a)(1)(iv)(A)(3).

*C. Significant Net Emissions Increase of NOx is*

*Significant for Ozone - 40 CFR 51.165(a)(1)(v)(E)*

Under 40 CFR 51.165(a)(1)(v)(E), any significant net emissions increase of NOx is considered significant for ozone. Illinois has certified that this requirement is addressed by 35 IAC 203.207(b), which provides that any net emissions increase that is significant for VOC or NOx shall be considered significant for ozone. Illinois' provisions at 35 IAC 203.207(b) are consistent with the Federal requirements at 40 CFR 51.165(a)(1)(v)(E); therefore, we propose to find that 35 IAC 203.207(b) satisfies the requirements of 40 CFR 51.165(a)(1)(v)(E).

*D. Any Emissions Change of VOC in an Extreme Area*

*Triggers NNSR - 40 CFR 51.165(a)(1)(v)(F)*

Under 40 CFR 51.165(a)(1)(v)(F), any physical change in, or change in the method of operation of, a major stationary source of VOC that results in any increase in emissions of VOC from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to CAA title 1, part D

subpart 2. Illinois has certified that this requirement is addressed by 35 IAC 203.207(f). That provision states that in areas classified as extreme nonattainment for ozone, beginning on the date that EPA classifies an area as an extreme nonattainment area for ozone, any physical change in or change in the method of operation of a major stationary source which results in any increase in emissions of VOC or NOx from a discrete operation, unit, or other pollutant emitting activity shall be considered a major modification. Illinois' provisions at 35 IAC 203.207(f) are consistent with the Federal requirements at 40 CFR 51.165(a)(1)(v)(F); therefore, we propose to find that 35 IAC 203.207(f) satisfies the requirements of 40 CFR 51.165(a)(1)(v)(F).

*E. Significant Emissions Rates for VOC and NOx as Ozone Precursors - 40 CFR 51.165(a)(1)(x)(A)-(C) and (E)*

Under 40 CFR 51.165(a)(1)(x)(A), (B) and (C), the significant emission rate for ozone is defined as 40 tons per year of VOC or NOx, except that the significant emission rate in serious or extreme nonattainment areas shall be 25 tons per year. Under 40 CFR 51.165(a)(1)(x)(E), any increase in actual emissions of VOC from any emissions unit at a major stationary source of VOC located in an extreme ozone nonattainment area shall be considered a significant net emissions increase.

Illinois has certified that it satisfies these requirements pursuant to 35 IAC 203.207(d), (e) and (f), and 35 IAC 203.209(a) and (b). Specifically, 35 IAC 203.207(d) and (e), and 35 IAC 203.209(a) and (b) establish the significant emission rate for ozone as 40 tons per year of VOC or NOx and 25 tons per year in serious or extreme nonattainment areas. Additionally, 35 IAC 203.207(f) specifies that in areas classified as extreme nonattainment for ozone, any physical change in or change in the method of operation of a major stationary source which results in any increase in emissions of VOC or NOx from a discrete operation, unit, or other pollutant emitting activity shall be considered a major modification. Because the Illinois SIP's provisions at 35 IAC 203.207(d), (e) and (f), and 35 IAC 203.209(a) and (b) are consistent with the Federal requirements at 40 CFR 51.165(a)(1)(x)(A)-(C) and (E), we propose to find that the above Illinois SIP provisions satisfy the requirements of 40 CFR 51.165(a)(1)(x)(A)-(C) and (E).

*F. Provisions for Emissions Reduction Credits - 40 CFR 51.165(a)(3)(ii)(C)(1) and (2)*

Under 40 CFR 51.165(a)(3)(ii)(C)(1) and (2), to be considered creditable, emission reductions achieved by shutting down an existing emission unit or curtailing production or operating hours must be surplus, permanent, quantifiable, and

federally enforceable. Shutdowns or curtailments must have occurred after the last day of the base year for the SIP planning process. Reviewing authorities may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes emissions from the previously shut down or curtailed emissions units, but in no event may credit be granted for shutdowns that occurred prior to August 7, 1977. Shutdown or curtailment reductions occurring before the last day of the base year for the SIP planning process may also be generally credited if the shutdown or curtailment occurred on or after the date the construction permit application is filed or if the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emission unit and the emission reductions that result are surplus, permanent, quantifiable, and federally enforceable.

Illinois certifies that these requirements are satisfied by 35 IAC 203.302(a), 35 IAC 203.303(b) and (f), 35 IAC 203.602 and 35 IAC 203.701. In particular, 35 IAC 203.302(a) establishes a general obligation that "the owner or operator of a new major source or major modification shall provide emission offsets equal to or greater than the allowable emissions from the source

or the net increase in emissions from the modification sufficient to allow [IEPA] to determine that the source or modification will not interfere with reasonable further progress [RFP]...” With respect to 40 CFR 51.165(a)(3)(ii)(C)(1)(i), the Illinois SIP at 35 IAC 203.303(b) and 35 IAC 203.701 requires that all emission offsets must: 1) be of the same pollutant and of a type with approximately the same qualitative significance for public health and welfare as that attributed to the increase from a particular change; 2) be federally enforceable by permit; 3) not have been previously relied on in issuing any permit pursuant to the Illinois SIP for demonstrating attainment or RFP; and 4) be maintained permanently. Further, 35 IAC 203.303(b)(3) restricts the use of emission reductions from past shutdowns or curtailments, and requires the proposed new or modified source to be a replacement for the shutdown or curtailment. Additionally, under 35 IAC 203.602, no person shall cause or allow the operation of a new major stationary source or major modification where the owner or operator has demonstrated that it would not interfere with RFP by providing emission offsets pursuant to 35 IAC 203.302 without maintaining those emission offsets or other equivalent offsets.<sup>10</sup>

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<sup>10</sup> Illinois has explained that the phrase “other equivalent offsets” as used in 35 IAC 203.602, coupled with the language in 35 IAC 203.701, establishes that emission offsets must be permanent, and that if emission

With respect to 40 CFR 51.165(a) (3) (ii) (C) (2), we note that Illinois' language in 35 IAC 203.303(b) (3) does not explicitly require that shutdowns or curtailments occur on or after the date a permit application was filed, as specified in 40 CFR 51.165(a) (3) (ii) (C) (2). However, Illinois satisfies the Federal requirements by limiting in 35 IAC 203.303(b) (3) the circumstances under which prior shutdowns or curtailments can be credited as offsets. For example, given an applicant for a NNSR permit must provide emission offsets under 35 IAC 203.302, the meaning of the phrase "past shutdown" as used in 35 IAC 203.303(b) (3) is consistent with the wording of 40 CFR 51.165(a) (3) (ii) (C) (2) (i) as it establishes additional requirements for offsets that occurred prior to the filing of the application. Because 35 IAC 203.302(a), 35 IAC 203.303(b) and (f), 35 IAC 203.602 and 35 IAC 203.701 address all of the elements required by 40 CFR 51.165(a) (3) (ii) (C) (1) and (2), we propose to find that the Illinois SIP satisfies the requirements of 40 CFR 51.165(a) (3) (ii) (C) (1) and (2).

*G. Requirements for VOC Apply to NOx as Ozone Precursors*

*- 40 CFR 51.165(a) (8)*

Under 40 CFR 51.165(a) (8), all requirements applicable to

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reductions relied upon by a source cease to be viable as offsets for some reason, the source would need to obtain equivalent offsets.

major stationary sources and major modifications of VOC shall apply to NOx except where the Administrator has granted a NOx waiver applying the standards set forth under CAA section 182(f) and the waiver continues to apply. Illinois certifies that these Federal requirements are satisfied by 35 IAC 203.206(b) (major stationary source); 35 IAC 203.207(b), (d), (e) and (f) (major modification of a source); 35 IAC 203.209(a) and (b) (significant emissions determination); 35 IAC 203.301(e) and (f) (LAER); and 35 IAC 203.302 (maintenance of RFP and emission offsets). As already discussed, we have reviewed 35 IAC 203.206(b); 35 IAC 203.207(b), (d), (e) and (f); 35 IAC 203.209(a) and (b); and 35 IAC 203.302 and find that these provisions contain language that is consistent with the corresponding Federal NNSR requirements with respect to the treatment of VOC and NOx in ozone nonattainment areas. The Federal requirements for LAER are also addressed by 35 IAC 203.301(e) and (f), which establish specific LAER and BACT requirements for existing sources located in serious or severe ozone nonattainment areas. Because 35 IAC 203.206(b), 35 IAC 203.207(b), (d), (e) and (f), 35 IAC 203.209(a) and (b), 35 IAC 203.301(e) and (f), and 35 IAC 203.302 contain language that is consistent with the Federal requirements, we propose to find that the Illinois SIP satisfies the requirements of 40 CFR

51.165(a) (8) .

*H. Offset Ratios for VOC and NOx for Ozone Nonattainment Areas - 40 CFR 51.165(a) (9) (ii), (iv)*

Under 40 CFR 51.165(a) (9) (ii) (A)-(E), the VOC offset ratios shall be 1.1:1 in marginal ozone nonattainment areas, 1.15:1 in moderate ozone nonattainment areas, 1.2:1 in serious ozone nonattainment areas, 1.3:1 in severe ozone nonattainment areas, and 1.3:1 in severe ozone nonattainment areas. Illinois certifies that these requirements are satisfied by 35 IAC 203.302(a). Specifically, 35 IAC 203.302(a) (1) requires offset ratios for both VOC and NOx that are consistent with 40 CFR 51.165(a) (9) (ii) (A)-(E). Therefore, we propose to find that the Illinois SIP at 35 IAC 203.302(a) satisfies the requirements of 40 CFR 51.165(a) (9) (ii) (A)-(E) .

For ozone nonattainment areas subject to CAA title 1, part D, subpart 1 but not subpart 2, 40 CFR 51.165(a) (9) (iv) requires an offset ratio of at least 1:1. Because all of the current ozone nonattainment areas in Illinois were designated under CAA title 1, part D, subpart 2, 40 CFR 51.165(a) (9) (iv) does not apply to Illinois at this time.

*I. OTR Requirements*

Illinois' approved SIP does not contain the OTR provisions set forth in 40 CFR 51.165(a) (1) (iv) (A) (1) (ii), 40 CFR

51.165(a) (1) (iv) (A) (2) (ii), 40 CFR 51.165(a) (1) (v) (E), 40 CFR 51.165(a) (1) (x) (C), 40 CFR 51.165(a) (8), and 40 CFR 51.165(a) (9) (iii) because Illinois is not located in an OTR. Illinois is not required to include these requirements in its SIP until such time as EPA publishes rules that establish Illinois as a part of the OTR.

*J. Anti-backsliding Provisions for the Revoked 1997 NAAQS  
- 40 CFR 51.165(a) (12)*

"Anti-backsliding" provisions are designed to ensure that for existing ozone nonattainment areas that are designated nonattainment for a revised and more stringent ozone NAAQS, (1) there is protection against degradation of air quality (i.e., the areas do not "backslide"), (2) the areas continue to make progress toward attainment of the new, more stringent NAAQS, and (3) there is consistency with the ozone NAAQS implementation framework outlined in CAA title 1, part D, subpart 2. See 78 FR 34211. As part of the SIP Requirements Rule, EPA revoked the 1997 NAAQS for all purposes and established anti-backsliding requirements for areas that remained designated nonattainment for the revoked NAAQS. See 80 FR 12265 and 40 CFR 51.165(a) (12). Under 40 CFR 51.165(a) (12), the anti-backsliding requirements at 40 CFR 51.1105 apply in any area designated nonattainment for the 2008 ozone NAAQS and designated

nonattainment for the 1997 ozone NAAQS on April 6, 2015.

Illinois has certified that there were no areas designated as nonattainment for the 1997 8-hour ozone NAAQS on April 6, 2015.

Attainment status designations for Illinois are found at 40 CFR 81.314. With respect to the 1997 8-hour ozone NAAQS, all areas in Illinois attained the 1997 8-hour ozone NAAQS prior to April 6, 2015. See 77 FR 25363 (April 30, 2012) and 77 FR 48062 (August 13, 2012). Since all areas in Illinois were designated as attainment or unclassifiable/attainment on April 6, 2015 for the 1997 8-hour ozone NAAQS, the anti-backsliding requirements of 40 CFR 51.165(a)(12) do not apply for the 2008 8-hour ozone NAAQS. Accordingly, Illinois' approved SIP does not contain the anti-backsliding provisions set forth in 40 CFR 51.165(a)(12).

#### **IV. Proposed Action**

EPA is proposing to approve Illinois' May 23, 2018 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Chicago Nonattainment Area. EPA has concluded that Illinois' submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under EPA's February 3 and December 11, 2017 findings.

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

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The proposed rule approving Illinois' 2008 8-hour ozone NAAQS NNSR SIP revision is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on

tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 25, 2018.

**James Payne,**

*Acting Regional Administrator, Region 5.*

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