

#### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175. This good cause final action simply extends the date for the EPA to take action on a petition. Thus, Executive Order 13175 does not apply to this rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental

health or safety standard. This good cause final action simply extends the date for the EPA to take action on a petition and does not have any impact on human health or the environment.

#### *K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice-and-comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in Section II.B of this document, including the basis for that finding.

#### *IV. Statutory Authority*

The statutory authority for this action is provided by sections 110, 126 and 307 of the CAA as amended (42 U.S.C. 7410, 7426 and 7607).

#### **V. Judicial Review**

Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the appropriate circuit by October 24, 2016. Under section 307(b)(2) of the CAA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

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

Environmental protection, Administrative practices and procedures, Air pollution control, Electric utilities, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone.

Dated: August 15, 2016.

**Gina McCarthy,**

*Administrator.*

[FR Doc. 2016–20140 Filed 8–22–16; 8:45 am]

**BILLING CODE 6560–50–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA–R05–OAR–2015–0075; FRL–9950–86–Region 5]

#### **Air Plan Approval; Wisconsin; Kenosha County 2008 8-Hour Ozone Nonattainment Area Reasonable Further Progress Plan**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving an Early Progress Plan and motor vehicle emissions budgets (MVEBs) for volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) for the Kenosha County, Wisconsin 8-hour ozone nonattainment area. Wisconsin submitted an Early Progress Plan for Kenosha County on January 16, 2015. This submittal was developed to establish MVEBs for the Kenosha 2008 8-hour ozone nonattainment area. This approval of the Early Progress Plan for the Kenosha 2008 8-hour ozone nonattainment area is based on EPA’s determination that Wisconsin has demonstrated that the State Implementation Plan (SIP) revision containing these MVEBs, when considered with the emissions from all sources, shows progress toward attainment from the 2011 base year through a 2015 target year.

**DATES:** This direct final rule will be effective October 24, 2016, unless EPA receives adverse comments by September 22, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0075 at <http://www.regulations.gov> or via email to [persoon.carolyn@epa.gov](mailto:persoon.carolyn@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680, [leslie.michael@epa.gov](mailto:leslie.michael@epa.gov).

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

- I. What is the background for this action?
- II. What are the criteria for early progress plans?
- III. What is EPA’s analysis of the request?
- IV. What are the MVEBs for the Kenosha County 2008 8-hour ozone nonattainment area?
- V. What action is EPA taking?
- VI. Statutory and Executive Order Reviews

**I. What is the background for this action?**

EPA’s final rule designating nonattainment areas and associated classifications for the 2008 ozone National Ambient Air Quality Standards (NAAQS) was published in the **Federal Register** on May 21, 2012 (77 FR 30088). A portion of Kenosha County was designated as marginal nonattainment. The Kenosha County 2008 8-hour ozone nonattainment area had been previously designated nonattainment as part of the larger Milwaukee area for the 1997 8-hour ozone standard and had MVEBs for NO<sub>x</sub> and VOC established in the Wisconsin 1997 8-hour maintenance plan SIP. Consequently, the transportation partners in the Kenosha area have to use the 1997 8-hour ozone nonattainment MVEBs for the Milwaukee area to demonstrate transportation conformity for the 2008 8-hour ozone standard until new MVEBs are approved or found adequate, as required by the transportation conformity rule at 40 CFR 93.109(c)(2)(i). Wisconsin submitted this plan to establish new MVEBs for

Kenosha County developed with EPA’s MOVES2014 model.

**II. What are the criteria for early progress plans?**

EPA allows for the establishment of MVEBs for the 2008 8-hour ozone standard prior to a state submitting its first required 2008 8-hour ozone SIP that would include new MVEBs. Although voluntary, these “early” MVEBs must be established through a plan that meets all the requirements of a SIP submittal. This plan is known as the “Early Progress Plan.” Specifically and in reference to Early Progress Plans, the preamble of the July 1, 2004, final transportation conformity rule (*see*, 69 FR 40019) reads as follows:

The first 8-hour ozone SIP could be a control strategy SIP required by the Clean Air Act (*e.g.*, rate-of-progress SIP or attainment demonstration) or a maintenance plan. However, 8-hour ozone nonattainment areas ‘are free to establish, through the SIP process, a motor vehicle emissions budget or budgets that addresses the new NAAQS in advance of a complete SIP attainment demonstration. That is, a state could submit a motor vehicle emission budget that does not demonstrate attainment but is consistent with projections and commitments to control measures and achieves some progress toward attainment’ (August 15, 1997, 62 FR 43799). A SIP submitted earlier than otherwise required can demonstrate a significant level of emissions reductions from current level of emissions, instead of a specific percentage required by the Clean Air Act for moderate and above ozone areas.

The Early Progress Plan must demonstrate that the SIP revision containing the MVEBs, when considered with emissions from all sources, and when projected from the base year to a future year, shows progress toward attainment. EPA has previously indicated that a 5 percent to 10 percent reduction in emissions from all sources could represent a significant level of emissions reductions from current levels (69 FR 40019). This allowance is provided so that areas have an opportunity to use the budget test to demonstrate conformity as opposed to the interim conformity tests (*i.e.*, 2002 baseline test and/or action versus baseline test). The budget test with an adequate or approved SIP budget is generally more protective of air quality and provides a more relevant basis for conformity determinations than the interim emissions test. (69 FR 40026).

It should also be noted that the Early Progress Plan is not a required plan and does not substitute for required submissions such as an attainment demonstration or rate-of-progress plan, if such plans become required for the Kenosha 8-hour ozone area.

**III. What is EPA’s analysis of the request?**

On January 16, 2015, the State submitted to EPA an Early Progress Plan for the sole purpose of establishing MVEBs for the Kenosha 2008 8-hour ozone nonattainment area. The submittal utilizes a base year of 2011, and a projected year 2015 to establish NO<sub>x</sub> and VOC MVEBs. The planning assumptions used to develop the MVEBs were discussed and agreed to by the Kenosha interagency consultation group, which consists of the transportation and air quality partners in the Kenosha 2008 8-hour ozone nonattainment area. Tables 1 and 2 below show the differences by source categories between the 2011 base year and 2015 forecast year. The NO<sub>x</sub> and VOC emissions in tons per day (tpd) within the Kenosha nonattainment area are expected to decrease significantly, 6.9 percent and 8.9 percent, respectively, between 2011 and 2015. These emission trends demonstrate that progress will be made towards attainment of the 2008 8-hour ozone NAAQS.

**TABLE 1—KENOSHA COUNTY 2008 OZONE NONATTAINMENT AREA NO<sub>x</sub> EMISSIONS**

[Kenosha County NO <sub>x</sub> Emissions]		
Source	2011 NO <sub>x</sub> (tpd)	2015 NO <sub>x</sub> (tpd)
Point .....	8.80	6.15
Area .....	1.09	1.33
On-road Mobile .....	5.17	4.40
Non-Road Mobile .....	2.14	1.69
<b>Total .....</b>	<b>17.17</b>	<b>15.98</b>
<b>Total Percent Reduction .....</b>	<b>6.9%</b>	

**TABLE 2—KENOSHA COUNTY 2008 OZONE NONATTAINMENT AREA VOC EMISSIONS**

[Kenosha County VOC Emissions]		
VOC Source	2011 VOC (tpd)	2015 VOC (tpd)
Point .....	0.70	2.63
Area .....	4.78	4.72
On-road Mobile .....	2.38	1.99
Non-Road Mobile .....	1.46	1.08
<b>Total .....</b>	<b>9.32</b>	<b>8.49</b>
<b>Total Percent Reduction .....</b>	<b>8.9%</b>	

EPA found these MVEBs adequate for transportation conformity purposes in

an earlier action (80 FR 17428, April 1, 2015). As of April 16, 2015, the effective date of EPA's adequacy finding for these MVEBs, conformity determinations in Kenosha County must meet the budget test using these 2008 8-hour ozone MVEBs, instead of the 1997 8-hour ozone MVEBs. Please note that this adequacy finding does not relate to the merits of the SIP submittal, nor does it indicate whether the submittal meets the requirements for approval. This EPA rulemaking action takes formal action on the Early Progress Plan SIP revision.

#### IV. What are the MVEBs for the Kenosha 2008 8-hour ozone nonattainment area?

Through this rulemaking, EPA is approving the 2015 regional MVEBs for NO<sub>x</sub> and VOC for the Kenosha County 2008 8-hour ozone nonattainment area. EPA has determined that the MVEBs contained in the Early Progress Plan SIP revision are consistent with emission reductions from all sources within the nonattainment area and are showing progress toward attainment.

The 2015 MVEBs in tpd for VOCs and NO<sub>x</sub> for the Kenosha County, Wisconsin nonattainment area are as follows:

Area	2015 NO <sub>x</sub> (tpd)	2015 VOCs (tpd)
Kenosha County .....	4.397	1.944

#### V. What action is EPA taking?

EPA is approving Kenosha's Early Progress Plan, including the 2015 MVEBs for NO<sub>x</sub> and VOC. The Early Progress Plan demonstrates progress towards attainment of the 2008 8-hour ozone NAAQS for the Kenosha nonattainment area. The NO<sub>x</sub> and VOC emissions reductions from 2011 to 2015 for Kenosha County nonattainment areas were 6.9 percent and 8.9 percent, respectively. These emission reductions are based on control measures that are permanent and enforceable and will continue to improve air quality in the region, thus demonstrating that the MVEBs are showing progress toward attainment.

EPA issues this direct final rulemaking in response to Wisconsin's January 16, 2015 submittal of an Early Progress Plan. This revision is a voluntary SIP revision for the sole purpose of establishing MVEBs for the purpose of implementing transportation conformity in the Kenosha County 2008 8-hour ozone nonattainment area.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments.

However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective October 24, 2016 without further notice unless we receive relevant adverse written comments by September 22, 2016. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective October 24, 2016.

#### VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act 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 Clean Air Act. 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 (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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 2016. 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. Parties with

objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds, Oxides of nitrogen.

Dated: August 5, 2016.

**Robert A. Kaplan,**

*Acting Regional Administrator, Region 5.*

40 CFR part 52 is 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.*

■ 2. Section 52.2585 is amended by adding paragraph (ee) to read as follows:

#### § 52.2585 Control strategy; ozone.

\* \* \* \* \*

(ee) Approval—On January 16, 2015, the State of Wisconsin submitted a revision to its State Implementation Plan for Kenosha County, Wisconsin. The submittal established new Motor Vehicle Emissions Budgets (MVEB) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO<sub>x</sub>) for the year 2015. The MVEBs for Kenosha County nonattainment area are now: 1.994 tons per day of VOC emissions and 4.397 tons per day of NO<sub>x</sub> emissions for the year 2015.

[FR Doc. 2016–20002 Filed 8–22–16; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R03–OAR–2016–0418; FRL–9950–94–Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Minor New Source Review—Nonroad Engines

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Commonwealth of Virginia state implementation plan (SIP). The revisions amend the definition of “nonroad engine” under Virginia’s minor New Source Review (NSR) requirements to align with Federal requirements. EPA is approving these revisions to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on October 24, 2016 without further notice, unless EPA receives adverse written comment by September 22, 2016. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0418 at <http://www.regulations.gov>, or via email to [campbell.dave@epa.gov](mailto:campbell.dave@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** David Talley, (215) 814–2117, or by email at [talley.david@epa.gov](mailto:talley.david@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On June 17, 2014, the Virginia Department of Environmental Quality (VADEQ), on behalf of the Commonwealth of Virginia, submitted a formal revision to its SIP. The SIP revision consists of amendments to the definition of “nonroad engine” under VADEQ’s minor NSR regulations. Virginia has a SIP approved minor NSR program located in the Virginia Administrative Code (VAC) at 9VAC 5–80 which regulates certain modifications and construction of stationary sources within areas covered by its SIP as necessary to assure the national ambient air quality standards (NAAQS) are achieved.

##### II. Summary of SIP Revision and EPA Analysis

VADEQ’s June 17, 2014 SIP submittal includes revisions to the definition of “nonroad engine” under the VAC, specifically 9VAC5–80–1110. The definition of “nonroad engine” was expanded to include portable and temporary engines. The revision to 9VAC5–80–1110 makes VADEQ’s definition more consistent with the Federal definition at 40 CFR 89.2. According to VADEQ, Federal design standards for internal combustion engines and Federal fuel standards for engines are already more restrictive than permit requirements for portable and temporary engines in Virginia’s minor NSR program. Virginia’s amended definition adopts the Federal definition of “nonroad engine,” grouping portable engines and temporary engines together with other non-mobile engines. The revised definition will streamline Virginia’s minor NSR program by no longer requiring VADEQ to issue minor NSR permits without meaningful additional emissions control requirements on those engines. Virginia asserted the amended definition does not increase emissions or otherwise affect air quality.

EPA finds these revisions are appropriate and meet the Federal requirements of 40 CFR 51.160 and 51.161, and CAA section 110(a)(2)(C) for a minor NSR program. Additionally, the revision to 9VAC5–80–1110 (and in particular the deletions in the revised regulation) are in accordance with