ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, 70 and 71

[EPA–HQ–OAR–2010–0885, FRL–9810–3]

RIN 2060–AR34

Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing a rule for implementing the 2008 ozone national ambient air quality standards (NAAQS) (the ''2008 ozone NAAQS'') that were promulgated on March 12, 2008. This proposed rule addresses a range of state implementation plan requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology (RACT), reasonably available control measures (RACM), new source review (NSR) requirements in nonattainment areas, emission inventories, and the timing of state implementation plan (SIP) submissions and of compliance with emission control measures in the SIP. Other issues also addressed in this proposed rule are the revocation of the 1997 ozone NAAQS and anti-backsliding requirements that would apply when the 1997 ozone NAAQS is revoked.

DATES: *Comments.* Comments must be received on or before August 5, 2013. *Public Hearings.* The EPA plans to hold one public hearing concerning the proposed rule in Washington, DC. The date, time and location will be announced separately. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearings. *Information Collection Request.* Under the Paperwork Reduction Act (PRA), comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before July 8, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0885, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Mail:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2010–0885, Environmental Protection Agency, 1301 Constitution Ave. NW., Washington, DC 20460. Mail Code: 2822T. Please include two copies if possible. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *Hand Delivery:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2010–0885, Environmental Protection Agency in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, Air and Radiation Docket and Information Center.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0885. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any CD you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in *www.regulations.gov.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: For further general information on this rulemaking, contact Dr. Karl Pepple, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 54l-2683, or by email at *pepple.karl@epa.gov;* or Mr. Butch Stackhouse, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, phone number (919) 54l-5208, or by email at *stackhouse.butch@epa.gov.* For information on the public hearings, contact Ms. Pamela S. Long at (919) 541–0641 or by email at *long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected directly by this proposal include state, local and tribal governments. Entities potentially affected indirectly by this proposal include owners and operators of sources of emissions (volatile organic compounds (VOCs) and nitrogen oxides (NO_X)) that contribute to ground-level ozone formation.

B. What should I consider as I prepare my comments for the EPA?

1. Submitting CBI. Do not submit CBI information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then

identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed to be CBI must be submitted for inclusion in the public docket. Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice will be posted at *http://www.epa.gov/air/ozonepollution/actions.html#impl.*

D. What information should I know about possible public hearings?

The EPA intends to hold one public hearing on this proposal. Further details concerning the public hearing for this proposed rule will be published in a separate **Federal Register** notice. For updates and additional information on the public hearings, please check the EPA's Web site for this rulemaking at *http://www.epa.gov/air/ozonepollution/actions.html#impl.*

E. How is this notice organized?

The information presented in this notice is organized as follows:

Statutory Authority
List of Subjects

II. Background for Proposal

A. The 2008 Ozone NAAQS

On March 12, 2008,[1] the EPA revised the primary NAAQS for ozone, designed to protect public health, to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour concentration, averaged over 3 years).[2] The secondary NAAQS for ozone, designed to protect public welfare, was simultaneously set at the same level (and with the same averaging time) as the primary NAAQS. Since the 2008 primary and secondary NAAQS for ozone are identical, for convenience, we refer to both as ''the 2008 ozone NAAQS'' or ''the 2008 ozone standard.''

On September 16, 2009, the EPA announced[3] that it would initiate a rulemaking to reconsider the 2008 ozone NAAQS for various reasons, including the fact the 0.075 ppm level fell outside of the range for the primary standard recommended by the Clean Air Scientific Advisory Committee. Pending the outcome of that reconsideration, the EPA suspended further work on designating areas, and on classifying and developing implementation guidance for areas that would be designated nonattainment for the 2008 NAAQS. In September 2011, the OMB returned for further consideration the EPA's draft rulemaking to reconsider the 2008 ozone NAAQS.[4] The current primary and secondary NAAQS for ozone thus remains at 0.075 ppm, as established in 2008. The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997 but is set at a more stringent level.

B. The Challenge of Ozone Implementation

The EPA and the states, and some local and tribal air agencies, are now proceeding with activities to implement the 2008 ozone NAAQS. In rules finalized on April 30, 2012, and May 31, 2012, the EPA formally designated all areas of the country as attainment/unclassifiable, nonattainment or unclassifiable for the 2008 NAAQS.[5] On April 30, 2012, the EPA also finalized a rule that established the approach for classifying ozone nonattainment areas for the 2008 ozone NAAQS based on their air quality concentrations, as well as the deadline for areas in each classification to achieve the 2008 ozone NAAQS.[6] That rule, referred to as the ''Classifications Rule,'' also addressed the revocation of the 1997 ozone NAAQS for purposes related to transportation conformity, and reclassification for certain areas in California. Today's proposed rule, referred to as the ''SIP Requirements Rule,'' addresses a range of additional issues important for implementing the 2008 ozone NAAQS.

In this action, the EPA proposes a rule to address the steps states will take to implement the 2008 ozone NAAQS and the timing of those steps. In accordance with Executive Order (EO) 13563 titled, ''Improving Regulation and Regulatory Review,'' signed by President Barack Obama on January 18, 2011, which directs governmental agencies to offer and support flexible, common sense approaches, this proposed SIP Requirements Rule is intended to provide the health and environmental protections required under the CAA while maximizing flexibility and minimizing burden for states, who are the primary implementing agencies.

Achieving the health benefits required by the CAA will require the combined efforts of federal, state, local, and in some cases tribal governments, each accomplishing the tasks for which it is best suited. For the EPA, that means adopting national standards where it makes sense to do so, such as standards to reduce emissions from sectors that are of national concern, such as mobile sources and many types of industries. It also means providing as much assistance and flexibility as possible to the states as they work to develop and implement their attainment plans. In addition, we are mindful that the requirement to implement the 2008 ozone NAAQS comes at a time when many states are facing substantial resource challenges. The EPA is committed to working in partnership with states and other stakeholders to share the burden of implementing the 2008 ozone NAAQS by promulgating a number of national regulations that will provide significant reductions in ozone precursors.

In this preamble, we lay out proposed expectations and requirements for implementation of the 2008 ozone NAAQS. As we have considered the elements of implementation of the NAAQS required under the CAA, it has been our goal to propose approaches that provide flexibility and opportunities for efficiency, without jeopardizing expeditious attainment of the public health and welfare goals, and to identify the ways in which the EPA will provide assistance to the states. We invite comment on any and all aspects of this proposed rule, and encourage suggestions that will increase implementation efficiency, allow the most effective pollution control programs to be implemented and identify additional ways in which the EPA can assist the states to reach attainment within the legal framework of the CAA.

The CAA was amended in 1990 to add specific provisions that apply to ozone nonattainment areas. These include timelines for both planning and implementation, and numerous mandates for specific programs to reduce emissions. Since that time, the EPA, states and others have gained a great deal of scientific knowledge and increased understanding of issues related to ozone formation and control. Specifically, we know more about how NO_X and VOC interact to form ozone and we have better models for evaluating control strategies. This better understanding allows for more strategic approaches in which public health can serve as the key factor in prioritizing control measures. We also have a better appreciation for the role of interstate transport of ozone, international transport of pollutants and background levels of ozone. In the past 20 years, technology has evolved substantially, particularly with respect to mobile sources, with the result that some of the very specific programs mandated for ozone nonattainment areas, such as Stage II Vapor Recovery and vehicle I/M programs, may not provide the benefits they did originally because the problems that they were designed to address have been largely solved in other ways or technology advances make them no longer relevant. New and creative emission reduction approaches, such as energy efficiency and land use programs, are now being explored that have great promise for improved air quality and other benefits, but may not fit easily into the timelines of the CAA or the EPA's traditional expectations for SIPs. Other innovative approaches, such as I/M programs built around next generation testing technologies like onboard diagnostics (OBD), are available now and the EPA will work with states interested in adopting such programs to ensure their effective implementation.

The EPA has explored a number of approaches to address the issues discussed above and has identified

[1] 73 FR 16436.

[2] For a detailed explanation of the calculation of the 3-year 8-hour average, *see* 40 CFR part 50, Appendix I.

[3] *http://yosemite.epa.gov/opa/admpress.nsf/0/85F90B7711ACB0C885257763300617D0D.*

[4] Memorandum from Cass R. Sunstein to the former EPA Administrator Lisa Jackson, September 2, 2011.

[5] The EPA designated 46 areas as nonattainment for the 2008 ozone NAAQS.

[6] 77 FR 30160, May 21, 2012.

several ways to achieve emission reductions through national/regional standards and provide states flexibility and assistance in meeting the CAA requirements to increase implementation efficiency while still ensuring the public health and welfare protection achieved by meeting the ozone NAAQS. In subsequent sections of this preamble, we lay out our proposed approaches, but here are a few examples:

1. *Federal control measures:* States can rely on emission reductions from federal control measures to help areas attain the 2008 ozone NAAQS or to meet other SIP-related objectives, as long as the federal measures achieve their reductions prior to the relevant SIP-related deadlines. Promulgated and planned federal rules include, but are not limited to: (1) Tier 3 emissions standards for on-road motor vehicles;[7] (2) Maximum Achievable Control Technology (MACT) rules that address hazardous air pollutants (HAPs) that are also VOCs, such as rules associated with oil and gas development, internal combustion engines, incinerators, boilers and cement kilns; and (3) consumer product rules. The emission reductions achieved by these federal rules will reduce the amount of emission reductions individual states will need to achieve through state and local regulations in order for areas to attain the 2008 ozone NAAQS.

2. *Stage II Vapor Recovery:* In a separate **Federal Register** notice (77 FR 28772; May 16, 2012), the EPA determined that onboard refueling vapor recovery was in widespread use throughout the country and, as a result, the EPA exercised its authority under the CAA to waive the mandatory section 182(b)(3) stage II vapor recovery requirement. This waiver allows states, if they determine it appropriate, to discontinue the requirement for gasoline dispensing facilities (GDFs) in Serious and above nonattainment areas to install and operate Stage II vapor recovery systems, and the requirement for states to inspect such systems, resulting in cost savings for both the states and the owners and operators of GDFs.

3. *Attainment demonstrations:* The EPA is investigating opportunities for easing the burden on states to conduct air quality modeling to demonstrate attainment, particularly for nonattainment areas initially classified as Moderate or reclassified to Moderate for the 2008 ozone NAAQS. The EPA is exploring options such as making available various emissions, meteorological and boundary conditions inputs, and national scale modeling results that were generated in support of EPA rules, that states could reference as part of their attainment demonstrations.

4. *Innovative and creative approaches:* EO 13563 specifically requires agencies to ''seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.'' The EPA is encouraging innovative and creative approaches to reducing emissions such as improvements in energy efficiency and land use programs, especially since many of the more traditional control measures have already been implemented in many areas. The EPA is committed to working in partnership with states to facilitate the incorporation of such approaches into SIPs. Energy efficiency, renewable energy programs, land use planning and travel efficiency are discussed in more detail in section III.O of this preamble.

5. *Updated information:* The EPA will continue to assist states' implementation efforts by offering a variety of new compilations of information that will be useful to all states. In 2012, the EPA issued an updated ''Menu of Control Measures'' document which includes information on NO_X and VOC control measures, including efficiencies and costs, for a range of source categories. This menu of measures is located at *http://www.epa.gov/airquality/ozonepollution/SIPToolkit/*. In addition, the EPA developed a Web site with information on existing local ozone reduction measures (e.g., ozone action days, ridesharing programs) and a forum for the exchange of ideas about potential state and local measures. This control measure Web site is located at *http://www.epa.gov/airquality/ozonestrategy/*. General information about SIP implementation requirements is located at *http://www.epa.gov/air/ozonepollution/implement.html*. Specific information regarding SIP submittal and approval status is located at *http://www.epa.gov/airquality/urbanair/sipstatus/*.

6. *Emissions offset relief in Economic Development Zones:* The EPA will work with states to identify areas within nonattainment areas as zones to which economic development should be targeted. In these zones, the CAA allows new or modified major sources seeking permits to meet emissions growth offset requirements by drawing from a pool of growth allowances established by the state. This will help ensure clean air requirements can be met in a way that is consistent with economic development in low-employment areas and other areas in need of job growth.

7. *Rural transport areas:* Section 182(h) of the CAA provides a ''rural transport'' classification for ozone nonattainment areas that are rural in nature and can demonstrate that sources in the area do not make a significant contribution to ozone concentrations measured in the area or in other areas. These areas are subject to Marginal area requirements, regardless of the area's classification under section 181(a), in recognition of that fact.

8. *RFP requirements:* The EPA is proposing to provide nonattainment areas classified as Moderate and above the flexibility in certain situations to substitute NO_X reductions for VOC reductions in their 15 percent RFP plans. We believe that, given the improved scientific understanding of the formation of ozone, it makes sense, wherever possible, to allow states to credit toward the RFP requirement those reductions that an area most needs to reach attainment.

9. *Combining submittals:* The EPA is proposing, as an option, to allow states to combine SIP submittals where they believe it will reduce administrative burdens, and to adjust timeframes to provide more time for states to conduct some of the necessary rulemaking or program development activities without compromising expeditious progress towards and attainment of the standards.

10. *Encouraging early reductions:* Under the ''Ozone Advance'' program, the EPA is working with states, tribes and local governments to ensure they are aware of the advantages of early action and to provide assistance in taking steps to achieve emission reductions in ozone attainment areas and participating Marginal nonattainment areas. Early reductions may help these areas maintain the 2008 ozone NAAQS. The EPA believes there are significant advantages for states, tribes and local governments to take steps to reduce emissions as early as possible. Early reductions can help to maintain or improve existing air quality, which in turn can help to ensure continued health protection and keep an area in attainment or, if eventually designated as nonattainment under a future ozone NAAQS, help bring the area back into attainment. In addition, efforts to improve local air quality can establish working relationships between

[7] In addition to the planned Tier 3 emission standards, other new and existing mobile source regulations addressing emissions from new heavy-duty vehicles, non-road equipment and engines, locomotives, marine engines and ocean-going vessels will continue to provide additional emissions reductions as the current fleets are replaced with vehicles, equipment and engines that are certified to more stringent emissions standards or engines are re-built to comply with any applicable requirements.

key stakeholders that can help achieve emission reductions quickly and in ways that make the most sense to the particular community.

The EPA will work closely with states and tribes to provide assistance and flexibility in implementing the 2008 ozone NAAQS consistent with the implementation approaches that are adopted in the final implementation rule. The EPA solicits comment on other suggestions commenters may have for this implementation rule that are consistent with the CAA and provide flexibility to the states for common sense implementation that will provide for timely progress towards attainment of the 2008 ozone standard.

C. History of Implementation Rules for the 1997 Ozone NAAQS

In 2004 and 2005, the EPA promulgated regulations codified in 40 CFR part 51, subpart X, addressing implementation of the 1997 8-hour ozone NAAQS, revocation of the 1979 1-hour ozone NAAQS, and the anti-backsliding requirements that continued to apply for the revoked 1979 standard. *See* **Federal Register** publications at 69 FR 23951, April 30, 2004 (the ''Phase 1'' Rule) and 70 FR 71612, November 29, 2005 (the ''Phase 2'' Rule). The EPA received several petitions for reconsideration and several parties submitted petitions for judicial review of those rules. The EPA granted reconsideration of several issues and took final action on those issues. Challenges to those reconsideration actions were consolidated with the challenges to the Phase 1 and Phase 2 Rules. The court upheld portions of the Phase 1 Rule but vacated limited portions concerning the classification of areas under subpart 1 of part D of title I of the CAA and the failure to include three anti-backsliding requirements associated with the revoked 1-hour ozone NAAQS. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) (*South Coast*). Although the court upheld only limited challenges, it seemed to vacate the Phase 1 Rule in its entirety. The EPA requested rehearing and clarification of the ruling, and on June 8, 2007, the court clarified that it vacated the rule only to the extent that it had upheld petitioners' challenges. *South Coast Air Quality Management District, et al.,* v. *EPA,* 489 F.3d 1245 (D.C. Cir. 2007). Thus, only the following provisions of the Phase 1 Rule were vacated: The provisions that classified some 1997 8-hour ozone nonattainment areas under subpart 1, part D, title I of the CAA; and the provisions that did not retain three anti-backsliding obligations associated with the revoked 1-hour ozone NAAQS: nonattainment NSR, section 185 penalty fees and contingency measures for failure to attain or to make reasonable progress toward attainment.[8] The EPA finalized action to re-address the vacated subpart 1 classifications and contingency measures provisions of the Phase 1 Rule. 77 FR 28424, May 14, 2012. The EPA proposed action to re-address the vacated nonattainment NSR provision. 75 FR 51960 (August 24, 2010). We are re-addressing the anti-backsliding requirements for the section 185 fee program for the revoked 1-hour ozone NAAQS and re-proposing further action on the NSR anti-backsliding issues as part of this proposal.

In the litigation on the Phase 2 Rule, the EPA requested and the court granted a remand of the provision that allowed emission reductions from outside a nonattainment area to be credited toward the RFP requirement for that area, so that the EPA could reconsider that provision in light of the EPA's different treatment of such reductions under the fine particle ($PM_{2.5}$) implementation rule (72 FR 20586, April 25, 2007). The EPA then issued a revised rule requiring that states include in their baseline all emissions within any area outside of the nonattainment area from which reductions are being credited for rate of progress (ROP) purposes (74 FR 40074, August 11, 2009). On May 13, 2010, the EPA granted a petition for reconsideration of this provision in light of the NO_X SIP Call/RACT court decision described below. We proposed a rule to address this reconsideration as it relates to the 1997 ozone NAAQS (75 FR 80420, December 22, 2010), and we discuss this issue in more detail as it relates to the 2008 ozone NAAQS in section III.C.4 of this preamble.

On July 10, 2009, the court issued its ruling on the remaining challenged provisions pertaining to the Phase 2 Rule. *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009). The court upheld the Phase 2 Rule in large part, finding most of the challenged provisions to be reasonable interpretations consistent with the statutory mandates in the CAA. The court, however, granted the petitions for review on limited issues. It remanded the EPA's determination that compliance with the NO_X SIP Call regional cap-and-trade program would satisfy the area-specific RACT requirement. It also remanded the revisions made to the requirements for NSR offsets in certain areas and vacated the extension of an NSR waiver provision beyond the previous 18-month time limit. The effect of the vacatur of the 18-month time limit is discussed in section III.I of this preamble.

A listing of the relevant rulemakings concerning implementation of the 1997 ozone NAAQS appears in Appendix B of this preamble.

D. Section 110 SIP Requirements

CAA section 110(a) imposes an obligation upon states to make a SIP submission with respect to the 2008 8-hour ozone NAAQS. CAA section 110(a)(1) requires states to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of the new or revised NAAQS, or within such shorter period as the EPA may prescribe.[9] Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP submission as the ''infrastructure'' SIP. The requirements for infrastructure SIPs include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The contents of that submission may vary depending upon the facts and circumstances. In particular, the content of such a SIP submission may vary depending upon what provisions the state's existing SIP already contains. Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1). This includes SIP submissions incorporating necessary local nonattainment area requirements, which are due pursuant to the schedule in section 182.[10] The

[8] The court's June 8, 2007, clarification also confirmed that the December 22, 2006, decision did not establish a requirement that areas continue to demonstrate conformity for the 1-hour ozone NAAQS for anti-backsliding purposes.

[9] The EPA did not prescribe a shorter period for the 2008 8-hour ozone NAAQS; thus, the SIP submission was due March 12, 2011.

[10] Nonattainment area plans required by part D title I of the CAA for the 2008 8-hour ozone NAAQS are due by various dates as established throughout subpart 2 of part D, i.e., reasonably available control measures are due in 2 years under 182(b)(2), reasonable further progress plans and attainment plans for Moderate areas are due in 3 years under 182(b)(1), and attainment demonstrations for Serious and above areas are due in 4 years under 182(c)(2). The EPA has in the past interpreted these dates to run from the effective dates of the nonattainment designations, *see* 68 FR 32802, 32816–817 (June 2, 2003) (''subpart 2 SIP submittals will be due as a general matter by the same period of time after designation and classification under the 8-hour standard as provided in subpart 2 for areas designated and classified at the time of enactment of the 1990 CAA.'') The designations for the 2008 ozone standard were effective on July 20, 2012. *See* 77 FR 30088 (May 21, 2012) and 77 FR

two section 110 SIP elements not governed by the 3-year submission deadline are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a nonattainment area new source review permit program for major sources as required in part D of title I of the CAA; and (ii) submissions required by section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D of title I of the CAA. The EPA also notes that the D.C. Circuit's recent opinion in *EME Homer City Generation* v. *EPA,* 696 F.3d 7, 31 (D.C. Cir. 2012) concluded that a SIP cannot be deemed to lack a required submission or deemed deficient for failure to meet the 110(a)(2)(D)(i)(I) obligation until after the EPA quantifies that obligation.

In the case of the 2008 8-hour ozone NAAQS, the period during which the EPA was making efforts to reconsider the 2008 NAAQS with the expectation of revising it in the near term extended about 6 months beyond March 12, 2011, the normal deadline for submission of infrastructure SIPs. The EPA therefore did not prepare and issue timely guidance for the states to assist them in preparing their submissions. Also, states were given the impression that if the NAAQS were revised as a result of the reconsideration, the 3-year deadline would reset. However, despite the reconsideration process, March 12, 2011, remained the legally applicable deadline for infrastructure SIPs for the 2008 8-hour ozone NAAQS. The EPA recently responded to a court order requiring the EPA to make findings of failure to submit for certain infrastructure SIPs that had not been found complete by March 12, 2011.[11]

The EPA recognizes that many states are affected by transported ozone and ozone precursors from upwind states, and that transported pollution may contribute significantly to air pollution that exceeds the NAAQS in those states. The CAA establishes states' responsibilities to address interstate transport through two provisions: section 110(a)(2)(D) (specifying certain of the requirements for the ''infrastructure'' SIPs) and section 126 (requiring notification to downwind states of planned new or modified sources and providing a petition process through which downwind jurisdictions can seek to have specific sources of transported pollution addressed). This proposed implementation rule, which deals with the required SIP elements for areas designated as nonattainment for the 2008 ozone NAAQS, does not address states' obligations under the CAA to reduce transported pollution. Although, as noted elsewhere in this notice, the EPA intends to issue a guidance memorandum on the required elements of the section 110 infrastructure SIP submittal for the 2008 ozone NAAQS, that memorandum also would not contain guidance on how to meet the requirements of section 110(a)(2)(D)(i)(I), which deals with air pollutant emissions within a state that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in a downwind state.

E. Part D Nonattainment Area SIP Requirements

In addition to the obligation to submit required section 110 infrastructure SIPs within 3 years of promulgation of a new or revised NAAQS, states with designated nonattainment areas also have the obligation to submit SIPs designed to bring those areas into attainment. SIP requirements applicable to nonattainment areas are found in part D of title I of the CAA. Subpart 1 of part D discusses general requirements for nonattainment areas, including the requirement that states adopt and submit for the EPA's approval detailed SIPs that bring the area into attainment.

Subpart 2 of part D contains additional provisions specifically applicable to ozone nonattainment areas. Subpart 2 includes CAA sections 181 through 185B. Section 181 of subpart 2 creates a framework for classifying ozone nonattainment areas into five classification categories based on the severity of their ozone air quality problems.

Section 181(a) includes attainment deadlines for each classification category in relation to the time the area is designated nonattainment: Marginal areas are required to attain within 3 years of designation; Moderate areas—within 6 years; Serious areas—within 9 years; Severe-15 areas—within 15 years; Severe-17 areas—within 17 years; and Extreme areas—within 20 years.[12] Section 182 of subpart 2 outlines SIP requirements applicable to ozone nonattainment areas in each classification category. In general, under the framework established by subpart 2, areas classified in higher nonattainment categories are provided with more time to attain the ozone NAAQS but are also subject to more extensive planning and control obligations.

Where the Classifications Rule primarily dealt with issues related to CAA section 181, this rule addresses issues related to CAA sections 182 through 185B. Subpart 2 is the focus of much of the discussion of this rule. When a topic is discussed that is not covered by subpart 2, reference will be made to the more general subpart 1 requirements found in CAA sections 171 through 179B, or to other sections of the CAA, as appropriate. As discussed in section II.D of this proposal, section 110(a) infrastructure SIPs will be the topic of a separate guidance document.

III. What are the state implementation plan requirements for the 2008 ozone NAAQS?

A. What is the deadline for submitting nonattainment area SIP elements due under CAA section 182 for the 2008 ozone NAAQS?

Section 182 of the CAA requires states with ozone nonattainment areas to submit various SIP elements within specified time periods after enactment of the CAA Amendments of 1990: (1) An emission inventory for the nonattainment area within 24 months (section 182(a)(1)); (2) a RACT SIP within 24 months (section 182(b)(2)); (3) a 15 percent RFP plan for Moderate and above areas within 3 years (section 182(b)(1)); (4) an attainment plan for Moderate areas within 3 years (section 182(b)(1)); (5) an attainment plan and demonstration for Serious and above areas within 4 years (section 182(c)(2)); and (6) a 3 percent per year RFP plan for Serious and above areas within 4 years (section 182(c)(2)).

In the Phase 2 Rule, we interpreted the SIP submittal time periods in section 182 to run from the effective date of designation and classification for the 1997 ozone NAAQS. *See* 70 FR 71670. However, with regard to attainment demonstrations for Serious and above areas, we provided 3 years, instead of 4 years, to submit an attainment demonstration. Specifically, we promulgated 40 CFR 51.908(a) which required all areas classified Moderate or higher to submit attainment demonstrations based on photochemical grid modeling no later than 3 years after the area's designation for the 1997 8-hour ozone NAAQS. We explained that at the time of the 1990 Amendments, Congress required Serious and above areas to base their attainment demonstrations on photochemical grid modeling, which at that time was a relatively new modeling

34221 (June 11, 2012). In this notice, the EPA is proposing two options for SIP submittal dates for the 2008 ozone NAAQS. *See* section III.A.

[11] *See* 78 FR 2882, January 15, 2013.

[12] Attainment deadlines for the 2008 ozone NAAQS were established in the Classifications Rule, 77 FR 30160, May 21, 2012.

technique. Congress then gave those areas 4 years to submit an attainment demonstration. In the Phase 2 rulemaking, we determined that photochemical grid modeling should be required for Moderate areas as well as for Serious and above areas, and we explained that the technique was no longer new and that areas did not need 4 years to submit an attainment demonstration based on such modeling. The policy reasons that existed at the time the Phase 2 rule was developed, specifically, the need for timing consistency between subpart 1 and subpart 2 areas within the same region, the timing of the large-scale transport modeling underway at the time, and the option of coordinated planning with the similarly timed $PM_{2.5}$ SIPs, are not circumstances faced today by the Serious and higher areas.

For purposes of the 2008 ozone NAAQS, the EPA proposes in the alternative the following two approaches regarding the deadlines for submitting the various elements of the state implementation plan.

Period of time provided by the statute. Section 182 of the CAA specifies a time period, running from the date of enactment of the 1990 CAA Amendments, for states to submit each required element of the state implementation plan for nonattainment areas. Under this first alternative, the EPA is proposing that the time period specified in section 182 for the submission of each required element (*i.e.,* 2 years for emission inventories and RACT SIPs, 3 years for 15 percent RFP plans and Moderate area attainment demonstrations and 4 years for 3 percent per year [13] RFP plans and attainment demonstrations from Serious and higher areas), as described above, would apply and that such time periods would run from the effective date of an area's designation for the 2008 ozone NAAQS. *State's choice: consolidated SIP submittal due 30 months after designation, or period of time provided by the statute.* The EPA's second alternative, which is our preferred alternative, is for the state to have the choice of meeting the statutory deadline for each required SIP element as set out in section 182, or following a consolidated submittal approach. Under the consolidated approach, all of the required SIP elements for a nonattainment area would be submitted at one time, no later than 30 months after the effective date of the area's designation for the 2008 ozone NAAQS. The consolidated approach represents a more expeditious schedule for areas to submit attainment demonstrations and RFP SIPs for the 2008 ozone NAAQS, but it provides slightly more time for submittal of emission inventories and RACT SIPs. We are proposing under this alternative that a state can choose, for a particular nonattainment area, to submit all SIP elements required under section 182 no later than 30 months after the effective date of designation; or the state can choose to submit all SIP elements in accordance with the time provided by the statute. As part of this alternative proposal, a state with more than one nonattainment area can select the option that is most preferable for each area. This alternative proposal applies only to areas designated Moderate and above for the 2008 ozone NAAQS.

The consolidated approach may be preferable for some states because it would allow them to undertake a more coordinated and less burdensome planning process, including only having one period for public review and opportunity for public hearing for all the SIP elements involved. (Note that all states that include part of a multi-state nonattainment area would need to consult with each other and adopt the same SIP submittal deadline(s) with respect to the entire multi-state area.) Moreover, we believe that the 30-month timeframe would be reasonable for many areas. Those states with areas currently classified as Moderate and above for the 2008 ozone NAAQS have significant experience preparing modeled attainment demonstrations and many are participating in ongoing modeling with nearby states to address regional ozone issues. Thus, for some areas it may be less burdensome to submit all ozone SIP elements concurrently within 30 months of designation. We note that an added benefit of earlier completion of the attainment planning process is that it provides states and sources with additional time to implement the measures adopted as part of the RFP plan and attainment demonstration.[14] This is particularly critical for Moderate areas, which have only 6 years to attain the standard. The EPA designated most areas on April 30, 2012, with an effective date 60 days after publication in the **Federal Register**. Thus, attainment demonstrations would be due under this option for most areas by January 2015, prior to the beginning of the 2015 ozone season. The EPA believes that the later due date for emission inventories and RACT SIPs under this option would provide for a *de minimis* delay. Implementation of the RACT requirements would still occur on the schedule established by CAA section 182(b)(2)(C). From an accountability standpoint, if the 30 months elapse with no SIP submittal from the state, the EPA will assume by default that the state has chosen to take the amount of time allowed by the statute for the attainment plan and demonstration, and is late with the RACT and emissions inventory SIP and thus potentially subject to a finding of failure to submit.

B. What are the requirements for modeling and attainment demonstration SIPs?

An attainment demonstration consists of: (1) Technical analyses, such as base year and future year modeling, to locate and identify sources of emissions that are contributing to violations of the 2008 ozone NAAQS within the nonattainment area (i.e., analyses related to the emissions inventory for the nonattainment area and the emission reductions necessary to attain the standard); (2) a list of adopted measures (including RACT controls) with schedules for implementation and other means and techniques necessary and appropriate for demonstrating RFP and attainment as expeditiously as practicable but no later than the outside attainment date for the area's classification; (3) a RACM analysis; and 4) contingency measures required under section 172(c)(9) of the CAA that can be implemented without further action by the state or the Administrator to cover emissions shortfalls in RFP plans and failures to attain. Penalty fee programs for failure to attain in Severe and Extreme areas are also associated with or are part of the attainment demonstration and are addressed in other sections of this proposal.

1. Marginal Areas

Under section 182(a), Marginal areas have up to 3 years from designation to attain the NAAQS, and are not required to submit an attainment demonstration. When Congress amended the CAA in 1990, it anticipated that nonattainment areas with ozone concentrations close to the level of the NAAQS would likely come into attainment within 3 years after designation as nonattainment without any additional local planning.

Although states are not required to develop attainment demonstrations for

[13] Typically submitted in 3-year increments, thus as 9 percent RFP plans that produce average reductions of 3 percent per year.

[14] Emission reductions resulting from implementation of RACT, RFP and other state and federal requirements may, in some cases, not be sufficient to demonstrate attainment. States are responsible for adopting any additional measures needed to attain the NAAQS. These additional measures would be submitted by the state as part of the attainment plan and demonstration.

Marginal areas, there may be modeling completed by the EPA or other state organizations which may provide useful information regarding whether Marginal areas may be expected to attain by their attainment dates. For example, as part of the Cross State Air Pollution Rule (CSAPR), the EPA modeled the expected improvements in air quality from existing federal, state and local controls. We encourage states to use available modeling information to examine the likelihood of whether a Marginal area would attain within 3 years.

Where such modeling indicates that a Marginal area is unlikely to attain the standard by its attainment date without the implementation of additional controls, we strongly encourage states or local agencies to work to get the necessary emission reduction measures in place in order to meet the ozone NAAQS within the 3-year timeframe. Marginal areas that do not attain the standard by the required date are required to be reclassified (or ''bumped up'') to the Moderate classification, which would require the application of mandatory planning and control requirements. If it is not possible to implement sufficient additional controls for a Marginal area to attain by the 3-year maximum attainment date, states may wish to consider voluntarily requesting reclassification to the Moderate classification. The EPA intends to offer assistance to the states as they consider the most appropriate course of action for Marginal areas that may be at risk of failing to meet the NAAQS within the applicable 3 year timeframe: whether to adopt additional controls or seek a voluntary reclassification to the next higher category. Early reclassification would provide more time for adopting and implementing the control measures needed for attainment by the Moderate area attainment date than the area would have if it is reclassified after it fails to attain within 3 years of designation. If an area is reclassified based on an EPA determination that the area failed to attain by its attainment date, the state would likely have only 18 to 24 months to adopt and implement controls by the beginning of the final full ozone season before the Moderate area deadline because the statute requires areas to attain by the latest acceptable attainment date for any classification regardless of when the area is reclassified.

2. Moderate Areas

Section 182(b)(1)(A) requires states with Moderate (and higher classified) ozone nonattainment areas to develop an attainment demonstration that provides for reductions in VOC and NO_X emissions ''as necessary to attain the national primary ambient air quality standard for ozone.'' Although not specifically required by the statute, in the Phase 1 Rule for the 1997 ozone NAAQS, the EPA required states with Moderate and above areas to submit photochemical grid modeling or another equivalent analytical method to satisfy the attainment demonstration requirement for each area, which is the CAA requirement that applies for Serious and above areas (CAA section 182(c)(2)(A)). The EPA explained that it was reasonable to do so because this modeling was generally available and reasonable to employ. The EPA is proposing to continue to require states with an area classified as Moderate to submit an attainment demonstration based on photochemical modeling or another equivalent analytical method that is determined to be at least as effective, as is required under the Act for Serious and above areas and multi-state nonattainment areas.[15]

This requirement explicitly allows for alternative analytical methods to be substituted for or used to supplement a photochemical modeling-based assessment of an emissions control strategy. Any alternative analysis should be based on technically credible methods and provide for the timely submittal of the attainment demonstration and implementation of SIP controls. States should review the EPA modeling guidance and consult their appropriate EPA regional office before proceeding with alternative analyses.

3. Serious and Above Areas

For Serious and higher-classified areas, we continue to believe that photochemical modeling is the most technically credible method of estimating future year ozone concentrations based on projected VOC and NO_X precursor emissions. States with areas classified as Serious and higher must submit an attainment demonstration based on photochemical modeling or an alternative analytical method determined by the Administrator to be at least as effective.

4. What guidance is there for using models to demonstrate attainment?

The procedures for modeling ozone as part of an attainment demonstration are well developed and described in the EPA's ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5,}$ and Regional Haze.'' [16] This guidance document, as it currently exists, can be used by states developing attainment demonstration SIPs for the 2008 ozone NAAQS. The EPA is considering updates to the guidance to address ozone modeling for the 2008 ozone NAAQS. We will issue any updates as needed.

All photochemical modeling in support of an attainment demonstration should be consistent with the EPA's ozone modeling guidance. States with areas that were nonattainment for the 1997 ozone NAAQS or are nonattainment today have invested considerable resources in local and/or regional ozone modeling analyses. We encourage states to work together to leverage the work and resources from these existing analyses, as well as to develop new analyses for the 2008 ozone NAAQS as appropriate. The application of air quality models requires a substantial effort by state agencies and the EPA. Therefore, in order to maximize efficient use of time and resources, states should work closely with the appropriate EPA regional offices in executing each step of the modeling process. Coordination with the EPA during the modeling process will help increase the likelihood that the EPA will be able to approve the modeling-based attainment demonstration.

5. High Electricity Demand Days (HEDD)

The current modeling guidance addresses, among many other considerations, episode selection and accounting for potentially higher VOC and/or NO_X emissions during high energy demand periods. A study has identified high NO_X emissions from electric generating units (EGUs) in the Northeast Corridor on summer days when demand for electricity is high [17] and has labeled these days as ''High Electricity Demand Days'' (HEDD). This study indicates that NO_X emissions from EGUs during periods of high electricity demand in the Northeast may be significantly greater than emissions that occur on an average summer day. This spike in NO_X emissions is due to increased power demand on hot summer days to meet air conditioning

[15] State plans for single nonattainment areas that include more than one state (multi-state nonattainment areas) are also required to have photochemical modeling (*see* CAA section 182(j)(1)(B)).

[16] The modeling guidance can be found at the following Web site: *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf.*

[17] ''High Electric Demand Day and Air Quality in the Northeast.'' White Paper Prepared by the Northeast States for Coordinated Air Use Management. June 5, 2006. Available at: *http://www.nescaum.org/.*

and other electric power needs. High electricity demand days require production of additional power from load-following EGUs and/or peaking unit EGUs, which are less frequently used compared to base-load EGUs. In the Northeast Corridor, these units have tended to be less well controlled than base-load EGUs.

High energy demand summer days tend to coincide with ozone episodes, which may be in part due to the fact that NO_X emissions on these days can greatly exceed average summer day NO_X emissions from electric power generation. There has been some study of control measures to reduce NO_X emissions on HEDDs.[18]

Since NO_X emissions from electric power generation are a significant contributor to the total NO_X emissions for many ozone nonattainment areas, states that experience this phenomenon should be careful to fully account for it by ensuring that these emissions are included in photochemical modeling of episode days on which the phenomenon occurs. In order to properly account for HEDD emissions, careful attention should be paid to the temporalization of emissions to the specific day and hour of the day when these emissions occur. We note that the current modeling guidance [19] already addresses episode selection and development of accurate emissions input information during peak ozone periods. We will consider whether additional updates to the modeling guidance are needed to address modeling of the HEDD phenomenon.

6. Modeled Attainment Test

Models are used to test whether control measures to be adopted in the SIP are likely to result in attainment of the standard. The modeled attainment test for the ozone NAAQS under the EPA's guidance uses a combination of ambient ozone data and modeled ozone concentrations to estimate future year air quality. The attainment test is applied at each monitor location within or near a designated nonattainment area. Models are used in a relative sense to estimate the response of measured air quality to future changes in emissions. Future air quality is estimated by multiplying recent monitored values by the modeled relative response to projected future changes in emissions.[20] The EPA additionally recommends application of an attainment test to be performed in unmonitored areas. The recommended attainment test methodology for unmonitored areas has been used in recent 8-hour ozone SIPs developed for the 1997 ozone NAAQS. To make it easier for states to apply the attainment tests, both the monitor-based test and the unmonitored area test have been incorporated in a software package called the ''Modeled Attainment Test Software'' (MATS). The MATS is available for no charge at: *http://www.epa.gov/scram001/modelingapps_mats.htm.*

7. What future year(s) should be modeled in attainment demonstrations?

The future modeling year should be selected such that all emissions control measures relied on for attainment will have been implemented by that year. Note that for purposes of the 1997 ozone NAAQS and as we are proposing here for the 2008 ozone NAAQS, control measures relied upon to demonstrate attainment should be implemented by the beginning of the last full ozone season prior to the area's attainment date. To demonstrate attainment, the modeling results for the nonattainment area must predict that emissions reductions implemented by the beginning of the last full ozone season preceding the attainment date will result in ozone concentrations that meet the level of the standard.[21] Because an area must attain ''as expeditiously as practicable,'' additional considerations are necessary before a future modeling year can be established. For example, although the maximum attainment date for a Moderate area designated in 2012 would be December 31, 2018, under the 2008 ozone NAAQS Classifications Rule, the state would need to conduct a RACM analysis (CAA section 172(c)(1)) to determine if it can advance the area's attainment date by at least a year.[22] Results of the RACM analysis may indicate attainment can be achieved earlier (e.g., by December 2016 or December 2017) through implementation of reasonably available control measures prior to the beginning of an earlier ozone season. For instance, if emission reductions sufficient to demonstrate attainment are implemented prior to the 2016 ozone season, then in this example the attainment year and the future projection year should be 2016. We strongly recommend that the state discuss the selection of the future year(s) to model with the appropriate EPA regional office as part of the modeling protocol development process.

8. Multi-State Nonattainment Areas

The CAA requirement for multi-state ozone nonattainment areas (CAA section 182(j)) requires each state in which a portion of a multi-state ozone nonattainment area is located to use photochemical grid modeling or any other analytic method determined by the Administrator to be at least as effective and to take all reasonable steps to coordinate, substantively and procedurally, the development, submittal and implementation of SIPs applicable to the various states within the nonattainment area. The EPA interprets CAA section 182(j) to require coordination on all aspects of nonattainment SIPs, including the development of an attainment demonstration.

[18] *See,* e.g., Chris James and Jeremy Fisher, Ph.D. Reducing Emissions in Connecticut on High Electric Demand Days (HEDD): A Report for the CT Department of Environmental Protection and the U.S. Environmental Protection Agency. July 25, 2008. Synapse Energy Economics, Inc. 22 Pearl St., Cambridge, MA 02139.

[19] *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf.*

[20] The EPA's guidance on attainment demonstrations (*Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*, April 2007) recommends that states may supplement the attainment test with other evidence in a ''weight of evidence'' determination of whether the nonattainment area is likely to attain the NAAQS by its deadline. The EPA intends to recommend in a forthcoming update of this guidance that other evidence that can be considered includes recent monitored values that have been adjusted so that they better represent the air quality that would have existed in the absence of any unusual natural or anthropogenic events (if any) that influenced ozone concentrations on the monitored days. The EPA intends to apply certain eligibility conditions to this recommendation. Specifically, the EPA intends to apply an eligibility approach that is like the set of eligibility criteria in the Exceptional Events Rule. However, we will not apply the ''no exceedance but for'' concept that is part of the provision in 50.14(c)(3)(iv)(D) that limits the EPA approvals for data exclusion to situations in which there would have been no exceedance or violation of the NAAQS ''but for'' the event. In this way, the EPA guidance will effectively recommend that states can apply Exceptional Events Rule-like considerations to situations in which an event has exacerbated the level of a NAAQS exceedance (but that did not cause the exceedance in the ''but for'' sense) on historical days that occur during the ambient data base year period that is used in the attainment test to project future air quality. The EPA expects there to be limited situations where this potential adjustment would make a difference between future year estimated attainment and nonattainment. The EPA intends to work with state air agencies in the development of the planned update to our guidance on this topic.

[21] Note that for purposes of the 8-hour ozone NAAQS, a determination of attainment (or failure to attain), which EPA is required to make after the attainment date has passed, is based on the most recent 3 complete years of data prior to the area's attainment date. Attainment date extensions are only available if the 4th maximum 8-hour average ozone concentration in the attainment year is below the level of the standard.

[22] *See* section III.D.2 of this proposal for a discussion of RACM analysis requirements.

C. What are the RFP requirements for the 2008 ozone NAAQS?

1. Background

Areas that are designated nonattainment for ozone must achieve RFP toward attainment of the ozone NAAQS. Part D of the CAA contains three separate provisions regarding RFP. Under subpart 1, section 172(c)(2) contains a general requirement that nonattainment SIPs must provide for reasonable further progress; this provision does not define RFP, but provides authority for the Administrator to do so. Sections 182(b)(1) and 182(c)(2)(B) under subpart 2 contain specific percent reduction targets for ozone nonattainment areas classified as Moderate and above and Serious and above, respectively. For Moderate and above areas, section 182(b)(1) requires a 15 percent reduction in VOC emissions from the baseline anthropogenic emissions over the 6-year period between designation and the Moderate area maximum attainment date. For Serious and above areas, section 182(c)(2)(B) requires an additional 3 percent per year reduction in VOC emissions beginning 6 years after designation until the attainment date.[23] For the additional RFP requirement for Serious and above areas, section 182(c)(2)(B) allows NO_X reductions to be substituted for VOC reductions under certain conditions. Note that the 15 percent requirement must be met by the end of the 6-year period regardless of whether the state attains the NAAQS prior to that point. The 3 percent per year requirement for Serious and above areas runs until the attainment date.

The Phase 2 Rule interpreted the requirements of subpart 2 as they would apply to areas for the 1997 ozone NAAQS. With respect to RFP, the Phase 2 Rule interpreted the section 182(b)(1) 15 percent RFP requirement such that an area that had already met the 15 percent RFP requirement for VOC under the 1-hour ozone NAAQS (for the first 6 years after the RFP baseline year for the 1-hour ozone NAAQS) would not have to fulfill that requirement again. Instead, Moderate areas would be treated like areas covered under section 172(c)(2), and Serious and above areas would be covered under section 182(c)(2)(B). For the purposes of the 1997 ozone NAAQS, the EPA interpreted section 172(c)(2) to require Moderate areas to obtain 15 percent ozone precursor emission reductions over the first 6 years after the baseline year for the 1997 ozone NAAQS, and interpreted section 182(c)(2)(B) to require Serious and above areas to obtain 18 percent ozone precursor emission reductions in that 6 year period. Under the section 172(c)(2) and 182(c)(2)(B) RFP requirements, NO_X emission reductions could be substituted for VOC reductions. This provision of the Phase 2 Rule was upheld in *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009).

2. In general, what is the EPA proposing as the RFP requirements for the 2008 ozone NAAQS?

The EPA is proposing a number of provisions to address issues relevant to implementing RFP under the 2008 ozone NAAQS: (1) The timing for the submission of RFP plans; (2) restrictions on emission reduction measures that can be used to fulfill the RFP requirements under subpart 2; 3) the RFP plan requirements of section 182(b)(1) of the CAA for nonattainment areas classified as Moderate or higher under the 2008 ozone NAAQS for which no portion of such areas previously fulfilled the 15 percent RFP requirement for VOC in section 182(b)(1); (4) the RFP plan requirements for nonattainment areas classified as Moderate or higher under the 2008 ozone NAAQS which consist entirely of former nonattainment areas that under a prior ozone NAAQS fulfilled the 15 percent RFP requirement for VOC in section 182(b)(1); (5) the RFP plan requirements for nonattainment areas classified as Moderate or higher under the 2008 ozone NAAQS which consist partially of former nonattainment areas that under a prior ozone NAAQS fulfilled the 15 percent RFP requirement for VOC in section 182(b)(1); and (6) proposed procedures for calculating RFP targets. Hereafter in the discussion of RFP requirements within this section, when we use the term ''2008 nonattainment area'' we mean ''nonattainment area classified as Moderate or higher under the 2008 ozone NAAQS.''

a. What is the deadline for submitting RFP plans?

As detailed in section III.A of this preamble, the EPA is proposing two options regarding the deadline(s) for submittal of the various SIP elements required for an ozone nonattainment area based on its classification for the 2008 ozone NAAQS. The first option is that the required SIP elements would be due in the time frame provided for such elements in section 182, with the specified time periods running from the effective date of designation for the 2008 ozone NAAQS. Thus, the RFP plan addressing the first 6-year period for Moderate and higher classified areas would be due 3 years from the effective date of designation; and the RFP plan addressing the additional 3 percent per year requirement for Serious and higher classified areas would be due 4 years from the effective date of designation.

The second option is to give states the choice to either submit the various SIP elements required for an area according to the timeframes specified by statute or to submit all of the required SIP elements within 30 months of the effective date of designation for the 2008 ozone NAAQS; in other words, the state would submit one consolidated SIP, including all RFP obligations, no later than 30 months from the effective date of designation. For the same reasons discussed in section III.A of this preamble (related to SIP due dates), the EPA believes that it may be reasonable, and preferred by some states, to allow states to submit the RFP plans within 30 months in conjunction with all other required SIP elements.

We are soliciting comment on options for submission deadlines as listed in this section and section III.A.

b. Restrictions on Emission Reduction Measures That Can Fulfill the RFP Requirement

The CAA places certain restrictions on the emission reductions that are creditable toward meeting the RFP requirements. To be creditable, the reductions must meet the conditions in CAA sections 182(b) and 182(c), including that reductions:

- Must be from measures required in the SIP, in a title V permit, or from rules promulgated by the EPA;
- Must occur during the RFP period;
- May not come from the pre-1990 EPA rules for motor vehicle exhaust and evaporative emissions; and
- May not come from the EPA rules limiting the Reid vapor pressure (RVP) of gasoline that were implemented by 1992.[24]

We are proposing that, except as specifically provided in section 182(b)(1)(D) of the CAA, all SIP-approved or federally promulgated emissions reductions that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements, provided the reductions meet the standard requirements for

[23] CAA section 182(c)(2)(B) states that Serious and above areas must achieve additional reductions of at least 3 percent per year ''averaged over each consecutive 3-year period.'' Thus it is equivalent to a nine percent additional reduction in baseline emissions for each subsequent 3-year period.

[24] CAA section 182(b)(1)(D)(ii) states that ''Regulations concerning Reid vapor pressure promulgated by the Administrator by November 15, 1990, or required to be promulgated under section 7545(h) of this title'' are not creditable toward required RFP reductions.

creditability.[25] That is, to receive SIP credit, the reductions must be enforceable, quantifiable, permanent and surplus. We promulgated a regulatory provision adopting this same interpretation for purposes of implementing the 1997 ozone NAAQS. *See* 40 CFR 51.910(a)(2). CAA section 182(b)(1)(D) imposes limitations on specific measures for which states may take credit for RFP reductions required under CAA sections 182(b)(1) and 182(c)(2)(B).

We are also proposing that all emission reductions creditable toward meeting RFP requirements must be from sources located within the nonattainment area. Section C.4 below discusses this issue in further detail.

c. What are the RFP plan requirements for 2008 ozone nonattainment areas for which no portion of the area has previously been required to meet the 15 percent RFP requirement for VOC in section 182(b)(1) of the CAA?

Section 182(b)(1) of the CAA requires ozone nonattainment areas classified as Moderate or higher to submit a RFP plan to achieve a 15 percent reduction in VOC baseline emissions over a 6-year period following the baseline year. If the area is classified Serious or higher, section 182(c)(2)(B) of the CAA requires an additional RFP plan to achieve an average of 3 percent additional emissions reductions per year for each subsequent 3-year period after the conclusion of the initial 6-year RFP period specified by section 182(b)(1).

We are proposing that the RFP plan for a 2008 nonattainment area must provide for a 15 percent reduction in VOC emissions from the baseline emissions in the 6 years following the baseline emissions inventory year if no portion of that 2008 nonattainment area has already fulfilled the 15 percent RFP plan requirement for VOC.[26] If such 2008 nonattainment area is classified as Serious or higher, the RFP plan for that 2008 nonattainment area must in addition achieve an average of three percent additional emissions reductions per year for each subsequent 3-year period after the conclusion of the initial 6-year period specified by section 182(b)(1). We promulgated a similar regulatory provision adopting this interpretation for purposes of implementing the 1997 ozone NAAQS. *See* 40 CFR 51.910(a)(1)(i).

In the alternative, we are proposing to allow an area to meet the 15 percent RFP requirement in whole or in part with NO_X reductions in lieu of VOC reductions if that area can demonstrate that it has in fact achieved a 15 percent reduction in VOC emissions from a 1990 baseline. There are two reasons that we believe it makes sense to allow areas to substitute NO_X for VOC in the 15 percent RFP plans. First, our understanding of the effects of reductions of VOC and NO_X on ambient ozone levels has greatly improved since the 1990 CAA Amendments were enacted, and there are technical tools more readily available to help states predict the combination of VOC and/or NO_X that will be most effective in reducing ozone in a particular area. In many areas we now know that NO_X reductions will have a far greater effect than VOC reductions on reducing ambient ozone concentrations. In fact, in some areas background levels of naturally-occurring VOC are so high that reductions in manmade VOC have limited effect on ozone. Since the purpose of the RFP provisions in section 182 is to foster the achievement of reasonable further progress toward attainment, we believe that it makes the most sense to allow states to credit toward the RFP requirement those reductions that an area most needs to reach attainment. Second, the mix of emissions across the country and in specific areas is very different than it was in 1990 because of emission controls that have gone into effect over the last 20 years. A variety of national and local VOC control measures affecting mobile and stationary sources have already substantially reduced the levels of manmade VOC. Since 1990, the EPA has issued aggressive national rules to reduce tailpipe VOC emissions from on-road vehicles and from non-road engines. The EPA has also reduced evaporative emissions and vehicle refueling emissions through vehicle onboard refueling vapor recovery systems. VOC emissions from most major industrial sectors have also been substantially reduced through controls required to meet relatively stringent standards for hazardous air pollutants. The EPA has also promulgated national rules limiting the VOC content of the most ubiquitous paints/coatings and consumer products. These efforts have substantially reduced the anthropogenic VOC emissions inventory such that additional area-specific VOC reductions will be increasingly difficult to achieve.

As a further alternative, if we do not finalize the proposal above to allow any area to substitute NO_X reductions for VOC reductions where such area can demonstrate that it has achieved a 15 percent reduction in VOC emissions from a 1990 baseline, we are proposing to allow such substitution only for areas located in the Ozone Transport Region (OTR) that would be subject to the 15 percent RFP requirement for the first time as a designated nonattainment area for the 2008 ozone NAAQS. Although attainment areas in the OTR were not required to adopt 15 percent RFP plans under section 184 of the CAA, they were required to adopt certain VOC reduction measures such as enhanced vehicle I/M plans in metropolitan statistical areas (MSAs) with a population of 100,000 or more, and RACT for all sources covered by a control technique guideline (CTG). At the time of the 1990 Amendments it was expected that VOC reductions from those measures would account for a significant portion of the 15 percent RFP requirement for areas designated nonattainment. Thus, since attainment areas in the OTR were required to adopt and implement many of the same measures that applied in nonattainment areas, we are proposing that such areas should be treated as having met the 15 percent RFP requirement if they can demonstrate that they did, in fact, achieve a 15 percent reduction in VOC emissions between 1990 and 1996 (even though they of course would not have submitted a 15 percent plan as they were not subject to the 15 percent requirement at that time). In such a case, the area would be treated the same as a nonattainment area that previously met the 15 percent requirement, as discussed below in section III.C.2.d.[27] Specifically, these areas would still be required to submit a plan to achieve a 15 percent emission reduction, but could substitute NO_X reductions for VOC in such plan.

[25] Note that section III.C.2.f. below discusses the EPA's proposal regarding removal of the requirement to calculate non-creditable emissions for pre-1990 vehicles.

[26] ''Fulfilled the 15 percent RFP plan requirement for VOC'' means EPA has approved an RFP plan for the geographic area as meeting the 15 percent RFP plan requirement for VOC specified in section 182(b)(1) of the CAA under a prior ozone NAAQS, whether it is the 1-hour ozone NAAQS or the 1997 8-hour ozone NAAQS.

[27] The EPA's official on-road emissions model, MOVES, currently allows states to model emissions in 1990 and 1999 and later years, but not in 1996. EPA will evaluate whether the capability of modeling emissions in 1996 needs to be added to MOVES, or whether some other methodology can be used for this analysis.

d. What are the RFP plan requirements for 2008 ozone nonattainment areas that consist entirely of one or more nonattainment areas for a former ozone NAAQS or pieces of nonattainment areas for a former ozone NAAQS where such areas fulfilled the 15 percent RFP plan requirement for VOC for that former ozone NAAQS?

This provision covers any 2008 nonattainment area [28] which consists entirely of a nonattainment area or portions of nonattainment areas for which we previously approved an RFP plan as meeting the 15 percent RFP plan requirement for VOC in section 182(b)(1) of the CAA. Such a 2008 nonattainment area could consist of one or more 1-hour nonattainment areas, one or more nonattainment areas under the 1997 ozone NAAQS, or a combination of nonattainment areas for either the 1-hour or 1997 ozone NAAQS. However, all portions of the area that are a part of the 2008 nonattainment area must have an approved 15 percent RFP plan for either the 1-hour or the 1997 ozone NAAQS.[29]

We are proposing that such 2008 nonattainment areas have met the CAA requirement for a 15 percent VOC reduction plan and are not required to fulfill that requirement again. As we did for the 1997 ozone NAAQS, we propose to interpret the RFP requirement in section 172(c)(2) to mean that a Moderate area must achieve a 15 percent reduction in baseline VOC emissions, but that NO_X emission reductions may be substituted for the VOC reductions in the manner specified in section 182(c)(2)(C). Under section 182(c)(2)(B), Serious and higher classified areas would be required to achieve an average of 3 percent emission reductions per year for each 3-year period following the baseline year (i.e., a total of 18 percent emissions reduction in the first 6 years) and NO_X emission reductions could be substituted as provided under section 182(c)(2)(C).

e. What are the RFP plan requirements for 2008 ozone nonattainment areas that include portions consisting of all or a piece of one or more nonattainment areas for a previous NAAQS and which fulfilled the 15 percent RFP plan requirement for VOC for that previous NAAQS and portions that have never been subject to or never have fulfilled the 15 percent RFP plan requirement for VOC for a previous NAAQS?

This provision addresses those areas that include all or part of a nonattainment area under a former ozone NAAQS that fulfilled the 15 percent RFP plan requirement for VOC and all or part of an area that was not subject to or did not meet the 15 percent requirement for a former ozone NAAQS. The most common situation in which this would arise is when a 2008 nonattainment area consists of a former nonattainment area and additional surrounding areas (e.g., all or part of surrounding counties) that have not previously been designated nonattainment for ozone.

For such 2008 nonattainment areas, we are proposing that the state choose between two approaches for addressing the 15 percent RFP requirement. First, the state could choose to treat the entire area as an area that never met the 15 percent requirement, and meet the requirements of subsection III.C.2.c of this section, described previously. Second, the state could choose to treat the 2008 nonattainment area as divided into two portions: the former non-RFP plan portion and the former RFP plan portion. For the former non-RFP plan portion of the 2008 nonattainment area, the plan would establish a separate 15 percent VOC reduction requirement under section 182(b)(1) of subpart 2. However, VOC emissions reductions to meet the 15 percent requirement may come from across the entire 2008 nonattainment area, provided that the former RFP plan portion of the area also has a VOC reduction target as part of its RFP plan for the 2008 ozone NAAQS. If the RFP plan for the 2008 ozone NAAQS for the former nonattainment area relies solely on NO_X reductions, then the portion of the nonattainment area never before subject to nonattainment requirements is still responsible for the 15 percent VOC reductions.

For the former RFP plan portion of the 2008 nonattainment area, the RFP requirements in section 172(c)(2) will apply if the 2008 nonattainment area is classified as Moderate as described previously in this document in subsection III.C.2.d of this section. Also, as described in subsection III.C.2.d of this section, CAA section 182(c)(2)(B) RFP requirements will apply if the 2008 ozone NAAQS nonattainment area is classified as Serious or higher.

f. How should states account for non-creditable reductions when calculating RFP emission reduction targets?

Section 182(b)(1)(D) specifies four categories of control measures that are not creditable toward the 15 percent RFP requirement under CAA section 182(b)(1)(A): (i) Measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990; (ii) regulations concerning RVP promulgated by November 15, 1990; (iii) measures to correct previous RACT requirements; and (iv) measures required to correct I/M programs. With the exception of the first category, reductions from these measures were achieved many years ago, so the question of creditability is moot for RFP credit for the 2008 ozone NAAQS. For the motor vehicle standards, a small amount of reduction is still occurring due to fleet turnover. In Appendix A to the preamble of the Phase 2 Rule (70 FR 71696, as amended by 71 FR 58498, October 4, 2006), we presented methodologies for accounting for non-creditable emission reductions consistent with requirements of section 182(b)(1)(D)(i) of the CAA. The procedures vary with the types of areas. The EPA also issued a memorandum that supplements the Appendix.[30] We are proposing as one alternative to eliminate the obligation for states to continue to perform this calculation because these reductions are now very small and will continue to further decrease in future years. The calculation of non-creditable reductions is based on the impact of pre-1990 model year vehicles on the total emissions inventory. In 2011, pre-1990 model year vehicles are estimated to account for only 2 percent of vehicle miles traveled (VMT), 5 percent of total on-road VOC emissions and 3 percent of total on-road NO_X emissions using national estimates of fleet composition, activity and emissions from the EPA's latest emissions model. By 2017, the first year for which non-creditable reductions must be calculated for the 2008 ozone NAAQS, pre-1990 model year vehicles will be 27 years old and older. These vehicles will account for approximately 0.2 percent of total VMT, 0.6 percent of total on-road VOC emissions and 0.4 percent of total on-road NO_X emissions

[28] 77 FR 30088, May 21, 2012.

[29] The following nonattainment areas were nonattainment for both the 1-hour and the 1997 ozone NAAQS, and remained the same size under the 2008 ozone NAAQS compared to the 1997 ozone NAAQS: Baltimore, MD; Los Angeles-San Bernardino Counties (West Mojave Desert), CA; Los Angeles-South Coast Air Basin, CA; Riverside County (Coachella Valley), CA; Sacramento Metro, CA; San Joaquin Valley, CA; and Ventura County, CA.

[30] Memorandum from William T. Harnett re: ''8-Hour Ozone National Ambient Air Quality Standards (NAAQS) Implementation—Reasonable Further Progress (RFP),'' August 15, 2006. *See* first Q & A.

in 2017, using national estimates of fleet composition, activity and emissions from the EPA's latest emissions model. Local results may vary, but the non-creditable reductions associated with the turnover of these vehicles everywhere will be a very small fraction of the total on-road VOC emissions inventory by 2017 and will continue to decrease over future years. Accounting for all other emission sources, on-road VOC emissions typically constitute less than half of the total VOC inventory and about half of the total NO_X inventory, so these percentages would be further reduced in the context of the total emissions inventory. Calculating non-creditable reductions will continue to be a very resource-intensive process requiring multiple modeling runs and extensive staff time. We are proposing to remove the burden of performing this calculation for purposes of RFP for the 2008 ozone NAAQS based on the *de minimis* nature of these non-creditable reductions. If the final rule requires states to account for these non-creditable reductions, we are proposing in the alternative that the calculation should be performed as described in Appendix C to this preamble.

g. Alternative Approaches To Achieving RFP

In the spirit of the Executive Order 13563 titled, ''Improving Regulation and Regulatory Review,'' signed by President Barack Obama on January 18, 2011, which directs federal agencies to offer and support flexible, common sense approaches, the EPA is taking comment on allowing states to use additional alternative approaches to achieving RFP goals. One alternative is an air quality-based approach that would measure RFP in terms of actual ambient air quality improvements tied to an area's percent emission reduction requirements. Such an approach would involve work on the part of the state to translate an area's RFP emissions reduction targets (tons) into ozone improvement targets (ppb) based on air quality modeling or other appropriate analyses. The emission reduction targets for the area should be expressed in terms of the pollutant (VOC or NO_X) which, when reduced, is most effective in reducing ozone concentrations in the area. Under this approach, RFP milestones would be satisfied if the area implements the target emissions reduction strategies and achieves the targeted ozone air quality improvement over the relevant RFP assessment period. This approach would retain a state's accountability for making consistent incremental progress while focusing on the most direct measurement of improvement, namely air quality. A similar approach is already included in the implementation rules that govern SIP development for the $PM_{2.5}$ NAAQS (*See* 40 CFR 51.1009(g) and (h)).

Another alternative approach would be to adjust (or ''weight'') the amount of RFP credit given for reductions of individual species (or similar groups) of VOCs based on their ozone forming potential (i.e., photochemical reactivity). Accordingly, reductions of VOCs with relatively high photochemical reactivity would be given more credit toward RFP requirements and reductions of VOCs with relatively low photochemical reactivity would be given less credit toward those requirements. For example, reducing one ton of a highly reactive VOC (i.e., with 1.5 times the ozone forming potential of an average VOC) could be given a RFP credit of 1.5 tons, reducing one ton of a low reactive VOC (i.e., with 0.5 times the ozone forming potential of an average VOC) could be given a RFP credit of 0.5 tons, and reducing one ton of a VOC with average reactivity could be given a RFP credit of 1.0 tons. Such an approach provides an incentive for states to target those VOC reductions that will have the greatest impact on actual ozone formation. In order to use this approach, the EPA and/or states would need to develop more detailed operational parameters, guidelines or rules derived from scientific assessment.

For both of these alternative approaches, the EPA is seeking comment on the usefulness and practicality of the approach, and specifically on whether there is adequate legal basis under the CAA to approve SIPs that would employ these approaches.

3. What baseline year may states use for the emission inventory for the RFP requirement?

The baseline inventory for RFP is used as the starting point for determining a target level of emission reductions to meet the RFP requirement—in other words, it is the baseline from which creditable reductions are determined. Section 182(b)(1)(B) of the CAA, as amended in 1990, states that the term ''baseline emissions'' is defined as the total amount of actual VOC (or NO_X) emissions from all anthropogenic sources in the area during the calendar year 1990. The initial 6-year RFP period covered the 6 years following the baseline year, 1991–1996, ending in the year that areas classified as Moderate under the 1-hour NAAQS were required to attain that NAAQS.

For the 2008 ozone NAAQS, the EPA is proposing that states should use as the baseline year for RFP the calendar year for the most recently available triennial emission inventory at the time RFP plans are developed. We promulgated a regulatory provision adopting this same interpretation for purposes of implementing the 1997 ozone NAAQS. *See* 40 CFR 51.910(d). A triennial emissions inventory under the Air Emissions Reporting Requirements (AERR) Rule (73 FR 76539; December 17, 2008) is required for the year 2011 and was required to be submitted to the EPA by December 31, 2012. For the 1997 ozone NAAQS, our regulations also provided that a state has flexibility to use an alternative baseline year if it shows that the alternative year is appropriate and justifiable. We are proposing to allow similar flexibility for the 2008 ozone NAAQS.

A RFP baseline year of 2011 is analogous to the approach provided for RFP in the CAA as amended in 1990. The CAA required a 1990 baseline for the 15 percent RFP requirement which lined up the 6-year 15 percent RFP period with the 1996 attainment date for Moderate areas under the 1-hour NAAQS. For the 2008 ozone NAAQS, initial area designations were effective in 2012 and the 6-year RFP period from a baseline of 2011 (i.e., January 1, 2012–December 31, 2017) would line up reasonably well with the Moderate area attainment date of 2018. As noted above, the AERR Rule required states to report emissions for calendar year 2011 to the EPA by December 31, 2012. This is about 2.5 years before the July 20, 2015, deadline for 15 percent RFP plans to be submitted. The EPA believes this timing is reasonable for areas designated nonattainment in 2012 and allows time for states to develop and submit an RFP plan, as well as time to implement measures to satisfy the RFP requirement by December 31, 2017. If a state chooses 2011 as a baseline year for a Moderate area designated nonattainment in 2012, the 15 percent reduction requirement covers the period from January 1, 2012, to December 31, 2017. The 6-year period concludes one year prior to the December 31, 2018, attainment date. Areas using 2011 as a base year would thus have to achieve whatever additional emissions reductions are needed to provide for attainment of the standard by December 31, 2018. This corresponds to the approach taken in the Phase 2 Rule (70 FR 71615–71616).

However the EPA is also proposing that states have the option of selecting an appropriate and justifiable alternate

year as a baseline year for RFP. If states choose a pre-2011 baseline year, the EPA is proposing that the 6-year period for achieving the 15 percent reduction starts in January of the year following the selected baseline year. When a year prior to 2011 is chosen as the baseline year, the 6-year period thus concludes more than one year prior to the start of the attainment year for the area. In this situation, the EPA is proposing that the area is responsible for a 3 percent emissions reduction each year after the initial 6-year period has concluded up to the beginning of the attainment year. For example, if 2009 is chosen as a baseline year for a Moderate area, the 15 percent reductions cover the period from January 1, 2010 to December 31, 2015. The area would need to generate an additional 3 percent emissions reduction per year for the years 2016 and 2017. As in the Phase 2 Rule and consistent with CAA section 182(c)(2), Serious and higher classified areas would need to provide in their SIPs an additional average of 3 percent per year emission reduction over each subsequent year beyond the initial 6-year period through the attainment year (70 FR 71616).

We are proposing that for a multi-state nonattainment area, all states associated with the nonattainment area must consult and agree on the same alternate year to use as the baseline year for RFP.

4. Can emission reductions from sources located outside the nonattainment area boundary apply toward RFP?

a. Background

Under the EPA's initial Phase 2 Rule,[31] certain emission reductions from outside a nonattainment area can be credited toward meeting the 1997 ozone NAAQS RFP requirement. *See* 70 FR 71647–49. For the same reasons provided in our proposed rule [32] to revise this provision for the 1997 ozone NAAQS, the EPA is proposing to not allow states to rely on credit for emission reductions from outside the nonattainment area to meet RFP obligations for the 2008 ozone NAAQS.

The language in the CAA's baseline emissions provision for determining the emissions reductions required for RFP purposes (sections 182(b)(1)(B) and 182(c)(2)(B)) is almost identical to the language in the CAA's RACT provision (section 172 (c)(1)). The issue of taking credit for reductions from outside the nonattainment area was raised in the context of the RACT provision and decided by the court in *NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009). The court there held that ''the RACT requirement calls for reductions in emissions from sources in the area; reductions from sources outside the nonattainment area do not satisfy the requirement.'' *NRDC* at 1256. We note the similarity in language in the several provisions of the CAA, but also the difference between RACT, which is a source specific requirement, and RFP, which is not.

b. Proposal

The EPA is therefore proposing that for the 2008 ozone NAAQS states may not take credit for VOC or NO_X reductions occurring outside the nonattainment area for purposes of meeting the 15 percent and 3 percent RFP requirements of sections 172(c)(2), 182(b)(1) and (c)(2)(B). This approach would mean that RFP credit for meeting the 15 percent VOC requirement for Moderate and above ozone nonattainment areas in section 182(b)(1) and the additional 3 percent per year requirement for Serious and above ozone nonattainment areas in section 182(c)(2)(B) could come only from emission reductions from within the nonattainment area. The EPA notes that the required 15 percent and 3 percent reductions are calculated from the baseline emissions inventory for the nonattainment area, which reflects only emissions within the nonattainment area. In nonattainment areas where there are few significant local emission sources, and thus relatively small emission inventories, the required reduction percentages would similarly translate into only small required emission reductions. Areas still can and should, where appropriate, rely on out-of-area reductions for purposes of demonstrating attainment. There is no limitation under the attainment demonstration provisions of the CAA that restricts states from considering outside-the-area reductions as part of the modeled attainment demonstration for an area. As EPA has previously said, in determining the attainment date that is as expeditious as practicable, the state should consider impacts on the nonattainment area of intrastate transport of pollution from sources within its jurisdiction, and potential reasonable measures to reduce emissions from those sources.

At the same time, the EPA recognizes that not allowing credit for reductions outside the nonattainment area will make it more challenging for some areas, such as the areas adjacent to the South Coast nonattainment area in California, namely, Coachella Valley, West Mojave Desert and Ventura County in California, to meet their RFP requirements and may foreclose some cost-effective opportunities for emissions reductions. Despite the court's opinion in *NRDC,* the EPA continues to believe that there remain valid policy reasons for giving states incentive to focus on obtaining emission reductions that are the most beneficial and cost effective for achieving air quality progress and attaining the ozone standards. The EPA believes there may be cases where the most beneficial and cost-effective reductions are from sources located outside the nonattainment area boundaries. In these cases, we believe it would be good policy to credit the emission reductions toward meeting RFP requirements. To this end, the EPA is also taking comment on whether there is a clear legal rationale for allowing credit for reductions outside the nonattainment area to satisfy the RFP requirements for the 2008 ozone NAAQS. We encourage commenters to consider how the baseline emission inventory should be determined if reductions from outside the nonattainment area were able to be creditable for RFP requirements. If the EPA receives comment that provides a clear legal justification for this approach, we will seriously consider including this approach in the final rule.

The EPA requests comments on the proposal and its implications for the 2008 ozone NAAQS.

D. How do RACT and RACM requirements apply for 2008 ozone NAAQS nonattainment areas?

1. Reasonably Available Control Technology

a. Background

Subpart 1 of part D of the CAA includes a requirement that an attainment plan must provide for the implementation of all RACM as expeditiously as practicable, including such reductions that may be obtained through RACT.[33] Subpart 2 requires Marginal ozone nonattainment areas to correct pre-1990 RACT requirements and requires Moderate and above areas to adopt RACT rules for all VOC and

[31] *See* Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2 (70 FR 71612, November 29, 2005).

[32] Reasonable Further Progress Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard (75 FR 80420, December 22, 2010).

[33] The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas'' and also in 44 FR 53762; September 17, 1979).

NO_X sources covered by existing or new CTGs and for all other major sources of VOC and NO_X (unless the state has received a NO_X waiver). Additionally, states must adopt RACT for all VOC and NO_X sources covered by a CTG, and for all other major sources of VOC and NO_X in the OTR (CAA section 184(b)(1)).

Since the 1970s, the EPA has issued CTGs that establish presumptive RACT-level control requirements for various source categories. The CTGs usually identify a particular control level which the EPA recommends as being RACT. In some cases, the EPA has issued Alternative Control Techniques guidelines (ACTs) for source categories.[34] ACTs differ from CTGs in that they present a range for possible control options but do not identify any particular option as the presumptive norm for what is RACT. Section 183(c) of the CAA requires the EPA to ''revise and update [CTGs and ACTs] as the Administrator determines necessary.'' The EPA issued eleven new CTGs from 2006 through 2008.[35] For nonattainment areas classified as Moderate or higher, states are required to address RACT for the source categories covered by CTGs.

Some of the CTGs specify the minimum size of sources to which they apply. Where a CTG does not specify the minimum size of sources to which it applies or there is no CTG for a source category, states are required to apply the RACT requirement to sources in a nonattainment area that exceed the size threshold corresponding to the statutory definition of ''major stationary source.'' Section 302 of the CAA defines major stationary source as a source that emits 100 tons per year (tpy) or more of any air pollutant, and for ozone the air pollutants of concern are NO_X and VOC. That 100 tpy threshold, however, is modified by subsections 182(c)–(f) of the CAA, which define a major source for Serious areas as a source that emits more than 50 tpy of VOC or NO_X; for Severe areas as a source that emits more than 25 tpy of VOC or NO_X; and for Extreme areas as a source that emits more than 10 tpy of VOC or NO_X.[36]

The CAA required states to submit RACT SIPs for Moderate and higher classified areas within 2 years after enactment of the 1990 CAA Amendments and required implementation as expeditiously as practicable but no later than May 31, 1995, or 54 and one-half months following enactment of the 1990 Amendments (i.e., no later than 30 and one-half months after the required RACT SIP submission date).

In considering modification to existing RACT guidance,[37] the EPA believes there are two principles worth emphasizing:

1. The implementation rules should conform closely to the clearly articulated goal of the CAA that states implement measures that provide for attainment of the ozone standard as expeditiously as practicable.

2. The implementation rules should enable, if not encourage, the adoption of emission reduction strategies that will be the most effective, and the most cost effective, at reducing ozone levels.

b. Proposal

i. Substantive Requirements

RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that there are no sources in the nonattainment area covered by a specific CTG source category. States must provide notice and opportunity for public comment on their RACT submission even where the state determines to certify that the existing provisions remain RACT or where the state submits a negative declaration. States must also submit appropriate supporting information for their RACT submission as described in the Phase 2 Rule. *See* 70 FR 71652.

States should use current EPA guidance and any other information available in making RACT determinations.[38] The EPA recognizes that existing CTGs and ACTs for many source categories have not been revised in a number of years. However, in most cases, more recent technical information is available in other forms, such as the BACT/LAER Clearinghouse; SIPs for other nonattainment areas, in particular those areas with higher classifications; the ''Menu of Control Measures'' for NO_X and VOC; and emissions standards developed under CAA section 111(d) and NSR/prevention of significant deterioration (PSD) settlement agreements. As part of their RACT SIP submission, states should provide adequate documentation that they have considered control technology that is economically and technologically feasible. The analysis of economic and technological feasibility should be based on information that is current as of the time of development of the RACT SIP for the 2008 ozone NAAQS. In other words, it is not sufficient for states to rely on previous RACT determinations without considering more recent information. Where public commenters submit specific information to a state about controls that are alleged to be reasonably available in light of technological and economic feasibility, the state should consider such information in developing its RACT SIP. The EPA generally considers controls that have been achieved in practice by other existing sources in the same source category to be technologically and economically feasible. In some cases, states may conclude that sources already subject to RACT for the 1-hour and/or 1997 ozone NAAQS are also meeting the 2008 ozone NAAQS RACT requirement.

The EPA's NO_X RACT guidance (Nitrogen Oxides Supplement to the General Preamble, 57 FR 55625; November 25, 1992) encouraged states to develop RACT programs that are based on ''area wide average emission rates.'' Additional guidance on area-wide RACT provisions is provided by EPA's January 2001 economic incentive program guidance titled, ''Improving Air Quality with Economic Incentive Programs.'' [39] Thus, the EPA's existing policy recognizes the approach of states submitting a demonstration as part of their NO_X RACT SIP submittal showing that the weighted average NO_X emission rate from sources in the nonattainment area subject to RACT meets NO_X RACT requirements.

As part of their RACT submission, states have the option of demonstrating that compliance with a regional trading program by certain sources within a nonattainment area will achieve RACT-level reductions for those sources within the nonattainment area. The analysis would need to consider current control technology and cost effectiveness information as part of any such demonstration, and to show that the trading program achieves emission

[34] *See http://www.epa.gov/air/ozonepollution/SIPToolkit/ctgs.html.*

[35] CTGs updated from 2006 through 2008: Industrial Cleaning Solvents; Offset Lithographic Printing and Letterpress Printing; Flexible Package Printing; Flat Wood Paneling Coatings; Paper, Film, and Foil Coatings; Large Appliance Coatings; Metal Furniture Coatings; Miscellaneous Metal and Plastic Parts Coatings; Fiberglass Boat Manufacturing; Miscellaneous Industrial; and Automobile and Light-Duty Truck Assembly Coatings.

[36] Note, however, that an area may have obligations under anti-backsliding provisions based on classification under the 1-hour and/or the 1997 8-hour ozone NAAQS. Those obligations may result in a lower major source threshold for purposes of applying RACT than the classification associated with the 2008 ozone NAAQS.

[37] May 18, 2006 memorandum from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, ''RACT Qs & As—Reasonable Available Control Technology (RACT): Questions and Answers.''

[38] EPA's CTGs and ACTs are located at *http://www.epa.gov/air/ozonepollution/SIPToolkit/ctgs.html.*

[39] *http://www.epa.gov/ttn/oarpg/t1/memoranda/eipfin.pdf.*

reductions greater than or equal to reductions that would be achieved through a source-specific application of RACT in the nonattainment area.

In the preamble to the Phase 2 Rule, the EPA explained that states could, in certain circumstances, conclude that sources (EGUs and some non-EGUs), in compliance with the requirements of regional trading programs established by the NO_X SIP Call and/or the Clean Air Interstate Rule (CAIR), have met their ozone NO_X RACT requirements with respect to the 1997 ozone standards. *See* 70 FR 71612, 71656–58. EPA subsequently modified its guidance regarding when compliance with CAIR may satisfy NO_X RACT requirements for EGUs in CAIR states. *See* 72 FR 31727, 31730–37.

On July 10, 2009, in *NRDC* v. *EPA,* the Court of Appeals for the DC Circuit remanded the provision of the Phase 2 Rule determining that compliance with the NO_X SIP Call satisfies NO_X RACT because EPA had failed to show that compliance with the NO_X SIP Call would achieve at least RACT-level reductions in each nonattainment area.[40] The court held that ''[b]ecause the EPA has not shown that the NO_X SIP call compliance will result in at least RACT-level reductions in emissions from sources within each nonattainment area, the EPA's determination that compliance with the NO_X SIP call satisfies the RACT requirement is inconsistent with the ''in the area'' requirement and thus violates the plain text of [section] 172 (c)(1).'' [41] Additionally, the court emphasized that ''the RACT requirement calls for reductions in emissions from sources in the area; reductions from sources outside the nonattainment area do not satisfy the requirement . . . Accordingly, participation in the NO_X SIP call would constitute RACT only if participation entailed at least RACT-level reductions in emissions from sources within the nonattainment area.''

The EPA believes that the concerns expressed by the court about the agency's approach to the NO_X RACT requirement for sources, including EGUs, and the emissions reductions required by the NO_X SIP Call raise significant questions about the EPA's approach to the comparable issues related to compliance with the CAIR.

The EPA has not analyzed whether participation in either the NO_X SIP call or CAIR would achieve reductions at least equivalent to what would be achieved if RACT requirements were applied on a source-specific basis in nonattainment areas for the 2008 ozone NAAQS. The analysis the EPA prepared for the Phase 2 Rule addressed only nonattainment areas for the 1997 ozone NAAQS. Moreover, since source-specific control assumptions would need to be developed in order to determine the overall reduction level achievable in a nonattainment area through source-specific application of RACT, the EPA believes states are in a better position than EPA to conduct this analysis.

The statute, as interpreted by the court in *NRDC* v. *EPA,* provides that RACT SIPs must demonstrate that RACT-level emission reductions are achieved within the relevant nonattainment area. Thus, and for the reasons explained above, it does not allow states to, without providing such demonstration, rely upon the participation of a source in a regional cap-and-trade program to satisfy RACT requirements. However, as noted above, states retain the option of demonstrating that compliance with a regional trading program by certain sources within a nonattainment area, will achieve RACT-level reductions for those sources within the nonattainment area.

For clarity, we also note that a state has discretion to require beyond-RACT reductions from any source, and has an obligation to demonstrate attainment as expeditiously as practicable. Thus, states may require VOC and NO_X reductions that are ''beyond RACT'' if such reductions are needed in order to provide for timely attainment of the ozone NAAQS.

The EPA is soliciting comment on modifying existing guidance to provide additional flexibility in implementing the section 182(b)(2) RACT requirements. In some nonattainment areas additional reductions of anthropogenic VOC emissions have been scientifically demonstrated to have a limited impact on reducing ozone concentrations. We are soliciting comment on whether such a demonstration is an appropriate factor to consider in determining what is ''reasonable'' in a RACT analysis. This modification to existing guidance is being explored in the spirit of the Executive Order 13563 titled, ''Improving Regulation and Regulatory Review,'' signed by President Barack Obama on January 18, 2011, which directs governmental agencies to offer and support flexible, common sense approaches. The EPA recognizes that limited state and federal resources need to be used where they will produce the best environmental benefit, and that we should attempt to accommodate air quality management approaches that will be a better use of public and private resources and lead to more expeditious attainment.

In some areas, additional VOC reductions may be of little value in further reducing ozone, and may be far less effective than NO_X reductions (which may be quicker to implement and lower cost). Under such circumstances, the EPA is taking comment on whether state RACT determinations could take into consideration, in the evaluation of what is economically feasible, the potential air quality benefit (or lack thereof) of further VOC controls. Commenters should discuss the specific circumstances and limitations to which an air quality benefit factor would apply. For example, commenters should address whether this approach would (or can) be limited to cases where it can be scientifically demonstrated that additional VOC controls are ineffective in reducing ambient ozone concentrations. In addition, commenters are encouraged to provide specific examples of where modeling has demonstrated that anthropogenic VOC reductions have ''negligible effect.'' Commenters, if possible, should also provide a defensible threshold for defining ''ineffective,'' and define a test for concluding that the effect of additional VOC reductions would be ''negligible.'' The EPA is also interested in comments that address whether this flexibility should be provided on an individual source basis, or also on a source category basis. Any approaches suggested by commenters should also address how public health and welfare will be impacted. Finally, commenters are encouraged to provide an explanation as to the specific legal basis for supporting the suggested approach.

For VOC sources subject to MACT standards, our policy is to allow states to streamline their RACT analysis by including a discussion of the MACT controls and considerations relevant to VOC RACT. Historically, in many cases, states have been able to rely on MACT standards for purposes of showing that a source has met VOC RACT. States need to take care to ensure that any MACT controls relied on for RACT adequately address all VOCs and not just those that are also HAPs. For example, if a manufacturer complies with MACT by reformulating products to remove HAPs but the production process still releases non-HAP VOCs, the state would need to justify why the MACT meets the RACT requirement for that source or would need to develop an

[40] In view of its decision in *North Carolina* v. *EPA,* in which the Court had previously remanded the CAIR, the Court deferred consideration of the litigant's challenge insofar as it related to the CAIR program.

[41] *See NRDC* v. *EPA,* 571 F.3d 1245.

appropriate RACT rule to address non-HAP VOCs.

ii. Timing

We are proposing two alternatives for when states would be required to submit RACT SIPs. Under the first alternative, states with Moderate and higher classified areas would be required to submit RACT SIPs within the period specified in section 182(b) with the time running from the effective date of an area's designation for the 2008 ozone NAAQS (i.e., within 2 years from the effective date of designation). Under the second alternative, states would be given the choice of submitting RACT SIPs for Moderate and higher classified areas either as part of a consolidated SIP submittal 30 months after the effective date of designation, or within the period of time provided in section 182(b), as described above. The 30-month option would align the submission date for the RACT SIP with the proposed submission date for other SIP elements for the area's classification in order to relieve states of the added burden that can result from processing different SIP elements at different times.

We are also proposing a specific deadline by which RACT measures are to be implemented for the 2008 ozone NAAQS. Section 182(b)(2) requires RACT measures to be implemented as expeditiously as practicable, but no later than May 31, 1995, which was 54 and one-half months from the date of enactment of the 1990 CAA Amendments. This date was also near the beginning of the ozone season for many nonattainment areas at the time of enactment, and ensured that RACT measures were required to be in place during most of the last two ozone seasons before the Moderate area attainment date of November 15, 1996. For the 2008 ozone NAAQS, we are proposing that areas must implement RACT measures as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of a nonattainment designation. Nonattainment designations for all areas of the country were effective July 20, 2012. RACT measures for these areas would be required to be implemented by January 1, 2017. This allows a comparable amount of time for sources to meet RACT requirements as originally anticipated under the 1990 CAA Amendments, and ensures that RACT measures are required to be in place throughout the last two ozone seasons prior to the Moderate area attainment date of December 31, 2018.

If we finalize the ''state's choice'' approach for when SIP elements would be due, those states which chose to submit a consolidated SIP within 30 months of designation would have a little longer to develop and submit their RACT SIPs, but affected sources would have a little less lead time to implement the adopted requirements. Thus, any emission reductions due to RACT would not be delayed due to the slightly later RACT SIP submission date. The EPA believes this is a reasonable interpretation of the statute in this case.

2. Reasonably Available Control Measures (RACM)

The RACM requirement, which is set forth in section 172(c)(1) of the CAA, applies to all nonattainment areas that are required to submit an attainment demonstration. The EPA has issued policies and procedures related to RACM. Specifically, the EPA has issued guidance that interprets the RACM provision to require a demonstration that the state has adopted all reasonable measures (including RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as practicable and thus that no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area.[42] [43] [44] We believe that this guidance should continue to apply for purposes of the 2008 ozone NAAQS.

The determination of whether a SIP contains all RACM requires an area-specific analysis that there are no additional economically and technologically feasible control measures (alone or cumulatively) that will advance the attainment date.[45] The EPA's RACM policy, as outlined in the April 16, 1992, General Preamble, indicates that states should consider all candidate measures that are potentially available for the particular nonattainment area that could advance the attainment date by 1 year.[46] The April 16, 1992, General Preamble[47] also provides that ''any measure that a commenter indicates during a public comment period is reasonably available should be closely reviewed by the planning agency to determine if it is in fact reasonably available for implementation in the area in light of local circumstances.'' Although states should consider all available measures, including those being implemented in other areas, a state must adopt measures for an area only if those measures are economically and technologically feasible and will advance the attainment date or are necessary for RFP. This interpretation of the section 172 requirements has been upheld by several courts. *See,* e.g., *Sierra Club* v. *EPA,* et al., 294 F.3d 155 (D.C. Circuit, 2002).

E. Does the 2008 ozone NAAQS result in any new inspection and maintenance (I/M) programs?

No new I/M programs are currently required as a result of areas being designated and classified nonattainment for the 2008 ozone NAAQS. The applicable requirements for ozone nonattainment areas that are required to adopt I/M programs are described in sections 182(a)(2)(B), 182(b)(4), 182(c)(3), and 184(b)(1)(A) of the CAA and further defined in section 51.350 (''Applicability'') of the I/M rule (40 CFR part 51, subpart S). Under these cumulative requirements, Moderate ozone nonattainment areas in urbanized areas with 1990 Census populations of 200,000 or more are required to adopt basic I/M programs, while Serious and higher classified ozone nonattainment areas outside of the northeast OTR with 1980 Census-defined urbanized populations of 200,000 or more are required to adopt enhanced I/M programs. Within the OTR, MSAs with populations of 100,000 or more are required to adopt enhanced I/M programs, regardless of attainment status. Currently, all the nonattainment areas meeting the criteria for mandatory I/M under the 2008 ozone NAAQS are already operating I/M programs due to being designated nonattainment and classified as Moderate or above under an earlier ozone standard. If a Marginal 2008 ozone nonattainment area meeting the population cutoff for mandatory I/M is ever in the future reclassified to Moderate or a higher classification, then an I/M program meeting the SIP

[42] ''State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas'' 44 FR 20372 at 20375 (April 4, 1979). ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule.'' 57 FR 13498 at 13560 (April 16, 1992).

[43] ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. *www.epa.gov/ttn/oarpg/t1/memoranda/revracm.pdf.*

[44] Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: ''Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs.'' *www.epa.gov/ttn/oarpg/t1/memoranda/121400_racmmemfin.pdf.*

[45] *Ibid.*

[46] ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule.'' 57 FR 13507 (April 16, 1992). The discussion of RACM in that document contains other relevant history concerning the RACM requirement.

[47] 57 FR 13498.

submittal and program implementation requirements of the I/M rule would be required at that time.

1. If new I/M programs are required in the future, what are the SIP and implementation requirements?

On April 7, 2006, the EPA finalized a suite of revisions to the I/M rule (71 FR 17705) to address the implementation of I/M under an 8-hour ozone NAAQS. The revised rule included deadlines for 8-hour nonattainment areas that were tied to the effective date of a given area's designation and classification under the 8-hour ozone NAAQS. Specifically, the April 2006 rulemaking established a deadline for submission of an I/M SIP no later than one year after the effective date of the area's nonattainment designation and classification for the 8-hour ozone standard. This rule was originally applied for purposes of the 1997 8-hour NAAQS, but it remains applicable to the 2008 8-hour NAAQS. In addition to establishing the I/M SIP submittal schedule, the April 2006 rulemaking also set a deadline of no later than 4 years after the effective date of designation and classification by which the I/M program in question would actually begin testing vehicles.

2. Should the EPA allow more time for states to submit future I/M SIPs?

Since the 2006 I/M rulemaking, the EPA has revisited the question of how much time it takes to submit an I/M SIP based upon the degree to which the modeling work needed to demonstrate attainment is closely linked to the modeling work required to design an I/M program that meets the area's attainment needs. Put simply, areas need to determine together the amount of emissions reductions needed for attainment and the amount of emissions reductions to get from different sectors and strategies (including I/M), before designing an I/M program capable of achieving the necessary reductions to demonstrate attainment. Requiring submittal of an I/M program in advance of an attainment demonstration for the current or future ozone standard could result in significant unnecessary work on modeling, SIP revisions, and implementation, if revisions to the I/M program are later deemed necessary.

Because control strategy decisions and the modeling needed to perform the attainment demonstration are intertwined with decisions and modeling needed to design the local I/M program to such a high extent, the EPA is requesting comment on its proposal to align deadlines for the attainment SIP and the I/M SIP so that both are due at the same time.[48] Commenters are asked to take the following factors into consideration when providing comments on this portion of the proposed rulemaking: Areas' need to analyze various I/M program designs to determine which combination of program parameters is capable of meeting the emission reduction needs of the attainment SIP; the need to secure legal authority when some of the potentially affected state legislatures may only meet for 2–4 months during any given legislative session; the time needed to promulgate a regulation; and the impact on timing of other, potentially competing resource demands that will be placed on states as a result of the need to meet current and/or future ozone standards.

3. How is modern I/M different from the last time new I/M programs were required?

It is important to note that much has changed since I/M programs were required under the original, November 5, 1992, I/M Rule. At that time, an I/M program would have included testing a vehicle's tailpipe emissions, in some cases using a treadmill-like device (dynamometer), so that the emissions were measured under more realistic driving conditions rather than at rest (idle). Dynamometer-based tests also allowed for measurement of NO_X emissions, which was not possible at idle. The equipment needed for these types of programs was expensive compared to today's next-generation alternatives and the test itself was time consuming as the vehicle needed to be secured to the dynamometer and then driven through the test cycle.

Beginning with the 1996 model year, vehicles have been equipped with a computerized system known as onboard diagnostics or OBD. The OBD system monitors the vehicle's emission control system continuously and illuminates the vehicle's dashboard ''Check Engine'' light if a problem is detected. The vehicle's computer stores information on the type of malfunction detected, and is therefore able to provide repair shops with information on the type of repair that is needed. The EPA estimates that about 80 percent of the national vehicle fleet is already equipped with an OBD system and that by the time any potential new I/M programs would be required to begin operation, about 90 percent of the national vehicle fleet will be OBD equipped. As a result, the EPA believes that I/M programs will no longer need to use tailpipe testing, and can instead rely on a simple, fast and inexpensive interrogation of the OBD system.

There are many ways to conduct OBD system checks but all involve a relatively inexpensive scanner. The scanner is connected to a port in the vehicle and the tool downloads information from the vehicle's computer. This type of testing can be done either in a centralized testing facility, directly at a repair shop, or even remotely using telematics technology. Compared to earlier vehicle test methods, next-generation I/M testing through OBD system checks is substantially quicker, less invasive, less costly to implement and ideally suited to innovative testing strategies such as remote inspections using cellular or telematic technologies, self-serve testing kiosks and even mail-in data loggers, none of which were practical under the previous generation of tailpipe tests and all of which are available for use in today's and future I/M programs.

The EPA believes that OBD technology can change not only the way vehicles are tested but also whether vehicles need to be independently tested at all. This is because OBD offers vehicle owners all the information they need regarding whether or not their vehicle will pass or fail an I/M inspection. Simply put, if the ''Check Engine'' light is on, the vehicle will fail. This capability of OBD to provide immediate driver feedback suggests some as-yet untested but nevertheless intriguing alternatives to traditional I/M.

One such alternative—the EPA believes—would include programs that offer some vehicle owners free or subsidized repairs of vehicles with lit ''Check Engine'' lights. Should such a program result in the same number of vehicles being repaired as would be the case in a traditional I/M program, then the program in question would be considered functionally equivalent to I/M. The choice of how to fund these repairs would rest with the state but could include collecting a fee equivalent to what would otherwise be charged for testing from all registrants, requiring vehicle insurance providers or a state to cover the cost of repairing the vehicle when the ''Check Engine'' light comes on, partnering with local vocational-technical schools to provide repair services, making driving with a lit ''Check Engine'' light on a secondary traffic offense (similar to driving without a seat belt or working headlights in some states), etc. Ultimately, program equivalency would

[48] As discussed in section III.A of today's proposal, the EPA is soliciting comment on alternative deadlines for attainment SIP submissions. The EPA is here soliciting comment on aligning the deadline for I/M submittal with those alternative deadlines.

not depend upon how repairs are funded but rather on the number of relevant repairs accomplished by the program. Similarly, programs that accelerate the retirement of vehicles in need of emission-related repairs or that significantly prompt older vehicles to be replaced by cleaner technology could be considered equivalent to I/M if the amount of emission reductions achieved equals or exceeds what would be achieved by a traditional enhanced I/M program.

The EPA is requesting comments on these or other ideas for ''right sizing'' I/M for the current and future fleet. Comments should address how proposals will meet the minimum statutory requirements for I/M while still achieving I/M's primary goal of reducing emissions from the fleet in-use and supporting vehicle maintenance and emission repair.

F. How does transportation conformity apply to the 2008 ozone NAAQS?

1. What is transportation conformity?

Transportation conformity is required under CAA section 176(c) to ensure that transportation plans, transportation improvement programs (TIPs) and federally supported highway and transit projects are consistent with (''conform to'') the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or interim reductions and milestones. Transportation conformity applies to areas that are designated nonattainment, and to those former nonattainment areas that have been redesignated to attainment since 1990 and have a CAA section 175A maintenance plan (''maintenance areas'') for transportation-related criteria pollutants: Carbon monoxide, ozone, nitrogen dioxide, and particulate matter.

The EPA's Transportation Conformity Rule (40 CFR 51.390 and Part 93, subpart A) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. The EPA first promulgated the Transportation Conformity Rule on November 24, 1993 (58 FR 62188), and subsequently published several amendments. For example, the EPA published a final rule on July 1, 2004 (69 FR 40004) that provided transportation conformity procedures for state and local agencies under the 1997 ozone NAAQS, among other things. For further information on transportation conformity rulemakings, policy guidance and outreach materials, *see* the EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/index.htm*.

2. Why is the EPA discussing transportation conformity in this proposed rulemaking?

We are discussing transportation conformity in this proposed rulemaking in order to provide affected parties with information on when transportation conformity must be implemented for the 2008 ozone NAAQS and how we plan to make the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS with respect to transportation conformity. Affected parties would include state and local transportation and air quality agencies, metropolitan planning organizations (MPOs) and the U.S. Department of Transportation (the DOT) (40 CFR 93.102).

3. When would transportation conformity apply to areas designated nonattainment for the 2008 ozone NAAQS?

Transportation conformity for the 2008 ozone NAAQS applies 1 year after the effective date of nonattainment designations for that standard. This is because CAA section 176(c)(6) and 40 CFR 93.102(d) provide a 1-year grace period from the effective date of initial designations before transportation conformity applies in areas newly designated nonattainment for a particular pollutant and standard.

4. How would the 1-year transportation conformity grace period apply?

The transportation conformity grace period applies to all areas designated nonattainment for the 2008 ozone NAAQS. Metropolitan areas are urbanized areas that have a population greater than 50,000 and a designated MPO responsible for transportation planning per 23 U.S.C. 134. In general, within 1 year after the effective date of the initial nonattainment designation for a given pollutant and standard, the area's MPO and the DOT must make a conformity determination with regard to that pollutant and standard for the area's transportation plan and TIP. The conformity requirements for donut areas,[49] including the application of the 1-year conformity grace period, are generally the same as those for metropolitan areas. MPOs and any adjacent donut areas must continue to meet conformity requirements in nonattainment and maintenance areas for the 1997 ozone NAAQS during the grace period, in addition to any other applicable standards. If, at the end of the grace period, the MPO and the DOT have not made a transportation plan and TIP conformity determination for the relevant pollutant and standard, the area would be in a conformity ''lapse.'' During a conformity lapse, only certain projects can receive additional federal funding or approvals to proceed. The practical impact of a conformity lapse will vary from area to area.

Isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of an MPO (40 CFR 93.101). Conformity requirements for isolated rural nonattainment and maintenance areas can be found at 40 CFR 93.109(g). An isolated rural area would be required to make a conformity determination only at the point when a new transportation project needs funding or approval. This point may occur significantly after the 1-year grace period has ended. *See* the EPA's July 1, 2004, final rule for further background on how the EPA has implemented this conformity grace period for the 1997 ozone NAAQS in metropolitan, donut and isolated rural areas (69 FR 40008–40014).[50]

5. What flexibilities exist for isolated rural areas?

As discussed previously in this proposal, for transportation conformity purposes, isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of an MPO (40 CFR 93.101). In general, ozone nonattainment and maintenance areas with populations of less than 50,000 would be considered to be isolated rural areas for transportation conformity purposes because the DOT only requires an MPO to be established when an area's population exceeds 50,000.

The Transportation Conformity Rule contains a number of flexibilities that apply to isolated rural areas. As discussed previously, they are not required to determine conformity by the end of the 1-year grace period that applies for new nonattainment areas, since isolated rural areas do not have MPOs and do not have transportation plans that are subject to the requirements to demonstrate conformity on a periodic basis. Isolated rural areas are only required to demonstrate conformity when a non-exempt Federal Highway Administration or Federal

[49] For the purposes of transportation conformity, a ''donut'' area is the geographic area outside a metropolitan planning area boundary, but inside a designated nonattainment or maintenance area boundary that includes an MPO (40 CFR 93.101).

[50] Also, see the EPA's transportation conformity Web site for more information, including EPA's ''Transportation Conformity Guidance for 2008 Ozone NAAQS Nonattainment Areas'' at: *www.epa.gov/otaq/statesresources/transconf/2008naaqs.htm*.

Transit Administration project in the nonattainment or maintenance area requires funding or approval. Experience has shown that isolated rural areas have few projects that require a transportation conformity determination. Another available flexibility is that isolated rural areas may choose from several alternative conformity tests that may be used for analysis years beyond the last year for which the SIP has established a motor vehicle emissions budget. These alternative tests are described in 40 CFR 93.109(g)(2)(ii)(A)–(C). We also note that since these areas do not have transportation plans or TIPs, they would never experience a conformity lapse.

6. Does transportation conformity apply for the 1997 ozone NAAQS once that standard is revoked?

The CAA only requires transportation conformity in areas that are designated nonattainment or maintenance for a given pollutant and standard. Therefore, transportation conformity would no longer apply for purposes of the 1997 ozone NAAQS as of the time that standard (and thus an area's designation for that standard) is revoked. In other words, existing 1997 ozone NAAQS nonattainment and maintenance areas, regardless of their designation for the 2008 ozone NAAQS, would no longer be required to demonstrate transportation conformity for the 1997 ozone NAAQS after the 1997 ozone NAAQS is revoked. The EPA revoked the 1997 ozone NAAQS for transportation conformity purposes in the Classifications Rule for the 2008 ozone NAAQS. The revocation will become effective on July 20, 2013, 1 year after the effective date of designations for the 2008 ozone NAAQS. Under our current Transportation Conformity Rule, the latest approved or adequate emission budgets for a previous ozone NAAQS (i.e., the 1997 or the 1-hour ozone NAAQS) would continue to be used in conformity determinations for the 2008 ozone NAAQS until emission budgets are established and found adequate or are approved for the 2008 ozone NAAQS. 77 FR 14981–2.

7. What impact will the implementation of the 2008 ozone NAAQS have on a state's Transportation Conformity SIP?

Since we are not proposing to make revisions to our Transportation Conformity Rule in this proposal, states with previously approved Transportation Conformity SIPs should not need to revise those SIPs, unless they need to do so to ensure that existing state regulations apply in the appropriate newly designated areas. However, if this is the first time that transportation conformity will apply in a state, such a state is required to submit a SIP revision that covers the three specific transportation conformity requirements that are delineated in CAA section 176(c)(4)(E). These specific requirements are consultation procedures and written commitments to control or mitigation measures associated with conformity determinations for transportation plans, TIPs or projects. 40 CFR 51.390. Additional information and guidance can be found in EPA's ''Guidance for Developing Transportation Conformity State Implementation Plans'' (*http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf*).

G. What requirements for general conformity apply to the 2008 ozone NAAQS?

1. What is the purpose of the general conformity regulations?

Section 176(c) of the CAA requires that before a federal entity takes an action affecting air quality in a state, it must make a determination that the proposed action will not interfere with the SIP or the state's ability to attain and maintain the NAAQS. In November 1993, the EPA promulgated two sets of regulations to implement section 176(c). One set, known as the Transportation Conformity Rules (described previously in this proposal), deals with approval and funding of highway and mass transit projects. The other set, known as the General Conformity Regulations, deals with all other federal activities. Besides ensuring that federal actions will not interfere with the SIP, the general conformity program also fosters communications between federal agencies and state/local air quality agencies, provides for public notification of and access to federal agency conformity determinations and allows for air quality review of individual federal actions. In 1995, Congress limited the application of section 176(c) to nonattainment and maintenance areas only.

2. How are federal actions in nonattainment or maintenance areas addressed?

Federal agencies must demonstrate that their new actions occurring in a nonattainment or maintenance area will conform with the SIP by showing they will not (1) cause or contribute to any new violation of any standard in respective nonattainment and maintenance areas; (2) interfere with provisions in the applicable SIP for maintenance of any standard; (3) increase the frequency or severity of any existing violation of any standard; or (4) delay timely attainment of any standard or any required interim emissions reductions or other milestone. Information on what federal actions are covered and how to demonstrate conformity are found in 40 CFR part 93 subpart B. On March 24, 2010, former Administrator Lisa P. Jackson signed the General Conformity Final Rule ''Revisions to the General Conformity Regulations,'' which was published April 5, 2010 (75 FR 17254–17279). More information on the general conformity program is available at *http://www.epa.gov/air/genconform/*.

3. General Conformity for the 2008 Ozone NAAQS

a. What de minimis emission levels will apply for ozone precursors?

For the ozone precursors VOC and NO_X, the existing *de minimis* emission levels that are set forth in the EPA's General Conformity Regulations at 40 CFR 93.153(b)(1) continue to apply to the 2008 ozone NAAQS. Those levels were based on the definition of a major stationary source for NSR programs as established by sections 182, 183 and 302 of the CAA. Federal actions estimated to have an annual net emissions increase less than the *de minimis* levels are not required to demonstrate conformity under the General Conformity Regulations. The current *de minimis* levels are identified in Table 1.

TABLE 1—*De Minimis* EMISSION LEVELS FOR VOC AND NO_X

Type of ozone area	VOC tons/year	NO_X tons/year
Extreme Nonattainment	10	10
Severe Nonattainment	25	25
Serious Nonattainment	50	50
Other ozone Nonattainment areas outside an ozone transport region	100	100

TABLE 1—*De Minimis* EMISSION LEVELS FOR VOC AND NO_X—Continued

Type of ozone area	VOC tons/year	NO_X tons/year
Other ozone Nonattainment areas inside an ozone transport region	50	100

b. What impact will implementation of the 2008 ozone NAAQS have on a state's General Conformity SIP?

We are not proposing to make revisions to our General Conformity Regulations in this proposal. States with approved General Conformity SIPs should not need to revise those SIPs, unless they need to do so to ensure the existing regulations apply in the appropriate newly designated areas.

c. Are there any other impacts related to general conformity based on implementation of the 2008 ozone NAAQS?

As noted above, we are not proposing any revisions to the General Conformity Regulations at this time. However, as areas develop SIPs for the 2008 ozone NAAQS, we recommend that state and local air quality agencies work with federal agencies with major facilities that are subject to the General Conformity Regulations (e.g., commercial airports, ports and large military bases) to establish an emission budget for those facilities in order to facilitate future conformity determinations. Such a budget could be used by federal agencies in determining conformity or identifying mitigation measures if the budget level is included and identified in the SIP.

One federal activity subject to general conformity requirements is prescribed burning. The EPA recognizes that prescribed fire in some instances must be employed for natural resource management purposes and prevention or control of wildfires. The use of prescribed fire presents federal agencies, states and tribes with the challenge to balance and integrate two public policy goals, (1) to allow fire to function, as nearly as possible, in its natural role in maintaining healthy wildland ecosystems; and (2) to protect public health and welfare by mitigating the impacts of air pollutant emissions on air quality. The EPA encourages states and tribes to work with federal agencies to develop Smoke Management Programs (SMPs) and use Basic Smoke Management Practices (BSMPs) that identify the responsibilities of Federal Land Managers and state/tribal air quality managers to coordinate fire activities, minimize air pollutant emissions, manage smoke from prescribed fires for resource benefits, ensure the safety of burners and those in the forest/urban interface and establish emergency action programs to mitigate the impacts on the public. To reduce administrative burden on federal agencies, the EPA's April 5, 2010 revisions, to its General Conformity Regulations (75 FR 17254) provided flexibilities in 40 CFR 93.153(h) and (i) for prescribed fires to meet general conformity requirements using SMPs and BSMP.

4. When would general conformity apply to areas designated nonattainment for the 2008 ozone NAAQS?

General conformity for the 2008 ozone NAAQS applies 1 year after the effective date of nonattainment designations for that standard. This is because CAA section 176(c)(6) (which applies to general conformity as well as to transportation conformity) provides a 1-year grace period from the effective date of initial designations before general conformity determinations are required in areas newly designated nonattainment for a particular pollutant and standard.

5. How does the 1-year grace period apply to general conformity determinations?

As discussed previously in this proposal, CAA section 176(c)(6) applies to both transportation and general conformity. Therefore, the EPA's April 2010 revisions to its the General Conformity Regulations (*see* 75 FR 17277, April 5, 2010) apply the grace period for the purposes of general conformity in the same manner as for transportation conformity.

6. How would the revocation of the 1997 ozone NAAQS affect general conformity requirements?

Our proposal to revoke the 1997 ozone NAAQS at the time the final SIP Requirements Rule is published in the **Federal Register** means that general conformity requirements under the 1997 ozone NAAQS would end after the 2008 ozone NAAQS general conformity requirements begin.

H. What are the requirements for contingency measures in the event of failure to meet a milestone or to attain?

1. Background

Contingency measures are additional emissions control measures states must implement in the event a nonattainment area fails to meet an RFP milestone or fails to attain by its attainment date. Under the CAA, nonattainment areas that are classified under subpart 2 of part D of title I as Moderate, Serious, Severe or Extreme must include in their SIPs contingency measures consistent with section 172(c)(9), and those classified as Severe or higher must include contingency measures that are also consistent with section 182(c)(9). These contingency measures must be fully adopted rules or measures that are ready for implementation quickly upon failure to meet milestones or attain. Per EPA guidance,[51] these measures should represent 1 year's worth of reductions, or approximately 3 percent of the baseline emissions inventory. For additional background information on contingency measures, *see* 68 FR 32802 (June 3, 2003) and 70 FR 71650 (November 29, 2005) (the proposed and final Phase 2 Rule).

Guidance developed by the EPA in 1993 specified the content of the contingency measures. This guidance indicated that for areas classified Moderate and higher that had completed the initial 15 percent VOC reductions, contingency measures could be a mixture of VOC and NO_X reductions. The guidance indicated that of the 3 percent emissions reductions required, 0.3 percent had to be VOC emissions reductions, allowing the remaining 2.7 percent of emissions reductions to be NO_X emissions reductions.

2. Proposal

The EPA is proposing to interpret the contingency measure requirement for the 2008 ozone NAAQS in the same manner it has interpreted that requirement for the 1-hour and 1997 ozone NAAQS, with the exception of the content of the contingency

[51] August 23, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, to Regional Air Directors, ''Guidance on Issues Related to 15 Percent Rate-of-Progress Plans.''

measures, as discussed below. The EPA is proposing that the contingency measures required for Moderate and above areas under CAA sections 172(c)(9) and 182(c)(9) must provide for the implementation of specific measures if the area fails to meet any applicable milestone. These measures must be submitted for approval into the SIP as adopted measures that would take effect without further rulemaking action by the state or the Administrator upon a determination that an area failed to attain or meet the applicable milestone. Contingency measures should represent 1 year's worth of progress for the nonattainment area, which would be achieved while the area is revising its plan. Where appropriate, federal measures providing ongoing reductions into the future can be used as contingency measures. Innovative measures such as energy efficiency programs or renewable energy programs that meet the requirements of CAA section 172(c)(9), as well as section 182(c)(9) for areas classified as Serious or higher, can also be used as contingency measures.

Regarding content of the 1 year's worth of emissions covered by the contingency measures, the EPA believes that prior contingency measure guidance specifying a minimum of 0.3 percent of the emission reductions (i.e., one-tenth of the total 3 percent emission reduction requirement) must be from VOCs is no longer necessary. The EPA is proposing that for Moderate and above areas that have completed the initial 15 percent VOC reduction required by CAA section 182(b)(1)(A)(i), the 3 percent emissions reductions of the contingency measures may be based entirely on NO_X controls if that is what the state's analyses have demonstrated would be most effective in bringing the area into attainment. There is no minimum VOC requirement.

We are soliciting comment on a contingency measure issue for nonattainment areas classified as Extreme, based on past state experience developing control plans for Extreme areas. The CAA in section 182(e)(5) allows the EPA to approve an Extreme area attainment plan that relies, in part, on the future development of new control technologies or improvements of existing control technologies. This discretion is available as long as the state has demonstrated that: all reasonably available control measures, including RACT, have been included in the plan; the area's RFP demonstration during the first 10 years after designation does not rely on anticipated future technologies; and the state has submitted enforceable commitments to develop and adopt contingency measures in the event that anticipated future technologies do not achieve planned reductions.

If an Extreme area qualifies for the discretion authorized by section 182(e)(5), it could be argued that it is unreasonable to expect the state to provide for the contingency measures required by sections 172(c)(9) and 182(c)(9). Indeed, it is hard to know how an area whose attainment SIP can include measures that are not fully developed would be able to identify contingency measures that are more specific. And while the CAA does not limit these measures to ''feasible'' measures, we do not believe that such areas should be required to adopt unreasonable or draconian measures when all reasonable candidate contingency measures will already have been employed in the plan to meet the RACM and RFP requirements. In this case it could be argued that the section 182(e)(5) contingency measure provision is the only reasonable way to meet the section 172(c)(9) and 182(c)(9) contingency measure requirements. Accordingly, the EPA is soliciting comments on how Extreme areas that can demonstrate they have implemented all feasible measures for purposes of their RFP SIPs and their RACM analyses can legally address CAA contingency measure requirements.

3. Additional Guidance for States That Use a Federal Measure as a Contingency Measure

The EPA has a long-standing practice of allowing federal measures to be used as contingency measures as long as they provide emissions reductions in the relevant years in excess of those needed for attainment or RFP. The EPA has interpreted this policy as applying to federal measures that have already been adopted, which would include emissions reductions from fleet turnover to lower emitting on-road vehicles and non-road equipment such as on-road vehicles certified to Tier 2 light-duty vehicle emission standards.[52] The EPA has approved the use of federal measures to meet contingency measure requirements in several EPA actions approving 1-hour and 8-hour ozone SIPs. (62 FR 15844, April 3, 1997), (62 FR 66279, December 18, 1997), (66 FR 30811, June 8, 2001), (66 FR 586 and 66 FR 634, January 3, 2001) (74 FR 1903, January 14, 2009). We plan to continue to allow areas to use future reductions from promulgated federal measures as contingency measures for the 2008 ozone NAAQS, consistent with our practice for both the 1-hour and 1997 ozone NAAQS.

States using on-road motor vehicle fleet turnover as a contingency measure should establish and submit, as part of the SIP containing the contingency measure, motor vehicle emissions budgets (MVEBs) consistent with the use of on-road fleet turnover as a contingency measure. Such budgets would help to ensure that the emissions reductions attributed to the on-road fleet turnover contingency measure are actually available in the event that the contingency measure is triggered and would be available to serve the purpose intended by the SIP. For example, if an area is required to attain the 2008 ozone NAAQS in 2018 and the SIP includes VOC and NO_X emissions reductions resulting from on-road fleet turnover as a contingency measure in the event that the area fails to attain by 2018, the SIP for that area should include VOC and NO_X MVEBs for 2019 (the year after the attainment date) that are consistent with the use of the on-road fleet turnover contingency measure. Having such budgets would help to ensure that reductions from a fleet turnover contingency measure would be surplus and available for the SIP in the event that contingency measures are triggered.

I. How do the NSR requirements apply for the 2008 ozone NAAQS?

1. NSR Requirements for the 2008 Ozone NAAQS

The NSR programs contained in parts C and D of title I of the CAA are preconstruction review and permitting programs applicable to new or modified major stationary sources of air pollutants regulated under the CAA. In attainment and unclassifiable areas outside the OTR, the requirements under part C apply under the PSD program. In nonattainment areas and throughout the OTR, the program is implemented under the requirements of part D, under the nonattainment NSR program. Collectively, we commonly refer to the PSD and nonattainment NSR programs together as the ''major NSR programs.''

The regulations for the major NSR programs are contained in 40 CFR

[52] Fleet turnover is the change in model year composition of the local motor vehicle fleet. The composition of the motor vehicle fleet changes as new vehicles enter the fleet and old vehicles are removed. Generally, this results in a decrease in fleet average NO_X and VOC emissions each year as older model year vehicles certified to less stringent emission standards leave the fleet and are replaced by newer vehicles certified to more stringent standards. The emission impacts of fleet turnover outside of California are currently calculated using EPA's MOVES emission factor model. 75 FR 9411, March 2, 2010. In California these emissions impacts are currently calculated using EMFAC2007.

51.166 and 52.21 for PSD, and 51.165, 52.24 and part 51, Appendix S for nonattainment NSR. Among other things, in unclassifiable and attainment areas outside of the OTR, the PSD program requires a new major source, or a major modification to an existing source, to install best available control technology (BACT) and conduct an air quality impact analysis, including an analysis of potential impacts on Class I areas (*see* CAA sections 162, 165(a)(3), 165(a)(4), 165(a)(5) and 165(d)).

Section 165(a)(3) of the CAA provides that in order to obtain a PSD permit the owner or operator of a proposed facility must, among other things, demonstrate that ''emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any . . . national ambient air quality standard in any air control region.'' The EPA has generally interpreted this requirement to include any NAAQS that is in effect at the time a permit is issued.[53] *See, e.g.,* 73 FR 28321, 28324, 28340 (May 16, 2008); Memorandum from Stephen D. Page, Director, Office of Air Quality Planning & Standards, ''Applicability of the Federal Prevention of Significant Deterioration Permit Requirements to New and Revised National Ambient Air Quality Standards'' (April 1, 2010). Accordingly, since the May 27, 2008, effective date of the 2008 ozone NAAQS, permit applications for new major stationary sources and major modifications have been subjected to the PSD program requirements for ozone under two sets of circumstances: first, prior to the designation of areas based on the 2008 ozone NAAQS, sources locating in areas designated attainment or unclassifiable for the 1997 ozone NAAQS; and second, on and after the July 20, 2012 effective date of area designations for the 2008 ozone NAAQS, sources locating in areas designated as attainment or unclassifiable for both the 1997 and 2008 ozone NAAQS. In all cases, the permit applicants must, among other things, demonstrate that the proposed project's emissions increase will not cause or contribute to a violation of the 2008 ozone NAAQS.

For purposes of determining individual source impacts with respect to the 2008 ozone NAAQS, PSD permit applicants and permitting authorities should continue to follow the current practice described in Appendix W to 40 CFR part 51, which is to consult with the applicable EPA regional office to determine the appropriate means of addressing such impacts. 40 CFR part 51, App. W, § 5.2.1(c). Although those applicants must demonstrate that the proposed source or modification will not cause or contribute to a violation of the 2008 ozone NAAQS, that demonstration does not necessarily require the permit applicants to perform new air quality modeling. *See* 40 CFR 51.166(k)(1) and 52.21(k)(1) (requiring source impact analysis); *see also* 40 CFR part 51, App. W, § 5.2.1(c) (explaining that the choice of methods to assess the impact of an individual source on the ozone NAAQS depends on the nature of the source and its emissions, and that appropriate methods are determined in consultation with the EPA regional office on a case-by-case basis). As appropriate, after consultation with the applicable EPA regional office, the demonstration can be made using modeling performed previously for air quality planning purposes or with other forms of qualitative or quantitative analysis, as has generally been the case in past permits. The adoption of the 2008 ozone NAAQS does not change that approach.

Following the July 20, 2012, effective date of area designations and classifications for the 2008 ozone NAAQS, and in keeping with the general policy that the permit issued to a major new source or major modification must satisfy the applicable permit requirements in effect as of the date of permit issuance, the requirements to be satisfied by the permit applicant in an area designated nonattainment for the 2008 ozone NAAQS will have depended on the area's highest nonattainment classification, whether for the 2008 ozone NAAQS or a previous ozone NAAQS for which the area remains nonattainment. *See* section IV of this proposal for a more detailed description of anti-backsliding requirements. Accordingly, some pending permits that were originally being reviewed under the PSD requirements but not yet issued were to have been (or may need to be) revised to adequately reflect the area's new status as nonattainment for the 2008 ozone NAAQS. For example, if an area designated as attainment or unclassifiable for the 1997 ozone NAAQS was designated as nonattainment for the 2008 ozone NAAQS, any permit issued on or after the July 20, 2012, effective date of the new nonattainment designation (and classification) must satisfy the requirements for nonattainment NSR. In an area that was already designated as nonattainment for the 1997 ozone NAAQS at the time it was designated nonattainment for the 2008 ozone NAAQS, the source would need to ensure that its permit application applies the appropriate nonattainment NSR requirements (e.g., the applicable major source thresholds and offsets) consistent with the area's new classification under the 2008 ozone NAAQS as reflected in the SIP and the final NSR anti-backsliding provisions for the 2008 ozone NAAQS, as discussed in section IV.

Some states may already have had in place a nonattainment NSR program consistent with the applicable part D requirements of the Act that can be directly applied to areas designated nonattainment for the 2008 ozone NAAQS and that were not designated nonattainment for the 1997 ozone NAAQS as of the July 20, 2012, effective date of the designations for the 2008 ozone NAAQS. For nonattainment areas in states with SIPs containing a generic requirement to issue nonattainment NSR permits in areas designated as nonattainment, those permit requirements for the 2008 ozone NAAQS became automatically effective upon designation.

For a newly designated 2008 ozone nonattainment area in a state with a SIP that specifically lists the areas in which nonattainment NSR requirements under part D apply, or in a state which currently has no approved nonattainment NSR program, there will be an interim period between the July 20, 2012, designation date and the date when the state amends its SIP either to list any new nonattainment area(s) or to include a part D plan. During this interim period, nonattainment NSR requirements are governed by the EPA's Emission Offset Interpretative Ruling codified in appendix S to 40 CFR part 51. In general, appendix S requires new or modified major sources in nonattainment areas to meet the lowest achievable emission rate (LAER) and obtain sufficient offsetting emissions reductions to assure that the new or modified major sources will not interfere with the area's progress toward attainment. Readers should refer to 40 CFR part 51, appendix S for a complete understanding of these and other appendix S permitting requirements.

Section 110(a)(2)(C) of the CAA establishes a general duty on the state to include a program in its SIP that regulates the modification and construction of any stationary source as necessary to assure that NAAQS are

[53] However, the EPA has also recognized that it has discretion to grandfather, under appropriate circumstances, permit applications that are pending at the time a new or revised NAAQS comes into effect from the requirement to demonstrate that a major new source or modification does not cause or contribute to a violation of a new or revised NAAQS. Since the NAAQS has been in effect since 2008, the EPA does not believe any grandfathering is necessary and proposes no such action here.

achieved. This general duty exists during all periods, including the period between the effective date of a new nonattainment area designation and the date when a state has an EPA-approved nonattainment NSR program satisfying the applicable part D requirements. Although section 110(a)(2)(C) does not contain specific requirements a state must follow for issuing major source permits during the interim period, the EPA's regulations at 40 CFR 52.24(k) require the state to follow 40 CFR part 51, appendix S, during this time. The availability of the waiver provision in section VI of appendix S is limited by the court's ruling in *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009). In the EPA's Phase 2 Rule for the 1997 ozone NAAQS, the EPA revised section 52.24(k) to eliminate language stating that if a nonattainment area did not have an approved nonattainment NSR program within 18 months after designation, a construction ban would apply. 70 FR 71612 (November 29, 2005). The effect was to extend the applicability of appendix S, including the section VI waiver provision, to cover the full period from the date of designation to the date on which the EPA approved the nonattainment NSR SIP.

In *NRDC* v. *EPA* (571 F.3d 1245 (D.C. Cir. 2009)), the court considered the petitioners' general objections to the NSR waiver provision in section VI of appendix S, as well as the EPA's elimination of the 18-month limit on the applicability of that section. The court dismissed the petitioners' general objections as ''untimely'' but vacated ''the elimination of the 18-month time limit for NSR waivers under Appendix S'' on the ground that it violated section 172(e) of the CAA (571 F.3d at 1276). The EPA intends to revise section 52.24(k) to reflect the court's vacatur of the extension of the 18-month time limit for section VI of appendix S. In the meantime, as a result of the vacatur, no section VI waivers may be granted beyond 18 months from the date of designation.

2. Facilitating New Source Growth in Nonattainment Areas

a. Offset Banks

The Act requires new and modified major sources in nonattainment areas to secure emissions reductions (i.e., ''offsets'') to compensate for the proposed emissions increase. States can help facilitate continued economic development in a nonattainment area by establishing offset banks or registries. Such banks or registries can help new or modified major stationary source owners meet offset requirements by streamlining identification and access to available emissions reductions. Several states have established offset banks to help ensure a consistent method for generating and transferring NO_X and VOC offsets.[54] Offsets are generated by emissions reductions that meet specific creditability criteria set forth by EPA regulations.[55] 40 CFR 51.165(3)(ii)(A)–(J).

b. Interpollutant Offset Substitution

States can make it easier for new or modified major sources to satisfy the offset requirements in an area by establishing interpollutant offset substitution provisions. Such provisions create additional flexibility in meeting offset requirements by allowing NO_X emissions reductions to satisfy VOC offset requirements and vice versa. The appropriate exchange rate for substitution is determined by the state for each area consistent with the attainment needs of the area and must be approved by the EPA.

c. Economic Development Zones

Section 173(a)(1)(B) of the CAA authorizes the Administrator, in consultation with the Secretary of Housing and Urban Development (HUD), to identify areas within nonattainment areas as ''zone(s) to which economic development should be targeted.'' In these zones, states are able to assist new or modified major sources in meeting the nonattainment area offset requirement by setting aside growth ''allowances'' that serve as a pool of offsets to be tapped by such sources. The advantage of creating an offset pool specifically for a CAA economic development zone (EDZ) relative to relying on a traditional offset bank is that the offsets can be fully owned and controlled by the state, and the offsets do not need to be obtained from facility-specific emissions reductions or shutdowns in the nonattainment area. Accordingly, this provision is especially well suited to address the needs of the manufacturing sector and small businesses. The EPA is willing to work with HUD and states to identify potential areas.

In the context of the 1997 ozone NAAQS, the EPA previously worked with Arkansas officials to create a CAA EDZ in Crittenden County, which is part of the Memphis ozone nonattainment area (*see* 71 FR 8857, February 21, 2006). The EPA identified Crittenden County as a CAA EDZ after consultation with the Secretary of HUD to review qualification information associated with HUD-implemented economic development programs. We also evaluated socio-economic statistics for Crittenden County in comparison with similar information for other U.S. counties, and we reviewed air quality modeling of the Memphis nonattainment area provided by the Arkansas Department of Environmental Quality demonstrating that a specified growth allowance pool was consistent with timely attainment of the 1997 ozone NAAQS. After reviewing this information, the Administrator determined that the EDZ designation would help the citizens of Crittenden County without jeopardizing the clean air goals of the Greater Memphis area. The Memphis area has since attained the 1997 ozone NAAQS and the Arkansas portion of the Memphis nonattainment area was redesignated to attainment on March 24, 2010.

J. What are the emission inventory and emission statement requirements?

1. Emission Inventory Requirements

Emission inventories are critical for the efforts of state, local and federal agencies to attain and maintain the NAAQS that the EPA has established for criteria pollutants, including ozone. Pursuant to section 110(a)(2)(F)(ii) of the CAA, states must submit emission inventories containing information regarding the current emissions of criteria pollutants and their precursors. The EPA first codified regulations to implement CAA section 110(a)(2)(F)(ii) in 40 CFR part 51, subpart Q in 1979 and amended them in 1987.

The 1990 CAA Amendments established new emission inventory requirements applicable to certain areas that were designated nonattainment for certain pollutants. First, CAA section 182(a)(1) requires that Marginal and above ozone nonattainment areas submit a base year emission inventory for the nonattainment area 2 years after designation as nonattainment in 1990. For areas designated nonattainment for the 2008 ozone NAAQS, we are proposing that the base year emission inventory submission be due no later than 2 years after the effective date of designation, or alternatively, 30 months following the effective date of designation under the consolidated SIP submittal option described in section III.A of this preamble.

[54] *See,* for example, emission reduction credit banking programs in Ohio (OAC Chapter 3745–1111) and California (H&SC Section 40709).

[55] *See* the EPA's ''Improving Air Quality with Economic Incentive Programs'' document at *http://www.epa.gov/region07/air/nsr/nsrmemos/eipfin.pdf.* For additional memoranda and guidance documents, *see http://www.epa.gov/region7/air/nsr/nsrindex.htm.*

Second, CAA section 182(a)(3)(A) requires that states submit periodic emission inventories every 3 years after the initial base year inventory for Marginal and above ozone nonattainment areas. The periodic inventory must include emissions of VOC and NO_X for point, nonpoint and mobile sources (on-road and non-road). On December 4, 2008, the EPA promulgated the AERR rule (40 CFR 51, subpart A). The AERR requires states to submit comprehensive statewide 3-year cycle emission inventories (2008, 2011, 2014, etc.) regardless of an area's attainment status. The EPA thinks it would be appropriate for states with periodic inventory obligations under 182(a)(3)(A) to rely on their 3-year cycle inventory as described in the AERR to satisfy their 182(a)(3)(A) periodic inventory obligation. In cases where a state will use its 3-year cycle inventory to meet its 182(a)(3)(A) inventory obligation, we are further proposing that the emissions reporting requirements of the AERR be applied to determine all of the data elements required for such inventories. (*see,* e.g. Tables 2A, 2B, 2C and 2D of 40 CFR part 51, subpart A, Appendix A).

For all inventories that are used in developing RFP plans or attainment demonstrations, mobile source emissions should be estimated using the latest emissions models, data and planning assumptions. The latest approved models should be used to estimate emissions from on-road and non-road sources, in combination with the latest available estimates of VMT, vehicle population, and/or equipment activity. States are advised to check the EPA Web pages for the mobile source models and to consult with the EPA Office of Transportation and Air Quality and their regional office to determine the versions of models to use for their SIPs for the 2008 ozone NAAQS.

Currently, the most recently approved model for estimating on-road emissions in states outside of California is MOVES2010 [56] which initially was approved for use in SIPs on March 2, 2010 (75 FR 9411).[57] The EPA has subsequently released two minor updates to MOVES2010, MOVES2010a and MOVES2010b that are also approved for use in SIPs. The on-road emissions can be generated either through inventory mode (via MOVES) or through emission rates mode (via SMOKE–MOVES [58]). Guidance on using MOVES as well as information on the current version of MOVES that has been approved for use in SIPs and transportation conformity is available at: *http://www.epa.gov/otaq/models/moves/index.htm.*

Emissions from non-road equipment should be estimated with the latest official version of the EPA's NONROAD model, and other appropriate methods for estimating emissions from sources not covered by these models. Links to **Federal Register** notices and policy guidance memos on the latest approved versions of MOVES and NONROAD can be found at *http://www.epa.gov/otaq/models.htm.* States should consult the guidance document ''Emission Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454/R–05–001 (updated November 2005) and submit inventories that are appropriate for each nonattainment area and consistent with this guidance.

As indicated above, some inventories submitted to meet the requirements of section 182(a)(1) and 182(a)(3)(A) may be used in the development of RFP plans and/or attainment demonstrations. As such, the EPA requires the methodologies used to develop these inventories to be clearly documented and the inventories themselves to be subject to public participation requirements and formal approval/disapproval by the EPA.[59]

In guidance titled, ''Public Hearing Requirements for 1990 Base-Year Emissions Inventories for Ozone and Carbon Monoxide Nonattainment Areas,'' September 29, 1992, the EPA set forth its interpretation of a ''*de minimis''* deferral of the public hearing requirement and the requirement for the EPA to approve or disapprove certain emissions inventories under section 110(k).[60] The EPA is proposing to follow this guidance in implementing the emissions inventory requirements under CAA sections 182(a)(1) and 182(a)(3)(A) for purposes of the 2008 ozone NAAQS. Under this approach, where emission inventories are used in the development of an RFP plan or attainment demonstration, states can defer the public hearing on these inventories until the time the areas adopt and submit their RFP plans and/or attainment demonstrations that rely on such inventories. The EPA would not take action to approve or disapprove such inventories until the state completes the state public participation process. If a state opts to submit a consolidated SIP submittal, this should not be an issue.

2. Source Emission Statements

Section 182(a)(3)(B) of the CAA requires Marginal and above areas to submit an emissions statement within 2 years of enactment of the CAA Amendments of 1990. Specifically it provides that the emission statement must: ''. . . require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the state with a statement, in such form as the Administrator may prescribe (or an equivalent alternative developed by the state), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first such statement shall be submitted within 3 years after the date of the enactment of the CAA Amendments of 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.''

We published guidance on source emission statements in a July 1992 memorandum titled, ''Guidance on the Implementation of an Emission Statement Program.'' A memorandum titled, ''Emission Statement Requirements Under 8-hour Ozone NAAQS Implementation,'' dated March 14, 2006, clarified that the source emission statement requirement under the CAA was applicable to all areas designated nonattainment for the 1997 ozone NAAQS and classified as Marginal or higher under subpart 2, part D, title I of the CAA. This requirement similarly applies to all areas designated

[56] MOVES2010 refers to the initial version of the model that was approved for use in SIPs and regional transportation conformity analyses on March 2, 2010, as well as subsequent minor upgrades to the model such as MOVES2010a and MOVES2010b.

[57] EMFAC is the model used to estimate on-road mobile source emissions in California. The latest version of the model that has been approved for SIP and conformity purposes is EMFAC2011. *See* 78 FR 14533 (March 6, 2013).

[58] For more information, *see http://www.smoke-model.org/index.cfm.*

[59] In comparison, the AERR emissions data are submitted by the states to the EPA, electronically via the Emission Inventory System to the National Emissions Inventory (NEI), without public review. The states submit AERR data to the NEI inventory 12 months after the NEI inventory year (i.e., calendar year 2014 NEI inventory data are submitted by December 31, 2015). The NEI process provides for the states to review the data as collected by the EPA before the EPA officially publishes the data. (Under the current process, the EPA would intend to publish the data for the 2014 NEI in June of 2016, 6 months after the AERR data is required to be submitted to the EPA.)

[60] CAA section 110(k) lists the actions that the EPA may take on SIP submissions, including approval and disapproval of the SIP.

nonattainment for the 2008 ozone NAAQS and classified as Marginal or higher under subpart 2. The EPA is proposing this SIP submittal be due 2 years after the effective date of designations or, alternatively, no later than 30 months after the effective date of designations as part of a consolidated SIP submission as described previously in this proposal. Most areas that need an emission statement program already have one in place due to a nonattainment designation for an earlier ozone NAAQS. If an area has a previously approved emission statement rule in force for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS. The state should review the existing rule to ensure it is adequate and, if it is, may rely on it to meet the emission statement requirement for the 2008 ozone NAAQS.

We note that regardless of whether states submit their emissions inventory statements within 2 years of the effective date of designations, or within 30 months of the effective date of designations as part of a consolidated SIP submission, this proposed rule will ensure that, consistent with the intent of section 182(a)(3)(B), states will submit their first emission statements no later than 3 years following the effective date of designations for the 2008 NAAQS. We are soliciting comments on our interpretation of the emission statement requirements under section 182(a)(3)(B) as they would apply to areas designated nonattainment for the 2008 ozone NAAQS.

K. What are the ambient monitoring requirements?

Ozone monitoring data play an important role in designations, classifications, control strategy development and related implementation activities. The EPA's ambient monitoring requirements are contained in 40 CFR part 58. On July 16, 2009, the EPA proposed revised rules for monitoring ambient ozone (74 FR 34525). The EPA proposed to modify minimum monitoring requirements in urban areas, add new minimum monitoring requirements in non-urban areas and extend the length of the required ozone monitoring season in some states. The schedule for finalizing any or all aspects of the ambient ozone monitoring proposal remains unclear at this time. There were no new monitoring requirements included in the 2008 ozone NAAQS rule.

The Photochemical Assessment Monitoring Station (PAMS) program, required by CAA section 182(c)(1), collects enhanced ambient air measurements in areas classified as Serious, Severe, or Extreme ozone nonattainment. Each PAMS area collects data for a target list of volatile organic compounds (VOCs), NO_X, NO_y, and ozone, as well as surface and upper air meteorological measurements. Monitoring rule amendments published on October 17, 2006, (71 FR 61236) reduced the minimum PAMS requirements. The revisions were intended to require the retention of the minimum common PAMS network elements necessary to meet the objectives of every PAMS program, while freeing up resources for states to tailor other features of their own PAMS networks to suit their specific data needs.

L. How can states qualify for a 1-year attainment deadline extension?

Section 181(a)(5) of the CAA addresses the conditions under which an area may be eligible for a 1-year extension of its attainment date. Because that statutory provision was written for an exceedance-based standard, such as the 1-hour ozone NAAQS, the EPA established through the Phase 1 Rule (40 CFR 51.907) an interpretation that would apply to a concentration-based standard, such as the 1997 ozone NAAQS.[61] The 2008 ozone NAAQS is also a concentration-based standard. Thus, we are proposing the same approach as set forth in section 51.907 for purposes of the 2008 ozone NAAQS. Under this approach, an area that fails to attain the 2008 ozone NAAQS by its attainment date would be eligible for the first 1-year extension if, for the attainment year, the area's 4th highest daily 8-hour average is at or below the level of the standard. The area would be eligible for the second 1-year extension if the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is at or below the level of the standard. Thus, to be eligible for the first 1-year extension, the 4th highest daily 8-hour value for an area would need to be at or below 0.075 ppm. The area would be eligible for the second extension if the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is less than or equal to 0.075 ppm.

M. How will the EPA address transport of ozone and its precursors for rural nonattainment areas, multi-state nonattainment areas and international transport?

1. Rural Transport Areas (RTAs)

Section 182(h) of the CAA recognizes that ozone standard violations in some rural areas may be almost entirely attributable to emissions from outside the nonattainment area (i.e., from upwind areas). That section provides that an area meeting certain criteria may, at the Administrator's discretion, be treated as a ''rural transport area.'' Under this classification, the area's ozone implementation requirements are met if the area satisfies the requirements applicable to areas classified as Marginal. This means that the area does not need to provide an attainment demonstration or adopt specific mandatory measures associated with higher classifications. The only requirements that would apply, regardless of the level of ozone air quality, would be nonattainment NSR, at the Marginal major source threshold and offset ratio, and conformity requirements associated with a nonattainment designation, as well as the emission inventory and source emission statement requirements. Because the area's nonattainment problem is primarily due to upwind sources outside the control of the area, the consequences of failure to attain by the Marginal area deadline would not apply.

The EPA may determine an area is a rural transport area if it meets two statutory criteria. First, a nonattainment area may only be a rural transport area if it ''. . . does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area . . .'' In addition, the EPA must determine that ''sources of VOC emissions (and, where the Administrator determines relevant, NO_X emissions) within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.'' The metropolitan areas addressed in section 182(h) were only those with population cores of 50,000 or more.

In 2000, OMB issued new standards for defining statistical areas (65 FR 82228; December 27, 2000). The new

[61] The exceedance based standard basically allowed the NAAQS level to be exceeded an average of only once a year over a 3-year period. (This is a generalization of how attainment is determined; the actual method considers other factors such as completeness of the data.) *See* 40 CFR, appendix H. In contrast, the concentration based standard allows the level of the 8-hour ozone NAAQS to be ''exceeded'' more than once a year on average because the form (concentration-based) of that NAAQS is determined by averaging the 4th highest reading for each year over a 3-year period.

statistical area standards supersede and replace the previous 1990 standards for defining metropolitan areas, which the EPA used for the ozone designations and classifications for the 1-hour ozone NAAQS and the 1997 ozone NAAQS. In order to facilitate comparison of data for MSAs over time, OMB retained the conceptual approach to defining metropolitan statistical areas based around population cores of 50,000 or more. These core areas are not necessarily confined to city limits, and may include multiple counties or parts of counties. Because of the usefulness of the metropolitan area standards and data products, OMB received requests that the new standards take into account more territory of the United States. In response, OMB established a new category called micropolitan statistical areas, which are defined as areas with an urban core population of at least 10,000 but less than 50,000. The new standards also establish the term Core Based Statistical Area (CBSA), which refers collectively to both metropolitan statistical areas and the new smaller micropolitan statistical areas, and the term Combined Statistical Area (CSA), which consists of two or more adjacent CBSAs that are linked by commuting patterns. (*See http://www.census.gov/population/www/metroareas/metrodef.html.*)

In light of the changed OMB definitions, the EPA has considered how the reference in section 182(h) to areas adjacent to a ''Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area'' should be interpreted. We intend to interpret this language to refer to OMB's current definition of MSA. In other words, to qualify for a rural transport classification, the nonattainment area's boundary could not include or be adjacent to an OMB-defined MSA based on the Census Bureau's latest population estimates. Under this approach, any nonattainment area associated with a micropolitan area or area too sparsely populated to be included in a census-defined statistical area, based on Census Bureau population estimates, may be able to qualify for a rural transport classification.

The EPA believes this interpretation of CAA section 182(h) is consistent with the scope of section 182(h) as promulgated in 1990 and provides maximum flexibility for areas to qualify for this classification where appropriate. During the designations process for the 2008 ozone NAAQS, no states identified any rural transport areas.

2. Multi-State Nonattainment Areas

Each state within a multi-state ozone nonattainment area is responsible for meeting all the requirements relevant to the given area. Section 182(j)(1)(a) requires that states should ''take all reasonable steps to coordinate substantively and procedurally'' on SIP development. States should coordinate on topics such as determining the appropriate modeling domain, baseline year, projection years and meteorological episodes. In addition, they should coordinate modeling efforts and, as required by section 182(j)(1)(B), the attainment demonstration must be based on photochemical grid modeling or another method determined by the EPA to be at least as effective.

Section 182(j)(2) recognizes that in certain instances, one or more states within a multi-state nonattainment area may not submit an attainment plan by the required date, and thus interfering with the ability of the area as a whole to demonstrate attainment. In such case, section 182(j) provides that even though the area as a whole would not be able to demonstrate attainment, the sanction provisions of section 179 shall not apply in the portion of the nonattainment area located in a state that submitted all other provisions of an attainment plan and demonstrated that it could have demonstrated attainment but for the failure of the other state to cooperate.

3. International Transport

a. Transboundary Transport

Most ozone air quality problems in the United States are due primarily to emission sources within the United States. However, domestic ozone air quality can also be affected by sources of emissions located across United States borders in Canada and Mexico, and from other continents. These contributions to U.S. ozone concentrations from sources outside the United States can affect to varying degrees the ability of some areas to attain and maintain the 2008 ozone NAAQS and may play a larger role in ozone attainment demonstrations for future NAAQS.

There is strong evidence that baseline levels of tropospheric ozone have risen above pre-industrial levels in the northern hemisphere, and much of this increase can be directly attributed to human-caused emissions of ozone precursors. Our ability to fully characterize and quantify the impact of sources of air pollution from other parts of North America (Canada and Mexico) has been steadily improving; however, our ability to assess the impacts of air pollution from other continents on air quality in the U.S. is still developing. Some factors that affect our current ability to fully characterize international transboundary transport of air pollution from other continents are uncertainties in foreign emissions inventories, incomplete understanding of atmospheric chemistry during transport and the inability to distinguish long-range pollutant contributions from local and regional sources of air pollution.

In order to address the challenging and complex problem of the impact of foreign emissions on air quality in the U.S., the EPA has been engaged in a number of different efforts both domestically and internationally. In 1991, the U.S. and Canada entered into an agreement to address transboundary air pollution (U.S.-Canada Air Quality Agreement); and in 2000 an Ozone Annex was added to the agreement to establish commitments to reduce ozone and its precursors—NO_X and VOCs. Under this agreement, significant progress has been made in reducing transport of ozone and its precursors across the U.S.-Canada border. Similarly, the U.S. has been working with Mexico in addressing the transboundary transport of air pollution under the La Paz Agreement (Cooperation for the Protection and Improvement of the Environment in the Border Area) established in 1983.

In addition, the EPA, along with several other federal agencies, sponsored a National Academy of Sciences study to summarize the state of knowledge regarding the international flows of air pollutants into and out of the U.S. and consider the impact of these flows on the achievement of environmental objectives related to air quality and pollutant deposition in the U.S.[62] The study, completed in 2009, recommended a variety of research initiatives, such as advanced ''fingerprinting'' techniques to better identify source-specific pollutant characteristics in order to enhance the understanding of long-range transport of pollution. Moreover, the EPA co-chairs the Task Force on Hemispheric Transport of Air Pollution under the Convention on Long-range Transboundary Air Pollution of the United Nations Economic Commission for Europe. The task force was established to develop a fuller understanding of intercontinental transport of air pollution in the northern hemisphere, and serves as a forum for international scientific communication

[62] ''Global Sources of Local Pollution: An Assessment of Long-Range Transport of Key Air Pollutants to and from the United States.'' *http://www.nap.edu/catalog.php?record_id=12743.*

and collaboration and as a bridge between the international research community and the international air quality policy community. This task force concluded that methane is an important precursor to tropospheric ozone on global scales and that decreasing methane emissions will, over several decades, decrease background ozone levels and help mitigate climate change.

Methane has not been addressed as part of ozone attainment planning in the past because of the limited effect that local measures to control methane would have on local or regional ozone concentrations in the immediate time frame. Given the temporal and spatial characteristics associated with methane and ozone, we continue to believe that it is inappropriate to require or rely on local methane emission reductions in ozone SIPs. Through voluntary partnership programs focused on greenhouse gas reduction, the EPA has worked with U.S. industries and state and local governments to promote cost-effective opportunities for reducing methane emissions from the coal, natural gas, petroleum, landfill and agricultural industries. Building on these domestic programs and the international Methane to Markets Partnership, the United States has joined with other countries to launch the Global Methane Initiative to facilitate the reduction of methane emissions globally. These domestic and international efforts will help mitigate climate change and decrease background ozone levels over the next several years and decades.

The EPA will continue to work with our domestic and international partners to better understand the extent and implications of transboundary flows of air pollutants and, where possible, to mitigate their impact on U.S. domestic air quality.

b. The SIP Approval Process Under Section 179B for International Border Areas

Emissions from sources outside the United States that may contribute to violations of the 2008 ozone NAAQS in an area designated as nonattainment may be addressed by section 179B of the CAA. This section allows the EPA to approve an attainment demonstration for a nonattainment area if: (1) The attainment demonstration meets all other applicable requirements of the CAA; and (2) the submitting state can satisfactorily demonstrate that ''but for emissions emanating from outside of the United States,'' the area would attain and maintain the ozone standard. The EPA is proposing that this could include consideration of any emissions from North American or intercontinental sources. The EPA has historically evaluated these ''but for'' demonstrations on a case-by-case basis, based on the individual circumstances, the classification of the area and the data provided by the submitting state. These data have included ambient air quality monitoring data, modeling scenarios, emissions inventory data and meteorological or satellite data. For areas classified as Moderate and above, the modeling and other elements of the attainment demonstration must show timely attainment of the NAAQS but for the emissions from outside of the U.S. Section 179B does not, however, provide authority to exclude monitoring data influenced by international transport from regulatory determinations related to attainment and nonattainment. Thus, even if the EPA approves a section 179B ''but for'' demonstration for an area, the area would continue to be designated as nonattainment and subject to the applicable requirements, including nonattainment new source review, conformity and other measures prescribed for nonattainment areas by the CAA. However, if the EPA approves a ''but for'' demonstration for an area, the area would not be subject to reclassification for failure to attain by its attainment deadline and, if such areas were classified as Severe or Extreme, the section 185 fee program would not apply based on a failure to attain by the attainment date.

Although monitored data cannot be excluded for a determination of whether an area has attained based solely on the fact the data are affected by emissions from outside the U.S., such data may be excluded from consideration if they were significantly influenced by exceptional events. CAA section 319(b)(3). Where international transport meets the criteria contained in the EPA's Exceptional Events Rule (40 CFR 50.14), it can be addressed by that rule.

The EPA believes that the best approach for addressing the potential impacts of international transport on nonattainment is for states to work with the EPA on a case-by-case basis to determine the most appropriate information and analytical methods for each area's unique situation. We will work with states that are developing plans pursuant to section 179B, and ensure the states have the benefit of the EPA's developing understanding of international transport of ozone and its precursors.

N. How will the section 182(f) NO_X provisions be handled?

1. Background

Section 182(f) of the CAA applies to areas designated nonattainment for ozone and classified as Serious and above under subpart 2 of part D of title 1, and to areas in the OTR. It requires states to apply the same requirements to major stationary sources of NO_X as apply to major stationary sources of VOC under subpart 2. Specifically, this requirement applies to RACT and nonattainment NSR for major stationary sources of NO_X in these areas.[63] However, while NO_X emissions are necessary for the formation of ozone in the lower atmosphere, a local decrease in NO_X emissions can, in some cases, increase local ozone concentrations. Thus, section 182(f) also allows a person or a state to request an exemption from or limitation on the application of the specified NO_X requirements if specific circumstances are met (''NO_X exemption''). Areas granted a NO_X exemption under section 182(f) may also be granted an exemption from certain requirements of the EPA's motor vehicle I/M regulations and from certain federal requirements of General and Transportation Conformity.[64] The EPA initially issued guidance on the section 182(f) NO_X requirements in 1993.[65] On January 14, 2005, the EPA issued an update to that guidance to address implementation of the 1997 ozone NAAQS.[66]

[63] *See* 57 FR 55622, November 25, 1992, ''Nitrogen Oxides Supplement to the General Preamble.''

[64] As stated in the EPA's I/M rule (57 FR 52950; November 5, 1992) and conformity rules (60 FR 57179, November 14, 1995 for transportation conformity and 58 FR 63214, November 30, 1993 for general conformity), certain NO_X requirements in those rules do not apply where the EPA grants an area-wide exemption under section 182(f).

[65] In 1993 the EPA issued a guidance document for application of the section 182(f) provisions with respect to the 1-hour ozone NAAQS. The document was titled ''Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f), from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Division Directors, December 16, 1993. The NO_X exemption guidance was revised later in ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions Revised Process and Criteria,'' memorandum from John S. Seitz, Director, Office of Air Quality and Standards, to the Regional Division directors, May 27, 1994; and ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria,'' memorandum from John S. Seitz, Director, Office of Air Quality and Standards, to the Regional Division Directors, February 8, 1995.

[66] Memorandum dated January 14, 2005, ''Guidance on Limiting Nitrogen Oxides (NO_X) Requirements Related to 8-Hour Ozone Implementation'' from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Air Directors, Regions I–X.

2. Proposal

We are not proposing any modifications to our previous interpretation of the NO_X RACT requirement for purposes of implementing the 2008 ozone NAAQS. Consistent with the approach taken in the 2005 updated guidance and the Phase 2 Rule, we are proposing that a previously granted NO_X exemption (or waiver) under the 1-hour or 1997 ozone NAAQS would not apply for purposes of implementing the 2008 ozone NAAQS. A state would need to submit a new request for an exemption that is supported by analyses specific to the 2008 ozone NAAQS and considers any relevant information developed after the 1-hour or 1997 ozone NAAQS waivers were granted. As states evaluate whether to seek a NO_X waiver, the EPA encourages them to include consideration of air quality effects that may extend beyond the designated nonattainment area. *See,* for example, the discussion in the Phase 2 Rule, November 29, 2005, on page 71661 (70 FR at 71661–71662).

A SIP revision requesting a NO_X exemption for the 2008 ozone NAAQS must contain adequate documentation that the provisions of section 182(f) and our regulations are met. The EPA has issued guidance on appropriate documentation regarding section 182(f) for application to the 8-hour ozone program.[67] The EPA believes this guidance is sufficient to cover the 2008 ozone NAAQS.

O. Emissions Reduction Benefits of Energy Efficiency/Renewable Energy Policies and Programs, Land Use Planning and Travel Efficiency

1. Energy Efficiency/Renewable Energy Policies and Programs

Governments at all levels—local, state, tribal and federal—have been developing energy efficiency/renewable energy (EE/RE) policies and programs to reduce demand for and production of fossil-fuel driven electric power. As of 2011, twenty-nine states (and Washington, DC) had adopted renewable portfolio standards (RPS) which require retail electricity providers to supply a minimum percentage or amount of retail demand with renewable resources, more than double the number of states in 2000.[68] [69] Although the details of each RPS policy vary, generally they are structured such that, initially, a relatively small percentage of a state's electricity supply must come from renewable sources, and over time the percentage increases until a state-specified target is achieved. For example, the State of Connecticut requires that 4.5 percent of electricity come from renewable sources beginning in 2005, and the target increases to 27 percent by 2020.[70]

Energy efficiency policies refer to a range of laws, regulations, and public utility commission (PUC) orders aimed at reducing energy demand through the use of more energy efficient equipment, technologies, and practices. These policies can be funded through ratepayer surcharges, federal funds (e.g., American Recovery and Reinvestment Act [71]), state general funds, proceeds from pollution auctions such as the Regional Greenhouse Gas Initiative [72] and/or any combination of the above. Examples of energy efficiency policies include:

- Minimum efficiency requirements for new homes and buildings (building energy codes) or appliances (appliance standards).
- Requirements for utilities (or other program administrators) to deliver a specified amount of energy savings by developing energy efficiency programs to increase market adoption of energy efficiency technologies and practices (i.e., energy efficiency resource standards (EERS), also known as Energy Efficiency Portfolio Standards (EEPS)). Some states have incorporated EERS to function alongside or as part of their RPS.
- Specified funding levels collected via ratepayer electric bills or other sources and dedicated to implementing energy efficiency programs (e.g., public benefits funds, air pollution allowance auction revenue).

EE/RE policies and programs can help reduce electricity generation from fossil-fueled sources resulting in lower emissions of NO_X (as well as other criteria pollutants, hazardous air pollutants and greenhouse gases) from power generation. Many renewable energy sources such as wind, solar and hydro power have no associated NO_X and other emissions. Other renewable energy sources, such as landfill gas combustion used to power electrical generators, do produce some air emissions but generally less NO_X emissions than coal-fired EGUs. Energy efficiency is achieving the same or better level of service or performance with lower energy consumption. Examples include high-efficiency appliances; efficient lighting; high-efficiency heating, ventilating and air conditioning systems or control modifications; efficient building design; advanced electric motor drives; combined heat and power; and heat recovery systems.

The EPA encourages states to consider adopting EE/RE policies and programs to benefit nonattainment areas in their own state, as well as to reduce the impact of ozone transport on downwind states. In July 2012, the EPA made available the first version of clarifying guidance on the incorporation of EE/RE measures in SIPs.[73] Specifically, the EPA made available a document titled, ''Roadmap for Incorporating Energy Efficiency/Renewable Energy Policies and Programs into State and Tribal Implementation Plans'' to encourage state, tribal and local agencies to consider incorporating EE/RE policies and programs into SIPs/tribal implementation plans (TIPs). The manual is a ''living'' document, and it will be updated periodically as new information becomes available.

The manual describes four pathways for considering air pollution reductions from EE/RE policies and programs in SIPs and TIPs. They can be included in the attainment year projected baseline, factored into a ''weight of evidence'' attainment demonstration, incorporated as emerging/voluntary measures, or adopted as control measures and modeled in the attainment demonstration. When reviewing air pollution reductions from EE/RE policies and programs for the purpose of SIPs and TIPs, it is important to consider how the EE/RE policies and programs and their associated emission reductions best fit within one or more of the four SIP pathways. Valid EE/RE policies and programs that meet the applicable requirements of section 182(c)(9) can also be used as contingency measures.

The EPA is providing additional assistance to state, tribal and local agencies, including tools for quantifying the emissions impacts of EE/RE policies and programs, training and technical assistance, and energy savings information for state-level EE policies

[67] Memorandum dated January 14, 2005, ''Guidance on Limiting Nitrogen Oxides (NO_X) Requirements Related to 8-Hour Ozone Implementation'' from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Air Directors, Regions I–X.

[68] For more information, *see* presentations from the 2011 National Summit on RPS at *http://www.cleanenergystates.org/assets/Uploads/2011-RPS-Summit-Combined-Presentations-File.pdf.*

[69] *See* Database of CHP Policies and Incentives (dCHPP) at *http://www.epa.gov/chp/policies/database.html.*

[70] *http://www.dpuc.state.ct.us/electric.nsf/$FormRenewableEnergyView?OpenForm&.*

[71] For more information, go to: *http://www.recovery.gov/Pages/default.aspx.*

[72] For more information, go to: *http://www.rggi.org/.*

[73] *See http://www.epa.gov/airquality/eere.html.*

and programs. The EPA is also working with states on developing examples to illustrate how reductions from specific EE/RE policies and programs could be quantified and considered in their SIPs. The EPA encourages states to continue to work with each other and with the EPA to incorporate emission reductions from their EE/RE policies and programs into SIPs.

2. Land Use Planning

States may also wish to consider strategies that foster more efficient urban and regional development patterns as another effective long-term air pollution control measure. For example, land use strategies consistent with the principles endorsed by the HUD DOT EPA Sustainable Communities Partnership [74] can reduce mobile source emissions by providing a broader range of transportation and housing choices. Strategies that achieve such results include: increased residential development in major employment centers, transit-oriented development, redevelopment of underutilized land in existing communities and making pedestrian and transit access key design features of new communities. Specific activities that support such strategies include: changing local zoning codes to accommodate mixed use development and more walkable neighborhoods; greenway corridors; complete streets ordinances; increasing street connectivity; creating more flexible parking standards; transit station area planning; and funding or policy incentives to support redevelopment. EPA studies have concluded that development patterns that enable people to live closer to work, and that allow people to walk, bike or use transit, will reduce VMT, thereby decreasing automobile emissions and improving regional air quality.[75] Several studies conducted by metropolitan planning organizations have also found significant reductions in VMT associated with accommodating more growth though redevelopment in existing communities rather than greenfields development.

The EPA has issued guidance on how to include emissions reductions from such growth strategies in SIPs. This guidance document, ''Improving Air Quality Through Land Use Activities,'' is available at: *http://www.epa.gov/otaq/stateresources/policy/transp/landuse/r01001.pdf.*

The guidance provides communities experiencing air quality problems with the information they need to better understand the link between air quality, transportation and land use activities, and how certain land use activities have the potential to help local areas meet and maintain healthy air quality. The document also includes methods to help communities account for the air quality benefits of their local land use activities in their air quality plans. The EPA will provide additional guidance as needed, and will continue to work with states on incorporating these types of programs into their SIPs.

3. Travel Efficiency

In addition to land use strategies, areas should consider incorporating travel efficiency strategies in their SIPs. Travel efficiency strategies may include land use strategies, but also include new or expanded mass transit options, commuter strategies, system operations (e.g., eco-driving, ramp metering), pricing (e.g., parking taxes, congestion pricing, intercity tolls), speed limit restrictions and multimodal freight strategies.

In July 2009, the Urban Land Institute released a report titled, *Moving Cooler: An Analysis of Transportation Strategies for Reducing Greenhouse Gas Emissions,*[76] which the EPA and the DOT helped to fund. The report analyzed the potential levels of emissions reductions achievable from light-duty travel efficiency strategies. *Moving Cooler* included six different bundles of strategies to reflect different potential groups of strategies that could be implemented.

We believe that the ''Low Cost'' bundle of measures represents the most appropriate combination of strategies for states to consider based on cost, likelihood of success and accuracy of the research results. This bundle of measures includes the strategies listed above. We have conducted a preliminary national emissions modeling analysis using the data in the report and estimate that between 2010 and 2020 the low cost bundle of measures could reduce NO_X and VOC emissions between approximately 2 and 5 percent depending on how aggressively the strategies are implemented. Additional reductions are possible in later years.

The *Moving Cooler* report makes assumptions about the geographic scope for which each strategy could be implemented. For example, certain strategies like increased transit are dependent on high population density, while other strategies like telecommuting could be implemented in both urban and rural areas. The percent reductions for such measures would be larger in urban areas, where VMT reductions would be concentrated. The EPA believes that states should consider these types of strategies as they develop SIPs for the 2008 ozone NAAQS.

In March of 2011, the EPA released two documents that we believe will prove to be useful to states that want to evaluate emissions reductions that may be available from travel efficiency strategies. The first document is titled, ''Potential Changes in Emissions Due To Improvements In Travel Efficiency.'' [77] This report provides information on the effectiveness of travel efficiency measures for reducing emissions of NO_X, VOCs and $PM_{2.5}$ at the national scale. The report describes an approach that uses regionally derived travel model data and other travel activity information, and sketch-planning analysis to estimate potential emission reductions from urban areas of varying size and characteristics. The results are applied to other urban areas in the U.S. of similar characteristic to estimate potential national emission reductions.

The second document is titled, ''Transportation Control Measures: An Information Document for Developing and Implementing Emission Reduction Programs.'' [78] This document provides information on transportation control measures that have been implemented across the country for a variety of purposes, including reducing emissions related to criteria pollutants. The document describes the processes used to develop and implement the strategies and, where available, their effectiveness.

P. Efforts To Encourage a Multi-Pollutant Approach When Developing 2008 Ozone SIPs

1. In General

From a planning and resource perspective, the EPA believes that it can

[74] Sustainable Communities Principles: 1. Provide more transportation choices. 2. Promote equitable, affordable housing. 3. Enhance economic competitiveness. 4. Support existing communities. 5. Coordinate and leverage federal policies and investments. 6. Value communities and neighborhoods. *See http://www.epa.gov/smartgrowth/partnership/index.html.*

[75] ''Our Built and Natural Environments'' (EPA 231–R–01–002, January 2001). ''Measuring the Air Quality and Transportation Impacts of Infill Development'' (EPA 231–R–07–001, November 2007).

[76] Cambridge Systematics, Inc. (2009). Moving Cooler: An Analysis of Transportation Strategies for Reducing Greenhouse Gas Emissions. Urban Land Institute: Washington, DC (*http://www.uli.org/*).

[77] EPA–420–R–11–003, March 2011, *http://epa.gov/otaq/stateresources/policy/420r11003.pdf.*

[78] EPA–430–R–09–040, March 2011, *http://www.epa.gov/otaq/stateresources/policy/430r09040.pdf.*

be efficient for states to develop integrated control strategies that addresses multiple pollutants rather than separate strategies for each pollutant or NAAQS individually. An integrated air quality control strategy that reduces multiple pollutants can help ensure that reductions are efficiently achieved and produce the greatest overall air quality benefits. For example, we know that certain control measures that reduce emissions of the ozone precursors NO_X and VOC, and thus reduce ambient ozone levels, can also result in reduced emissions and ambient concentrations of $PM_{2.5}$ [79] and also can improve visibility. Many VOCs are also HAP, so an ozone control strategy may provide the additional benefit of reducing air toxics. We also know that many sources of $PM_{2.5}$ also emit toxic metals as particulates, so controlling directly emitted $PM_{2.5}$ emissions from these sources would also reduce the emissions of toxic metals. In addition, due to expected changes in meteorology resulting from climate change, the EPA encourages states to assess climate change and air pollution together and account for the potential effects of climate change in their multi-pollutant planning efforts.

In June 2007, the EPA's CAA Advisory Committee (CAAAC) recommended that the agency allow states to integrate SIP requirements and other air quality goals into a comprehensive plan.[80] The recommended plan would demonstrate attainment/maintenance of multiple NAAQS, accomplish sector-based reductions, realize risk reductions of HAPs and make improvements in visibility. It could also be structured to integrate programs addressing land use, transportation, energy and climate.

The EPA has encouraged states to take a multi-pollutant approach to managing air quality.[81] Specifically, we have encouraged states to involve all stakeholders when planning to meet air quality standards and to provide a basic outline for how local jurisdiction(s) could address air pollutants in an integrated manner.

While the agency encourages states to develop multi-pollutant plans, we recognize that the requirement for the EPA to review and, as necessary, revise NAAQS every 5 years, which can trigger new statutory SIP submission and attainment dates, as well as the ever-evolving understanding of pollutants and the myriad control programs that may be available to reduce emissions, can sometimes make such efforts challenging. For example, under the current law, the 2007 submission date for Regional Haze SIPs has already passed while the December 2012 submittal date for attainment demonstrations for the 2006 $PM_{2.5}$ NAAQS is more than 2 years before the proposed submittal date for attainment demonstrations for the 2008 ozone NAAQS. Although it is thus not feasible to integrate fully the planning requirements for regional haze, the 2006 $PM_{2.5}$ NAAQS and the 2008 ozone NAAQS, states could use common databases and modeling tools for all three programs and rely on similar control measures as appropriate. Furthermore, as states develop plans to meet the 2008 ozone NAAQS, they may wish to modify existing plans for other NAAQS or for regional haze as they consider strategies more comprehensively. However, it is important to note that all the CAA mandated planning and program elements for individual standards must continue to be met. We are specifically requesting comments on other approaches to integrating the planning requirements for multiple NAAQS and other CAA programs that are promulgated at different times.

2. What is the EPA doing beyond encouraging states to integrate their air quality planning activities to the extent feasible?

Ideally, an air quality management plan (AQMP) is a set of pollution reduction strategies/planning activities for an area demonstrating: attainment/maintenance of one or more NAAQS; risk reductions from HAPs; improvements in visibility and ecosystem health; and integration of land use, transportation, energy and climate activities in the area. Three areas in the country—North Carolina, New York and the city of St. Louis (involving both Missouri and Illinois)—participated in an EPA-led pilot effort to develop multi-pollutant AQMPs. The pilots provided lessons regarding AQMP development that should prove useful to other areas interested in better integrating their air quality planning. The areas' initial AQMPs and other materials are available on the EPA's Web site.[82]

Implementation of the 2008 ozone NAAQS provides an opportunity for states to consider how to use a multi-pollutant approach from the beginning of their planning process. We recommend that states and tribes wishing to take a comprehensive approach consider the following activities.

- Develop models for the attainment demonstration that include previously implemented or planned measures to reduce ozone precursors, secondary fine particles, pollutants that contribute to regional haze and, where appropriate, air toxics and any potential negative impacts on ecosystems.
- Conduct an integrated assessment of the impact controls have on ambient levels of ozone, $PM_{2.5}$, regional haze and, where applicable, air toxics, greenhouse gases, ecosystem protection and environmental justice.
- Use common data bases and analytical tools, where possible.

EPA is requesting comment on what incentives or assistance we might be able to provide to encourage states to integrate their planning activities.

3. Multi-pollutant Assessments/One-atmosphere Modeling

A multi-pollutant assessment, or one-atmosphere modeling, is conducted with a single air quality model that is capable of simulating transport and formation of multiple pollutants simultaneously.[83] For example, this type of model can simulate formation and deposition involving pollutants associated with ozone, $PM_{2.5}$ and regional haze, and it can include algorithms simulating gas phase chemistry, aqueous phase chemistry, aerosol formation and acid deposition. This type of model could also include the formation and deposition of key air toxics and the chemical interactions that occur with these individual toxic species to produce ozone and $PM_{2.5}$.

Multi-pollutant assessments are recommended for ozone attainment demonstrations because the formation and transport of ozone is closely related to the formation of both $PM_{2.5}$ and regional haze. There is often a positive correlation between measured ozone and secondary particulate matter. Many of the same factors affecting concentrations of ozone also affect concentrations of secondary particulate matter because similarities exist in

[79] For a list of potential control measures for $PM_{2.5}$ precursors, *see http://www.epa.gov/airquality/particlepollution/measures/pm_control_measures_tables_ver1.pdf.*

[80] Recommendations to the Clean Air Act Advisory Committee: Phase II, June 2007, *http://epa.gov/air/caaac/aqm/phase2finalrept2007.pdf.*

[81] Memo from Stephen D. Page to Regional Air Division Directors, Aug. 10, 2005, ''Consideration of Multiple Pollutants in Control Strategy Development.'' *http://epa.gov/air/caaac/aqm/aqm-page-memo.pdf.*

[82] *http://www.epa.gov/air/aqmp/.*

[83] Depending on the context, ''multi-pollutant'' can be defined in different ways. In this context we are defining multi-pollutant modeling as simultaneous modeling of ozone, $PM_{2.5}$, key air toxics, and regional haze. Future multi-pollutant models may include the ability to model a broader array of air toxics as well as greenhouse gases.

sources of precursors for both pollutants. For example, emissions of NO_X may lead to formation of nitrates, which affect both ambient ozone and $PM_{2.5}$ levels and impair visibility. Many VOCs (such as toluene) are air toxics and may also be sources or precursors for both ozone and organic particles. In addition, the presence of ozone itself may be an important factor affecting secondary particle formation.

Because of these relationships, models and data analysis intended to address ozone could be beneficial for use in addressing $PM_{2.5}$ and visibility impairment. When performing a multi-pollutant assessment, the modeling should take into account previously implemented or planned measures to reduce ozone, $PM_{2.5}$ and regional haze. States that undertake multi-pollutant assessments as part of their attainment demonstration should consider assessing the impact of their ozone strategies on $PM_{2.5}$ and visibility impairment to ensure that optimal emission reduction strategies are developed for the three programs to the extent possible. This could facilitate addressing all of these pollutants in a more cost effective manner.

States may also find it desirable to assess the impact of ozone, $PM_{2.5}$ and/or regional haze control strategies on toxic air pollutants regulated under the CAA or under state air toxic initiatives. Given the relationships that exist between air toxics and the formation of ozone and $PM_{2.5}$, states may find that controls can be selected to meet goals for ozone and/or $PM_{2.5}$ attainment as well as those of specific air toxic programs.

Q. How does this proposed rule apply to tribes?

Section 301(d) of the CAA authorizes the EPA to approve eligible Indian tribes to implement provisions of the CAA on Indian reservations and other areas within the tribes' jurisdiction. The Tribal Authority Rule (TAR) (40 CFR part 49), which implements section 301(d) of the CAA, sets forth the criteria and process for tribes to apply to the EPA for eligibility to administer CAA programs. Among the programs that tribes may seek to administer are Tribal Implementation Plans (TIP),[84] which are submitted to the EPA for approval. However, unlike states, tribes are not required to develop implementation plans.[85] Under the TAR, the EPA determined that tribes are not required to meet plan submittal and implementation deadlines in the CAA, e.g., the deadlines specified in CAA sections 110(a)(1), 172(a)(2), 182, 187 and 191.[86]

Where tribes do seek to develop and administer TIPs, the TAR provides flexibility for tribes in the preparation of a TIP to address the NAAQS. See, e.g., 40 CFR 49.7(c). The TAR also states that the EPA has authority to promulgate federal implementation plan (FIP) provisions, as necessary and appropriate, to protect air quality if tribes choose not to implement those provisions. The EPA may find it necessary and appropriate to develop a FIP to reduce emissions from sources in Indian country where the tribe has not developed a TIP to address an air quality problem.

It is important for states and tribes to work together to coordinate planning efforts where nonattainment areas include both Indian country and state land. Coordinated planning in these areas will help ensure that the planning decisions made by the states and tribes complement each other and that the nonattainment area makes reasonable progress toward attainment and ultimately attains the 2008 ozone NAAQS. In reviewing and approving individual TIPs and SIPs, we will determine if together they are consistent with the overall air quality needs of an area.

States have an obligation to notify other states in advance of any public hearing(s) on their state plans if such plans will significantly impact such other states. 40 CFR 51.102(d)(5). Under section 301(d) of the CAA and the TAR, tribes may become eligible to be treated in a manner similar to states (TAS) for this purpose. Affected tribes with this status must also be informed of the contents of such state plans and given access to the documentation supporting these plans. In addition to this mandated process, we encourage states to extend the same notice to all affected tribes, regardless of their TAS status.

Executive Orders and the EPA's Indian policies generally call for the EPA to coordinate and consult with tribes on matters that affect tribes. Executive Order 13175, titled, ''Consultation and Coordination with Indian Tribal Governments'' requires the EPA to develop a process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have Tribal implications.'' In addition, the EPA's policies include the agency's 1984 Indian Policy relating to Indian tribes and implementation of federal environmental programs, the April 10, 2009, Office of Air Quality Planning and Standards guidance ''Consulting with Indian Tribal Governments,'' and the ''EPA Policy on Consultation and Coordination With Indian Tribes.'' [87]

Consistent with these policies, the EPA intends to meet with tribes on activities potentially affecting the attainment and maintenance of the 2008 ozone NAAQS in Indian country, including our actions on SIPs. As such, it would be helpful for states to work with tribes with land that is part of the same air quality area during the SIP development process and to coordinate with tribes as they develop their SIPs.

R. What are the requirements for the Ozone Transport Region (OTR)?

The Phase 2 Rule codified the requirements applicable to the OTR for the 1997 ozone NAAQS in 40 CFR 51.916. The EPA is proposing to adopt the same requirements for the 2008 ozone NAAQS, except that the submission date for OTR RACT SIPs would be the same as proposed under the RACT section of this preamble for nonattainment areas. That is, we are proposing to require that states submit the RACT SIPs required under section 182(b)(2) within the final timeline we adopt based on the two SIP submittal options detailed in section III.A of today's proposal. (See section III.D of this preamble for additional information on RACT timeframes.)

S. Are there any additional requirements related to compliance and enforcement?

The EPA is not proposing any specific regulatory provisions related to compliance and enforcement. Section 172(c)(6) requires nonattainment SIPs to ''include enforceable emission limitations, and such other control measures, means or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment . . .'' The EPA's current guidance, ''Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans (EPA–452/R–93–005, June 1993)'' is still relevant to rules adopted for SIPs under the 2008 ozone NAAQS and should be consulted for purposes of developing appropriate enforceable nonattainment plan provisions under section 172(c)(6).

[84] Not to be confused with Transportation Improvement Programs (also abbreviated ''TIPs''); the context will determine the meaning.

[85] 70 FR 71666 (November 29, 2005).

[86] *See* 40 CFR 49.4(a).

[87] For a copy of this 2011 policy, *see http://www.epa.gov/tribal/pdf/cons-and-coord-with-indian-tribes-policy.pdf.*

T. What are the requirements for addressing emergency episodes?

The EPA proposes that the existing requirements for emergency episodes (40 CFR part 51, subpart H) would also apply to the 2008 ozone NAAQS. Subpart H requires SIPs to identify areas by priority classification and to contain contingency plans to prevent pollutant concentrations from reaching levels that would cause significant harm to the health of persons. The significant harm level for ozone had been established as 0.6 ppm, 2-hour average (40 CFR 51.151). This level remains appropriate for the 2008 ozone NAAQS.

U. How does the ''Clean Data Policy'' apply to the 2008 ozone NAAQS?

The EPA, in its Phase 1 Rule, codified its long-standing interpretation under the Clean Data Policy in a regulation. Under 40 CFR 51.918, a determination of attainment suspends the obligation to submit attainment planning SIP elements for the 1997 ozone NAAQS. An EPA determination that the area attained the 1997 ozone NAAQS suspended the obligation to submit any attainment-related SIP elements not yet approved in the SIP, for so long as the area continued in attainment.

The EPA in this rulemaking is proposing to apply this same approach with respect to determinations of attainment for the 2008 ozone NAAQS. Moreover, in order to reflect the intended ongoing status of the Clean Data Policy and to consolidate in one regulation a comprehensive provision applicable to determinations of attainment for the current and former ozone NAAQS, the EPA proposes, after revocation of the 1997 ozone NAAQS, to replace 40 CFR 51.918 with proposed 40 CFR 51.1118. Section 51.1118 applies essentially the same language as 51.918. If finalized, 40 CFR 51.1118 will apply to a determination of attainment that is made with respect to any revoked or current ozone NAAQS—the 1-hour, the 1997 or the 2008 ozone NAAQS. The new section 51.1118, like section 51.918, will set forth the regulatory consequences of an EPA determination, made after notice-and-comment rulemaking, that an area designated nonattainment for an ozone standard has air quality attaining that standard. Upon such a determination by the EPA, the requirements for the area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress plans, contingency measures and other attainment-related SIP elements for that NAAQS, shall be suspended until such time as the area is redesignated to attainment, at which time the requirements no longer apply, or until the EPA determines that the area has again violated that ozone NAAQS, in which case the requirements are again applicable. The EPA intends to apply the provision for the 2008 ozone NAAQS in a similar manner as it did for the 1997 ozone NAAQS. Because the proposed section 51.1118 merely incorporates the continuation of the EPA's long-held interpretation (Clean Data Policy) for the 1-hour ozone NAAQS, which was embodied in regulation 51.918 for the 1997 ozone NAAQS, it is appropriate to apply it in the context of the 2008 ozone NAAQS as well as the 1997 and 1-hour ozone NAAQS. On July 10, 2009, the U.S. Court of Appeals for the District of Columbia upheld the section 51.918 regulatory provision. (*NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009))

V. What assistance programs is the EPA considering for implementation of the 2008 ozone NAAQS?

For purposes of the 1997 ozone NAAQS, the EPA established the Early Action Compact (EAC) program. Under the EAC program, certain areas that were violating the 1997 ozone NAAQS at the time of designation were allowed to enter into an EAC agreement, and were given a deferred effective date for their area designation in order to allow time for the area to meet the terms of the agreement. The EPA does not have plans to proceed with an EAC program for the 2008 ozone NAAQS.

Nevertheless, the EPA believes there are significant advantages for states, tribes and local agencies to take steps to reduce emissions as early as possible. First and foremost, early reductions help to achieve cleaner air sooner, and help to ensure continued health protection. Secondly, early steps could help an area avoid a nonattainment designation in the first place, or for an area eventually designated as nonattainment, early reductions could result in a lower nonattainment classification. In addition, early action to improve air quality can help an eventual nonattainment area, particularly an area that has never been designated nonattainment before, establish working relationships between key stakeholders. Our expectation is that early actions to reduce emissions in such areas would be less resource-intensive than actions taken once a nonattainment designation has been made, since at that point the implementation of controls would need to occur in conjunction with actions to comply with other requirements such as nonattainment NSR and transportation conformity.

If an area uses 2011 as the baseline year for its RFP plan, as we are proposing as the default approach in this rule, any reductions that were made before 2011 can be fully reflected in the baseline for the area's attainment plan. Reductions achieved after 2011 due to measures in the area's SIP may receive emission reduction credit, subject to CAA requirements.

Under the 8-Hour Ozone Flex program for the 1997 ozone NAAQS (begun in 2006), the EPA worked with interested attainment areas to take proactive steps that would keep them in attainment.[88] The EPA is now offering a new early emission reduction program to attainment areas called ''Ozone Advance,'' which is similar to the Ozone Flex program.[89] The EPA initiated the Ozone Advance program in April 2012. Additional information on the Ozone Advance program for the 2008 ozone NAAQS is provided in a separate guidance document that is available at *www.epa.gov/ozonepmadvance.*

W. What is the deadline for states to submit SIP revisions to address the CAA section 185 penalty fee provision for Severe and Extreme areas?

Under section 185, major stationary sources of VOC and NO_X in a Severe or Extreme ozone nonattainment area are subject to penalty fees for emissions in excess of 80 percent of the source's baseline amount of emissions if such an area fails to attain the NAAQS by its attainment date. The baseline amount for a source is based on its applicable emission limit(s) or actual emissions in the attainment year, whichever is lower.

Section 182(d)(3) provides that by December 31, 2000, the state shall submit a plan revision which includes the provisions required under section 185 for the 1-hour ozone NAAQS. Thus, the CAA provided slightly more than 10 years for submission of the fee program SIP revision for areas designated as

[88] *See http://www.epa.gov/ttn/oarpg/t1/memoranda/o3flexguidelines.pdf.*

[89] Areas that signed up for Ozone Advance prior to designations for the 2008 ozone NAAQS are able to continue to participate in the program even if they were subsequently designated nonattainment and classified as Marginal. These areas may continue to participate in the program until such time as they may be reclassified to a higher classification. Participation in the Ozone Advance program does not remove any nonattainment area requirements from these areas. The current Marginal areas in the Ozone Advance program are Baton Rouge, LA; DeSoto County, MS (part of Memphis, TN–AR–MS); and Upper Green River Basin, WY. The Uinta Basin, UT area, which was designated ''Unclassifiable,'' is also taking part in the program.

nonattainment and classified as Severe or Extreme by operation of law in 1990 for the 1-hour ozone NAAQS. We are proposing that states with areas initially classified as Severe or Extreme for the 2008 ozone NAAQS would be required to submit a section 185 SIP no later than 10 years after the effective date of designation and classification for the 2008 ozone NAAQS. For areas that are reclassified to Severe or Extreme at any other time, the EPA will establish an appropriate fee program SIP submission deadline as part of the reclassification action.

IV. What is the EPA proposing to address anti-backsliding issues related to transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS?

A. General Background

This section sets forth background for today's proposal regarding areas that will be subject to anti-backsliding requirements for the 1-hour ozone NAAQS and/or the 1997 ozone NAAQS, and the requirements that will apply to these areas after revocation of the 1997 ozone NAAQS. ''Anti-backsliding'' provisions are designed to ensure that for existing ozone nonattainment areas that are designated nonattainment for the revised and more stringent ozone NAAQS, (1) there is protection against degradation of air quality (e.g., 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 subpart 2 of Part D of the CAA.

The CAA contains several provisions indicating Congressional intent not to allow a state to alter or remove provisions from an approved implementation plan if the revision would reduce air quality protection. Section 193 of the CAA prohibits modification of a control requirement in effect or required to be adopted as of November 15, 1990 (the date of enactment of the 1990 CAA Amendments), unless such a modification would ensure equivalent or greater emissions reductions. CAA section 172(e), which addresses relaxations of a NAAQS, requires protections for areas that have not attained a NAAQS prior to a relaxation, by requiring controls which are at least as stringent as the controls applicable in nonattainment areas prior to any such relaxation. Section 110(l) provides that a SIP revision cannot be approved if it will interfere with attainment or other CAA requirements. Under section 175A(d), an area that is redesignated to attainment [90] may, with an appropriate showing, cease to implement a measure that is contained in the SIP at the time of redesignation, but only if that measure is retained as a contingency measure in the area's maintenance plan.[91]

B. Background on Transition From the 1-Hour to the 1997 Ozone NAAQS

The following discussion addresses the transition policies the EPA adopted in the 2004 Phase 1 Rule for implementation of the 1997 ozone NAAQS; the legal challenges to that rule; and the resulting court decision in *South Coast,* which directed the EPA to provide 1-hour ozone NAAQS anti-backsliding requirements for nonattainment NSR, section 185 fees and section 172(c)(9) and 182(c)(9) contingency measures for failure to attain the 1-hour ozone NAAQS by the applicable attainment date or to make reasonable further progress toward attainment of that standard.

In its Phase 1 Rule, the EPA stated that the 1-hour ozone NAAQS would be revoked (i.e., no longer apply) 1 year after the effective date of initial area designations for the 1997 ozone NAAQS.[92] The EPA also included anti-backsliding requirements in the Phase 1 Rule to address the transition between the two standards.

In developing the Phase 1 Rule, the EPA recognized that Congress did not directly address how anti-backsliding requirements should apply where the EPA replaces a prior NAAQS with a more stringent NAAQS, as occurred when the EPA replaced the 1-hour ozone NAAQS with the 1997 ozone NAAQS.[93] However, in section 172(e), Congress did address anti-backsliding requirements for when the EPA replaces a NAAQS with a less stringent NAAQS. In the absence of any express Congressional direction regarding anti-backsliding where a NAAQS is replaced with a more stringent NAAQS, the EPA concluded that it was reasonable to look to the principles set forth in section 172(e) for purposes of the transition from the 1-hour ozone NAAQS to the 1997 ozone NAAQS.

The Phase 1 Rule codified anti-backsliding provisions governing the transition from the revoked 1-hour ozone NAAQS to the 1997 ozone NAAQS in 40 CFR 51.905(a). These provisions, as promulgated, retained certain nonattainment area requirements specified under section 182 of the CAA, as those requirements applied for the 1-hour ozone NAAQS. The retained requirements, which were defined as ''applicable requirements'' in the ozone implementation regulations,[94] continued to apply to areas that were designated nonattainment for the 1-hour ozone NAAQS as of the date that NAAQS was revoked, and that were also designated nonattainment for the 1997 ozone NAAQS as of that same date. The 1-hour ozone NAAQS requirements that the EPA retained as applicable requirements were the following: (1) RACT; (2) I/M programs; (3) Major source applicability cut-offs for purposes of RACT; (4) Rate of progress (ROP) reductions; (5) Stage II vapor recovery; (6) the Clean fuels fleet program under section 183(c)(4) of the CAA; (7) Clean fuels for boilers under section 182(e)(3) of the CAA; (8) Transportation control measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA; (9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA; (10) Transportation controls under section 182(c)(5) of the CAA; (11) Vehicle miles traveled provisions under section 182(d)(1)(A) of the CAA; (12) NO_X requirements under section 182(f) of the CAA; and (13) Attainment demonstration (or an alternative as provided for under 40 CFR section 51.905(a)(1)(ii)).

Under the Phase 1 Rule, those 1-hour nonattainment areas would remain subject to the anti-backsliding provisions until they were redesignated

[90] Nonattainment areas that were redesignated to attainment with an approved section 175A maintenance plan are referred to throughout this document as ''maintenance'' areas. CAA section 175A(a) requires an area to develop a ten-year maintenance plan in order to be redesignated to attainment. CAA section 175A(b) requires an area to submit a second ten-year plan 8 years after approval of the first plan.

[91] Unimplemented requirements in the SIP or those shown to be unnecessary for maintenance can be shifted to the contingency measures portion of the SIP upon redesignation. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993. As discussed elsewhere in this document, an exception is made for nonattainment NSR, which can be removed from the SIP completely, and need not be retained as a contingency measure after redesignation to attainment. (*See* discussion in text below.)

[92] *See* section IV.G of this proposal for a discussion of the timing of the 1997 ozone NAAQS revocation and related anti-backsliding requirements.

[93] While there was the possibility of an area meeting the 1997 ozone NAAQS while exceeding the 1-hour ozone NAAQS, in almost all instances the 1997 ozone NAAQS was the more stringent of the two.

[94] *See* 40 CFR 51.900(f).

to attainment for the 1997 ozone NAAQS. In order for an area to be redesignated for the 1997 ozone NAAQS, the state would need to show that the applicable nonattainment requirements for the 1-hour ozone NAAQS had been satisfied with respect to that area.

Upon redesignation of an area to attainment for the 1997 ozone NAAQS, a state could request that 1-hour anti-backsliding provisions contained in the SIP be shifted to the contingency measures portion of the SIP, based on a showing that active implementation of these measures was not necessary for attainment or maintenance of the NAAQS and that such a revision would be consistent with section 110(l). 40 CFR 51.905(b). (Provisions in the contingency measures portion of the maintenance SIP are not actively implemented, but are measures the state may implement if the area were to violate the standard again.[95]) The court in *South Coast* did not vacate the EPA's regulations concerning these thirteen ''applicable requirements.''

The Phase 1 Rule also provided that three requirements applicable under the 1-hour ozone NAAQS would no longer apply after revocation of that NAAQS: Nonattainment NSR, section 185 fee requirements and section 172(c)(9) and 182(b)(9) contingency measures for failure to attain the 1-hour ozone NAAQS by the applicable attainment date or to make reasonable further progress toward attainment of the standard. See 40 CFR 51.905(e).[96] As a result of the *South Coast* challenge to the Phase 1 Rule, the court vacated the regulatory provisions which had stated that these three obligations would no longer apply for purposes of the 1-hour ozone NAAQS upon revocation of that standard. *See South Coast,* 900–904. The following sections discuss how the EPA has addressed these three provisions since the *South Coast* decision.

C. Background on Nonattainment NSR

On October 3, 2007, the EPA issued a memorandum indicating that the vacatur of the nonattainment NSR provisions in the Phase 1 Rule by the *South Coast* court meant that states with 1-hour nonattainment areas that were subject to the anti-backsliding provisions remain subject to the obligation to include in their SIPs major source applicability thresholds and offset ratios consistent either with their nonattainment classification for the 1-hour ozone NAAQS or with their designation and classification for the 1997 ozone NAAQS, whichever is higher, as of the effective date of designation as nonattainment for the 1997 ozone NAAQS.[97]

Thereafter, in a separate proposed rulemaking action in 2010, the EPA proposed revised regulations regarding treatment of major source thresholds and offset ratios for areas that were designated nonattainment for the 1-hour ozone NAAQS at the time of designation as nonattainment for the 1997 ozone NAAQS. *See* ''Proposed Rule to Implement the 1997 Ozone National Ambient Air Quality Standard: New Source Review Anti-Backsliding Provisions for Former 1-Hour Ozone Standard,'' August 24, 2010, 75 FR 51960 (hereinafter ''NSR Anti-Backsliding Proposed Rule''). The EPA proposed that 1-hour ozone NAAQS nonattainment NSR requirements would apply in a manner similar to the requirements specifically listed as ''applicable requirements'' in the Phase 1 Rule.

The NSR Anti-Backsliding Proposed Rule further proposed that in situations where an area's classification under the 1-hour ozone NAAQS was higher than its classification under the 1997 ozone NAAQS, (1) the obligation to implement nonattainment NSR requirements associated with the area's classification under the 1-hour ozone NAAQS would continue to apply after the revocation of the 1-hour ozone NAAQS until the area is redesignated to attainment for the 1997 ozone NAAQS, and (2) once the obligation to implement 1-hour ozone NAAQS nonattainment NSR ceases to apply, the state may request removal of the 1-hour ozone NAAQS nonattainment NSR requirements, without retaining them as contingency measures. The EPA also requested comment on an alternate proposal that, if certain conditions were met, would allow a state to request removal of the 1-hour nonattainment NSR requirements prior to redesignation of the area to attainment for the 1997 ozone NAAQS.

The EPA has not finalized the proposed NSR Anti-Backsliding Rule, and does not intend to do so. This proposal replaces and supersedes that proposal, and the final rule will address all outstanding NSR anti-backsliding issues for both the 1-hour and 1997 ozone NAAQS. These include how ongoing obligations to implement anti-backsliding requirements pertaining to NSR thresholds and offset ratios under the 1-hour and 1997 ozone NAAQS can be terminated, in light of revocation of the 1-hour ozone NAAQS and the impending revocation of the 1997 ozone NAAQS.

D. Background on Section 185 Fees

Section 185 of the CAA applies to areas classified as Severe or Extreme for the 1-hour ozone NAAQS. This section states that if such an area fails to attain the 1-hour ozone NAAQS by the applicable attainment deadline,[98] each major stationary source of VOC and NO_X [99] located in the area is required to pay a fee to the state for each calendar year following the attainment year for emissions above a baseline amount.[100] If the EPA determines that an area attained the standard as of the applicable attainment date, then the program does not take effect, even if the area subsequently violates that standard in a later year.

On January 5, 2010, the EPA issued a memorandum [101] that addressed the obligation of states with Severe or Extreme 1-hour ozone NAAQS nonattainment areas that did not attain by their attainment dates to collect fees from major sources. The memorandum discussed options for the EPA approval of SIPs that included an equivalent alternative program to the section 185 fee program specified in the CAA under

[95] States may adjust control strategies in the SIP or maintenance plan if they can demonstrate that the revision will not interfere with attainment or maintenance of the NAAQS, or any other CAA requirements. *See* CAA sections 175A and 110(l). Section 175A(d) of the CAA requires that contingency measures in the maintenance plan include all measures in the area's SIP before that area was regesignated to attainment.

[96] The fee obligations are also briefly addressed in section 181(b)(4), which cross-references the more detailed provisions found in section 185.

[97] Memorandum from Robert J. Meyers, Principal Deputy Administrator, Office of Air and Radiation, to EPA Regional Administrators, October 3, 2007, ''New Source Review (NSR) Aspects of the Decision of the U.S. Court of Appeals for the District of Columbia on the Phase 1 Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards (NAAQS).''

[98] Under the 1990 CAA Amendments, nonattainment areas had until November 15 of the indicated year to attain: Marginal—1993; Moderate—1996; Serious—1999; Severe–15—2005, Severe–17—2007, Extreme—2010.

[99] While section 185 expressly mentions only VOC, section 182(f) extends the application of this provision to NO_X, by providing that ''plan provisions required under [subpart D] for major stationary sources of [VOC] shall also apply to major stationary sources . . . of [NO_X].''

[100] *See* section III.W of this proposal for a discussion of baseline amount. *See* also CAA section 185(b)(2) for the definition of baseline amount.

[101] Memo from Stephen D. Page to Regional Air Division Directors, Jan. 5, 2010, ''Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-Hour Ozone NAAQS.'' The EPA had previously issued guidance on baseline emissions under section 185. Memorandum from William T. Harnett, Director, Air Quality Policy Division, to EPA Regional Air Division Directors, March 21, 2008.

the principles of section 172(e), including an ''attainment alternative.'' The EPA stated that it would use federal notice-and-comment rulemaking procedures and seek public comment on any future approval of such alternative plans.

On March 5, 2010, the Natural Resources Defense Council (NRDC) petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review the 2010 Stephen D. Page guidance memorandum on section 185 fee programs. NRDC argued that the EPA violated the Administrative Procedures Act by issuing the guidance without notice-and-comment rulemaking, and that both the section 185 alternate fee program and the ''attainment alternative'' in the guidance violated the CAA. Despite the fact that the EPA stated that approval of an alternative program would need to go through individual notice and comment rulemaking, the court concluded that the section 185 fee program guidance amounted to a rulemaking that should have provided notice and an opportunity to comment. The court thus vacated and remanded the EPA's guidance. *NRDC* v. *EPA,* 643 F.3d 311 (D.C. Cir. July 2011).

Although the court vacated the 2010 guidance memorandum on procedural grounds, it did not prohibit alternative programs, stating that ''neither the statute nor our case law obviously precludes that alternative.'' *Id* at 332. However, the court did express its disapproval of one alternative that was based in part on attainment of the 1997 ozone NAAQS. The court concluded that it would be impermissible to terminate an area's obligations under section 185 for the revoked 1-hour ozone NAAQS based solely on attainment of the 1997 ozone NAAQS. *NRDC,* 643 F.3d at 313. The EPA has taken into account the *NRDC* court's decision in developing the EPA's current approach to terminating anti-backsliding requirements for 1-hour ozone NAAQS section 185 fees, and that approach is reflected in today's proposal regarding terminating those anti-backsliding requirements for both the 1997 and 1-hour ozone NAAQS.

At this time, a relatively small group of areas are affected by uncertainties surrounding implementation and termination of 1-hour ozone NAAQS section 185 obligations. Separate rulemakings regarding individual 1-hour ozone NAAQS Severe and Extreme areas may resolve those issues before this implementation rule is finalized.

For areas subject to section 185 anti-backsliding requirements for the 1997 ozone NAAQS, this implementation rulemaking will have no near-term impact. The earliest attainment deadline for areas designated Severe or Extreme for that standard is 2019. Moreover, as yet no SIP submittals to establish section 185 penalty fee programs for the 1997 ozone NAAQS have become due.

In sum, the EPA's proposed approach to section 185 anti-backsliding requirements for the 1997 ozone NAAQS (which will be described below in section IV.H.2) should be viewed in the context of (1) EPA's ongoing efforts to address the section 185 anti-backsliding requirements for individual 1-hour ozone NAAQS Severe and Extreme areas in separate rulemakings, and (2) the fact that for 1997 ozone NAAQS Severe and Extreme areas, no fees can be triggered until 2020 (the calendar year after 2019).

E. Background on the Contingency Measures Requirement

In response to the *South Coast* decision, the EPA issued a final regulation on May 14, 2012 (77 FR 28424), which added nonattainment area contingency measures for failure to attain or meet RFP milestones (section 172(c)(9) and 182(c)(9) contingency measures)[102] for the 1-hour ozone NAAQS to the list of ''applicable requirements'' in 40 CFR 51.900(f). These contingency measures were required for failure to meet an RFP milestone or to attain the 1-hour ozone NAAQS by the area's attainment date for the 1-hour ozone NAAQS.[103] The EPA is similarly proposing in this implementation rulemaking to include an anti-backsliding requirement for nonattainment area contingency measures for failure to attain or to meet an RFP milestone for the 1997 ozone NAAQS by the applicable deadlines for that NAAQS.

F. What is the EPA proposing regarding anti-backsliding requirements for the 1-hour and 1997 ozone NAAQS?

We discuss here the EPA's proposed anti-backsliding requirements for the 1-hour and the 1997 ozone NAAQS in the context of implementing the 2008 ozone NAAQS. With the 2008 ozone NAAQS, as with the 1997 ozone NAAQS, the EPA strengthened rather than relaxed the ozone NAAQS. The transition from the 1997 to the 2008 ozone NAAQS is a straightforward lowering of the level with no change in the form of the standard, so it is unambiguous that the 2008 ozone NAAQS is always more stringent—never more lenient—than the 1997 ozone NAAQS. In these circumstances, section 172(e) on its face does not apply. In proposing the following anti-backsliding requirements, we look therefore to the principles but not to the letter of CAA section 172(e).

G. Timing of 1997 Ozone NAAQS Revocation and Related Anti-backsliding Requirements

This section discusses the revocation of the 1997 ozone NAAQS and the application of anti-backsliding requirements for that NAAQS and for the previously-revoked 1-hour NAAQS. The EPA is proposing to revoke the 1997 ozone NAAQS on the date the final SIP Requirements Rule for the 2008 ozone NAAQS is published in the **Federal Register** for all purposes other than transportation conformity, where it has already been revoked. *See* proposed revision to 40 CFR 50.10(c).

The EPA believes it is appropriate to revoke rather than retain the 1997 standard for all remaining purposes.[104] The EPA has already taken final action revoking the 1997 primary and secondary ozone NAAQS for transportation conformity purposes only.[105] [106] The EPA explained its rationale for this action in the notice proposing revocation of the 1997 ozone NAAQS in the context of conformity.[107] The EPA's action ensures that only one ozone NAAQS—the more protective 2008 ozone NAAQS—applies, rather than having two standards, one of which the agency has determined is insufficiently protective, apply concurrently. The EPA relies on similar reasoning to support today's proposal to revoke the 1997 ozone NAAQS for all purposes.

At the time the EPA promulgated the 2008 ozone NAAQS, the Administrator determined that the 1997 ozone NAAQS

[102] These nonattainment area contingency measures are not to be confused with maintenance plan contingency measures for areas redesignated to attainment under CAA section 175A(d).

[103] The January 16, 2009, proposal (74 FR 2936) did not address when section 185 and NSR anti-backsliding requirements would be removed, indicating that the EPA would issue a separate **Federal Register** notice providing guidance on those issues. As discussed elsewhere, the EPA addressed nonattainment NSR anti-backsliding in its 2010 proposal (August 24, 2010, 75 FR 51960), and addressed section 185 in the 2010 guidance that has since been vacated.

[104] When the EPA revises a NAAQS, the prior NAAQS is not automatically revoked. Accordingly, both the 1997 ozone NAAQS and the more stringent 2008 ozone NAAQS are active standards unless and until the EPA takes action to revoke the previous 1997 ozone NAAQS.

[105] 77 FR 30160, 30162, May 21, 2012.

[106] The EPA's authority to revoke the standard for transportation purposes only has been challenged. To ensure that the 1997 ozone NAAQS is revoked for all purposes, today's proposal would revoke that standard for all purposes for which it has not yet been revoked.

[107] 77 FR 8197, 8205, February 14, 2012.

was no longer sufficient to protect public health and the environment with an adequate margin of safety and that it was therefore necessary to establish a more stringent standard.[108] In determining how to transition from the 1997 ozone NAAQS to the more stringent 2008 ozone NAAQS, the EPA is now presented with the same situation that we faced with the transition from the 1-hour ozone NAAQS to the more stringent 1997 ozone NAAQS. For that transition, our Phase 1 Rule for the 1997 ozone NAAQS revoked the 1-hour ozone NAAQS for all purposes.[109] The Phase 1 Rule also established comprehensive anti-backsliding provisions to ensure that the level of protection provided by requirements for the 1-hour ozone NAAQS would remain in place as areas transitioned to implementing the more stringent 1997 ozone standard. The D.C. Circuit upheld EPA's decision, recognizing EPA's ''authority to revoke the one-hour standard so long as adequate anti-backsliding measures are introduced.'' [110]

We believe that revoking the 1997 ozone NAAQS, as we have already done for transportation conformity, is now appropriate for all other purposes. The EPA believes that the permanent retention of two conflicting standards, differing only in the ozone concentrations they allow, could lead to unnecessary complexity and that it is inappropriate to retain the 1997 standard of .08 ppm, which is less protective of human health than the 2008 standard of .075 ppm. The EPA's reason for establishing the new standard as requisite to protect public health was its conclusion that the old standard was not adequate. Revoking rather than retaining that 1997 ozone NAAQS will facilitate a seamless transition from demonstrating compliance with the 1997 ozone NAAQS to demonstrating compliance with the more health and welfare protective 2008 ozone NAAQS. This approach will ensure the most efficient use of state and local resources in working toward attainment of the standard that EPA has determined is requisite to protect public health. Moreover, we believe that following the same course we followed in revoking the hourly standard by requiring adequate anti-backsliding measures will ensure continued momentum in states' efforts toward cleaner air.

Until the 1997 ozone NAAQS is revoked, that NAAQS remains in effect, in parallel with the 2008 ozone NAAQS, and continues to apply independently and by its own terms. Similarly, prior to its revocation, implementation of the 1997 ozone NAAQS continues under the Phase 2 Rule (Subpart X, 40 CFR 51.900 et seq.) as modified in accordance with the *South Coast* decision. After the 1997 ozone NAAQS is revoked, however, the EPA is proposing that the anti-backsliding requirements for that NAAQS, as proposed in this rulemaking, will become applicable.

After the revocation of a standard the EPA no longer intends to take action to designate or to redesignate areas for that standard. The extent of continued implementation of a revoked standard derives from administration of anti-backsliding requirements for that standard. After revocation of the 1997 ozone NAAQS, and because the 1-hour ozone NAAQS has already been revoked, obligations under these NAAQS will be defined by the anti-backsliding requirements that are specified for these NAAQS in the final rule for today's proposal.

Upon revocation of the 1997 ozone NAAQS, the EPA proposes that anti-backsliding provisions would apply to an area in accordance with its designations and, as applicable, its nonattainment classifications, for the 1997 (and, if applicable, 1-hour) ozone NAAQS at the time of revocation of the 1997 ozone NAAQS. The sections below discuss in detail the applicable requirements and how they would apply to areas with various designations and classifications for the 2008 and the revoked 1997 and 1-hour ozone NAAQS.

After revocation of the 1997 standard, the designations for that standard are no longer in effect, and the sole designations that remain in effect are those for the 2008 ozone NAAQS. However, the EPA is retaining the listing of the designations of areas for the revoked 1997 ozone NAAQS in 40 CFR part 81, for the sole purpose of identifying the anti-backsliding requirements that may apply to the areas as a result of these designations at the time of revocation. Accordingly, such references to historical designations for the revoked standard should not be viewed as current designations under CAA section 107.

The Phase 1 Rule revoked the 1-hour ozone NAAQS for all purposes 1 year after the effective date of initial area designations for the 1997 ozone NAAQS. The *South Coast* court rejected a challenge to this revocation, and determined that the EPA had the authority to revoke the 1-hour ozone NAAQS, subject to adequate anti-backsliding provisions.

The EPA is today proposing to exercise its authority to revoke the 1997 primary and secondary ozone NAAQS for all remaining purposes upon the publication of the final SIP Requirements Rule in the **Federal Register**. The EPA's Classifications Rule [111] for the 2008 ozone NAAQS provides that the 1997 ozone NAAQS will be revoked 1 year after the effective date of initial area designations for the 2008 ozone NAAQS for purposes of transportation conformity. Therefore, the 1997 ozone NAAQS will be revoked for all purposes upon the publication of the final SIP Requirements Rule in the **Federal Register**. However, the EPA is taking comment on alternate dates for revocation of the 1997 ozone NAAQS for all purposes other than transportation conformity. Alternate suggestions should explain the basis for the suggested date and be accompanied by technical and legal justifications.

We are proposing, for purposes of the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS, that an area that was designated as nonattainment for the 1997 ozone NAAQS and also is designated as nonattainment for the 2008 ozone NAAQS, and which has not been redesignated to attainment for the 1997 ozone NAAQS prior to the effective date of revocation of that NAAQS, will be subject to anti-backsliding requirements for the 1997 ozone NAAQS. To the extent that 1-hour ozone NAAQS anti-backsliding requirements are also applicable SIP requirements in such an area at the time the 1997 ozone NAAQS is revoked, we are proposing that those requirements will also remain applicable.[112]

The timing that EPA is proposing means that any 2008 ozone NAAQS nonattainment area that was previously a 1997 ozone NAAQS nonattainment area, but has been redesignated to attainment for the 1997 ozone NAAQS by the time of revocation of that NAAQS, will not be subject to the anti-backsliding requirements for the 1997 or the 1-hour ozone NAAQS. This is because when an area has been redesignated to attainment for an ozone NAAQS while that NAAQS is in effect, it has fulfilled all applicable

[108] 73 FR 16436, March 27, 2008.

[109] *See* 69 FR 23954.

[110] *South Coast Air Quality Management District* v. *EPA,* 472 F.3d at 899.

[111] 77 FR 30160, May 21, 2012.

[112] As a practical matter, where a 2008 ozone nonattainment area is subject to anti-backsliding requirements for both the 1997 ozone NAAQS and the 1-hour ozone NAAQS, the anti-backsliding requirements that will apply to the area for NSR and Title V will be those corresponding to the higher of the two nonattainment classifications that the area possessed with regard to the 1997 and 1-hour ozone NAAQS at the time of revocation of the respective ozone NAAQS.

requirements for that NAAQS, including applicable anti-backsliding requirements for any prior ozone NAAQS. The area is, therefore, not subject to anti-backsliding requirements for the revoked ozone NAAQS or any prior ozone standard(s).

During the period prior to revocation of the 1997 ozone NAAQS, that NAAQS will remain in effect and applicable requirements for that NAAQS, and any applicable 1-hour ozone NAAQS anti-backsliding requirements, will apply as usual. Redesignations and reclassifications for the 1997 ozone NAAQS may continue up to the time of revocation of that standard.

This approach of establishing anti-backsliding requirements is consistent with the EPA's actual practice in the transition from the 1-hour to the 1997 ozone NAAQS.[113] It would not make sense to select a point prior to revocation of the 1997 ozone NAAQS for the anti-backsliding requirements associated with that standard to take effect, since prior to revocation of the 1997 ozone NAAQS, that NAAQS remains in effect and still applies directly, and an area can still be redesignated to attainment for that standard or reclassified to a higher nonattainment classification.[114] In fact, the status of many areas with respect to designation and classification for the 1997 ozone NAAQS has already changed since promulgation of the 2008 ozone NAAQS. Thus, the EPA concludes that establishing the date of revocation of the 1997 ozone NAAQS as the time for anti-backsliding requirements for that NAAQS to take effect is reasonable and consistent with past practice under the Phase 1 Rule.

H. What are the applicable requirements for anti-backsliding purposes during the transition to the 2008 ozone NAAQS?

The EPA in this rulemaking is proposing to establish subpart AA, 40 CFR 51.1100 *et seq.,* which will provide comprehensive anti-backsliding requirements for transition to the 2008 ozone NAAQS. The EPA is proposing that, upon revocation of the 1997 ozone NAAQS, subpart X, 40 CFR 51.900 *et seq.,* be effectively replaced by the proposed subpart AA.

The proposed subpart AA addresses anti-backsliding requirements for both the previously revoked 1-hour ozone NAAQS and the 1997 ozone NAAQS in a consolidated and streamlined fashion. Areas designated nonattainment for the 2008 ozone NAAQS and also designated nonattainment for either or both the 1-hour or 1997 ozone NAAQS at the time of revocation of the 1997 ozone NAAQS will be subject to section 51.1100(o). This provision specifies the list of ''applicable requirements'' that will apply as anti-backsliding requirements for the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS. At the time of revocation of the 1997 ozone NAAQS, section 51.1100(o) will replace 40 CFR 51.900(f). The EPA is proposing as ''applicable requirements'' the requirements that were previously listed in section 51.900(f) (excepting only Stage II vapor recovery),[115] as well as the three anti-backsliding requirements that were included as a result of the *South Coast* decision: nonattainment NSR thresholds and offset ratios, nonattainment contingency measures for failure to attain by the applicable deadline or to meet RFP milestones, and section 185 fee program requirements. Since the *South Coast* decision, the EPA has been including these three requirements as anti-backsliding requirements for the 1-hour ozone NAAQS for the purpose of discharging its obligations to effectuate anti-backsliding for that standard. Proposed section 51.1100(o) contains definitions of the EPA's proposed applicable requirements for the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS. These applicable requirements as proposed in section 51.1100(o) include the following: (1) RACT; (2) vehicle I/M programs; (3) Major source applicability cut-offs for purposes of RACT; (4) ROP and/or RFP reductions; (5) the Clean fuels fleet program under section 183(c)(4) of the CAA; (6) Clean fuels for boilers under section 182(e)(3) of the CAA; (7) Transportation control measures during heavy traffic hours as provided under section 182(e)(4) of the CAA; (8) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA; (9) Transportation controls under section 182(c)(5) of the CAA; (10) Vehicle miles traveled provisions under section 182(d)(1)(A) of the CAA; (11) NO_X requirements under section 182(f) of the CAA; (12) Attainment demonstrations; (13) Nonattainment contingency measures, (14) Nonattainment NSR requirements, and (15) Section 185 requirements for Severe and Extreme areas.

A number of areas designated nonattainment for the 2008 ozone NAAQS may retain residual attainment-related SIP obligations for the 1997 ozone NAAQS. It is possible that SIP revisions to address obligations under the 2008 ozone NAAQS can also satisfy similar outstanding SIP obligations to prevent backsliding for revoked 1997 and 1-hour ozone NAAQS. For areas with residual attainment-linked requirements for the revoked 1997 ozone NAAQS, the EPA has taken into account the close relationship in timing and nature of attainment-linked obligations for the 1997 and 2008 standards. The 2008 ozone NAAQS incorporates and supersedes the 1997 ozone NAAQS, and the attainment deadline for the 2008 ozone NAAQS is near-term. Thus the EPA believes it is critical to avoid the duplication of effort that requiring separate SIP submissions for the 1997 and 2008 ozone NAAQS would create. The best course would be to integrate, wherever possible, the attainment planning requirements for the revoked and current ozone NAAQS. At this time of scarce resources the states and the EPA should strive to develop SIP submissions that achieve the goals of both the 1997 and the 2008 ozone NAAQS. For example, areas that have not yet fully attained the 1997 ozone NAAQS and have an obligation to continue meeting planning and control requirements to attain as expeditiously as practicable may find it more efficient to develop plans and controls that achieve the goals of both the 1997 and the 2008 ozone NAAQS. The need for an approach similar to the one EPA took in the transition from the 1-hour ozone NAAQS to the 1997 ozone NAAQS is heightened as we move on to a third more stringent ozone NAAQS. In the Phase 1 Rule (69 FR 23975–6), an attainment-related SIP submission to satisfy a requirement for the 1997 ozone NAAQS could also satisfy an outstanding 1-hour ozone NAAQS SIP requirement. At this time it is even more important than in the previous transition to coordinate efforts and avoid overlapping and redundant planning efforts.

In this proposal, the EPA is also proposing a different approach to the Stage II Vapor Recovery requirement than was contained in 51.900(f)(5) in the Phase 1 Rule. In May 2012,[116] the EPA

[113] Although section 51.905(a) specified that the anti-backsliding requirements ''attached'' at the time of designation for the 1997 ozone NAAQS, areas were still able to redesignate to attainment for the 1-hour ozone NAAQS up to the date of revocation of that standard.

[114] *See,* for example, the redesignations to 1-hour attainment for Phoenix (70 FR 34362, June 14, 2005) and Atlanta (70 FR 34660, June 15, 2005).

[115] Under CAA section 202(a)(6), the EPA found that onboard refueling vapor recovery (ORVR) systems are in widespread use in the motor vehicle fleet and waived the section 182(b)(3) Stage II vapor recovery requirement for Serious and higher ozone nonattainment areas on May 16, 2012 (77 FR 28772). Thus, in this proposal, the section 182(b)(3) Stage II requirement is omitted from the list of applicable requirements in 51.1100(o).

[116] 77 FR 28772, May 16, 2012.

determined that ORVR systems are in widespread use nationally, and the EPA waived the CAA section 182(b)(3) requirement for states to adopt and submit programs for implementation of the Stage II vapor recovery system at GDFs located in Serious and above ozone nonattainment areas, pursuant to authority provided in CAA section 202(b)(6). As a result of this waiver, states may seek EPA approval to discontinue implementing an existing Stage II Control Program for GDFs in Serious and above ozone nonattainment areas, subject to (1) the submittal of an approvable demonstration showing that removing the program from the SIP would not interfere with attainment and maintenance of the NAAQS pursuant to section 110(l), and (2) the submittal of an approvable demonstration under section 193 for Stage II programs that were in effect in 1990. Accordingly, in this proposed rule, the EPA is proposing a revision to the existing anti-backsliding rules and not including the Stage II vapor recovery program previously required by CAA section 182(b)(3) in the list of measures that need to be retained for anti-backsliding purposes. Areas that already have Stage II programs in their SIPs could remove these programs if they make the appropriate showings as detailed in CAA sections 110(l) and 193, following EPA approval of such SIP revisions.[117] These revisions would not need to move Stage II requirements to contingency measures when Stage II is removed from the active SIP. Today's proposed rule would have no effect on the continuing independent CAA section 184(b)(2) requirement for OTR states to implement Stage II programs or measures capable of achieving emissions reductions comparable to those achieved by Stage II.

The EPA discusses below the three anti-backsliding requirements that proposed section 51.1100 would add to the applicable requirements originally contained in section 51.900(f) of the rule.

1. NSR

a. NSR for Areas Designated Nonattainment for the 2008 Ozone NAAQS

In response to the *South Coast* case, the EPA has been requiring areas designated nonattainment for the 1997 ozone NAAQS that are subject to anti-backsliding requirements for the 1-hour NAAQS to implement the nonattainment NSR requirements that applied at the time of revocation of the 1-hour ozone NAAQS, where such requirements are more stringent than those based on the area's classification for the 1997 ozone NAAQS. In keeping with its practice following the *South Coast* decision, the EPA is proposing that nonattainment NSR be added to the list of applicable requirements. Thus, for areas designated nonattainment for the 2008 ozone NAAQS, nonattainment NSR will be required for any prior ozone standard for which they remain designated nonattainment. As explained later in this preamble, however, areas that remained designated nonattainment for the 1-hour ozone NAAQS at the time of its revocation, but were subsequently redesignated to attainment for the 1997 ozone NAAQS, would not be subject to this obligation. In practical terms, the obligation to implement nonattainment NSR requirements associated with two or more standards means that the area must implement the thresholds and offset ratios associated with the highest nonattainment classification. In the section on termination of anti-backsliding requirements below, the EPA is proposing two options for lifting 1997 and 1-hour ozone NAAQS nonattainment NSR requirements for areas designated nonattainment for the 2008 ozone NAAQS: redesignation for the 2008 NAAQS, or a ''redesignation substitute'' for the 1997 and/or 1-hour ozone NAAQS. The EPA is also soliciting comment from the public on additional routes to lifting nonattainment NSR requirements tied to the revoked 1997 and 1-hour ozone NAAQS, in areas where the 2008 nonattainment NSR requirements would remain in place. These additional processes, like the redesignation substitute option the EPA is proposing, would operate to lift the nonattainment NSR requirements for the revoked NAAQS while retaining the NSR requirements for the 2008 ozone NAAQS. The EPA asks that commenters provide supporting legal rationales for any additional option, taking into account the DC Circuit's decision in *South Coast.* The timing and basis for termination of nonattainment NSR requirements for the revoked NAAQS is discussed below in section IV.J.

b. NSR for Areas Designated Attainment for the 2008 Ozone NAAQS

This proposal also addresses whether nonattainment NSR must continue to be implemented in areas initially designated attainment[118] for the 2008 ozone NAAQS, but that were still designated nonattainment for the 1997 ozone NAAQS as of the effective date of their attainment designations under the 2008 ozone NAAQS. Some of the areas that have been designated as attainment for the 2008 ozone NAAQS are still designated as nonattainment for the 1997 ozone NAAQS.

Until the 1997 ozone NAAQS is revoked, we propose that nonattainment NSR would continue to apply in areas designated as attainment for the 2008 ozone NAAQS but nonattainment for the 1997 ozone NAAQS. This approach is consistent with the exemption in the PSD regulations at 40 CFR 51.166(i)(2) and 52.21(i)(2), which provides that PSD requirements do not apply with respect to a particular pollutant if the new source or modification is located in an area designated as nonattainment under CAA section 107 as to that pollutant.

We propose that after the 1997 ozone NAAQS is revoked, areas designated as attainment for the 2008 ozone NAAQS would not be required to retain in their SIPs nonattainment NSR programs for ozone. Instead, such areas would be required to implement Prevention of Significant Deterioration (PSD) requirements, consistent with their attainment designation for the 2008 ozone NAAQS, notwithstanding any remaining references to nonattainment designations for the 1997 ozone NAAQS in 40 CFR Part 81.

When we revoke the 1997 ozone NAAQS, the designations for that standard have no further effect except as reference for anti-backsliding purposes. We are retaining references to the designations for the revoked standard in 40 CFR part 81 solely for anti-backsliding purposes for areas designated nonattainment for the 2008 ozone NAAQS. Accordingly, such references to historical nonattainment designations for the revoked standard should not be viewed as current ''nonattainment designation[s] under CAA § 107'' within the meaning of 40 CFR 51.166(i)(2) and 52.21(i)(2) and, therefore, do not trigger the exemption from PSD requirements otherwise resulting from those provisions.

While the EPA interprets the present regulatory text in 40 CFR 51.166(i)(2) and 52.21(i)(2) in the manner described above, these provisions do not expressly say that a nonattainment designation for a revoked standard does not trigger the

[117] *See* U.S. EPA Office of Air Quality Planning and Standards, ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures,'' August 7, 2012 (EPA–457/B–12–001).

[118] Applies to areas designated either ''unclassifiable/attainment'' (hereafter referred to as ''attainment'' areas) or ''unclassifiable,'' as defined in CAA § 107(d)(1)(A).

exemption. To avoid confusion in the regulatory text and to clarify its intent, we are alternatively proposing that an amendment to 40 CFR 51.166(i)(2) and 52.21(i)(2) would be appropriate to make it clear that a nonattainment designation for a revoked NAAQS, once the revocation becomes effective in an area, would not trigger the PSD exemption in those provisions and would not prevent application of PSD requirements for that pollutant. We request comment on whether such an amendment to 40 CFR 51.166(i)(2) and 52.21(i)(2) is necessary or whether it is sufficient for the EPA to articulate the interpretation of these provisions described in the preceding paragraph. We also request comment on how such an amendment to 40 CFR 51.166(i)(2) and 52.21(i)(2) should be worded.

The EPA took a similar approach in rules governing the transition from the 1-hour to the 1997 ozone NAAQS. This approach would not apply to areas located in the OTR and designated attainment, since the CAA requires these areas to remain subject to Moderate area nonattainment NSR requirements. As explained more fully in the NSR Anti-Backsliding Proposed Rule, the EPA is proposing this approach because the EPA does not interpret the *South Coast* decision as requiring that NSR requirements associated with a previous standard be retained in areas designated attainment for the current standard. *See* 75 FR 51964. The issue before the court in *South Coast* involved the substitution of one set of nonattainment NSR requirements for another, not the replacement of nonattainment NSR with PSD requirements. The EPA's determination that nonattainment NSR does not apply to areas designated attainment for the current NAAQS and thus is not required to remain in the SIP for such areas is consistent with *Greenbaum* v. *EPA,* 370 F.3d at 536.[119]

2. Section 185 Fee Programs

States with nonattainment areas classified as Severe or Extreme for a prior NAAQS at the time that NAAQS is revoked remain subject to the requirements of section 185 with respect to that NAAQS. This approach is consistent with the July 2011 *NRDC* court decision on the EPA's previously-issued section 185 guidance. As previously discussed, EPA has been working with states to address the section 185 requirements for the 1-hour ozone NAAQS. The timeline for section 185 requirements for the 1997 ozone NAAQS differs from that for the 1-hour ozone NAAQS; the earliest attainment deadline for a Severe area under the 1997 ozone NAAQS is 2019, and no 1997 ozone penalty fee program has yet become due.[120] As in the case of NSR, the section below on termination of anti-backsliding requirements proposes two alternative approaches to terminating section 185 anti-backsliding requirements for both the 1-hour and 1997 ozone NAAQS. Section IV.J goes into detail on the two proposed routes to terminate section 185 anti-backsliding requirements: redesignating to attainment for the 2008 ozone NAAQS, or providing a redesignation substitute for the revoked NAAQS triggering the section 185 requirement.

3. Contingency Measures Under Sections 172(c)(9) and 182(c)(9)

The EPA's recent final rulemaking (May 14, 2012, 77 FR 28424) set forth the EPA's rationale for including, as an applicable 1-hour ozone NAAQS anti-backsliding requirement, nonattainment area contingency requirements for failure to attain the 1-hour NAAQS by the applicable deadline or to meet RFP milestones with respect to that NAAQS. The EPA is proposing to adopt the same contingency requirements for failure to attain the 1997 ozone NAAQS by the applicable deadlines or to meet RFP milestones with respect to that NAAQS, based on the same rationale that the agency articulated in its May 14, 2012 rulemaking.

I. Application of Transition Requirements to Nonattainment and Attainment Areas

1. Introduction

This section discusses how the EPA's proposed transition requirements will apply to various types of areas. The general principle is to apply transition requirements depending on how the area is designated—attainment or nonattainment—for the 2008 ozone NAAQS, while taking into account the area's status with respect to prior standards.[121] Table 2 provides a summary of the four transition scenarios, and the proposed requirements that would apply for each of those scenarios.[122] The following sections describe each scenario in detail. In Table 2 and in the subsequent sections, for purposes of determining an area's transition requirements, we first look to the area's designation and classification for the 2008 ozone NAAQS. We then determine the area's designation and classification status for the 1997 ozone NAAQS as of the effective date the 1997 ozone NAAQS is revoked. Finally, where appropriate, we determine whether anti-backsliding requirements for the 1-hour ozone NAAQS apply in the area and, if so, we determine the area's designation and classification status for the 1-hour ozone NAAQS as of the date the 1-hour NAAQS was revoked.[123] For ease of reference, throughout the remainder of this preamble, we refer to an area's designation and classification for the 1997 ozone NAAQS at the time of revocation of that NAAQS, simply as the area's ''designation'' and ''classification'' for the 1997 ozone NAAQS. Similarly, we refer to an area's designation and classification for the 1-hour ozone NAAQS at the time of revocation of that NAAQS (June 15, 2005 for most areas), simply as the area's ''designation'' and ''classification'' for the 1-hour ozone NAAQS.

[119] ''It would make little sense for [nonattainment NSR] to be included in the post-attainment SIP, as the Clean Air Act . . . explicitly states that attainment area SIPs must include a PSD program.''

[120] Under the 1997 ozone NAAQS, areas classified Severe-15 must attain by 2019, Severe-17 areas by 2021, and Extreme areas by 2024.

[121] One area, the Uintah Basin, UT, was designated as ''unclassifiable,'' and for purposes here would be treated like an area designated ''attainment.''

[122] Section IV.J details the proposed routes to satisfy the anti-backsliding requirements listed in Table 2.

[123] If the nonattainment area was initially designated attainment for the 1997 ozone NAAQS or was redesignated to attainment (''Maintenance'') for the 1997 ozone NAAQS prior to the date of revocation of the 1997 NAAQS, then the area has already fulfilled any applicable 1-hour anti-backsliding requirements. For ease of reference, we refer to these areas as ''Maintenance'' areas.

TABLE 2—2008 OZONE NAAQS TRANSITION OBLIGATIONS

Designation for 2008 NAAQS	Designation for previous NAAQS (at time of revocation)	Proposed NSR/PSD obligations	Other proposed transition obligations
1. Attainment	Attainment/Maintenance	PSD remains in effect	—Area remains subject to existing section 175A maintenance plan for the previous ozone NAAQS and requirements already in the SIP, subject to revision consistent with sections 110(l) and 193. —Section 175A maintenance plan satisfies maintenance requirement under section 110(a)(1).
2. Attainment	Nonattainment for 1997 ozone NAAQS only; or nonattainment for 1997 *and* 1-hour NAAQS.	Nonattainment NSR in effect until revocation of the 1997 ozone NAAQS; then PSD applies.	—Area remains subject to measures to meet nonattainment requirements already in its adopted SIP. Removable only with a section 110(l) demonstration and a section 193 demonstration if applicable. —Two alternatives to address section 110(a)(1) maintenance provision: (a) Area's approved PSD SIP satisfies section 110(a)(1) maintenance provision, or (b) additional maintenance showing under section 110(a)(1).
3. Nonattainment	Attainment/Maintenance	Nonattainment NSR applies based on 2008 ozone NAAQS classification.	—Area remains subject to existing section 175A maintenance plan for the previous NAAQS and requirements already in the SIP, subject to revision consistent with sections 110(l) and 193.
4. Nonattainment	Nonattainment for 1997 ozone NAAQS only; or nonattainment for 1997 and 1-hour ozone NAAQS.	Nonattainment NSR applies based on highest applicable classification.	—Area subject to all applicable anti-backsliding requirements for 1-hr and/or 1997 NAAQS. —Anti-backsliding obligations lifted when the area either is redesignated to attainment for the 2008 ozone NAAQS, or the EPA approves a redesignation substitute for the revoked 1-hour or 1997 NAAQS —EPA solicits comment on additional options for lifting anti-backsliding obligations.

2. Requirements for Areas Designated Attainment for the 2008 Ozone NAAQS and (i) Maintenance for the 1997 Ozone NAAQS or (ii) Nonattainment for the 1997 Ozone NAAQS

In this section the EPA considers the requirements applicable after revocation of the 1997 ozone NAAQS, to (i) areas that are designated attainment for the 2008 ozone NAAQS and attainment for the 1997 ozone NAAQS with an approved 175A maintenance plan (hereafter ''maintenance for the 1997 ozone NAAQS''), as of the date of revocation of the 1997 ozone NAAQS, and to (ii) areas that are designated as attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS. The EPA is proposing a preferred approach and an alternative, less-preferred approach for requirements for areas that are designated attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS, and a single approach for requirements for areas that are designated attainment for the 2008 ozone NAAQS and maintenance for the 1997 ozone NAAQS. Appendix D contains a full list of these areas.

a. Background and Overview

The Phase 1 Rule for implementation of the 1997 ozone NAAQS adopted 40 CFR 51.905(c) and (d). These sections specified requirements applicable to areas designated attainment for the 1997 ozone NAAQS, and designated nonattainment or redesignated to attainment for the 1-hour ozone NAAQS. These areas were no longer obligated to adopt any outstanding applicable measures for the 1-hour ozone NAAQS. Sections 51.905(c) and (d) required, however, that these areas submit, within 3 years of the effective date of designation as attainment for the 1997 ozone NAAQS, a maintenance plan under CAA section 110(a)(1) for the 1997 ozone NAAQS.[124] Due to changes that have occurred since 2004, the EPA is now proposing as its preferred approach for an area designated attainment for the 2008 ozone NAAQS and redesignated to attainment for the 1997 ozone NAAQS (as of revocation of the 1997 ozone NAAQS), that the area's approved 175A maintenance plan will satisfy its maintenance plan obligation for the 2008 ozone NAAQS under section 110(a)(1). The EPA is also proposing as its preferred approach for an area designated attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS (as of revocation of the 1997 ozone NAAQS), that the area's approved PSD SIP will satisfy its maintenance plan obligation for the 2008 ozone NAAQS under section 110(a)(1).

The EPA believes this is appropriate for several reasons. First, many of these areas are now subject to a number of national rules which were not applicable in 2004. These national rules impose ozone precursor emissions limits on important emission source categories, independent of the provisions of any area-specific maintenance or anti-backsliding plan for ozone. These rules include the several significant mobile source regulations, emission standards for toxic VOCs, power plant regulations reducing NO_X emissions, and the Regional Haze Rule.[125] Second, since 2004 a number of

[124] This maintenance plan was required to cover a 10-year period starting at the effective date of designation and to include contingency measures.

[125] Mobile source regulations that have begun to reduce emissions since 2004 include the Tier 2 emissions standards for light-duty vehicles, the 2007 emissions standards for heavy-duty on-road vehicles, the clean air non-road diesel rule that covers a wide variety of non-road equipment and engines, and the locomotive and marine rule that establishes more stringent emissions standards for

these areas have also reduced emissions in order to attain the 1997 and/or 2006 $PM_{2.5}$ NAAQS. These $PM_{2.5}$-related emissions reductions also help reduce and limit growth in ozone precursor emissions. Some of these measures will produce large reductions during the 10-year period over which a maintenance plan could be required. Third, the EPA anticipates that it will complete the next review of the ozone NAAQS before any additional section 110(a)(1) maintenance plan requirements could be due with respect to the 2008 ozone NAAQS. Under these circumstances, imposing additional section 110(a)(1) maintenance plan requirements for areas attaining the 2008 ozone NAAQS could, without compensating benefit, create a conflict for state resources needed to address a more protective ozone standard. Finally, these areas are meeting a more protective NAAQS that is directly comparable in form to the 1997 ozone NAAQS, which was not the case when the anti-backsliding requirements for the 1-hour standard were created.

An area designated attainment for the 2008 ozone NAAQS has already attained the most stringent existing standard. Except for the substitution of PSD for nonattainment NSR requirements, the area remains subject to the nonattainment requirements already approved into the SIP, which can be revised only upon a showing that such revision is consistent with CAA sections 110(l) and 193.[126] These sections prevent any SIP revisions that would increase emissions of any pollutant related to a NAAQS unless a demonstration of continued attainment and maintenance accompanies the revision, and thus these sections effectively function as anti-backsliding provisions. Finally, because the form of the 1997 and 2008 ozone NAAQS is the same, there is no possibility that an area attaining the 2008 ozone NAAQS could be violating the 1997 ozone NAAQS, which is unlike the relationship that existed between the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS. Thus, the EPA believes that designation as attainment for the 2008 ozone NAAQS should result in no additional new obligations beyond PSD for this large group of areas, regardless of their status for prior standards.

As a result of these considerations, the EPA is proposing an approach more suited to areas designated attainment for the 2008 ozone NAAQS than the approach contained in the Phase 1 Rule. Below we describe our proposals for areas that are designated attainment for the 2008 ozone NAAQS and designated (i) maintenance or (ii) nonattainment for the 1997 ozone NAAQS.

b. Proposals

i. Areas Designated Attainment for the 2008 Ozone NAAQS and Maintenance for the 1997 Ozone NAAQS

For areas designated attainment for the 2008 ozone NAAQS and maintenance for the 1997 ozone NAAQS (as of the date of revocation of the 1997 ozone NAAQS), the EPA is proposing that the area's approved section 175A maintenance plan for the revoked 1997 ozone NAAQS satisfies both its obligations for maintenance under section 110(a)(1) for the 2008 ozone NAAQS and its obligation to submit a second approvable maintenance plan under section 175A for the revoked 1997 ozone NAAQS. The EPA's reasoning is as follows. All areas in this group are already subject to a section 175A maintenance plan for the revoked 1997 ozone NAAQS, and have been both redesignated to attainment for the 1997 ozone NAAQS and designated attainment for the more stringent 2008 ozone NAAQS. As explained elsewhere, the section 175A maintenance plan for the 1997 ozone NAAQS satisfies the anti-backsliding requirements of these areas for all prior standards. Any further 110(a)(1) maintenance plan requirement under the 2008 ozone NAAQS would be unnecessarily burdensome. No revision to the section 175A maintenance plans for these areas can be approved unless it complies with the anti-backsliding checks in CAA sections 110(l) and 193. Thus, the EPA believes strongly that there is no justification for additional maintenance plan burdens to be imposed on these areas solely because at one time they were designated nonattainment under the revoked 1997 ozone NAAQS. Since these areas were redesignated to attainment for the 1997 ozone NAAQS prior to its revocation, the EPA's proposed approach recognizes and reflects that status.

ii. Areas Designated Attainment for the 2008 Ozone NAAQS and Nonattainment for the 1997 Ozone NAAQS

The EPA is proposing as its preferred approach that areas designated attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS (as of revocation of the 1997 ozone NAAQS) not be required to adopt any outstanding applicable requirements for the revoked 1997 standard. This approach is similar to the approach followed in the Phase 1 Rule. The EPA also proposes, in a departure from the Phase 1 Rule, that the approved PSD SIPs for these areas satisfy the obligation to submit an approvable maintenance plan for the 2008 ozone NAAQS under section 110(a)(1). The EPA's rationale for this approach is as follows: areas designated attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS (as of revocation of the 1997 ozone NAAQS) have already attained the most stringent existing standard. These areas thus have developed nonattainment SIPs that in combination with federal measures and emissions controls in upwind areas have produced sufficient emissions reductions to achieve the more protective 2008 ozone NAAQS. They remain subject to the 1997 nonattainment area requirements already approved into the SIP, which can be revised only upon a showing that such revision complies with the anti-backsliding checks in CAA sections 110(l) and 193. At this time, and given the succession of NAAQS of increasing stringency that has occurred, the EPA believes that the burden of developing an approvable 110(a)(1) maintenance plan for the 2008 ozone NAAQS would outweigh any compensating benefit for an area that is already attaining that NAAQS and that is subject to prior nonattainment requirements which are already incorporated into the SIP.

The EPA is proposing a second, and less preferred, alternative for areas designated attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS as of revocation of the 1997 ozone NAAQS. Similar to the approach taken in the Phase 1 Rule, under this alternative we propose that the area be required to show maintenance for the 2008 ozone NAAQS. (*See* proposed regulatory text section 51.1105.) This maintenance showing would be due 3 years after the effective date of designations for the 2008 ozone NAAQS. The maintenance showing would contain a demonstration of continued maintenance of the 2008 ozone NAAQS in the area for ten years from the effective date of the area's designation as attainment for the 2008 ozone NAAQS. The EPA proposes a maintenance showing in a form other than a formal SIP revision. If the EPA were to adopt this option, the EPA would provide guidance regarding the specific elements of the maintenance showing. The EPA seeks comment on this option.

engines used in locomotives and in marine applications.

[126] It should be noted that transportation conformity requirements no longer apply in these areas after the effective date of the revocation of the 1997 ozone NAAQS. (77 FR 30160, May 21, 2012).

3. Areas Designated Nonattainment for the 2008 Ozone NAAQS

In the next sections the EPA addresses the transition requirements for three distinct groups of areas designated nonattainment for the 2008 ozone NAAQS: those which are also designated nonattainment for the 1997 ozone NAAQS as of the time of revocation of that NAAQS; those which are designated maintenance for the 1997 ozone NAAQS as of the time of revocation of that NAAQS; and those which are also designated nonattainment for both the 1997 and the previously revoked 1-hour ozone NAAQS as of the time of revocation of the 1997 NAAQS. *See* Appendix D for a list of these areas.

The EPA is proposing that areas designated nonattainment for the 2008 ozone NAAQS and also designated nonattainment for the 1997 ozone NAAQS, or for both the 1997 and the 1-hour ozone NAAQS, be subject to anti-backsliding provisions as interpreted by 51.1105. In particular, we are proposing that these areas be subject to applicable requirements for any prior standard for which they remain designated nonattainment at the time of revocation of the 1997 ozone NAAQS.[127] As was also the case in the proposed NSR Anti-Backsliding Rule, 75 FR 51965, neither of the EPA's current proposed approaches to allowing removal of NSR anti-backsliding requirements for a previous NAAQS (as discussed in section IV.J) would have an effect on any source permit conditions established during the time period in which a major NSR program pursuant to a previous NAAQS was applied. The NSR regulations do not provide a mechanism for major NSR permit conditions to be removed from a permit or modified when a SIP is later revised so as to remove or change NSR thresholds and/or offset requirements for purposes of future permitting. Replacement or removal of NSR SIP provisions does not relieve sources of their obligations under previously established permit conditions.

Under this proposed rule, areas that are designated nonattainment for the 2008 ozone NAAQS and are also designated nonattainment for a prior ozone NAAQS (as of the revocation of the 1997 NAAQS) will be subject to applicable requirements for that prior NAAQS, as well as the pertinent requirements for the current 2008 ozone NAAQS. In addition, if a state seeks to revise any measure already approved into its SIP for any prior standard, the revision must comply with the anti-backsliding checks in CAA sections 110(l) and 193.

a. Areas Designated Nonattainment for the 2008 Ozone NAAQS and Maintenance for the 1997 Ozone NAAQS

The EPA is proposing that for these areas, the area's approved section 175A maintenance plan for the revoked 1997 ozone NAAQS would satisfy the obligation to submit a second approvable maintenance plan under section 175A for the revoked 1997 ozone NAAQS. The EPA's reasoning is as follows. All areas in this group are already subject to an approved section 175A maintenance plan for the revoked 1997 ozone NAAQS and have been redesignated to attainment for the 1997 ozone NAAQS. As explained elsewhere, the approval of the redesignation and of the section 175A maintenance plan for the 1997 ozone NAAQS required the EPA to determine that the anti-backsliding requirements of these areas for the 1-hour standard, as well as those requirements applicable for the 1997 standard, have been met. Thus EPA's approvals of the redesignation request and the maintenance plan for the 1997 standard signify not only that all applicable requirements for the 1997 ozone standard have been met, but also that all applicable anti-backsliding measures for the 1-hour standard have been adopted and approved into the SIP. No revision to the section 175A maintenance plans for these areas can be approved unless it complies with the anti-backsliding checks in CAA sections 110(l) and 193.

These areas are also designated nonattainment for the more stringent 2008 ozone NAAQS and therefore are subject to nonattainment NSR and other nonattainment requirements for their classification under the more stringent 2008 ozone NAAQS. Thus, the EPA believes strongly that there is no justification for a second 175A maintenance plan to be imposed on these areas solely because at one time they were designated nonattainment under the revoked 1997 ozone NAAQS. Since these areas were redesignated to attainment for the 1997 ozone NAAQS prior to its revocation, the EPA's proposed approach recognizes and reflects that status.

b. 2008 Nonattainment Areas Also Designated Nonattainment for the 1997 Ozone NAAQS But Not for the 1-Hour Ozone NAAQS

To better understand how the anti-backsliding requirements will affect these areas, it is helpful to review which areas are included in this group and their status with respect to attainment of the 1997 ozone NAAQS. Table 1 in Appendix D lists the fifteen areas that are designated nonattainment for the 2008 ozone NAAQS and which, at the time of proposal of this rule, currently remain designated nonattainment for the 1997 ozone NAAQS but not for the 1-hour ozone NAAQS.[128] As Table 1 in Appendix D shows, even though these areas are currently designated nonattainment for the 1997 ozone NAAQS, the EPA anticipates making final determinations that more than half of these areas have attained the 1997 ozone NAAQS prior to the date of revocation of the 1997 ozone NAAQS pursuant to the EPA's ''Clean Data'' regulation, 40 CFR 51.918, and anticipates that several of these will have been redesignated to maintenance for that standard. A determination of attainment suspends obligations for states to submit attainment-related planning requirements for the 1997 ozone NAAQS for those areas as long as they continue to attain that standard.[129]

In addition, the EPA notes that two areas in this group are located in the OTR. For these areas in particular, a nonattainment designation for the 1997 ozone NAAQS does not necessarily indicate current unsatisfactory air quality or unmet SIP requirements with respect to that standard. The CAA requires areas in the OTR, among other measures, to be subject to certain nonattainment requirements such as nonattainment NSR even if they are redesignated to attainment. Therefore, even when these areas are eligible for redesignation to attainment, states often elect not to submit a redesignation request for these areas and to undergo the redesignation process because they view the workload involved incommensurate with the benefits of redesignation. Under the EPA's proposal, all areas listed in Table 1 of

[127] We do not include in these two groups any areas that were redesignated to attainment for the 1997 ozone NAAQS prior to revocation of that NAAQS. In order to be redesignated for the 1997 ozone NAAQS, the area had to satisfy all applicable anti-backsliding requirements for the 1-hour ozone NAAQS. Any 1997 ozone NAAQS nonattainment area that was designated nonattainment for the 1-hour ozone NAAQS at time of revocation of the 1-hour NAAQS had to meet applicable 1-hour ozone NAAQS anti-backsliding requirements in order to be redesignated to attainment for the 1997 ozone NAAQS.

[128] The status of some areas listed in Table 1 with respect to the 1997 ozone NAAQS may change between today and the date that NAAQS is revoked.

[129] Depending on the area's classification for the 1997 ozone NAAQS and the SIP elements already approved, the area may still have outstanding 1997 anti-backsliding submission requirements that are not suspended by 51.918 (e.g., nonattainment NSR, Subpart 2 RACT requirements).

Appendix D will be subject to anti-backsliding requirements for the 1997 ozone NAAQS, unless they are redesignated to attainment for that standard prior to its revocation.

The EPA believes that Table 1 in Appendix D illustrates that many of the areas in this category will have already met the 1997 ozone NAAQS and will have been redesignated to attainment by the time it is revoked, and thus after revocation of that NAAQS, the number of areas with 1997 anti-backsliding requirements will be correspondingly reduced. For other areas which remain designated nonattainment for the 1997 ozone NAAQS, under the EPA's Clean Data Regulation, a determination of attainment suspends the obligation to submit certain attainment-related requirements. For those areas which have already incorporated measures into their approved SIPs that satisfy the nonattainment requirements for that standard, section 110(l) functions as an anti-backsliding check to require continued implementation of such measures unless revised in accordance with its provisions.

The EPA is also proposing that once the nonattainment NSR anti-backsliding requirement(s) for the 1997 ozone NAAQS cease to apply, since PSD will then be in effect the state may request that the corresponding NSR requirements be removed entirely, rather than be retained in the SIP as a maintenance plan contingency measure.[130]

c. 2008 Nonattainment Areas Also Designated Nonattainment for the 1-Hour and 1997 Ozone NAAQS

Table 2 in Appendix D lists the 18 areas that are currently designated nonattainment for all three ozone NAAQS—the 2008 ozone NAAQS, the 1997 ozone NAAQS and the already revoked 1-hour ozone NAAQS. More than half of these areas are located in either California (9) or Texas (2). The remaining 7 areas are located in the East. The EPA has already made final determinations that all 7 eastern areas (five large metropolitan areas and two smaller areas), have attained the 1-hour ozone NAAQS. A number of the eastern areas—including Washington, DC, Philadelphia and Boston—have met their attainment deadlines for both the 1-hour and 1997 ozone NAAQS, although they have not undergone the process to be redesignated to attainment for these NAAQS. The EPA proposes that, upon revocation of the 1997 ozone NAAQS, the areas listed in this group will be subject to applicable requirements, including nonattainment NSR, for the 1-hour and 1997 ozone NAAQS (to the extent those requirements have not been suspended by a Clean Data Determination), unless they have been redesignated to attainment for the 1997 ozone NAAQS prior to its revocation. Implementation of measures previously approved into a SIP for either the 1-hour ozone NAAQS or the 1997 ozone NAAQS must continue unless the SIP is revised in accordance with the anti-backsliding checks in CAA sections 110(l) and 193.

4. Summary

a. Areas Designated Attainment for the 2008 Ozone NAAQS

Areas designated attainment for the 2008 ozone NAAQS are meeting the current, most stringent ozone standard. Section 110(l) functions as an anti-backsliding provision to assure that the state may not revise any previously approved SIP provision without a showing that the revision will not interfere with attainment and maintenance or any other CAA requirements.

i. Attainment for the 2008 Ozone NAAQS and Maintenance for the 1997 Ozone NAAQS

Areas in this category (designated attainment for the 2008 ozone NAAQS and maintenance for the 1997 ozone NAAQS, as of revocation of the 1997 ozone NAAQS) have fulfilled all anti-backsliding requirements for prior standards through their section 175A maintenance plans, and are not obligated to meet further requirements with respect to those standards. The EPA proposes no further requirements for these areas, apart from the requirements in their approved SIPs. The areas' approved section 175A maintenance plans for the 1997 ozone NAAQS also satisfy their obligations for maintenance plans for the 2008 ozone NAAQS pursuant to section 110(a)(1).

ii. Attainment for the 2008 Ozone NAAQS and Nonattainment for the 1997 Ozone NAAQS

In the case of areas designated attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS (as of revocation of the 1997 ozone NAAQS), a state[131] may, upon revocation of the 1997 ozone NAAQS, request that any requirements for nonattainment NSR included in the SIP for that revoked NAAQS be removed. In place of nonattainment NSR, these areas would be required to implement PSD requirements after the revocation of the 1997 ozone NAAQS. (As explained above, until the 1997 ozone NAAQS is revoked, nonattainment NSR applies.)

For these areas, the EPA is proposing to adopt as its preferred alternative that the SIP-approved PSD program that would apply to the area satisfies the maintenance plan obligation under CAA section 110(a)(1) for the 2008 ozone NAAQS; or as a less-preferred alternative, the EPA is proposing a requirement for an additional maintenance showing for the 2008 ozone NAAQS. (*See* proposed regulatory text 51.1105(a)(3).)

b. Areas Designated Nonattainment for the 2008 Ozone NAAQS

i. Areas Designated Nonattainment for the 2008 Ozone NAAQS and Maintenance for the 1997 Ozone NAAQS

The areas in this category are designated nonattainment for the 2008 ozone NAAQS and were (or will be) redesignated to attainment for the 1997 ozone NAAQS prior to its revocation. Thus, they are subject to section 175A maintenance plans for the 1997 ozone NAAQS. Having attained and been redesignated to attainment with a maintenance plan for the 1997 ozone NAAQS assures that the EPA has reviewed the area's approved maintenance SIP and has determined that it addresses all applicable anti-backsliding requirements for both the 1997 and 1-hour ozone NAAQS. The EPA believes that the approved SIP for these areas satisfies applicable anti-backsliding requirements. These areas are subject to nonattainment NSR and other nonattainment requirements for their classification under the 2008 ozone NAAQS.

The EPA wishes to solicit comments on ways to integrate requirements from existing NAAQS with those of new NAAQS so as to prevent their interaction from draining resources rather than protecting air quality. The EPA will consider suggestions for mitigating the cumulative effect of anti-backsliding requirements when they would frustrate, rather than further efforts to preserve and improve air quality. The EPA seeks ways to synthesize and reconcile anti-backsliding obligations with current planning and control efforts, so as to

[130] *See* 40 CFR 51.905(a)(3), the comparable provision for transitions from the 1-hour NAAQS to the 1997 ozone NAAQS, which allows states to request that the 1-hour nonattainment NSR provisions be removed from the SIP for such areas.

[131] This approach would not apply to areas located in the OTR and designated attainment, since the CAA requires these areas remain subject to Moderate nonattainment NSR requirements notwithstanding designation.

preserve scarce resources without sacrificing air quality protection.

ii. Areas Designated Nonattainment for the 2008 Ozone NAAQS and Also Nonattainment for a Prior Revoked Ozone NAAQS

The EPA is proposing that an area designated nonattainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS at the time of revocation of the 1997 ozone NAAQS will be obligated to implement the applicable requirements set forth in 51.1100(o) for the 1997 ozone NAAQS. If the area is also designated nonattainment for the 1-hour ozone NAAQS and subject to applicable requirements for that NAAQS at the time of revocation of the 1997 ozone NAAQS, the state must also continue addressing those applicable 1-hour ozone NAAQS requirements for that area. These areas must apply nonattainment NSR in accordance with their highest nonattainment classification under any ozone standard for which they are (or were at the time of revocation) designated nonattainment, as well as any section 185 requirements for areas classified Severe or Extreme at the time of revocation for a prior standard.

J. Satisfaction of Anti-backsliding Requirements for an Area

The EPA is proposing two acceptable procedures through which a state may demonstrate that it is no longer required to adopt any applicable requirements for an area which have not already been approved into the SIP for a revoked ozone NAAQS, through which it may remove nonattainment NSR provisions from the SIP and, upon a showing of consistency with the anti-backsliding checks in CAA sections 110(l) and 193 (if applicable), it may shift to the contingency measures portion of the SIP requirements which are already contained in the SIP.[132]

Procedure 1: Redesignation to Attainment for the 2008 Ozone NAAQS

The first of these procedures is formal redesignation of the area to attainment for the 2008 ozone NAAQS. This process is an extension of the approach EPA adopted in the Phase 1 Rule. Redesignation to attainment for the 2008 ozone NAAQS would allow a state to terminate and remove from its SIP for an area any nonattainment NSR requirements associated with its classifications under the 2008 ozone NAAQS, or under the 1997 or 1-hour ozone NAAQS, except for areas in the OTR as noted above. The area would instead apply PSD. We are proposing that once the area is redesignated and the requirement(s) for nonattainment NSR for the 2008 ozone NAAQS and for any prior ozone NAAQS cease to apply, the state may request that the corresponding NSR requirements be removed from the SIP rather than be retained as a maintenance plan contingency measure. This approach is consistent with the EPA's longstanding interpretation of NSR requirements for areas that are redesignated to attainment.[133] Redesignation to attainment would also terminate any section 185 obligations applicable to a Severe or Extreme Area for the 2008 or prior revoked 1997 or 1-hour ozone NAAQS pursuant to the express terms of CAA section 185.

For areas subject to anti-backsliding requirements for revoked standards, approval of redesignation to attainment for the 2008 ozone NAAQS signifies that the state has satisfied its obligations to adopt anti-backsliding requirements for the revoked standards. This same approach was used in the Phase 1 Rule in requiring redesignations for the 1997 ozone NAAQS to address anti-backsliding requirements for the revoked 1-hour standard. Approval of the section 175A maintenance plan for the 2008 ozone NAAQS assures that the area's SIP includes the provisions necessary for maintenance of the 2008 ozone NAAQS, which is the most stringent of the NAAQS. Therefore, upon redesignation to attainment and approval of its plan for maintenance of the 2008 ozone NAAQS, an area has satisfied its obligations to adopt anti-backsliding requirements. All of the anti-backsliding measures that have been approved into the SIP must continue to be implemented unless or until the state can show that such implementation is not necessary for maintenance, consistent with section 110(l) and section 193 if applicable. This showing may be submitted to the EPA at the same time as the maintenance plan, and may be approved by the EPA in a single action. Subject to this process, anti-backsliding requirements contained in the SIP could be shifted to the contingency measures portion of a section 175A maintenance plan, or, in limited circumstances[134] removed from the SIP.

Procedure 2: Providing a Redesignation Substitute for Revoked NAAQS

In addition to the redesignation of an area to attainment for the 2008 ozone NAAQS, the EPA is proposing a new separate route for satisfying anti-backsliding requirements for a revoked 1997 or 1-hour ozone NAAQS. The EPA's experience in implementing the anti-backsliding requirements in the Phase 1 Rule has taught that the EPA should provide an additional mechanism to allow for satisfaction of anti-backsliding requirements for a revoked standard.

Under the Phase 1 Rule, the EPA lacked a rule-based method that, like redesignation to attainment for a current standard, could serve as a demonstration that applicable nonattainment requirements for a revoked standard have been satisfied. Because the EPA can no longer formally redesignate areas to attainment for a standard after that standard is revoked, the only relief the Phase 1 Rule provided to areas subject to outdated anti-backsliding requirements for the revoked 1-hour ozone NAAQS was redesignation to attainment for the 1997 ozone NAAQS that replaced it. The lack of another avenue of relief created hardship and confusion, particularly with respect to terminating 1-hour ozone nonattainment NSR and section 185 program fee requirements.

As we confront the issue again, this time for areas which, in some cases, are subject to anti-backsliding requirements for two revoked ozone standards, the EPA now recognizes the need to create an alternative other than formal redesignation to attainment for the 2008 ozone NAAQS. Unless we provide a second mechanism, after revocation of the 1997 ozone NAAQS, areas that attain and meet requirements for the revoked 1997 or 1-hour ozone NAAQS will be treated more harshly than areas that were redesignated to attainment for those standards prior to their revocation. Areas that would otherwise have qualified for redesignation to attainment for the 1997 or 1-hour ozone NAAQS, were it not for their revocation, would have to wait to be relieved of outdated requirements until they also qualify for redesignation to attainment for the more stringent 2008 ozone NAAQS. The EPA believes that, under any view of anti-backsliding for a revoked standard, it should not mean

[132] Nonattainment NSR is not required to be retained in the SIP as a contingency measure. This is because for attainment areas, PSD replaces nonattainment NSR.

[133] *See* 40 CFR 51.905(a)(3), the comparable provision for transition from the 1-hour NAAQS to the 1997 ozone NAAQS, which allows such areas to request that the 1-hour nonattainment NSR provisions be removed from the SIP.

[134] As explained in the text above, nonattainment NSR requirements can be removed from the SIP entirely.

imposing more onerous terms than those that would apply if the standard had not been revoked.

Therefore, in addition to formal redesignation to attainment for the 2008 ozone NAAQS, the EPA is proposing a separate mechanism for satisfaction of anti-backsliding requirements for a revoked 1997 or 1-hour ozone NAAQS. Because the EPA can no longer formally redesignate areas for a revoked standard, under this option, areas would be eligible to qualify for satisfaction of applicable requirements for the revoked 1-hour or 1997 ozone NAAQS by submitting a showing that functions as a substitute for redesignation to attainment for that revoked standard, and insures that the substance of the redesignation requirements are met. For a revoked standard, this second mechanism would serve as a successor to redesignation to attainment, for which the area would have been eligible were it not for revocation. *See,* for example, CAA section 185, which states that the obligation to implement a fee program terminates when ''the area is redesignated as an attainment area for ozone.'' Thus, redesignation to attainment for the 1-hour ozone NAAQS if it were still possible would have clearly relieved the area of this obligation with respect to that standard.

For an area to show that it qualifies for this redesignation substitute, the EPA proposes that the state provide a showing that addresses the substance of the redesignation criteria. After notice-and-comment rulemaking on this showing, the EPA approval of the showing would have the same effect on the area's nonattainment anti-backsliding obligations as would a redesignation to attainment for the revoked standard.

The EPA proposes that the showing, based on the CAA's criteria for redesignation to attainment (CAA section 107(d)(3)(E)), would include: Attainment of the relevant revoked 1-hour or 1997 ozone NAAQS; a showing that attainment was due to permanent and enforceable emissions reductions; and a demonstration that the area can continue to maintain the standard over the next 10 years. Redesignation criteria in section 107(d)(3)(E)(ii) and (v) would be met by the existing approved SIP, under which the area has attained the revoked standard, in the context of (and reinforced by) the requirements for the new 2008 ozone NAAQS. We believe that, for a revoked standard, this approach results in a notice-and-comment process that fulfills the function of redesignation to attainment for the purpose of satisfying requirements for anti-backsliding requirements for a revoked standard. *See* CAA sections 107(d)(3)(E) and 175A. While we do not propose to require formal SIP submission procedures, since areas will not actually be redesignated under this option, the EPA will conduct notice-and-comment rulemaking on the state's showings. The EPA believes that requiring more elaborate administrative procedures would needlessly impose burdens on the area, which will remain subject to all the formal requirements for redesignation to attainment for the 2008 ozone NAAQS. Development of these SIP revisions takes time, and can impose costs to both industry and the public. Under these circumstances, it is consistent with the requirements of anti-backsliding for areas under pressure from multiple environmental obligations to be relieved of procedural burdens once the area has attained the revoked standard. As in the case of a redesignation to attainment for the 2008 ozone NAAQS, at the time of submitting a redesignation substitute or at any time thereafter, a state may request to revise its SIP so as to cease implementing a specific nonattainment SIP requirement. However, this request could not be granted, and the SIP revised, until the EPA approves the redesignation substitute and a demonstration that the SIP revision meets the requirements of section 110(l). The EPA is not providing this mechanism for the purpose of allowing areas to avoid requirements needed for attainment and maintenance of the NAAQS. The showings required, the provisions of section 110(l), and the fact that the area remains subject to the more stringent 2008 ozone NAAQS, assure that is not the case. It is, however, important to relieve areas of requirements that are no longer necessary, or that can be replaced by other forms of protection that might better meet local needs and circumstances.

The EPA notes that this proposed option, a redesignation substitute procedure for the revoked 1-hour or 1997 ozone NAAQS, is more stringent than an option previously adopted in the EPA's Phase 1 Rule (69 FR 23982). It requires a more extensive showing than mere attainment of the revoked standard. We also note that section 172(e) does not address when anti-backsliding requirements can be removed. Nor does the *South Coast* decision clearly answer this question. Here, the EPA is proposing a mechanism that demands more than a determination of attainment of the prior standard, and calls for a showing that addresses redesignation criteria for that standard. Moreover the process under this option occurs while the area remains subject to ongoing requirements to meet the new more stringent standard. In this context, the proposed option is clearly sufficient for its limited anti-backsliding purpose: It recognizes and supports the area's progress in having attained the prior standard due to permanent and enforceable emissions reductions, and reinforces continued attainment by calling for a demonstration that the area can maintain the revoked standard.

Under both of the EPA's proposed procedures, a state seeking to revise its SIP to remove anti-backsliding measures from the active portion of its SIP must demonstrate, pursuant to section 110(l), that such revision would not interfere with attainment or maintenance of any applicable NAAQS, or any other requirement of the CAA.[135]

The EPA seeks comments on its proposed approaches for the final rule. Additionally, as mentioned in section IV.H.1 above, the EPA is soliciting comments on additional routes to lifting nonattainment NSR requirements tied to the revoked 1997 and 1-hour ozone NAAQS, where the 2008 nonattainment NSR requirements would remain in place. These additional processes, like the redesignation substitute option the EPA is proposing, would operate to lift the nonattainment NSR requirements for the revoked NAAQS while retaining the NSR Requirements for the 2008 ozone NAAQS. The EPA asks that commenters provide supporting legal rationales for any additional option, taking into account the D.C. Circuit's decision in *South Coast.*

K. How will the EPA's determination of attainment (''Clean Data'') regulation apply for purposes of the anti-backsliding requirements?

The EPA, in its Phase 1 Rule, codified its long-standing interpretation under the Clean Data Policy in a regulation. Under 40 CFR 51.918, an EPA determination that an area is attaining the 1997 ozone NAAQS suspends the obligation to submit any attainment-related SIP elements for the 1997 ozone NAAQS not yet approved in the SIP, for so long as the area continues in attainment of that NAAQS.[136] The EPA

[135] Likewise to the extent a SIP revision seeking to remove anti-backsliding measures modifies control requirements subject to section 193, the revision would also have to satisfy the requirements of that provision.

[136] The EPA initially issued the Clean Data Policy in 1995, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard.''

Continued

in this rulemaking is proposing to apply this same approach with respect to determinations of attainment for the 2008 ozone NAAQS. Moreover, in order to reflect the intended ongoing status of the Clean Data Policy and to consolidate in one regulation a comprehensive provision applicable to determinations of attainment for the current and former ozone NAAQS, the EPA proposes, after revocation of the 1997 ozone NAAQS, to replace 40 CFR 51.918 with proposed 40 CFR 51.1118. Section 51.1118 applies essentially the same language as 51.918. Upon revocation of the 1997 ozone NAAQS, this section would be applicable to determinations of attainment for all ozone NAAQS: the 2008, 1997 and the already revoked 1-hour ozone NAAQS. If section 51.1118 is finalized, the EPA's long-standing Clean Data Policy, which has been upheld by the D.C. Circuit and all other courts that have considered it, will be embodied in a regulation applicable, after revocation of the 1997 ozone NAAQS, for the purpose of all existing and prior ozone NAAQS. The planning elements that are suspended under section 51.1118 would be the same as those suspended under existing section 51.918: RFP requirements, attainment demonstrations, RACM, contingency measures and other state planning requirements related to attainment of the relevant standard. For a Severe or Extreme area, a section 185 fee program is by its express terms linked to an attainment demonstration; therefore suspension of the obligation to submit the attainment demonstration also suspends the obligation to submit the fee program which is part of the attainment demonstration (provided that the EPA has not already determined that the area failed to attain by its attainment deadline). The EPA notes that a determination of attainment would not, however, suspend obligations to submit NSR, subpart 2 RACT or emission inventories under section 182(a)(1).

L. What is the relationship between implementation of the 2008 ozone NAAQS and the CAA title V permits program?

We are proposing, and soliciting comment on, two alternative approaches for implementing the title V permit program for sources in areas designated nonattainment for the 2008 ozone NAAQS and subject to anti-backsliding requirements for a prior ozone NAAQS.

One of the ways a source can become subject to title V is as a ''major source.'' *See* CAA section 502(a); 40 CFR 70.3; 71.3. Furthermore, the definition of ''major source'' for purposes of title V includes, but is not limited to, a ''major stationary source as defined . . . in part D'' of title I.[137] *See* CAA section 501(2)(B); 40 CFR 70.2; 71.2. Thus, changes in an area's classification (e.g., from ''Serious'' to ''Severe'') by changing the emissions threshold for being deemed a major source (e.g., from 100 tpy to 50 tpy of a relevant pollutant) can result in changes in title V applicability for a source.[138]

Between the effective date of area classifications for the 2008 ozone NAAQS and the revocation date of the 1997 ozone NAAQS, the major source thresholds for both the 1997 ozone NAAQS classifications *and* the 2008 ozone NAAQS classifications are in effect under part D of title I,[139] and therefore under title V as well. However, after revocation of the 1997 ozone NAAQS and the corresponding area classifications for that NAAQS, the question arises as to whether only the major source thresholds for the 2008 ozone NAAQS designations and classifications are relevant for determining whether a source is major for ozone precursors for purposes of title V.

As discussed below, the EPA is co-proposing and soliciting comments on the following two alternative approaches for determining whether a source is a ''major stationary source as defined in . . . part D'' for purposes of title V after the revocation of the 1997 ozone NAAQS: (1) The major source threshold for title V in an area is the same as the major source threshold for purposes of requirements such as NSR and RACT (i.e., the major source threshold associated with the area's classification for the 1997 and/or 1-hour ozone NAAQS may be the applicable threshold for title V purposes, to the extent that anti-backsliding requirements for the 1997 and/or 1-hour ozone NAAQS apply in the area); and (2) the major source threshold for title V in the area depends solely on the area's classification for the 2008 ozone NAAQS.

In the Phase 2 Rule for implementing the 1997 ozone NAAQS, the EPA discussed, in response to comments, its approach to implementing title V during the transition to implementation of the 1997 ozone NAAQS. *See* 70 FR 71689–71691. Specifically, the EPA recognized that the Phase 1 Implementation Rule retained the major source applicability cut-offs associated with the prior 1-hour ozone NAAQS for purposes of RACT as an anti-backsliding requirement. In other words, an area classified as Moderate for the 1997 ozone NAAQS, but Serious for the 1-hour ozone NAAQS, would be treated as a Serious area and required to apply major source RACT to sources above the major source threshold for Serious areas (i.e., 50 tpy or more of VOC or NO_X). In the Phase 2 Rule, the EPA concluded that the anti-backsliding provisions of the Phase 1 Implementation Rule were not relevant to the definition of major source for purposes of title V. The EPA suggested the anti-backsliding provisions could not change the major source thresholds for title V, as those are defined in the statute. *See* 70 FR 71690.

Following the EPA's promulgation of the Phase 2 Rule, the U.S. Court of Appeals for the D.C. Circuit issued its ruling on challenges to the Phase 1 Rule, which had established which requirements for the 1-hour ozone NAAQS would be retained as anti-backsliding requirements, and found that EPA erred in its approach to anti-backsliding by not requiring states to retain, as applicable requirements, all control measures that applied for the 1-hour ozone NAAQS. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). Accordingly, today's proposal not only includes RACT as an anti-backsliding measure, with the major source thresholds that applied to areas under the 1997 ozone NAAQS or 1-hour ozone NAAQS (i.e., where such thresholds are more restrictive than the thresholds

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Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995. For purposes of the 1997 ozone NAAQS, we codified that policy at 40 CFR 51.918. This codified policy was upheld by the D.C. Circuit in *NRDC* v. *EPA* 571 F.3d 1245 (DC 2009).

[137] The EPA notes that sources can become subject to title V permitting for other reasons, and nothing in this discussion is intended to suggest that changes in an area's classification would affect those other provisions of title V. Accordingly, sources subject to title V under other provisions would remain subject to title V for those independent reasons.

[138] It should be noted that, pursuant to CAA section 503(a), a source is subject to a permit program on the later of the date that it becomes a major source and the effective date of a permit program applicable to the source. Thus, if a permitting authority with an approved title V program lacks any authority to permit certain sources that are major sources subject to title V as a result of ozone precursor emissions and an area classification for ozone that has a major source threshold lower than 100 tpy (e.g., ''Serious'') then there is no title V permit program ''applicable to the source'' and those sources have no obligation to apply for a title V permit until after such time as a permit program becomes applicable to them. The EPA will work with States to ensure that all approved title V programs are adequate under the CAA.

[139] It should be noted that the major source threshold associated with an area's 1-hour ozone NAAQS classification may be the applicable threshold for at least some purposes where anti-backsliding requirements for the 1-hour ozone NAAQS apply in the area.

applicable to areas under their classifications for the 2008 NAAQS), but also includes the requirement for these areas to continue to implement NSR using the major source thresholds that applied under the 1997 ozone NAAQS or the 1-hour ozone NAAQS, where those thresholds are more restrictive than the threshold applicable to an area under its classification for the 2008 NAAQS. In light of the D.C. Circuit's decision in *South Coast,* and the current approach of this proposed rule to retain as anti-backsliding requirements the RACT and NSR obligations, including the major source applicability thresholds associated with prior NAAQS, the EPA solicits comment on appropriate approaches to title V applicability during the transition to the 2008 ozone NAAQS. In summary, EPA is co-proposing two approaches to interpreting title V applicability requirements following revocation of the 1997 ozone NAAQS: (1) Major source thresholds for title V should be the same as the major source thresholds applicable for purposes of other requirements such as RACT and NSR; and (2) major source thresholds for title V depend solely on the area's classification for the 2008 ozone NAAQS.

In particular, the EPA solicits comments on whether title V should (or should not) be considered a''control,'' within the meaning of section 172(e) in light of the fact that title V generally does not impose new substantive air quality control requirements but is intended to assure compliance with all such existing requirements. The EPA also solicits comments on the consistency of the two proposed approaches with the language and purposes of the Act, in light of the major source thresholds under the revoked standard being retained for requirements such as RACT and NSR. The EPA generally solicits comment on other legal or policy issues relevant to these two approaches.

Because the EPA would benefit from public comment on these issues, the EPA is co-proposing these two approaches and, following review of public comments on the issues raised by each approach, intends to adopt one of the approaches in the final rule. As part of the proposal to retain major source applicability thresholds for the 1997 and/or 1-hour classifications, the EPA is also proposing to make minor conforming amendments to the definition of ''major source'' in 40 CFR 70.2 and 71.2 by inserting after each occurrence of the word ''classified'' in paragraph (3) the phrase ''or treated as classified'' in order to make clear that sources subject to major source thresholds pursuant to a revoked standard for controls are also subject to the same major source thresholds for purposes of title V. The EPA further solicits comments on the proposed conforming amendments, and on whether additional changes, different changes, or no changes to parts 70 and 71, and to approved state title V programs, would be necessary, if the EPA concluded that the thresholds under the 1997 and/or 1-hour classifications should be retained for purposes of title V.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned the EPA ICR number 2347.01.

The EPA is proposing this 2008 ozone NAAQS SIP Requirements Rule so that states will know what CAA requirements apply to their nonattainment areas when the states develop their SIPs for attaining and maintaining the NAAQS. The intended effect of the SIP Requirements Rule—in conjunction with the rule on other aspects of implementation—is to provide certainty to states regarding their planning obligations such that states may begin SIP development. For purposes of analysis of the estimated paperwork burden, the EPA assumed 46 [140] non-attainment areas, some of which must prepare an attainment demonstration as well as submit an RFP and RACT SIP. The attainment demonstration requirement would appear as 40 CFR 51.908 which implements CAA subsections 172(c)(1), 182(b)(1)(A) and 182(c)(2)(B). The RFP SIP submission requirement would appear in 40 CFR 51.910, and the RACT SIP submission requirement would appear in 40 CFR 51.912, which implements CAA subsections 172(c)(1) 182(b)(2),(c),(d) and (e).

States should already have information from emission sources, as facilities should have provided this information to meet 1-hour and 1997 ozone NAAQS SIP requirements, operating permits and/or emissions reporting requirements. Such information does not generally reveal the details of production processes. But, to the extent it may, confidential business information for the affected facilities is protected. Specifically, submissions of emissions and control efficiency information that is confidential, proprietary and trade secret is protected from disclosure under the requirements of subsections 503(e) and 114(c) of the CAA.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to be a total of 120,000 labor hours per year at an annual labor cost of $2.4 million (present value) over the 3-year period or approximately $91,000 per state for the 26 state respondents, including the District of Columbia. The average annual reporting burden is 690 hours per response, with approximately 2 responses per state for 58 state respondents. There are no capital or operating and maintenance costs associated with the proposed rule requirements. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2010–0885. Commenters should submit any comments related to the ICR to both the EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 6, 2013, a comment to OMB is best assured of having its full effect if OMB receives it by July 8, 2013. The final rule will respond to any OMB or public

[140] 77 FR 30088, May 21, 2012.

comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201;) (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements directly on small entities. Entities potentially affected directly by this proposal include state, local and tribal governments and none of these governments are small governments. Other types of small entities are not directly subject to the requirements of this rule because this action only addresses whether a SIP will provide for adequate attainment and maintenance of the NAAQS and meet the obligations of the CAA.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no federal mandate under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local and tribal governments, in the aggregate, or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The CAA imposes the obligation for states to submit SIPs to implement the 2008 ozone NAAQS; in this rule, the EPA is merely explaining those requirements.

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, as specified in Executive Order 13132. The requirement to submit SIP revisions to meet a revised ozone standard is imposed by the CAA. This proposed rule, if made final, would interpret those requirements as they apply to the 2008 ozone NAAQS . Thus, Executive Order 13132 does not apply to these proposed regulation revisions.

In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, EPA specifically solicits comments on this proposed action from state and local officials. In addition, the EPA intends to meet with organizations representing state and local officials during the comment period for this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It would not have a substantial direct effect on one or more Indian tribes, since no tribe has to develop a SIP under these proposed regulatory revisions. Furthermore, these proposed regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, the EPA met with tribal officials in developing this action. Meeting summaries are contained in the docket for this rulemaking.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. These proposed revisions address whether a SIP will be adequate to attain and maintain the NAAQS and will meet the obligations of the CAA. The NAAQS are promulgated to protect the health and welfare of sensitive population, including children.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs

federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed revisions to the regulations would, if promulgated, revise the substantive requirements for SIPs to attain the NAAQS, which are designed to protect all segments of the general populations. As such, they do not adversely affect the health or safety of minority or low-income populations and are designed to protect and enhance the health and safety of these and other populations.

K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(E) and 307(d)(1)(V) of the CAA, the Administrator proposes to determine that this action is subject to the provisions of section 307(d). Under section 307(d)(1)(V), the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.''

Appendix A to Preamble

Glossary of Terms and Acronyms

ACT Alternative Control Techniques (document)
AERR Air Emissions Reporting Requirements Rule
BACT Best Available Control Technology
CAA Clean Air Act
CAAAC Clean Air Act Advisory Committee
CAIR Clean Air Interstate Rule
CERR Consolidated Emissions Reporting Rule
CFR Code of Federal Regulations
CO Carbon Monoxide
CSAPR Cross-State Air Pollution Rule
CTG Control Technique Guideline
DOT Department of Transportation
DV Design Value
EMFAC EMissions FACtors (a mobile emissions model)
ESRP Emissions Statement Reporting Program
EGU Electricity Generating Unit
EO Executive Order
EPA Environmental Protection Agency
FIP Federal Implementation Plan
GDF Gasoline dispensing facilities
HEDD High Electric Demand Day
ICR Information Collection Requirement
I/M Inspection and Maintenance (i.e., smog check)
km Kilometers
LAER Lowest Achievable Emission Rate
MACT Maximum Achievable Control Technology
MCR Mid-course Review
MPO Metropolitan Planning Organization
NAAQS National Ambient Air Quality Standards
NO_X Nitrogen Oxides
NPRM Notice of Proposed Rulemaking
NSR New Source Review
NTTAA National Technology Transfer and Advancement Act of 1995
OMB Office of Management and Budget
OTR Ozone Transport Region
ORVR Onboard refueling vapor recovery
PM Particulate Matter
$PM_{2.5}$ Fine Particulate Matter
ppb Parts per Billion
ppm Parts per Million
PSD Prevention of Significant Deterioration
RACM Reasonably Available Control Measures
RACT Reasonably Available Control Technology
RFA Regulatory Flexibility Act
RFG Reformulated Gasoline
RFP Reasonable Further Progress
ROP Rate of Progress
RPO Regional Planning Organization
SBA Small Business Administration
SIP State Implementation Plan
TAR Tribal Authority Rule
TAS Treatment in the Same Manner as a State (''Treatment as State'')
TIP Tribal Implementation Plan; also Transportation Improvement Program (depending on context)
tpd Tons Per Day
tpy Tons Per Year
TSP Total Suspended Particulate
UMRA Unfunded Mandates Reform Act of 1995
VCS Voluntary Consensus Standards
VOC Volatile Organic Compound

Appendix B to Preamble Relevant Rulemakings Concerning Implementation of the 1997 Ozone NAAQS and Anti-Backsliding Provisions for Revoked 1-Hour Ozone NAAQS

[MR—Major Rulemaking; RE—Reconsideration; CO—Correction; OT—Other]

FR Citation	Date	Title (kind of rule)	Action	Topic
68 FR 32802	06/02/2003	Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards (MR).	Proposed Rulemaking	
68 FR 46536	08/06/2003	Draft Regulatory Text for Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards (OT).	Notice of Availability	Draft regulatory text.
68 FR 60054	10/21/2003	Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards (OT).	Reopening of public comment period.	Classification system.
69 FR 23858	04/30/2004	Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas With Deferred Effective Dates (MR).	Final Rule	
69 FR 23951	04/30/2004	Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards—Phase 1 (MR).	Final Rule	Classification; Revocation of 1-hour std, anti-backsliding.
69 FR 35526	06/25/2004	Revision to the Preamble of the Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards—Phase 1; Correction (CO).	Final rule; correction	Filing of petitions for review.

APPENDIX B TO PREAMBLE RELEVANT RULEMAKINGS CONCERNING IMPLEMENTATION OF THE 1997 OZONE NAAQS AND ANTI-BACKSLIDING PROVISIONS FOR REVOKED 1-HOUR OZONE NAAQS—Continued

[MR—Major Rulemaking; RE—Reconsideration; CO—Correction; OT—Other]

FR Citation	Date	Title (kind of rule)	Action	Topic
70 FR 5593	02/03/2005	Implementation of the 8-Hour Ozone National Ambient Air Quality Standards—Phase 1: Reconsideration (RE).	Proposed rule; notice of public hearing.	Waiver from anti-backsliding of 1-hour ozone Sec. 185 penalty fees and contingency measures; listing of 1-hour attainment demos as applicable requirement.
70 FR 17018	04/04/2005	Nonattainment Major New Source Review Implementation Under 8-Hour Ozone National Ambient Air Quality Standards: Reconsideration (RE).	Proposed rule; notice of public hearing.	NSR under 8-hour NAAQS.
70 FR 30592	05/26/2005	Implementation of the 8-Hour Ozone National Ambient Air Quality Standards—Phase 1: Reconsideration (RE).	Final rule	Waiver from Anti-backsliding of 1-hour ozone Sec. 185 penalty fees and contingency measures; listing of 1-hour attainment demos as applicable requirement.
70 FR 39413	07/08/2005	Nonattainment Major New Source Review Implementation Under 8-Hour Ozone National Ambient Air Quality Standards: Reconsideration (RE).	Final rule; notice of final action on reconsideration.	NSR under 8-hour NAAQS.
70 FR 44470	08/03/2005	Identification of Ozone Areas for Which the 1-Hour Standard Has Been Revoked and Technical Correction to Phase 1 Rule (RE).	Final Rule	Part 81 change to reflect revocation of 1-hour standard; correction to 40 CFR 51.905(c).
70 FR 71612	11/29/2005	Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standards—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline (MR).	Final Rule	All other 8-hour ozone SIP requirements, including attainment demo, RFP, RACT/RACM.
71 FR 15098	03/27/2006	Implementation of the 8-Hour Ozone National Ambient Air Quality Standards—Phase 1: Reconsideration (RE).	Proposed rule; notice of public hearing; reopening comment period.	Overwhelming transport classification.
71 FR 58498	10/04/2006	Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standards—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline; Correction (CO).	Final rule; correction ..	Corrections to methods for calculating RFP targets.
71 FR 75902	12/19/2006	Phase 2 of the Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standards—Notice of Reconsideration (RE).	Proposed Rule	CAIR/RACT issue & two NSR issues.
72 FR 31727	06/08/2007	Phase 2 of the Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standards—Notice of Reconsideration (RE).	Final notice of reconsideration.	CAIR/RACT issue & two NSR issues.
73 FR 42294	07/21/2008	Proposed Rule to Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: Addressing a Portion of the Phase 2 Ozone Implementation Rule Concerning Reasonable Further Progress Emissions Reduction Credits Outside Ozone Nonattainment Areas (OT).	Proposed Rule	Phase 2 rule addressing partial vacatur on RFP Credit from outside nonattainment area.

APPENDIX B TO PREAMBLE RELEVANT RULEMAKINGS CONCERNING IMPLEMENTATION OF THE 1997 OZONE NAAQS AND ANTI-BACKSLIDING PROVISIONS FOR REVOKED 1-HOUR OZONE NAAQS—Continued

[MR—Major Rulemaking; RE—Reconsideration; CO—Correction; OT—Other]

FR Citation	Date	Title (kind of rule)	Action	Topic
74 FR 2936	01/16/2009	Proposed Rule To Implement the 1997 8-Hour Ozone National Ambient Air Quality Standards: Revision of Subpart 1 Area Reclassification and Anti-backsliding Provisions Under Former 1-Hour Ozone Standard; Proposed Deletion of Obsolete 1-Hour Ozone Standard Provision.	Proposed Rule	Phase 1 Rule—response to vacatur—Subpart 1 areas, 1-hour contingency measures, rule text revision on 1-hour Anti-backsliding exemptions.
74 FR 34525	07/16/2009	Ambient Ozone Monitoring Regulations: Revisions to Network Design Requirements.	Proposed Rule	Proposing to modify monitoring requirements and extend the length of the required ozone monitoring season in some states.
74 FR 40074	08/11/2009	Implementation of the 1997 8-Hour Ozone National Ambient Air Quality Standard: Addressing a Portion of the Phase 2 Ozone Implementation Rule Concerning Reasonable Further Progress Emissions Reduction Credits Outside Ozone Nonattainment Areas.	Final Rule	Phase 2 rule addressing partial vacatur on RFP Credit from outside nonattainment area.
75 FR 51960	08/24/2010	Proposed Rule To Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: New Source Review Anti-Backsliding Provisions for Former 1-Hour Ozone Standard.	Proposed Rule	Proposing to address New Source Review anti-backsliding requirements for the revoked 1-hour ozone NAAQS.
75 FR 80420	12/22/2010	Reasonable Further Progress Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	Proposed Rule	Proposing to revise the agency's earlier interpretation of its rule that allowed emissions reductions from outside the nonattainment area to be credited toward meeting the RFP requirements inside the area.
76 FR 41731	07/15/2011	Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver.	Proposed Rule	Proposing: 1) criteria for determining whether onboard refueling vapor recovery (ORVR) is in widespread use; 2) to determine the date at which widespread use of ORVR will occur.

Appendix C to Preamble Methods To Account for Non-Creditable Reductions When Calculating RFP Targets for the 2008 Ozone NAAQS

The following methods properly account for the non-creditable emissions reductions when calculating RFP targets.[1] They are consistent with requirements of sections 182(b)(1)(C) and (D) and 182(c)(2)(B) of the CAA.[2]

(1) Method 1 applies to areas (or portions thereof) that must meet a 15 percent VOC reduction requirement without NO_X substitution:

(A) Estimate the actual anthropogenic baseline year VOC inventory for the baseline year with all control programs that were in the baseline year.

[1] These methods assume the use of EPA's on-road motor vehicle emissions model in all states other than California. All of the methods given here require the user to turn off all post-1990 CAA measures as part of the calculation. In EPA's current motor vehicle emissions model, MOVES, this is accomplished by selecting ''Rate of Progress'' in the ''Strategies'' section of the MOVES Navigation Panel. This is described in the MOVES2010 User's Guide and in the MOVES Technical Guidance (both found at *www.epa.gov/otaq/models/moves/index.htm*). Users of future versions of EPA's motor vehicle emissions model should consult the appropriate User's Guide for the version of the model they are using for instructions on what model command to use. For California nonattainment areas, the current motor vehicle emissions model is EMFAC2007. Users modeling California nonattainment areas should consult with the EPA regional office for information on doing equivalent calculations in that model and in future versions.

[2] These sections of the Clean Air Act list four types of measures that are not creditable in these calculations: motor vehicle exhaust or evaporative standards promulgated by January 1, 1990; certain fuel RVP requirements that were implemented in 1992; certain corrections to RACT provisions in SIPs; and certain corrections to I/M programs. The latter two corrections occurred shortly after 1990 and no longer need to be accounted for. The methods described in this appendix address the first two types of non-creditable reductions.

(B) Using the same highway vehicle activity inputs used to calculate the actual baseline year inventory, run the appropriate motor vehicle emissions model for the baseline year and the 15 percent milestone year (i.e., the sixth year following the baseline year) with all post-1990 CAA measures turned off. Any other local inputs for vehicle inspection and maintenance (I/M) programs should be set according to the program that was required to be in place in 1990. Fuel vapor pressure (RVP) should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of the RVP regulations promulgated in June 1990.

(C) Calculate the difference between the baseline and 15 percent milestone year VOC emission factors calculated in Step B and multiply by vehicle miles traveled (VMT) for the baseline year. The result is the VOC emissions reduction that will occur between the baseline year and the 15 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable reduction that will occur over this period.

(D) Subtract the non-creditable reduction calculated in Step C from the actual anthropogenic baseline inventory estimated in Step A. This adjusted VOC inventory is the basis for calculating the target level of actual emissions in the 15 percent milestone year.

(E) Reduce the adjusted VOC inventory calculated in Step D by 15 percent. The result is the level of VOC emissions in the 15 percent milestone year necessary to meet the 15 percent VOC reduction requirement. The actual projected 15 percent milestone year inventory for all sources with all control measures in place in the milestone year and including projected growth in activity through the 15 percent milestone year must be at or lower than this target level of emissions.

(2) Method 2 applies to areas initially classified as Moderate for the 2008 ozone NAAQS and portions thereof and for areas or those portions thereof that had already met the 15 percent RFP requirement for VOC in section 182(b)(1) of the CAA for the 1-hour ozone NAAQS or the 1997 ozone NAAQS, or, that met this 15 percent RFP requirement based upon a combination of SIPs for both the 1-hour ozone NAAQS and the 1997 ozone NAAQS. These areas or the portions thereof are covered by subpart 1 RFP requirements and must meet a 15 percent VOC emission reduction requirement by the 15 percent milestone year but with NO_X substitution allowed, following EPA's NO_X Substitution Guidance [3]:

(A) Estimate the actual anthropogenic baseline year inventory for both VOC and NO_X with all control programs in place in the baseline year.

(B) Using the same highway vehicle activity inputs used to calculate the baseline year inventory, run the appropriate motor vehicle emissions model for the baseline year and the 15 percent milestone year with all post-1990 CAA measures turned off. Any other local inputs for I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of RVP regulations promulgated in June 1990.

(C) Calculate the difference between the baseline and 15 percent milestone years VOC emissions factors calculated in Step B and multiply by the baseline year VMT. The result is the VOC emissions reduction that will occur between the baseline year and the 15 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable VOC reduction that will occur over this period. Calculate the difference between the baseline year and the 15 percent milestone year NO_X emissions factors calculated in Step B and multiply by the baseline year VMT. This result is the NO_X emissions reduction that will occur between the baseline year and the 15 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable NO_X reduction that will occur over this period.

(D) Subtract the non-creditable VOC reduction calculated in Step C from the actual anthropogenic baseline year VOC inventory estimated in Step A. Subtract the non-creditable NO_X reduction calculated in Step C from the actual anthropogenic baseline year NO_X inventory estimated in Step A. These adjusted VOC and NO_X inventories are the basis for calculating the target level of emissions in the 15 percent milestone year.

(E) The target for VOC and NO_X emissions in the 15 percent milestone year needed to meet the 15 percent milestone year RFP requirement is any combination of VOC and NO_X emissions which result in a combined total of 15 percent reductions when compared to the adjusted VOC and NO_X inventories calculated in Step D. For example, the target level of VOC emissions in the 15 percent milestone year could be 90 percent of the adjusted VOC inventory calculated in Step D, which would be a 10 percent reduction, and similarly the target level of NO_X emissions could be 95 percent of the adjusted VOC inventory calculated in Step D, which would be a 5 percent reduction. The actual projected 15 percent milestone year VOC and NO_X inventories for all sources with all control measures in place as of the milestone year and including projected 15 percent milestone year growth in activity must be at or lower than the target levels of VOC and NO_X emissions.

(3) Method 3 applies to Serious and higher classified areas for the 2008 ozone NAAQS or portions thereof that have met a 15 percent reduction requirement for a previous ozone NAAQS and that must meet an 18 percent VOC emission reduction requirement with NO_X substitution allowed, following EPA's NO_X Substitution Guidance [4]:

(A) Estimate the actual anthropogenic baseline year inventory for both VOC and NO_X with all source control programs in place during the baseline year.

(B) Using the same highway vehicle activity inputs used to calculate the baseline year inventory, run the appropriate motor vehicle emissions model for the baseline year and the 18 percent milestone year (i.e., the sixth year following the baseline year) with all post-1990 CAA measures turned off. Any other local inputs for I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of RVP regulations promulgated in June 1990.

(C) Calculate the difference between the baseline year and the 18 percent milestone year VOC emissions factors calculated in Step B and multiply this difference by the baseline year VMT. The result is the VOC emissions reduction that will occur between the baseline year and the milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable VOC reduction that will occur over this period. Calculate the difference between the baseline and milestone years NO_X emissions factors calculated in Step B and multiply by the baseline year VMT. This result is the NO_X emissions reduction that will occur between the baseline year and the milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable NO_X reduction that will occur over this period.

(D) Subtract the non-creditable VOC reduction calculated in Step C from the actual anthropogenic baseline year VOC inventory estimated in Step A. Subtract the non-creditable NO_X reduction calculated in Step C from the actual anthropogenic baseline year NO_X inventory estimated in Step A. These adjusted VOC and NO_X inventories are the basis for calculating the target level of emissions in the milestone year.

(E) The target for VOC and NO_X emissions in the 18 percent milestone year needed to meet the 18 percent milestone year RFP requirement is any combination of VOC and NO_X emissions that result in a combined total of 18 percent reductions when compared to the adjusted VOC and NO_X inventories calculated in Step D. For example, the target level of VOC emissions in the 18 percent milestone year could be 92 percent of the adjusted VOC inventory in Step D (and 8 percent reduction in VOC) and 90 percent of the adjusted NO_X inventory in Step D (a 10 percent reduction in NO_X). The actual projected 18 percent milestone year VOC and NO_X inventories for all sources with all control measures in place in the milestone year and including projected 18 percent milestone year growth in activity must be at or lower than the target levels of VOC and NO_X emissions.

(4) Method 4 applies to all Serious and higher classified areas that have used Method 1 (and therefore do not have a NO_X target level of emissions for the 15 percent milestone year) and must meet an additional reduction VOC requirement of 9 percent every 3 years after the 15 percent milestone year with NO_X substitution allowed, following EPA's NO_X Substitution Guidance. Each subsequent target level of emissions should be calculated as an emission reduction from the previous target.

[3] NO_X Substitution Guidance (December 15, 1993; available at *http://www.epa.gov/ttn/oarpg/t1pgm.html*).

[4] NO_X Substitution Guidance (December 15, 1993; available at *http://www.epa.gov/ttn/oarpg/t1pgm.html*).

(A) Estimate the actual anthropogenic baseline year NO_X inventory in the baseline year with all control programs in place in the baseline year.

(B) Using the same highway vehicle activity inputs used to calculate the actual baseline year inventory, run the appropriate emissions model for VOC and NO_X in the baseline year and the 15 percent milestone year (previously done in Step B in Method 1 for VOC but not necessarily for NO_X) and the first 9 percent milestone year with all post-1990 CAA measures turned off. Any other local inputs for I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of fuel RVP regulations promulgated in June, 1990.

(C) Calculate the difference between the 15 percent milestone year and the first 9 percent milestone year VOC emission factors calculated in Step B and multiply by the baseline year VMT. The result is the VOC emissions reduction that will occur between the 15 percent milestone year and the 9 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable VOC reduction that will occur over this period. Calculate the difference between the baseline year and the first 9 percent milestone year NO_X emission factors calculated in Step B and multiply by the baseline year VMT. The result is the NO_X emissions reduction that will occur between the baseline year and the first 9 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable NO_X reduction that will occur over this period.

(D) Subtract the non-creditable VOC reduction calculated in Step C from the 15 percent milestone year VOC target level of emissions calculated previously. Subtract the non-creditable NO_X reduction calculated in Step C from the actual the baseline year NO_X inventory of emissions calculated in Step A. These adjusted VOC and NO_X inventories are the basis for calculating the target level of emissions for the first 9 percent milestone year.

(E) The target for VOC and NO_X emissions in the 9 percent milestone year needed to meet the first 9 percent milestone year RFP requirement is any combination of VOC and NO_X emissions that result in a combined total of 9 percent reductions when compared to the adjusted VOC and NO_X inventories calculated in Step D that total 9 percent. For example, the target level of VOC emissions in the first 9 percent milestone year could be 96 percent of the adjusted VOC inventory in Step D (a 4 percent reduction in VOC emissions) and 95 percent of the adjusted NO_X inventory in Step D (a 5 percent reduction in NO_X emissions). The actual projected first 9 percent milestone year VOC and NO_X inventories for all sources with all control measures in place in the milestone year and including projected first 9 percent milestone year growth in activity must be at or lower than the target levels of VOC and NO_X emissions.

(F) For subsequent 3-year periods until the attainment date, the adjusted VOC inventory should be based on the difference in VOC emissions during that 3-year period when all post-1990 CAA measures are turned off, subtracted from the previous VOC target level of emissions. For subsequent 3-year periods, the adjusted NO_X inventory should be based on the difference in NO_X emissions during that 3-year period when all post-1990 CAA measures are turned off, subtracted from the previous NO_X target level of emissions. For example, for the subsequent 9 percent milestone year, take the VOC and NO_X emissions reductions that will occur between the 9 percent milestone year and the subsequent 9 percent milestone year without the benefits of any post-1990 CAA measures and with consistent vehicle activity. These reductions are subtracted from the 9 percent milestone year target level of VOC and NO_X emissions calculated in Step E to get the adjusted VOC and NO_X inventories to be used as the basis for calculating the target levels of VOC and NO_X emissions in the subsequent 9 percent milestone year.

(5) Method 5 applies to all Moderate areas that are subsequently reclassified as Serious (or higher) pursuant to section 181(b) of the CAA, that used Method 2 (and therefore do have a NO_X target level of emissions for the 15 percent milestone year) and that must meet an additional reduction VOC requirement of 9 percent every 3 years after the 15 percent milestone year with NO_X substitution allowed, following EPA's NO_X Substitution Guidance. Each subsequent target level of emissions should be calculated as an emissions reduction from the previous target.

(A) Using the same highway vehicle activity inputs used to calculate the actual baseline year inventory, run the appropriate emissions model for VOC and NO_X in the 15 percent milestone year (previously done in Step B in Method 2) and the 9 percent milestone year with all post-1990 CAA measures turned off. Any other local inputs for I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of fuel RVP regulations promulgated in June 1990.

(B) Calculate the difference between the 15 percent milestone year and the 9 percent milestone year VOC emission factors calculated in Step A and multiply by the baseline year VMT. The result is the VOC emissions reduction that will occur between the 15 percent milestone year and the 9 percent milestone year without the benefits of any post-1990 CAA control measures. This is the non-creditable VOC reduction that will occur over this period. Calculate the difference between the baseline year and the first 9 percent milestone year NO_X emission factors calculated in Step A and multiply by the baseline year VMT. The result is the NO_X emissions reduction that will occur between the baseline year and the first 9 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable NO_X reduction that will occur over this period.

(C) Subtract the non-creditable VOC reduction calculated in Step B from the 15 percent milestone year VOC target level of emissions calculated previously. Subtract the non-creditable NO_X reduction calculated in Step B from the 15 percent milestone year NO_X target level of emissions calculated previously. These adjusted VOC and NO_X inventories are the basis for calculating the target level of emissions for the 9 percent milestone year.

(D) The target for VOC and NO_X emissions in the 9 percent milestone year needed to meet the first 9 percent milestone year RFP requirement is any combination of VOC and NO_X emissions that result in a combined total of 9 percent reductions when compared to the adjusted VOC and NO_X inventories calculated in Step D For example, the target level of VOC emissions in the first 9 percent milestone year could be 96 percent of the adjusted VOC inventory in Step C (a 4 percent reduction in VOC emissions) and 95 percent of the adjusted NO_X inventory in Step C (a 5 percent reduction in NO_X emissions). The actual projected 9 percent milestone year VOC and NO_X inventories for all sources with all control measures in place and including projected 9 percent milestone year growth in activity must be at or lower than the target levels of VOC and NO_X emissions.

(E) For subsequent 3-year periods until the attainment date, the adjusted VOC inventory should be based on the difference in VOC emissions during that 3-year period when all post-1990 CAA measures are turned off using the same VMT used in the baseline year, subtracted from the previous VOC target level of emissions. For subsequent 3-year periods, the adjusted NO_X inventory should be based on the difference in NO_X emissions during that 3-year period when all post-1990 CAA measures are turned off using the same VMT used in the baseline year, subtracted from the previous NO_X target level of emissions. For example, for the subsequent 9 percent milestone year, take the VOC and NO_X emissions reductions that will occur between the 9 percent milestone year and the subsequent 9 percent milestone year without the benefits of any post-1990 CAA measures. These reductions are subtracted from the 9 percent milestone year target level of VOC and NO_X emissions calculated in Step D to get the adjusted VOC and NO_X inventories to be used as the basis for calculating the target levels of VOC and NO_X emissions in the subsequent 9 percent milestone year.

(6) Method 6 applies to all Serious and higher classified areas that have used Method 3 (and therefore do have a NO_X target level of emissions for the 18 percent milestone year) and must meet an additional reduction VOC requirement of 9 percent every 3 years after the 18 percent milestone year with NO_X substitution allowed, following the EPA's NO_X Substitution Guidance. Each subsequent target level of emissions should be calculated as an emissions reduction from the previous target.

(A) Using the same highway vehicle activity inputs used to calculate the actual baseline year inventory, run the appropriate emissions model for VOC and NO_X in the 18 percent milestone year (previously done in Step B in Method 3) and the 9 percent milestone year with all post-1990 CAA measures turned off. Any other local inputs

for I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of fuel RVP regulations promulgated in June 1990.

(B) Calculate the difference between the 18 percent milestone year and the 9 percent milestone year VOC emission factors calculated in Step A and multiply by the baseline year VMT. The result is the VOC emissions reduction that will occur between the 18 percent milestone year and the 9 percent milestone year without the benefits of any post-1990 CAA control measures. This is the non-creditable VOC reduction that will occur over this period. Calculate the difference between the baseline year and the first 9 percent milestone year NO_X emission factors calculated in Step A and multiply by the baseline year VMT. The result is the NO_X emissions reduction that will occur between the baseline year and the first 9 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable NO_X reduction that will occur over this period.

(C) Subtract the non-creditable VOC reduction calculated in Step B from the 18 percent milestone year VOC target level of emissions calculated previously. Subtract the non-creditable NO_X reduction calculated in Step B from the 18 percent milestone year NO_X target level of emissions calculated previously. These adjusted VOC and NO_X inventories are the basis for calculating the target level of emissions for 9 percent milestone year.

(D) The target for VOC and NO_X emissions in the 9 percent milestone year needed to meet the first 9 percent milestone year RFP requirement is any combination of VOC and NO_X emissions that result in a combined total of 9 percent reductions when compared to the adjusted VOC and NO_X inventories calculated in Step D For example, the target level of VOC emissions in the first 9 percent milestone year could be 96 percent of the adjusted VOC inventory in Step C (a 4 percent reduction in VOC emissions) and 95 percent of the adjusted NO_X inventory in Step C (a 5 percent reduction in NO_X emissions). The actual projected 9 percent milestone year VOC and NO_X inventories for all sources with all control measures in place and including projected 9 percent milestone year growth in activity must be at or lower than the target levels of VOC and NO_X emissions.

(E) For subsequent 3-year periods until the attainment date, the adjusted VOC inventory should be based on the difference in VOC emissions during that 3-year period when all post-1990 CAA measures are turned off using the same VMT used in the baseline year, subtracted from the previous VOC target level of emissions. For subsequent 3-year periods, the adjusted NO_X inventory should be based on the difference in NO_X emissions during that 3-year period when all post-1990 CAA measures are turned off using the same VMT used in the baseline year, subtracted from the previous NO_X target level of emissions. For example, for the subsequent 9 percent milestone year, take the difference in VOC and NO_X emissions reductions that will occur between the 9 percent milestone year and the subsequent 9 percent milestone year without the benefits of any post-1990 CAA measures. These values are subtracted from the 9 percent milestone year target level of VOC and NO_X emissions calculated in Step D to get the adjusted VOC and NO_X inventories to be used as the basis for calculating the target levels of VOC and NO_X emissions in the subsequent 9 percent milestone year.

Appendix D to Preamble—List of Areas Nonattainment for the 2008 Ozone NAAQS In Addition to a Prior Ozone NAAQS

TABLE 1—AREAS NONATTAINMENT FOR BOTH THE 2008 AND 1997 OZONE NAAQS

2008 Nonattainment area name	1997 8-hour ozone classification	1997 Ozone attainment determination
Atlanta Area, GA *	Moderate	Attainment Deadline Determination ** Clean Data Determination.
Calaveras County, CA *	Moderate	Attainment Deadline Determination Clean Data Determination.
Charlotte-Rock Hill Area, NC, SC *	Moderate	Attainment Deadline Determination *** Clean Data Determination.
Chico Area, CA	Marginal	Attainment Deadline Determination Clean Data Determination.
Denver-Boulder-Greeley-Ft. Collins-Loveland Area, CO.	Marginal	
Imperial County Area, CA	Moderate	Clean Data Determination.
Jamestown Area, NY	Moderate	Clean Data Determination ****
Kern County (Eastern Kern) Area, CA	Moderate	Attainment Deadline Determination Clean Data Determination.
Mariposa County, CA *	Moderate	Attainment Deadline Determination Clean Data Determination.
Nevada County (Western part) Area, CA	Moderate	Attainment Deadline Determination Clean Data Determination.
Phoenix-Mesa Area, AZ *	Marginal	
Pittsburgh-Beaver Valley Area, PA	Moderate	Clean Data Determination ****
San Diego Area, CA	Moderate	**
Sheboygan County, WI	Moderate	Attainment Deadline Determination ***** Clean Data Determination.
St. Louis-St. Charles-Farmington, MO-IL *	Moderate	Attainment Deadline Determination ****** Clean Data Determination.

* 2008 nonattainment area boundary differs from 1997 nonattainment area boundary.

** The EPA published a proposed approval action for the state submitted redesignation request under CAA section 107(d)(3)(E) for the 1997 ozone NAAQS.

*** The EPA published a final approval action for the redesignation request submitted by the state of SC under CAA section 107(d)(3)(E) for the 1997 ozone NAAQS. The state of NC submitted a redesignation request under CAA § 107(d)(3)(E) for the 1997 ozone NAAQS.

**** Former subpart 1 areas with Determinations of Attainment prior to subpart 2 classification on May 14, 2012 (77 FR 28424). The EPA is considering approving an Attainment Deadline Determination for the Marginal or Moderate 1997 ozone NAAQS attainment date.

****** The state of WI submitted a redesignation request under CAA section 107(d)(3)(E) for the 1997 ozone NAAQS.

******* The EPA published a final approval action for the redesignation request submitted by the state of IL under CAA section 107(d)(3)(E) for the 1997 ozone NAAQS. The state of MO submitted a redesignation request under CAA section 107(d)(3)(E) for the 1997 ozone NAAQS.

TABLE 2—AREAS NONATTAINMENT FOR THE 2008, 1997, AND 1-HOUR OZONE NAAQS

2008 Nonattainment area name	2008 8-Hour ozone classification	1-Hour ozone classification	1-Hour ozone attainment determination	1997 8-Hour ozone classification	1997 Ozone attainment determination
Baltimore Area, MD	Moderate	Severe 15	Clean Data Determination.	Serious	
Dallas-Fort Worth Area, TX*.	Moderate	Serious	Clean Data Determination.	Serious	
Dukes County, MA*	Marginal	Serious	Clean Data Determination, Attainment Deadline Determination.	Moderate	Clean Data Determination, Attainment Deadline Determination.
Greater Connecticut Area, CT.	Marginal	Serious	Clean Data Determination.	Moderate	Clean Data Determination, Attainment Deadline Determination.
Houston-Galveston-Brazoria Area, TX.	Marginal	Severe 17		Severe 15	
Los Angeles and San Bernardino Counties (W Mojave Desert) Area, CA.	Severe 15	Severe 17		Severe	
Los Angeles-South Coast Air Basin Area, CA.	Extreme	Extreme		Extreme	
Morongo Areas of Indian Country (Morongo Band of Mission Indians)**.	Moderate	Extreme		Severe-17	
New York-N. New Jersey-Long Island Area, NY, NJ, CT.	Marginal	Severe 17	Clean Data Determination.	Moderate	Clean Data Determination, Attainment Deadline Determination.
Pechanga Areas of Indian Country (Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation)**.	Moderate	Extreme		Severe-17	
Philadelphia-Wilmington-Atlantic City Area, PA, NJ, MD, DE*.	Marginal	Severe 15	Clean Data Determination, Attainment Deadline Determination.	Moderate	Clean Data Determination, Attainment Deadline Determination.
Riverside County (Coachella Valley) Area (1-hr Southeast Desert), CA.	Severe 15	Severe 17		Severe 15	
Sacramento Metro Area, CA.	Severe 15	Severe 15	Clean Data Determination.	Severe 15	
San Francisco Bay Area, CA.	Marginal	Other	Clean Data Determination, Attainment Deadline Determination.	Marginal	
San Joaquin Valley Area, CA.	Extreme	Extreme		Extreme	
Seaford, DE***	Marginal	Marginal	Clean Data Determination, Attainment Deadline Determination.	Moderate	Clean Data Determination, Attainment Deadline Determination.
Ventura County (part) Area, CA.	Serious	Severe 15	Clean Data Determination, Attainment Deadline Determination.	Serious	Clean Data Determination.
Washington Area, DC, MD, VA.	Marginal	Severe 15	Clean Data Determination, Attainment Deadline Determination.	Moderate	Clean Data Determination, Attainment Deadline Determination.

*2008 nonattainment area boundary differs from 1997 and 1-hr ozone nonattainment area boundary.
**Part of Los Angeles-South Coast Air Basin Area, CA (South Coast) for 1997 and 1-hr ozone nonattainment area boundaries. Classification for the 1997 ozone NAAQS was the classification based on the DV for a South Coast monitor near the tribal land.
***Part of the Philadelphia-Wilmington-Atlantic City Area, PA, NJ, MD, DE for 1997 ozone nonattainment area boundary, and part of the Sussex County, DE ozone nonattainment area boundary for the 1-hour ozone NAAQS.

Statutory Authority

The statutory authority for this action is provided by sections 109; 110; 172; 181 through 185B; 301(a)(1) and 501(2)(B) of the CAA, as amended (42 U.S.C. 7409; 42 U.S.C. 7410; 42 U.S.C. 7502; 42 U.S.C. 7511–7511f; 42 U.S.C. 7601(a)(1); 42 U.S.C. 7661(2)(B)). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

40 CFR Part 51

Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Transportation, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Operating permits, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Operating permits, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 29, 2013.

Bob Perciasepe,

Acting Administrator.

For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AXVYGH9

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. Section 50.10 is amended by revising paragraph (c) to read as follows:

§ 50.10 National 8-hour primary and secondary ambient air quality standards for ozone.

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(c) Until date of publication of the final SIP Requirements Rule in the **Federal Register**, the 1997 ozone NAAQS set forth in this section will continue in effect, notwithstanding the promulgation of the 2008 ozone NAAQS under § 50.15. The 1997 ozone NAAQS set forth in this section will no longer apply to an area upon the date of publication of the final SIP Requirements Rule in the **Federal Register**. Area designations and classifications with respect to the 1997 ozone NAAQS are codified in CFR part 81.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 3. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart X—Provisions for Implementation of 8-Hour Ozone National Ambient Air Quality Standard

■ 4. Section 51.919 is added to read as follows:

§ 51.919 Applicability

As of one year after the effective date of designations for the 2008 ozone NAAQS, as set forth in 50.10(c), the provisions of Subpart AA shall replace the provisions of Subpart X, 51.900 to 51.918, which cease to apply.

Subpart AA—Provisions for Implementation of the 2008 Ozone National Ambient Air Quality Standards

■ 5. Amend part 51, subpart AA by:
■ a. Revising § 51.1100 by adding paragraphs (o) through (aa): and
■ b. Adding §§ 51.1104 through 51.1119.

The revisions and additions read as follows

Subpart AA—Provisions for Implementation of the 2008 Ozone National Ambient Air Quality Standards

Sec.

Subpart AA—Provisions for Implementation of the 2008 Ozone National Ambient Air Quality Standards.

§ 51.1100 Definitions.

* * * * *

(o) Applicable requirements for an area means the following requirements, to the extent such requirements apply to the area pursuant to its classification under CAA section 181(a)(1) for the 1-hour NAAQS or the 1997 ozone NAAQS at the time of revocation of the 1997 ozone NAAQS:

(1) Reasonably available control technology (RACT).

(2) Vehicle inspection and maintenance programs (I/M) under CAA section 182(b)(4) and 182(c)(3).

(3) Major source applicability cut offs for purposes of RACT.

(4) Reductions to achieve Reasonable Further Progress (RFP).

(5) Clean fuels fleet program under CAA section 183(c)(4).

(6) Clean fuels for boilers under CAA section 182(e)(3).

(7) Transportation Control Measures (TCMs) during heavy traffic hours as specified under CAA section 182(e)(4).

(8) Enhanced (ambient) monitoring under CAA section 182(c)(1).

(9) Transportation controls under CAA section 182(c)(5).

(10) Vehicle miles traveled provisions of CAA section 182(d)(1).

(11) NO_X requirements under CAA section 182(f).

(12) Attainment demonstration.

(13) Nonattainment contingency measures required under CAA sections 172(c)(9) and 182(c)(9) for failure to attain the 1-hour or 1997 ozone NAAQS by the applicable attainment date or to make reasonable further progress toward attainment of the 1-hour or 1997 ozone NAAQS.

(14) Nonattainment New Source Review (NSR) requirements.

(15) Penalty fee program requirements for Severe and Extreme Areas under CAA section 185.

(p) CAIR means the Clean Air Interstate Rule codified at 40 CFR 51.123(a) through (ee).

(q) NO_X SIP Call means the rules codified at 40 CFR 51.121 and 51.122.

(r) Ozone transport region means the area established by CAA section 184(a) or any other area established by the Administrator pursuant to CAA section 176A for purposes of ozone.

(s) Reasonable further progress (RFP) means for the purposes of the 2008 ozone NAAQS, the progress reductions required under CAA section 172(c)(2) and CAA sections 182(b)(1) and (c)(2)(B) and (c)(2)(C).

(t) Rate of progress (ROP) means for the purposes of the 1-hour ozone NAAQS, the progress reductions required under CAA section 172(c)(2) and CAA sections 182(b)(1) and (c)(2)(B) and (c)(2)(C).

(u) Revocation of the 1-hour NAAQS means the time at which the 1-hour NAAQS no longer apply to an area pursuant to 40 CFR 50.9(b).

(v) Revocation of the 1997 ozone NAAQS means the time at which the 1997 8-hour NAAQS no longer apply to an area pursuant to 40 CFR 50.10(c).

(w) Subpart 1 means subpart 1 of part D of title I of the CAA.

(x) Subpart 2 means subpart 2 of part D of title I of the CAA.

(y) [Reserved]

(z) Consolidated submittal means a joint submittal of the emissions inventory, RACT, and attainment demonstration SIPs no later than 30 months after the effective date of designation.

(aa) An area ''designated nonattainment for the 1-hour ozone NAAQS'' means, for purposes of section 51.1105, an area that is subject to applicable 1-hour ozone NAAQS anti-backsliding requirements at the time of revocation of the 1997 ozone NAAQS.

* * * * *

§ 51.1104 [Reserved]

§ 51.1105 Transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS and anti-backsliding.

(a) Requirements that continue to apply after revocation of the 1997 ozone NAAQS.

(1) 2008 ozone NAAQS nonattainment and 1997 ozone NAAQS nonattainment.

The following requirements apply to an area designated nonattainment for the 2008 ozone NAAQS and also designated nonattainment for the 1997 ozone NAAQS, or nonattainment for both the 1997 and 1-hour ozone NAAQS, at the time of revocation of the 1997 ozone NAAQS:

(i) The area remains subject to the obligation to adopt and implement the applicable requirements as defined in § 51.1100(o), for any NAAQS for which it was designated nonattainment at the time of revocation, in accordance with its classification for that NAAQS at the time of that revocation; except as provided in paragraph (b) of this section.

(2) 2008 ozone NAAQS nonattainment and 1997 ozone NAAQS maintenance.

For an area designated nonattainment for the 2008 ozone NAAQS that was redesignated to attainment prior to the date of revocation (hereinafter a ''maintenance area'') for the 1997 ozone NAAQS at the time of revocation of that NAAQS, the approved SIP, including the maintenance plan, satisfies the applicable requirements defined in section 51.1100(o) for the revoked NAAQS. These applicable requirements shall be implemented in accordance with the measures included in the area's SIP, including the maintenance plan. Any applicable requirements that were shifted to contingency measures prior to revocation of the 1997 ozone NAAQS may remain in that form.

(3) 2008 ozone NAAQS attainment and 1997 ozone NAAQS nonattainment.

(i) Obligations in an approved SIP.

An area that is designated attainment for the 2008 ozone NAAQS, and designated nonattainment for the 1997 ozone NAAQS or for both the 1997 and the 1-hour ozone NAAQS is no longer subject to nonattainment NSR as of revocation of the 1997 ozone NAAQS: the state may at any time request that the nonattainment NSR provisions applicable to the area be removed from the SIP as of that date. The state may also request, consistent with CAA section 110(l) and 193, that SIP measures adopted to satisfy other applicable requirements of § 51.1100(o) be shifted to maintenance contingency measures.

[OPTION 1] (ii) Termination of previous obligations for areas initially designated attainment for the 2008 ozone NAAQS.

For areas initially designated attainment for the 2008 ozone NAAQS, and designated nonattainment for the 1997 or for both the 1997 and 1-hour ozone NAAQS at the time of revocation of the 1997 ozone NAAQS, an area's approved PSD SIP shall satisfy the state's obligations with respect to the area's maintenance of the 2008 ozone NAAQS pursuant to CAA section 110(a)(1).

[OPTION 2] (ii) Maintenance showing for the 2008 ozone NAAQS.

For areas initially designated attainment for the 2008 ozone NAAQS, and designated nonattainment for the 1997 or for both the 1997 and 1-hour ozone NAAQS at the time of revocation of the 1997 ozone NAAQS, the state shall provide a showing of maintenance for the 2008 ozone NAAQS, which shall be due no later than three years after the effective date of designations for the 2008 ozone NAAQS. This maintenance showing shall demonstrate that the area can continue to maintain the 2008 ozone NAAQS for 10 years following the designations for that NAAQS.

(4) 2008 ozone NAAQS attainment and 1997 ozone NAAQS maintenance.

(i) Obligations in an approved SIP.

An area that is designated attainment of the 2008 ozone NAAQS and which has been redesignated to attainment for the 1997 ozone NAAQS with an approved section 175A maintenance plan, satisfies the applicable requirements set forth in section 51.1100(o) through implementation of the provisions of its SIP and maintenance plan. After revocation of the 1997 ozone NAAQS, and to the extent consistent with sections 110(l) and 193, the state may request that obligations under the applicable requirements of section 51.1100(o) be shifted to its list of maintenance plan contingency measures.

(ii) No additional obligation for the 2008 ozone NAAQS.

For an area that is initially designated attainment for the 2008 ozone NAAQS and which has been redesignated to attainment for the 1997 ozone NAAQS with an approved section 175A maintenance plan, the area's approved section 175A plan shall satisfy the state's obligations under CAA section 110(a)(1) with respect to maintenance of the 2008 ozone NAAQS.

(b) For how long does an area designated nonattainment for the 2008 ozone NAAQS remain subject to the applicable requirements as provided under paragraph (a)?

(1) Redesignation for 2008 ozone NAAQS or approval of a redesignation substitute for a revoked ozone NAAQS.

A state remains subject to the obligations for a revoked NAAQS under paragraphs (a)(1) and (a)(2) of this section until either (1) EPA approves the area's redesignation to attainment for the 2008 ozone NAAQS; or (2) EPA approves a showing for the area in a procedure that succeeds the redesignation process for a revoked NAAQS, and which serves the same purpose of ending anti-backsliding requirements as would redesignation, were the NAAQS in effect. Under this redesignation substitute procedure for a revoked NAAQS, and for this limited anti-backsliding purpose, the area must show that it has attained that revoked NAAQS due to permanent and enforceable emission reductions, and it must demonstrate that it will maintain that NAAQS for ten years from the date of EPA's approval of this showing. If EPA, after notice-and-comment rulemaking, approves this showing, it will have the effect set forth in paragraph (b)(2) below.

(2) Effect of redesignation to attainment for the 2008 ozone NAAQS or approval of a redesignation substitute for a revoked ozone NAAQS. After redesignation to attainment for the 2008 ozone NAAQS, the state may request that provisions for nonattainment NSR be removed from the SIP, and that other anti-backsliding obligations be shifted to contingency measures provided that such action is consistent with CAA sections 110(l) and 193. After approval of a redesignation substitute for a revoked NAAQS, the state may request to remove from the SIP provisions for nonattainment NSR for that revoked NAAQS. The State may also request to shift other anti-backsliding obligations for the relevant revoked standard to contingency measures provided that such action is consistent with CAA sections 110(l) and 193.

(c) Portions of an area designated nonattainment or attainment for the 2008 ozone NAAQS that remain subject to the obligations identified in paragraph (a) of this section.

Only that portion of the designated nonattainment or attainment area for the 2008 ozone NAAQS that was required to adopt the applicable requirements in § 51.1100(o) for purposes of the 1-hour or 1997 ozone NAAQS is subject to the obligations identified in paragraph (a) of this section. 40 CFR part 81, subpart C identifies the areas designated nonattainment and associated area boundaries for the 1997 ozone NAAQS. Areas that are designated nonattainment for the 1997 ozone NAAQS at the time of designation for the 2008 ozone NAAQS may be redesignated to attainment prior to the effective date of revocation of that ozone NAAQS.

(d) Obligations under the 1997 ozone NAAQS that no longer apply after revocation of the 1997 ozone NAAQS.

(1) Maintenance plans.

Upon revocation of the 1997 ozone NAAQS, an area with an approved 1997 ozone NAAQS maintenance plan under CAA section 175A may modify the maintenance plan: (a) To remove the obligation to submit a maintenance plan for the 1997 ozone NAAQS 8 years after approval of the initial 1997 ozone NAAQS maintenance plan; and (b) to remove the obligation to implement contingency measures upon a violation of the 1997 ozone NAAQS. However, such requirements will remain enforceable as part of the approved SIP until such time as EPA approves a SIP revision removing such obligations.

(2) Determinations of failure to attain the 1997 and/or 1-hour NAAQS.

(i) After revocation of the 1997 ozone NAAQS, EPA is no longer obligated to determine pursuant to CAA section 181(b)(2) or section 179(c) whether an area designated Marginal, Moderate, or Serious attained the 1997 ozone NAAQS by that area's attainment date for the 1997 ozone NAAQS.

(ii) Upon revocation of the 1997 ozone NAAQS for an area, under no circumstances is EPA obligated to reclassify an area to a higher classification for the 1997 ozone NAAQS based upon a determination that the area failed to attain the 1997 ozone NAAQS by the area's attainment date for the 1997 ozone NAAQS.

(iii) For the revoked 1-hour and 1997 ozone NAAQS, EPA is required to determine whether a nonattainment area attained the 1-hour or 1997 ozone NAAQS by the area's attainment date solely for the purpose of addressing an applicable requirement for nonattainment contingency measures or section 185 fee programs. In making such a determination, the EPA may consider and apply the provisions of former section 51.907 in interpreting whether a 1-year extension of the attainment date is applicable under section 172(a)(2)(C) or 181(a)(5) of the CAA.

(e) What is the continued applicability of the FIP and SIP requirements pertaining to CAA section 110(a)(2)(D)(i) and (ii) after revocation of the 1997 ozone NAAQS?

All control requirements associated with a FIP or approved SIP in effect for an area at the time the 1997 ozone NAAQS is revoked, such as the NO_X SIP Call or the CAIR shall continue to apply after revocation of the 1997 ozone NAAQS. Control requirements approved into the SIP pursuant to obligations arising from section 110(a)(2)(D)(i) and (ii), including 40 CFR 51.121, 51.122 and 51.123, may be modified by the state only if the requirements of §§ 51.121, 51.122 and 51.123, including statewide NO_X emission budgets continue to be in effect. Any such modification must meet the requirements of CAA section 110(l).

(f) New source review.

An area designated nonattainment for the 2008 ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS at the time of revocation of the 1997 ozone NAAQS remains subject to the obligation to adopt and implement the requirements for nonattainment NSR that apply or applied to the area pursuant to CAA sections 172(c)(5), 173 and 182 based on the highest of: (i) The area's classification under CAA section 181(a)(1) for the 1-hour NAAQS as of the effective date of revocation of the 1-hour ozone NAAQS; (ii) the area's classification under 40 CFR 51.903 for the 1997 ozone NAAQS as of the date a permit is issued or as of the effective date of revocation of the 1997 ozone NAAQS, whichever is earlier; and (iii) the area's classification under 40 CFR 51.1103 for the 2008 ozone NAAQS. Upon removal of nonattainment NSR obligations for a revoked NAAQS under section 51.1105(b)(ii), the state remains subject to the obligation to adopt and implement the requirements for nonattainment NSR that apply or applied to the area for the remaining applicable NAAQS consistent with this paragraph.

§ 51.1106 Redesignation to nonattainment following initial designations.

For any area that is initially designated attainment for the 2008 ozone NAAQS and that is subsequently redesignated to nonattainment for the 2008 ozone NAAQS, any absolute, fixed date applicable in connection with the requirements of this part other than an attainment date is extended by a period of time equal to the length of time between the effective date of the initial designation for the 2008 ozone NAAQS and the effective date of redesignation, except as otherwise provided in this subpart. The number of years such an area would have to attain would be based on the area's classification, consistent with Table 1 in section 51.1103.

§ 51.1107 Applicability of CAA section 181(a)(5)(B) for an area that fails to attain the 2008 ozone NAAQS by its attainment date.

(a) A nonattainment area will meet the requirement of CAA section 181(a)(5)(B) pertaining to 1-year extensions of the attainment date if:

(1) For the first 1-year extension, the area's 4th highest daily 8 hour average in the attainment year is 0.075 ppm or less.

(2) for the second 1-year extension, the area's 4th highest daily 8 hour value, averaged over both the original attainment year and the first extension year, is 0.075 ppm or less.

(b) For purposes of paragraph (a) of this section, the area's 4th highest daily 8 hour average for a year shall be from the monitor with the highest 4th highest daily 8 hour average for that year of all the monitors that represent that area.

§ 51.1108 Modeling and attainment demonstration requirements.

(a) Attainment demonstration requirements for nonattainment areas classified as Moderate or higher pursuant to § 51.1103.

(1) An area classified as Moderate under § 51.1103(a) shall be subject to the attainment demonstration requirement applicable for that classification under CAA section 182, except such demonstration is due no later than [option 1: 36 months] [option 2: The state's choice of either 36 months or 30 months for a consolidated submission] after the effective date of the area's designation for the 2008 ozone NAAQS.

(2) An area classified as Serious or higher under § 51.1103(a) shall be subject to the attainment demonstration requirement applicable for that classification under CAA section 182, except such demonstration is due no later than [option 1: 48 months] [option 2: The state's choice of either 48 months or 30 months for a consolidated submission] after the effective date of the area's designation for the 2008 ozone NAAQS.

(b) Attainment demonstration criteria.

An attainment demonstration due pursuant to paragraph (a) of this section must meet the requirements of § 51.112; the adequacy of an attainment demonstration shall be demonstrated by means of a photochemical grid model or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(c) Implementation of control measures.

For each nonattainment area, the state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season.

§ 51.1109 [Reserved]

§ 51.1110 Requirements for reasonable further progress (RFP).

(a) RFP for nonattainment areas classified pursuant to § 51.1103.

The RFP requirements specified in CAA section 182 for that area's classification shall apply.

(1) Submission deadline. For each area classified as Moderate or higher pursuant to § 51.1103, the state shall submit a SIP revision no later than [option 1: 36 months] [option 2: The state's choice of either 36 months or 30 months for a consolidated submittal] after designation as nonattainment for the 2008 ozone NAAQS that provides for RFP as described in paragraphs (a)(2)–(4) of this section.

(2) RFP requirements for areas classified as Moderate or higher with an approved 1-hour or 1997 ozone NAAQS 15 percent VOC RFP plan or a Determination of Attainment for those NAAQS.

An area classified as Moderate or higher that has the same boundaries as an area, or is entirely composed of several areas or portions of areas, for which EPA fully approved a 15 percent plan for the 1-hour or 1997 ozone NAAQS or which has been determined to be attaining those NAAQS is considered to have met the requirements of CAA section 182(b)(1) for the 2008 ozone NAAQS and instead:

(i) If classified as Moderate or higher, the area is subject to the RFP requirements under CAA section 172(c)(2) and shall submit a SIP revision that:

(A) Provides for a 15 percent emission reduction from the baseline year within 6 years after the baseline year;

(B) provides for an additional 3 percent per year reduction from the end of the first 6 years up to the beginning of the attainment year if a baseline year earlier than 2011 is used; and

(C) relies on either NO_X or VOC emissions reductions (or a combination) to meet the requirements of (a)(2)(i)(A) and (B). Use of NO_X emissions reductions must meet the criteria in CAA section 182(c)(2)(C).

(ii) If classified as Serious or higher, the area is also subject to RFP under CAA section 182(c)(2)(B) and shall submit an RFP SIP no later than [option 1: 48 months] [option 2: The state's choice of either 48 months or 30 months for a consolidated submission] providing for an average of 3 percent per year of reduction for:

(A) All remaining 3-year periods after the first 6-year period until the area's attainment year; and that

(B) relies on either NO_X or VOC emissions reductions (or a combination) to meet the requirements of (a)(2)(ii)(A) and (B). Use of NO_X emissions reductions must meet the criteria in CAA section 182(c)(2)(C).

(3) RFP requirements for Moderate and above areas for which only a portion has an approved 15 percent VOC RFP plan for the 1-hour or 1997 ozone NAAQS.

An area classified as Moderate or higher that contains one or more areas, or portions of areas, for which EPA fully approved a 15 percent plan for the 1-hour or 1997 ozone NAAQS as well as areas for which EPA has not fully approved a 15 percent plan for either the 1-hour or 1997 ozone NAAQS shall meet the requirements of either paragraph (a)(3)(i) or (ii) below.

(i) The state shall not distinguish between the portion of the area that previously met the 15 percent VOC reduction requirement and the portion of the area that did not, and shall meet the requirements of (a)(4) of this section for the entire nonattainment area.

(ii) The state shall treat the area as two parts, each with a separate RFP target as follows:

(A) For the portion of the area without an approved 15 percent VOC RFP plan for the 1-hour or 1997 ozone NAAQS, the state shall submit a SIP revision as required under paragraph (a)(4) of this section. Emissions reductions to meet this requirement may come from anywhere within the 2008 ozone NAAQS nonattainment area.

(B) For the portion of the area with an approved 15 percent VOC plan for the 1-hour or 1997 ozone NAAQS, the state shall submit a SIP as required under paragraph (a)(2) of this section.

(4) RFP Requirements for areas without an approved 1-hour or 1997 ozone NAAQS 15 percent VOC RFP plan and without a determination of attainment that suspends the requirements for those NAAQS.

(i) For each area classified as Moderate or higher, the state shall submit a SIP revision consistent with CAA section 182(b)(1). The 6-year period referenced in CAA section 182(b)(1) shall begin January 1 of the year following the year used for the baseline emissions inventory.

(ii) For Moderate areas, the plan must provide for an additional 3 percent per year reduction from the end of the first 6 years up to the beginning of the attainment year if a baseline year earlier than 2011 is used.

(iii) For each area classified as Serious or higher, the state shall submit a SIP revision consistent with CAA section 182(c)(2)(B). The final increment of progress must be achieved no later than the attainment date for the area.

(5) Creditability of emission control measures for RFP plans.

Except as specifically provided in CAA section 182(b)(1)(C) and (D), section 182(c)(2)(B), and 51.1110(e) below, all emission reductions from SIP-approved or federally promulgated measures that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements in this section, provided the reductions meet the requirements for creditability, including the need to be enforceable, permanent, quantifiable, and surplus.

(a) Baseline emissions inventory for RFP plans.

For the RFP plans required under this section, at the time of designation for the 2008 ozone NAAQS the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to EPA under the provisions of subpart A of this part. States may use an alternative baseline emissions inventory provided the state demonstrates why it is appropriate to use the alternative baseline year. All states associated with a multi-state nonattainment area must consult and agree on a single alternative baseline year.

(b) NO_X Substitution.

[Alternative 1 for the final rule] For areas classified as Moderate or higher that are subject to the requirements of CAA section 182(b)(1), the state must submit an RFP plan for the area that reduces VOC by 15 percent.

[Alternative 2 for the final rule] For areas classified as Moderate or higher that are subject to the requirements of CAA section 182(b)(1), the state may submit an RFP plan for the area that substitutes NO_X reductions for VOC, consistent with section 182(c)(2)(C), provided that the state can demonstrate that the area achieved a 15 percent reduction in VOC emissions in the 6-year period from a baseline emission year of 1990.

[Alternative 3 for the final rule] For areas in the OTR that are subject to the requirements of CAA section 182(b)(1) for the first time, the state may submit an RFP plan for an area that substitutes NO_X reductions for VOC, consistent with CAA section 182(c)(2)(C), provided that the state can demonstrate that the area achieved a 15 percent reduction in VOC emissions in the 6-year period from a baseline emission year of 1990.

(c) Creditability of out-of-area emissions reductions. For each area classified as Moderate or higher pursuant to § 51.1103, in addition to the restrictions on the credibility of emission control measures listed in 51.1110(a)(5), creditable emission reductions for percentage reduction RFP also must be obtained from sources within the nonattainment area.

(d) Calculation of non-creditable emissions reductions.

[Alternative 1 for the final rule] The following four categories of control measures listed in CAA section 182(b)(1)(D) are no longer required to be calculated for exclusion in RFP analyses because the Administrator has determined that due to the passage of time the effect of these exclusions would be de minimis: (i) Measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990; (ii) regulations concerning Reid vapor pressure promulgated by November 15, 1990; (iii) measures to correct previous RACT requirements; and (iv) measures required to correct I/M programs.

[Alternative 2 for the final rule] The non-creditable emissions reductions for RFP targets must be calculated using the methodology in Appendix C of the preamble to the 2008 SIP Requirements Rule.

§ 51.1111 [Reserved]

§ 51.1112 Requirements for reasonably available control technology (RACT) and reasonably available control measures (RACM).

(a) RACT requirement for areas classified pursuant to § 51.1103.

(1) For each primary standard nonattainment area classified Moderate or higher, the state shall submit a SIP revision that meets the NO_X and VOC RACT requirements in CAA sections 182(b)(2) and 182(f).

(2) The state shall submit the RACT SIP for each area no later than [option 1: 24 months] [option 2: State's choice of either 24 months or 30 months for a consolidated submittal] after the effective date of designation for the 2008 ozone NAAQS.

(3) The state shall provide for implementation of RACT as expeditiously as practicable but no later than January 1 of the fifth year after the effective date of designation for the 2008 ozone NAAQS.

(b) Determination of major stationary sources for applicability of RACT provisions.

VOCs and NO_X are to be considered separately for purposes of determining whether a source is a major stationary source as defined in CAA section 302.

(c) Reasonably Available Control Measures (RACM) requirement for areas designated nonattainment for the 2008 ozone NAAQS.

For each nonattainment area required to submit an attainment demonstration under § 51.1108(a) and (b), the state shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.

§ 51.1113 Section 182(f) NO_X exemption provisions.

(a) A person or a state may petition the Administrator for an exemption from NO_X obligations under section 182(f) for any area designated nonattainment for the 2008 ozone NAAQS and for any area in a section 184 ozone transport region.

(b) The petition must contain adequate documentation that the criteria in section 182(f) are met.

(c) A section 182(f) NO_X exemption granted for the 1-hour or 1997 ozone NAAQS does not relieve the area from any NO_X obligations under section 182(f) for the 2008 ozone standard.

§ 51.1114 New source review requirements.

The requirements for NSR for the ozone NAAQS are located in § 51.165 of this part.

§ 51.1115 Emissions inventory requirements.

For each nonattainment area classified in accordance with § 51.1103, the emissions inventory requirements in CAA sections 182(a)(1) and 182(a)(3) shall apply, and such SIP shall be due no later [option 1: 24 months] [option 2: 24 months or state's choice of 30 months for a consolidated submittal] after designation. For purposes of defining the data elements for the emissions inventories for these areas, the ozone-relevant data element requirements under 40 CFR part 51 subpart A shall apply.

§ 51.1116 Requirements for an Ozone Transport Region.

(a) In general.

CAA sections 176A and 184 apply for purposes of the 2008 ozone NAAQS.

(b) RACT requirements for certain portions of an Ozone Transport Region.

(1) The state shall submit a SIP revision that meets the RACT requirements of CAA section 184(b)(2) for each area that is located in an ozone transport region.

(2) The state is required to submit the RACT revision no later than [option 1:

24 months] [option 2: State's choice of 24 months or 30 months for a consolidated submittal] after designation for the 2008 ozone NAAQS and shall provide for implementation of RACT as expeditiously as practicable but no later than January 1 of the fifth year after designation for the 2008 ozone NAAQS.

§ 51.1117 Fee programs for Severe and Extreme nonattainment areas that fail to attain.

For each area classified as Severe or Extreme for the 2008 ozone NAAQS, the state shall submit a SIP revision within 10 years of the effective date of designation that meets the requirements of CAA section 185.

§ 51.1118 Suspension of attainment SIP planning requirements in a nonattainment area upon a determination that the area has attained the ozone NAAQS.

Upon a determination by EPA that an area designated nonattainment for the 2008 ozone NAAQS, or for any prior ozone NAAQS, has attained the standard, the requirements for such area to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures for failure to attain or make reasonable progress and other planning SIPs related to attainment of the 2008 ozone NAAQS, or for any prior NAAQS for which the determination has been made, shall be suspended until such time as: the area is redesignated to attainment for that NAAQS, at which time the requirements no longer apply; or EPA determines that the area has violated that NAAQS, at which time the area is again required to submit such plans.

§ 51.1119 Applicability.

As of revocation of the 1997 ozone NAAQS, as set forth in 50.10(c), the provisions of Subpart AA shall replace the provisions of Subpart X, 51.900 to 51.918, which cease to apply. See Subpart X section 51.919.

■ 6. Appendix S to Part 51 is amended by adding section VII. to read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

VII. Anti-Backsliding Measures

Nonattainment area new source review obligations for prior ozone NAAQS.

(a) Except as provided in paragraph (b) of this section, an area designated nonattainment for the 2008 ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS at the time of revocation of the 1997 ozone NAAQS remains subject to the obligation to adopt and implement the requirements for nonattainment new source review that apply or applied to the area pursuant to CAA sections 172(c)(5), 173 and 182 based on the highest of: (i) The area's classification under CAA section 181(a)(1) for the 1-hour ozone NAAQS as of the effective date of revocation of that NAAQS; (ii) the area's classification under 40 CFR § 51.903 for the 1997 ozone NAAQS as of the date a permit is issued or as of the effective date of revocation of that NAAQS, whichever is earlier; and (iii) the area's classification under 40 CFR § 51.1103 for the 2008 ozone NAAQS.

(b)(i) An area remains subject to the obligations for a revoked NAAQS under paragraph (a) until either (1) the area is redesignated to attainment for the 2008 ozone NAAQS; or (2) EPA, after notice-and-comment rulemaking, approves a showing for the area in a procedure that succeeds the redesignation process for a revoked NAAQS, and which serves the same purpose of ending anti-backsliding requirements as would redesignation, were the NAAQS in effect. Under this redesignation substitute procedure for a revoked NAAQS, and for this limited anti-backsliding purpose, the area must show that it has attained that revoked NAAQS due to permanent and enforceable emission reductions, and it must demonstrate that it will maintain that NAAQS for ten years from the date of EPA's approval of this showing.

(ii) Effect of redesignation to attainment for 2008 ozone NAAQS or approval of a redesignation substitute for a revoked ozone NAAQS. After redesignation to attainment for the 2008 ozone NAAQS, the state may request that provisions for nonattainment NSR be removed from the SIP. After EPA approval of a redesignation substitute for a revoked NAAQS, the state may request that provisions for nonattainment NSR for the revoked NAAQS be removed from the SIP. Upon removal of nonattainment new source review obligations for a revoked NAAQS, the state remains subject to the obligation to adopt and implement the requirements for nonattainment new source review that apply or applied to the area for the remaining applicable NAAQS consistent with paragraph (a).

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