notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) AMOCs approved previously in accordance with AD 2006–12–10, are approved as AMOCs for the corresponding provisions of paragraph (f) and (g) of this AD.

Material Incorporated by Reference

(j) You must use Boeing Special Attention Service Bulletin 747–35–2114, dated December 19, 2002; or Boeing Special Attention Service Bulletin 747–35–2114, Revision 1, dated June 7, 2007; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Special Attention Service Bulletin 747–35–2114, Revision 1, dated June 7, 2007, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On July 17, 2006 (71 FR 33604, June 12, 2006), the Director of the Federal Register approved the incorporation by reference of Boeing Special Attention Service Bulletin 747–35–2114, dated December 19, 2002.

(3) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on April 14, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8531 Filed 4–21–08; 8:45 am]

BILLING CODE 4910–13–P

PEACE CORPS

22 CFR Part 304

RIN 0420–AA23

Claims Against the Government Under the Federal Tort Claims Act

AGENCY: Peace Corps.

ACTION: Direct final rule.

SUMMARY: The Peace Corps is revising its regulations concerning claims filed under the Federal Tort Claims Act. This change clarifies the Chief Financial Officer's authority to approve claims for amounts under $5,000.

DATES: This direct final rule is effective on June 19, 2008, without further action, unless adverse comment is received by Peace Corps by June 5, 2008. If adverse comment is received, Peace Corps will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments by e-mail to *sglasow@peacecorps.gov*. Include RIN 0420–AA23 in the subject line of the message. You may also submit comments by mail to Suzanne Glasow, Office of the General Counsel, Peace Corps, Suite 8200, 1111 20th Street, NW., Washington, DC 20526. Contact Suzanne Glasow for copies of comments.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Associate General Counsel, 202–692–2150, *sglasow@peacecorps.gov*.

SUPPLEMENTARY INFORMATION: The Chief Financial Officer will be the final deciding authority for claims worth less than $5,000.

Section-by-Section Analysis

Section 304.10

Subpart (b) is amended to reflect the fact that the Chief Financial Officer will make final determinations for claims worth less than $5,000.

Executive Order 12866

This regulation has been determined to be non-significant within the meaning of Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by state, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

List of Subjects

Claims.

■ Accordingly, under the authority of 22 U.S.C. 2503(b) and 28 U.S.C. 2672, Peace Corps amends the Code of Federal Regulations, Title 22, Chapter III, as follows:

PART 304—CLAIMS AGAINST THE GOVERNMENT UNDER THE FEDERAL TORT CLAIMS ACT

■ 1. The authority citation for part 304 continues to read as follows:

Authority: 28 U.S.C. 2672; 22 U.S.C. 2503(b); E.O. 12137, as amended.

■ 2. In § 304.10, paragraph (b) is revised to read as follows:

§ 304.10 Review of claim.

* * * * *

(b) After legal review and recommendation by the General Counsel, the Director of the Peace Corps will make a written determination on the claim, unless the claim is worth less than $5,000, in which case the Chief Financial Officer will make the written determination.

Dated: April 16, 2008.

Carl R. Sosebee,

Acting General Counsel.

[FR Doc. E8–8658 Filed 4–21–08; 8:45 am]

BILLING CODE 6015–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2004–0439, FRL–8556–2]

RIN 2060–AN12

Petition for Reconsideration and Withdrawal of Findings of Significant Contribution and Rulemaking for Georgia for Purposes of Reducing Ozone Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is amending a final rule it issued under Section 110 of the Clean Air Act (CAA) related to the transport of nitrogen oxides (NO_X). On April 21, 2004, we issued a final rule (Phase II NO_X SIP Call Rule) that required the State of Georgia (Georgia) to submit revisions to its State Implementation Plan (SIP) to include provisions that prohibit specified amounts of NO_X emissions—one of the precursors to ozone (smog) pollution—for the purposes of reducing NO_X and ozone transport across State boundaries in the eastern half of the United States. This rule became effective on June 21, 2004.

Subsequently, the Georgia Coalition for Sound Environmental Policy (GCSEP

or Petitioners) filed a Petition for Reconsideration requesting that EPA reconsider the applicability of the NO_X SIP Call Rule to Georgia.

In response to this Petition, and based upon review of additional available information, EPA proposed to remove Georgia from the NO_X SIP Call Rule. (June 8, 2007). Specifically, EPA proposed to rescind the applicability of the requirements of the Phase II NO_X SIP Call Rule to Georgia, only. Six parties commented on the proposed rule. No requests were made to hold a public hearing. After considering these comments, EPA is issuing a final rule as proposed.

DATES: This final rule is effective on May 22, 2008.

ADDRESSES: The EPA has established a docket for this action, identified by Docket ID No. EPA–HQ–OAR–2005–0439. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility 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, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Tim Smith, Air Quality Policy Division, Geographic Strategies Group, (C539–04), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–4718, e-mail *smith.tim@epa.gov.* For legal questions, please contact Winifred Okoye, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–5446, e-mail at *okoye.winifred@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action removes the applicability of certain requirements related to NO_X emissions in Georgia. If these requirements were not removed, they would potentially affect electric utilities, cement manufacturing, and industries employing large stationary source internal combustion engines.

B. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

II. Background

A. Background on NO_X SIP Call, Subsequent Litigation and Rulemaking Related to Georgia

On October 27, 1998, EPA took final action to prohibit specified amounts of emissions of oxides of NO_X, one of the main precursors of ground-level ozone, from being transported across State boundaries in the eastern half of the United States. (The NO_X SIP Call Rule) (63 FR 57356), (October 27, 1998). We found that sources and emitting activities in 22 States and the District of Columbia (23 States) [1] were emitting NO_X in amounts that significantly contribute to downwind nonattainment of the 1-hour ozone national ambient air quality standard (NAAQS or standard). (63 FR 57356). We also determined separately that sources and emitting activities in these 23 States were emitting NO_X in amounts that significantly contribute to and interfere with maintenance of downwind nonattainment of the 8-hour ozone NAAQS (63 FR 57358, 57379). To determine significant contribution, we examined both the air quality impacts of emissions and the amount of reductions that could be achieved through the application of highly cost-effective controls. The air quality impacts portion of our significant contribution analysis relied on state specific modeling, and modeling and recommendations by the Ozone Transport Assessment Group (OTAG) 62 FR 60335 (November 7, 1997), and 63 FR 57381–57399.

This analysis examined the impact of upwind emissions on downwind nonattainment areas. We explained that a downwind area should be considered,

> ''nonattainment,'' for purposes of section 110(a)(2)(D)(i)(I), under the 1-hour ozone NAAQS if the area (as of 1994–96 time period) had nonattainment air quality and if the area was modeled to have nonattainment air quality in the year 2007, after implementation of all measures specifically required of the area under the CAA as well as implementation of Federal measures required or expected to be implemented by that date.

63 FR 57386; See also 63 FR 57373–75; 62 FR 60324–25. We also explained that ''nonattainment [area] includes areas that have monitored violations of the standard and areas that 'contribute to ambient air quality in a nearby area' that is violating the standard.'' 63 FR 57373. Thus, to qualify as a downwind nonattainment receptor, an area had to be both in current nonattainment and also modeled to have nonattainment air quality in 2007. An area shown to be in attainment at either time was not considered a downwind receptor. 63 FR 57371, 73–75, 57382–83. See also 63 FR 57385–87 for our discussion on the determination of downwind nonattainment receptors.

Further, we assessed each upwind State's contribution to 1-hour standard downwind nonattainment independent of the State's contribution to 8-hour standard nonattainment. 62 FR 60326; 63 FR 57377 and 57395. We determined and concluded that the level of NO_X emissions reductions necessary to address the significant contribution for the 8-hour NAAQS would be achieved using the same control measures as required for the 1-hour standard (63 FR

[1] The 23 States were Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin (63 FR 57394).

57446). Therefore, we promulgated only one NO_X emissions budget for each of the affected upwind States (63 FR 57439). Further, we required these States to submit revised SIPs, prohibiting those amounts of NO_X emissions such that any remaining emissions would not exceed the level specified in the NO_X SIP Call regulations for that State in 2007. 62 FR 60364–5; 63 FR 57378 and 57426.

With regard to Georgia, we determined that sources and emitting activities in Georgia were significantly contributing to 1-hour standard nonattainment in Birmingham, Alabama and Memphis, Tennessee (63 FR 57394). At the time the NO_X SIP Call Rule was being developed, monitored air quality data for 1994–1996 indicated that Memphis, Tennessee had nonattainment air quality [2] although we had redesignated the Memphis, Tennessee nonattainment area as an attainment area in 1995.[3] 60 FR 3352 (January 17, 1995). Further, Birmingham, Alabama was a designated nonattainment area for the 1-hour ozone NAAQS at the time of promulgation of the NO_X SIP Call rule. In addition, the modeling done at that time showed that the Memphis and Birmingham areas were modeled to have nonattainment air quality for the 1-hr standard in the year 2007. Thus, at that time Memphis, Tennessee and Birmingham, Alabama were ''nonattainment'' for purposes of the NO_X SIP Call Rule.

A number of parties, including certain States as well as industry and labor groups, challenged the NO_X SIP Call Rule. Specifically, Georgia and Missouri industry petitioners, citing the OTAG modeling and recommendations, maintained that EPA had record support for the inclusion of only the eastern part of the state of Missouri (Missouri), and northern Georgia as contributing significantly to downwind nonattainment. The United States Court of Appeals for the District of Columbia (D.C. Circuit or Court), upheld our findings of significant contribution for almost all jurisdictions covered by the NO_X SIP Call, with respect to the 1-hour standard [4] but vacated and remanded the inclusion of Georgia and Missouri, *Michigan* v. *EPA*, 213 F. 3d 663 (D.C. Cir. 2000), cert. denied, 121 S. Ct. 1225 (2001) (*Michigan*). The Court agreed with the litigants that only the eastern portion of Missouri and northern portion of Georgia were within the geographic area for photochemical modeling known as the ''fine grid,'' and thus, that the record for the rulemaking supported only including those portions of the two States.[5]

Subsequently, in response to the Court decision in *Michigan,* we proposed (in what is known as the ''Phase II NO_X SIP Call rule''), the inclusion of only the fine grid parts of Georgia and Missouri in the NO_X SIP Call with respect to the 1-hour standard only. (67 FR 8396, (February 22, 2002)). We also proposed revised NO_X budgets for Georgia and Missouri that would include only the fine grid portions of these States. On April 21, 2004, we finalized the Phase II NO_X SIP Call rule. This rule included eastern Missouri and northern Georgia as proposed, allocated revised NO_X budgets that reflected the inclusion of sources in only these areas, and set revised SIP submittal and full compliance dates of April 1, 2005 and May 1, 2007, respectively. 69 FR 21604, (April 21, 2004).

B. GCSEP Requests Related to Phase II NO_X SIP Call Rule

After our promulgation of the Phase II NO_X SIP Call rule, GCSEP, on June 16, 2004, took several legal actions: (1) A request that EPA reconsider the rulemaking in light of new information (2) a request that EPA stay the effectiveness of the rule pending a review of that information, and (3) a formal challenge to the rule in Federal Courts.

Petition for Reconsideration. GCSEP requested that EPA ''convene a proceeding for reconsideration of the rule,'' under section 307(d)(7)(B) of the Act. (Petition for Reconsideration, June 16, 2004) (Petition.) GCSEP made this request based on assertions that:

—Certain events occurred after the close of the notice and comment period on our February 22, 2002, proposal (that is, these events occurred after April 15, 2002), and

—EPA needed to reopen the rule for public notice and comment on those specific events.

GCSEP asserted that it ''was impracticable to raise [its] objection within [the provided comment period] or [that] the grounds for [its] objection arose after the public comment period (but within the time specified for judicial review).'' CAA Section 307(d)(7)(B). In addition, GCSEP further asserted that its objection was ''of central relevance to the outcome of the rule.'' CAA Section 307(d)(7)(B).

Request for Stay of Effectiveness. GCSEP also requested an administrative stay of the effectiveness of the Phase II NO_X SIP Call Rule as it relates to Georgia only. The stay would delay the applicability of Phase II NO_X SIP Call requirements to Georgia during the period EPA would conduct notice-and-comment rulemaking to address the issues raised in the Petition. On March 1, 2005, EPA proposed to stay the effectiveness of the Phase II NO_X SIP Call Rule, as requested by GCSEP, as to Georgia only. (70 FR 9897, (March 1, 2005)). Four parties commented on the proposed rule, raising issues related to the merits of the stay, and issues related to the merits of the Petition. On August 31, 2005, EPA finalized, as proposed, a stay of the effectiveness of the Phase II NO_X SIP Call Rule as it related to Georgia only. (70 FR 51591, (August 31, 2005)). EPA also responded to comments on the stay but indicated that it would respond to comments on the merits of the Petition in a subsequent rulemaking that would address the Petition.

Challenge in Circuit Court. Finally, GCSEP filed a challenge to the Phase II NO_X SIP call rule in the Court of Appeals for the 11th Circuit, which has since been transferred to the D.C. Circuit. *Georgia Coalition for Sound Environmental Policy* v. *EPA*, Case No. 04–13088–C. The EPA and GCSEP have requested and the Court has granted the request to hold the challenge in abeyance pending completion of the present rulemaking.

III. Proposed Response to GCSEP's Petition For Reconsideration

A. Proposed Action

In a June 8, 2007, rulemaking notice, EPA initiated the process to respond to the Petition. In that notice, we proposed to remove only Georgia from inclusion in the Phase II NO_X SIP call rule. In the proposal, EPA specifically noted that we were not reopening any other portions of the NO_X SIP Call and Phase II NO_X SIP Call rules for public comment and reconsideration. 72 FR 31774 (June 8, 2007).

In the Petition, GCSEP had argued that Georgia did not meet EPA's stated

[2] Monitored air quality data indicated that the Memphis, Tennessee nonattainment area had nonattainment air quality from 1994 through 2000. Since 2001, the Memphis, Tennessee nonattainment area has had monitored attainment air quality data.

[3] In the NO_X SIP Call Rule, we relied on the designated area solely as a proxy to determine which areas have air quality in nonattainment. ''Our reliance on designated nonattainment areas for purposes of the 1-hour NAAQS does not indicate that the reference in section 110(a)(2(D)(i)(I) to 'nonattainment' should be interpreted to refer to areas designated nonattainment.'' 63 FR 57375 n.25.

[4] In light of various challenges to the 8-hour standard, we stayed the 8-hour basis for the NO_X SIP Call rule indefinitely. (65 FR 56245), (September 18, 2000).

[5] As the Court stated, ''[a]ccordingly, they say the NO_X Budget for Missouri and Georgia should be based solely on those emissions.'' 213 F.3d at 684.

rationale for the NO_X SIP call rule when EPA promulgated the Phase II NO_X SIP Call rule. In short, GCSEP argued that (1) EPA based its inclusion of northern Georgia on a finding that northern Georgia contributes to nonattainment of the one-hour standard in Birmingham, Alabama and Memphis, Tennessee; (2) but that neither Birmingham nor Memphis was a nonattainment area at the time of the Phase II rulemaking; and (3) as a result of the revised attainment status of Birmingham and Memphis, there are no 1-hour ozone nonattainment areas in any States affected by NO_X emissions from northern Georgia, and (4) therefore northern Georgia no longer satisfied EPA's stated rationale for inclusion in the NO_X SIP Call Rule.

At proposal, we explained that in the 1998 NO_X SIP Call Rule, we articulated a test for defining a given downwind ''receptor'' location as ''nonattainment'' under section 110(a)(2)(D)(i)(I). We defined ''nonattainment'' areas as including ''areas that have monitored violations of the standard and areas that 'contribute to ambient air quality in a nearby area' that is violating the standard'' (63 FR 57373; See also, 63 FR 57375–85). Additionally, as noted previously, to be defined as ''nonattainment'' receptors, the receptor also had to be modeled to have nonattainment air quality in the year 2007 when SIP Call controls would be in place.

As earlier explained, with regard to Georgia, EPA had determined that sources and emitting activity in that State emit NO_X in amounts that significantly contribute to nonattainment of the 1-hour ozone standard in the Birmingham, Alabama and Memphis, Tennessee nonattainment areas (63 FR 57394). Although we had redesignated the Memphis, Tennessee nonattainment area in 1995, monitored air quality data for 1994–1996 indicated nonattainment air quality.[6] While Birmingham, Alabama was designated nonattainment for the 1-hour ozone NAAQS and also had nonattainment air quality. Thus, at the time of the promulgation of the 1998 NO_X SIP Call rule, both Memphis, Tennessee and Birmingham, Alabama were in ''nonattainment'' for purposes of the NO_X SIP Call Rule. In addition, the earlier referenced modeling results indicated that both areas were also projected to have nonattainment air quality in 2007.

We have now redesignated both of these areas as 1-hour ozone attainment areas and both currently have monitored air quality data that does not violate the 1-hour ozone standard. Specifically, on March 12, 2004, we redesignated Birmingham, Alabama, to attainment of the 1-hour ozone NAAQS. 69 FR 11798, (March 12, 2004). In addition, the Memphis, Tennessee nonattainment area, which was redesignated in 1995 has had monitored attainment air quality data since 2001.

Therefore, we agree with GCSEP that at promulgation of the Phase II NO_X SIP Call Rule, both Memphis, Tennessee and Birmingham, Alabama are now in attainment of the 1-hour ozone standard. Thus, both areas no longer meet the definition of ''nonattainment'' used in the 1998 NO_X SIP Call to identify downwind receptor areas for the air quality impacts portion of the significant contribution analysis.

B. Final Action

At promulgation of the Phase II NO_X SIP Call Rule, both Memphis, Tennessee and Birmingham, Alabama were in attainment of the 1-hour ozone standard. In light of the fact that both downwind receptor areas are no longer ''nonattainment'' areas, for purposes of the significant contribution analysis, we are withdrawing our findings of significant contribution for Georgia for the 1-hr ozone standard, as proposed. This in effect means that Georgia is no longer required to submit a revised SIP that prohibits certain amounts of NO_X emissions under the Phase II NO_X SIP Call Rule.

IV. Response to Comments on the Proposed Rule

Six commenters submitted comments on the June 8, 2007 proposal. The comments are summarized below along with EPA's responses. In this section, we are also responding to those comments on the merits of this Petition that we received at proposal of the stay of the effectiveness of the NO_X SIP Call rule in Georgia and had indicated would be better addressed in the context of this rulemaking. 70 FR 51591, 51594 (August 31, 2005).

A. Legal Rationale

Comment: Several commenters agreed with EPA's proposed rationale for removing Georgia from the NO_X SIP Call rule. These commenters agreed with EPA that Georgia no longer met EPA's criteria for ''significant contribution'' when Birmingham was redesignated as attainment area.

Response: EPA agrees with these commenters.

Comment: One commenter stated that given the NO_X emissions reduction requirements that are already in place in Georgia, implementing the NO_X SIP Call rule would not result in further NO_X emissions reductions, particularly from electricity generating units (EGUs). This commenter asserted that requiring Georgia to implement the NO_X SIP Call requirements without regard to those reductions already achieved and required in the future, would be ''arbitrary, capricious and not in accordance with the law.''

Response: As earlier stated, in the June 8, 2007, proposal we explained that our inclusion of Georgia in the Phase II NO_X SIP Call rule was based on our definition of ''nonattainment'' and determination of ''significant contribution to downwind nonattainment'' as articulated in the 1998 NO_X SIP Call rule. 72 FR 31773. Based on this definition and determination, we had found that emissions activities from northern Georgia contributed significantly to nonattainment of the one-hour ozone standard in both Memphis, Tennessee and Birmingham, Alabama. 72 FR 31774. We also explained at proposal that both Memphis, Tennessee and Birmingham, Alabama were designated as attainment areas at the time of the Phase II NO_X SIP Call Rule. 72 FR 31774. Consequently, this rulemaking reflects our belief that emissions activities in Georgia did not meet the 1998 NO_X SIP Call rule definition and determination at the time of the Phase II NO_X SIP Call Rule and thus, that emissions from northern Georgia could no longer be identified as ''contributing significantly'' to downwind nonattainment problems. Thus, although the commenter suggests we consider achieved and future reductions, our basis for this action does not rely on other emissions controls in Georgia.

Comment: One commenter disagreed with both EPA's proposed removal of Georgia, and stated rationale for the removal. This commenter noted that *Michigan,* 213 F.3d 663, did not question the inclusion of the northern Georgia or the ''fine grid'' portion of the NO_X SIP Call photochemical modeling in the NO_X SIP Call rule. This commenter believed that because the inclusion of the fine grid portion of Georgia was never in question, EPA cannot legally question that now. This commenter also asserted that the grounds presented by GCSEP are not of ''central relevance to the outcome of the rule'' because the inclusion of the ''fine

[6] Monitored air quality data indicated that the Memphis, Tennessee nonattainment area had nonattainment air quality from 1994 through 2000. Since 2001, the Memphis, Tennessee nonattainment area has had monitored attainment air quality data.

grid'' portion of Georgia was not at issue and therefore, that reconsideration of Georgia's inclusion in the NO_X SIP Call rule is not appropriate. The commenter asserted that the only ''relevant'' issues were the line between the fine grid and coarse grid and the calculation of emissions budgets, neither of which were addressed by the Petition. One commenter disagreed with another commenter's assertion that EPA cannot revisit the original findings as it related to Georgia. This commenter believed that the issue of whether the Court questioned any conclusions on ''significant contribution'' is irrelevant in this context because the facts and issues presented in this rulemaking were not before the Court in *Michigan.*

Response: Our position on the continued inclusion of Georgia in the NO_X SIP Call rule is not inconsistent with the *Michigan* holding, *inter alia,* that ''[b]efore assessing 'significance,' EPA must find *(1) emissions activity within a state; (2) show with modeling or other evidence that such emissions are migrating into other states; and (3) show that the emissions are contributing to nonattainment.*'' *Michigan,* 213 F.3d at 680 (emphasis added). Further, we note that the petitioners had maintained that there was record support for inclusion of emissions from only the eastern half of Missouri and the northern two thirds of Georgia as contributing to downwind ozone problems. We also note the holding that ''the fine grid portion[] of [Georgia was] closest to * * * [the Birmingham] nonattainment area[ ].''*Michigan,* 213 F.3d at 682. Thus, this action reflects our belief that with the redesignation of the Birmingham, Alabama nonattainment area, we can no longer conclude that emissions activities in Georgia are ''contributing to [the Birmingham] nonattainment [area].''

We do agree, however, that *Michigan* did not question either the ''proposition that the fine grid portion of each State should be considered to make a significant contribution downwind,'' or OTAG's modeling analysis, but again we note the applicable holding that the ''critical issue is whether the targeted 'source' or 'emissions activity' 'contribute[s] significantly to nonattainment' in another state.'' *Michigan,* 213 F.3d at 682 (alteration in original). Again, we believe that the redesignation of Birmingham, Alabama and Memphis, Tennessee raises the question as to ''whether the targeted 'source' or 'emissions activity' 'contribute[s] significantly to nonattainment' in another state,'' at the time of the Phase II NO_X SIP Call rule. And we believe we no longer have record support showing that Georgia 'contribute[s] significantly to nonattainment' in another state'' that would warrant our continued inclusion of Georgia in the NO_X SIP Call rule.

We also note that the issue at hand in this rulemaking was not presented in *Michigan* and thus, was not decided in *Michigan.* That is, the Court did not rule on whether EPA could continue to subject a State to the NO_X SIP Call requirements if, at the time of the rulemaking for inclusion of that State, emissions activity from sources in that State were no longer significantly contributing to nonattainment in downwind areas. And even if we concede and agree with both comments that *Michigan* does not require us to revisit the inclusion of the ''fine grid portion'' in the NO_X SIP Call rule, and that GCSEP's petition raises issues beyond the scope of the Phase II NO_X SIP Call rulemaking, we believe we must be cognizant of the fact that Memphis, Tennessee and Birmingham, Alabama are no longer downwind nonattainment receptors as contemplated by the NO_X SIP Call rule, and take action accordingly. EPA must have a rational basis for including any area within the scope of the NO_X SIP Call and EPA concludes that it would not be rational to apply the SIP Call to an area that does not contribute to any downwind receptor.

We also disagree with the comment that petitioners did not meet the grounds for reconsideration as provided in CAA section 307(d)(7)(B). Much confusion exists as to whether this rulemaking is under CAA section 307(d)(7)(B). Although GCSEP invoked CAA section 307(d)(7)(B) as authority for its Petition, earlier we had informed them, by letter dated October 22, 2004, that our response would be under the authority of the Administrative Proceedings Act (APA), because CAA section 307(d)(7)(B) was clearly inapplicable. (A copy of this letter is in the docket for this rulemaking.) Thus, this rulemaking is being taken under Section 553(e) of the APA, which ''give[s] an interested person the right to petition for the * * * amendment, or repeal of a rule.'' 5 U.S.C. § 553(e). See also our earlier response to a comment regarding our authority to stay the effectiveness of the NO_X SIP Call with respect to Georgia pending a final reconsideration rulemaking. 70 FR 51592–93 (August 31, 2005).

Comment: One commenter noted that subsequent to the Phase II NO_X SIP Call rule, EPA has revoked the one-hour ozone standard and asserted that the NO_X SIP Call requirements are obsolete for Georgia as a result of the revocation. This commenter believed that Georgia cannot significantly contribute to nonattainment, nor interfere with maintenance, of a standard that no longer exists. The commenter asserted that we cannot justify this rule because of our authority to regulate activity that interferes with maintenance of the one-hour standard.

Response: As stated earlier, in this action, we are finalizing our removal of Georgia from the NO_X SIP Call rule in light of our redesignation of downwind receptors that emissions activities in Georgia were determined to be significantly contributing to. We note, however, that the NO_X SIP Call rule continues to apply in other areas subsequent to the revocation of the 1-hour ozone standard for purposes of anti-backsliding during transition to implementation of the 8-hour standard, 40 CFR 51.905(f) (2005), and is therefore not ''obsolete.'' Further, with regard to our authority to regulate emissions activity that interferes with the 1-hour ozone standard maintenance, under section 110(a)(2)(D)(i)(I), we had also determined, in the 1998 NO_X SIP Call rule, that this requirement was inapplicable to the extent the 1-hour standard would no longer apply to an area subsequent to our attainment determination. ''Under these circumstances, emissions from an upwind area cannot interfere with maintenance of the 1-hour NAAQS.'' 63 FR 57379.

Comment: One commenter, citing EPA's response to comments on the continued inclusion of Missouri in the Phase II NO_X SIP Call rulemaking, argued that EPA has always taken a ''once-in-always-in'' approach to the NO_X SIP Call. The commenter asserted that the proposed rule is contrary to EPA's previous ''once-in-always-in'' approach. The commenter noted that the facts giving rise to GCSEP's petition occurred only at the end of a lengthy, delayed rulemaking for the Phase II NO_X SIP Call rule. This commenter also believed that the proposed rule, which took into account updated information, was inconsistent with our previous statements relating to the continued inclusion of Missouri in the NO_X SIP Call rule. The commenter also cited our specific response to comments on this issue that,

(1) ''We disagree that a new emissions inventory is necessary that takes into account Missouri's statewide NO_X rule and other post-1998 CAA rules. Because SIPs are constantly changing, it is impractical to revise emissions inventories and modeling analyses each time changes are made,'' and (2) ''* * * completing the NO_X SIP Call rule in Missouri is an equitable approach. It

would be inequitable to use 2003 air quality analysis for Missouri but to hold other NO_X SIP Call States to the 1998 analysis.'' (69 FR 21626).

The commenter also noted our statement at the time that ''an agency should not revisit an otherwise sound rulemaking just due to the passage of time leading to changed circumstances, because circumstances always change.'' Response to Comments: Phase II NO_X SIP Call Rule p. 47.

One commenter disagreed with another commenter's assertion that the proposed rule violated the ''once-in-always-in'' approach, because (1) the NO_X SIP Call rule had yet to be implemented in Georgia and (2) that NO_X emissions reductions have already been made by the State of Georgia under other State regulatory authorities.

Response: EPA does not agree that this rule is inconsistent with an ''once-in-always-in'' approach. The issue at hand is not whether Georgia (or parts of Georgia) should continue to be ''in,'' but whether as an initial matter Georgia (or parts of Georgia) should be ''in'' the Phase II NO_X SIP Call rule at all. As earlier explained, States are subject to the NO_X SIP Call requirements if they meet the 1998 NO_X SIP Call rule test for significant contribution to ''nonattainment'' receptors. (63 FR 57373; 57375–85). States that meet this test continue to be subject to the NO_X SIP Call requirements even with the revocation of the 1-hour ozone standard. 40 CFR 51.905(f) (2005). Because both Birmingham, Alabama and Memphis, Tennessee were meeting the 1-hour ozone standard and had been redesignated as attainment areas at the time of the Phase II NO_X SIP Call Rule, we no longer believe that the fine grid portion of Georgia met the test for significant contribution to ''nonattainment'' receptors at the time of promulgation of the Phase II rule.

We are also not persuaded by commenter's citation of our responses to comments in the Phase II NO_X SIP Call rule regarding our rejection of 2003 air quality data that would take into account current (at the time) emissions reductions by Missouri and our continued reliance on emissions data from the NO_X SIP Call in subjecting Missouri to the NO_X SIP Call requirements. (See 69 FR 21262). We do not believe that our response on this issue is analogous primarily because the Chicago, Illinois nonattainment area that eastern Missouri was significantly contributing to was still in nonattainment at the time of promulgation of the Phase II NO_X SIP Call rule. Thus, eastern Missouri continued to meet the 1998 NO_X SIP Call rule test for significant contribution to downwind ''nonattainment.'' Again this would not be the case with respect to Georgia in this instance because both Birmingham, Alabama and Memphis, Tennessee had been designated as attaining the 1-hour ozone standard prior to promulgation of the Phase II rule.

Further we disagree with the assertion that this rulemaking amounts to revisiting the question of whether sources in northern Georgia are linked to downwind nonattainment contrary to our stated position that ''we should not revisit an otherwise sound rulemaking just due to the passage of time.'' Rather as earlier stated we believe that their clean air quality and our redesignation of Birmingham, Alabama, and Memphis, Tennessee nonattainment calls into question the validity of our existing determination that Georgia ''significantly contributes to downwind nonattainment'' as construed in the NO_X SIP Call Rule. 63 FR 57376. Our decision also comports with our earlier statement that we intended to review the NO_X SIP Call rule to make necessary adjustments. 63 FR 57428. Further, as earlier stated, even if we concede and agree with both comments that *Michigan* does not require us to revisit the inclusion of Georgia's fine-grid portion and that GCSEP's petition raises issues beyond the scope of the Phase II NO_X SIP Call rulemaking, we believe we must be cognizant of the fact that Memphis, Tennessee and Birmingham, Alabama were no longer downwind nonattainment receptors as contemplated by the NO_X SIP Call at the time of the Phase II Rule. Both areas achieved the 1-hour ozone standard without the implementation of the NO_X SIP Call Rule in Georgia and thus, we see no reason for Georgia's continued inclusion in the NO_X SIP Call. Rather, we believe that our continued subjection of the State of Georgia to the NO_X SIP Call requirements could likely be viewed as arbitrary and capricious and not in accordance with the law in light of the facts pertinent to the two downwind receptors at the time of promulgation of the Phase II NO_X SIP Call rule.

Comment: One commenter asserted that our proposal was an attempt at resurrecting the pre-1990 version of CAA Section 110(a)(2)(D)(i). The commenter noted that prior to the 1990 amendments, this section required the elimination of emissions that ''prevent attainment or maintenance'' of the NAAQS by another State, while under the 1990 amendments this section now prohibits emissions that ''contribute significantly to nonattainment'' in another State. The commenter asserted that under the proposed rule, EPA seems to be applying the pre-1990 provision by concluding that if the downwind State had attained, without the assistance of one particular group of upwind sources, then those sources must not be part of the problem.

Response: We disagree. Under CAA Section 110(a)(2)(D)(i)(I), SIPs must contain provisions prohibiting amounts of emissions ''which will contribute significantly to nonattainment'' of an air quality standard in a downwind state. In the NO_X SIP Call Rule we interpreted the term ''contribute significantly'' by explaining that:

> The determination of significant contribution includes both air quality factors relating to amounts of upwind emissions and their ambient impact downwind, as well as cost factors relating to the costs of the upwind emissions reductions. Once an amount of emissions is identified in an upwind State that contributes significantly to a nonattainment problem downwind * * * the SIP must include provisions to eliminate that amount of emissions. 63 FR 57376 (October 27, 1998).

We also set out the multi-factor test we applied in determining whether emissions from an upwind state ''contribute[s] significantly'' to downwind nonattainment. These factors included:

> [T]he overall nature of the ozone problem (i.e., collective contribution'); The extent of the downwind nonattainment problems to which the upwind State's emissions are linked, including the ambient impact of controls required under the CAA or otherwise implemented in the downwind areas; [and] [t]he ambient impact of the emissions from the upwind State's sources on the downwind nonattainment problems. *Id.*

In the June 8, 2007, proposal, we explained that our inclusion of Georgia in the NO_X SIP Call was based on a finding that emissions from northern Georgia contributed significantly to nonattainment of the one-hour ozone standard by both Memphis, Tennessee and Birmingham, Alabama. 72 FR 31774. We also explained that both Memphis, Tennessee and Birmingham, Alabama were designated as attainment areas at the time of the Phase II NO_X SIP Call Rule. 72 FR 31774. Consequently, today's rulemaking reflects our belief that emissions activities in Georgia no longer meet both our determination of ''significant contribution'' and the multi-factor test, which we made at promulgation of the NO_X SIP Call Rule under the current section 110(a)(2)(D)(i)(I), and thus, that emissions from northern Georgia can no longer be identified as ''contributing

significantly'' to downwind nonattainment problems. Thus, Georgia would not need NO_X SIP Call provisions to prevent any such contribution.

B. Emissions Cap Comment

One commenter believed that our non-inclusion of Georgia in the NO_X SIP Call Rule would result in EGUs located in Georgia not being subject to an emissions cap during ozone seasons, and that the lack of a cap for sources that would otherwise be subject to the NO_X SIP Call rule may impede the ability of downwind states to maintain attainment of the 1-hour ozone NAAQS. Another commenter noted that EGUs are subject to annual caps under the Clean Air Interstate rule (CAIR), and that Georgia rules require that any add-on controls for CAIR compliance purposes should be operational during the ozone season.

Response: This action is based on the fact that the attainment of the 1-hour ozone standard and redesignation of Birmingham, Alabama and Memphis, Tennessee raises the question as to ''whether the targeted 'source' or 'emissions activity' 'contribute[s] significantly to nonattainment' in another state.'' It is also based on our conclusion that emitting activities in Georgia no longer '' 'contribute[s] significantly to nonattainment' in another state.'' Although not a basis for our action, EPA notes, after reviewing the current Georgia regulations, that by adopting stringent requirements for EGU NO_X emissions in the SIP Georgia has effectively capped EGUs emissions at levels that are more stringent than would be achieved by implementing the NO_X SIP Call requirements.

With regard to the comment that the absence of a cap for sources in Georgia may impede the ability of downwind maintenance of the 1-hour ozone standard, see our earlier response, in Section III.A above, on our authority to regulate emissions activity that interfere with the maintenance of the 1-hour ozone standard.

C. Comparison With the Atlanta State Implementation Plan

We also received comments on our analysis and conclusion at proposal that NO_X emissions controls under current and anticipated Atlanta SIP requirements would ensure equivalent or better levels of NO_X emissions than would be achieved under the NO_X SIP Call. 72 FR 31775–76. Comments addressed the degree of reductions from the Atlanta SIP in comparison to the emissions reductions assumed in the NO_X SIP Call budgets for: EGUs, non-EGU boilers, cement kilns and IC engines, as well as emissions from other categories not included within the NO_X SIP Call.

Comment: One commenter believed that EGUs requirements in the Atlanta SIP were less stringent than the levels assumed in the NO_X SIP Call budgets. This commenter noted that the NO_X SIP Call Rule was based on an average level of 0.15 pounds NO_X per million BTU for EGUs, while the 1999 Atlanta SIP was based on a level of an average of 0.20 pounds NO_X per million BTU. Moreover, the commenter noted that our calculations did not take into consideration Georgia's 60 counties that would have been subject to the Phase II NO_X SIP Call rule that are not all addressed by the Atlanta SIP.

Other commenters believed that the emissions reductions for EGUs that would be achieved by the 1999 and subsequent Atlanta SIP requirements exceeded the requirements of the NO_X SIP Call rule. One commenter noted that emissions by 27 of the 28 EGUs that would be covered by the NO_X SIP Call rule are limited by the 1999 Atlanta SIP requirements, and that only 4 percent of the total EGUs NO_X emissions for the 2006 ozone season are emitted by the sole EGU that is not covered by those requirements. The commenter did agree that the 27 units covered under the 1999 Atlanta SIP were subject to an overall average limit of 0.20 pounds per million BTU. The commenter further stated that 19 of the 27 EGUs were required to meet 0.13 pounds per million BTU during the ozone season beginning May 1, 2003, or one year earlier than the NO_X SIP Call requirements, which were effective with the 2004 ozone season.

Several commenters noted that, based on a review of our calculations, the overall actual NO_X emissions for the 2003–2006 time period, and taking into account early reduction allowances that EGUs subject to 0.13 pounds per million BTU limits would have earned, Georgia would not only have complied with the NO_X SIP Call for this time period, but could have maintained 4027 tons of banked excess allowances as of the end of the 2006 ozone season. This estimate was based on (1) calculations by Georgia, under the NO_X SIP Call trading program at 40 CFR part 96, showing that EGUs allocations would have been 29,416 tons per year in addition to the compliance supplement pool (CSP) allowance of 10,728 tons in 2004, or in sum, 98,976 tons from 2004 through 2006 ozone seasons; (2) actual EGUs NO_X emissions of 24,966, 35,272, and 34,711 tons, respectively, for the 2004 through 2006 ozone seasons. (The commenter attributed these numbers to the Agency's Clean Air Market Division's Web site.) This would result in a total of 94,949 tons for the 2004–2006 ozone seasons; and (3) a comparison of the NO_X SIP Call allocations of 98,976 tons with the 94,949 tons of actual emissions to determine that actual emissions were 4,027 tons less than would have been allocated under the NO_X SIP Call trading program. The commenters noted that, were Georgia in the NO_X SIP Call rule, Georgia could have sold these allowances, and that this would have likely resulted in NO_X emissions increases from sources in other States.

One commenter also noted that the Atlanta SIP requires both limits that are to be met on a 30 day rolling average, which is more restrictive than the seasonal budgets identified in the NO_X SIP Call trading program, and a stringent cap on EGUs emissions because the limits cannot be complied with by purchasing allowances.

Response: As earlier stated, in the June 8, 2007, proposal we explained that our inclusion of the State of Georgia in the NO_X SIP Call was based on our definition of ''nonattainment'' and determination of ''significant contribution to downwind nonattainment'' as articulated in the 1998 NO_X SIP Call rule. 72 FR 31773. Based on this definition and determination we found that emissions activities from northern Georgia contributed significantly to nonattainment of the one-hour ozone standard in both Memphis, Tennessee and Birmingham, Alabama. 72 FR 31774. We also explained that both Memphis, Tennessee and Birmingham, Alabama were designated as attainment areas at the time of the Phase II NO_X SIP Call Rule. 72 FR 31774. Consequently, this rulemaking reflects our belief that emissions activities in Georgia did not meet the 1998 NO_X SIP Call rule definition and determination at the time of the Phase II NO_X SIP Call Rule and thus, that emissions from northern Georgia can no longer be identified as ''contributing significantly'' to downwind nonattainment problems.

Nonetheless, we note that the compliance date for Phase II NO_X SIP Call Rule was May 31, 2007, instead of May 31, 2004, assumed by the above calculations. We also note that these calculations strongly support our conclusion that existing requirements under the Atlanta SIP result in NO_X emissions reductions which are more stringent than the NO_X SIP call.

Comment: One commenter believed that the appropriate basis for comparison between the Atlanta SIP and the NO_X SIP Call budgets should not be 2004, but rather 2007 and

subsequent years. Because the NO_X SIP Call is based upon achieving the 2007 NO_X SIP Call budget, the better analysis would be to assess whether sources in northern Georgia are modeled to achieve the 2007 NO_X SIP Call budget. The commenter stated that we had not made this showing. The commenter also stated that our documentation in the proposal did not clearly address future reductions from EGUs and other sources. (72 FR 31776). The commenter asserted that our predicted EGUs reductions based upon the Integrated Planning Model (IPM) are also indeterminate.

Other commenters supported EPA's view that existing and future Atlanta SIP requirements would result in a future trend towards decreasing EGU NO_X emissions. One commenter noted that in February 2007 (effective May 1, 2007), EGUs requirements, under the Atlanta SIP, became more stringent because the applicable average limits changed from 0.20 to 0.18 lbs/MMBTU. Additionally, the Georgia ''multipollutant'' rule would require the installation of 12 additional selective catalytic reduction (SCR) units between 2008 and 2015. The commenter also noted that Georgia Power has submitted an application to retire two coal-fired units in the Atlanta area and replace them with lower-emitting natural gas combined-cycle units.

Response: As explained earlier, we are determining that Georgia no longer meets the ''significant contribution'' test articulated in the 1998 NO_X SIP Call rule because both Memphis and Birmingham were in attainment at the time of the Phase II NO_X SIP Call rule. Nevertheless, after reviewing the available information, EPA finds ample evidence to note that beginning with the 2007 ozone season, NO_X emissions in northern Georgia will be less than assumed by the NO_X SIP Call budgets. Because, as noted in comments, Georgia NO_X requirements for the SIP are becoming more stringent over time, emissions for 2007 and subsequent years would likely result in even more favorable comparisons for the Georgia SIP requirements relative to the NO_X SIP Call rule. This assessment is not based on what the commenter terms as ''indeterminate'' predictions of the IPM model, but rather on the enforceable requirements of the Atlanta SIP.

Comment: Two commenters also noted that, under the Atlanta SIP, NO_X emissions reductions for IC engines and cement kilns are significantly beyond the NO_X SIP Call rule reductions. The commenters stated that these additional reductions were achieved as a result of the Georgia RACT rules for fuel burning equipment, stationary turbines, stationary engines, large gas turbines, and small fuel burning equipment. One commenter noted that non-EGUs boilers (*i.e.,* greater than 250 Million BTU/hour) might have become small-scale net purchasers of allowances under the Phase II NO_X SIP Call rule due to the absence of controls at the levels assumed in setting the NO_X SIP Call budgets. Nonetheless, the commenter believed that the additional reductions from other sources would more than offset those purchases, and would not affect the finding that Georgia would have been a net exporter of NO_X emissions allowances under the Phase II NO_X SIP Call rule.

One commenter expressed concerns that reductions from other (non-EGUs) sources were not well documented in the proposal, and that they may be at least already partially included in the calculations for the comparison of reductions between the Atlanta SIP and Phase II NO_X SIP Call rule.

Response: As explained earlier, we are determining that Georgia no longer meets the ''significant contribution'' test articulated in the 1998 NO_X SIP Call Rule because both Memphis and Birmingham attained the 1-hour ozone standard and were redesignated at the time we promulgated the Phase II NO_X SIP Call rule. Nonetheless, EPA notes that documentation provided by commenters for the non-EGUs measures in the Georgia SIP would appear to support the assertion that Georgia would have been a likely net exporter of allowances under the NO_X SIP call rule.

D. Other Issues

Comment: One commenter opposed EPA's proposed rule, and recommended that not only should Georgia be included in the NO_X SIP Call rule, but should also be responsible for NO_X emissions reductions under the rule. The commenter noted that NO_X emissions are contributors to smog, and that Atlanta suffers from urban sprawl with no incentive to keep growth within city limits.

Response: EPA agrees with the commenter that NO_X is an important contributor to air pollution in Georgia, and that Georgia may need further NO_X reductions in order to meet applicable ozone standards. This rule, however, reflects a determination that at the time of promulgation of the Phase II NO_X SIP Call rule, emissions activities from sources in Georgia were no longer significantly contributing to downwind nonattainment in other States. Thus, it is not appropriate for EPA to impose NO_X reductions requirements in Georgia under the SIP Call.

Comment: One commenter believed that the proposed action encourages parties to hinder rulemakings in hopes that new circumstances will provide a technical basis for a reprieve.

Response: EPA disagrees. We believe we are acting appropriately based on the facts at the time of the Phase II NO_X SIP Call rulemaking. Moreover, any delay in finalizing the Phase II NO_X SIP Call Rule did not contribute to adverse air quality in Birmingham and Memphis because these areas were able to attain the 1-hour standard in the intervening period. EPA also notes that during this intervening period, the Agency had to juggle competing rulemaking demands on our limited scientific and legal staff.

Comment: Two commenters expressed the concern that including Georgia in the NO_X SIP call would impose resource expenditures without significant NO_X emissions reductions. One commenter cited concerns over resource expenditures for (1) non-EGUs compliance with 40 CFR part 75 monitoring, (2) EGUs recordkeeping in addition to acid rain and CAIR, (3) Georgia SIP obligations, and (4) EPA tracking of ozone season allocations. The other commenter expressed concerns that imposition of the NO_X SIP Call would require Georgia to conduct a lengthy and expensive rulemaking process and would divert limited state resources from other efforts such as eight-hour ozone SIPs, $PM_{2.5}$ SIPs, and regional haze SIPs.

Response: EPA generally agrees that these resource considerations support the proposed rule.

Comment: One commenter noted that numerous modeling studies have assumed full implementation of the NO_X SIP Call in all affected States including Georgia. Thus, the commenter argues, if Georgia does not implement the SIP Call, all of these modeling analyses would be incorrect.

Response: The commenter appears to assume, without providing any support, that not including Georgia in the NO_X SIP Call Rule would result in future emissions being greater than those used as inputs to previous modeling studies, and that those increased emissions would lead to increases in modeled estimates of ozone concentrations. This assumption is incorrect. As noted in the preamble to the proposed rule (72 FR 31775–31776) and as discussed above, EPA has determined that future NO_X emissions from Georgia, because of Atlanta SIP requirements, would most likely be less than the emissions that were projected to occur from implementation of the NO_X SIP Call rule by Georgia. In other words, the emission levels required by the Georgia SIP are

lower than those that would have occurred from implementation of the NO_X SIP Call in Georgia. Thus, any assumption regarding Georgia's participation in the NO_X SIP Call would likely not have affected estimates of Georgia emissions in various modeling analyses. For these reasons, we can conclude that the removal of Georgia from the NO_X SIP Call would not be expected to impact modeling inputs or results of the modeling studies.

Comment: One commenter noted that the commenter's problem with EPA's proposed rule was compounded by exclusion of Georgia from the seasonal CAIR program. The commenter further stated that Georgia is the only state out of 22 states east of the Mississippi subject to CAIR that is not otherwise subject to the CAIR summertime NO_X program.

Response: We disagree. Georgia is subject to both annual emissions budgets for NO_X under CAIR, and stringent requirements under the 1999 and subsequent Atlanta SIP requirements. In addition, as noted by commenters, Georgia SIP rules require that controls installed for purposes of meeting annual CAIR requirements must be operated during the ozone season. In sum, we believe that all these requirements will assure substantial reductions in summertime NO_X emissions in Georgia. See also 72 FR 31775–56.

Comment: One commenter noted that EPA did find in its original analysis for the NO_X SIP Call rule that the NO_X emissions in Georgia significantly contributed to 8-hour ozone nonattainment areas in 10 downwind States, including Alabama. The commenter was also cognizant of the stay of the findings of the NO_X SIP Call rule as it relates to the 8-hour ozone standard. Thus this commenter recommended that Georgia should not be removed from the Phase II NO_X SIP Call rule.

Another commenter expressed concerns that Georgia sources do not have summertime NO_X emissions caps despite significant contributions to 8-hour ozone levels.

Response: This comment and any other comments on the 8-hour basis of the NO_X SIP Call rule are beyond the scope of the proposed rule. The stay of effectiveness of the 8-hour basis for the NO_X SIP Call continues, and the proposed rule neither addressed nor reopened any issues relating to the 8-hour basis for the NO_X SIP Call rule. 72 FR 31774.

EPA notes, however, that as stated above, Georgia is subject to annual emissions budgets for NO_X under CAIR, that controls installed for purposes of meeting annual CAIR requirements must be operated during the ozone season in Georgia, and that the Georgia SIP requirements designed to achieve emission reductions aimed at addressing 8-hour ozone nonattainment in Atlanta will assure that stringent levels of NO_X emissions will be met. As noted earlier above, these levels are more stringent than required by the NO_X SIP Call budgets.

Comment: One commenter noted that certain controls in Georgia were installed a year earlier than similar requirements in North Carolina, and the average pounds/million BTU emissions rate is lower in Georgia than in North Carolina or Alabama.

Response: This comment is beyond the scope of the proposed rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. This action grants a petition for reconsideration and removes the State of Georgia from the NO_X SIP Call Rule. It does not impose any requirement on regulated entities.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because the action removes a regulatory requirement.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that 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 this final 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 12.201; (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 this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This action grants a petition for reconsideration and removes the State of Georgia from the NO_X SIP Call Rule and therefore, is not expected to have a significant economic impact on a substantial number of small entities. This action neither imposes requirements on small entities, nor is it expected that there will be impacts on small entities beyond those, if any, required by or resulting from the NO_X SIP Call and the Section 126 Rules.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rules with ''Federal mandates'' that may result in the expenditure to State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The EPA prepared a statement for the final NO_X SIP Call that would be required by UMRA if its statutory provisions applied. This action does not create any additional requirements beyond those of the final NO_X SIP Call, and will actually reduce the requirements by excluding the State of Georgia, and therefore no further UMRA analysis is needed.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

This rule 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. This action does not impose an enforceable duty on these entities. This action imposes no additional burdens beyond those imposed by the final NO_X SIP Call. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have Tribal implications, as specified in Executive Order 13175.

It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This action does not significantly or uniquely affect the communities of Indian Tribal governments. The EPA stated in the final NO_X SIP Call Rule that Executive Order 13084 did not apply because that final rule does not significantly or uniquely affect the communities of Indian Tribal governments or call on States to regulate NO_X sources located on Tribal lands. The same is true of this action. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action does not impose requirements beyond those, if any, required by or resulting from the NO_X SIP Call and Section 126 Rules.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards, therefore, 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.

EPA has determined that this 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. For the final NO_X SIP Call rule, the Agency conducted a general analysis of the potential changes in ozone and particulate matter levels that may be experienced by minority and low-income populations as a result of the requirements of that rule. These findings were presented in the RIA for the NO_X SIP Call. This action does not affect this analysis.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 22, 2008.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by June 23, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA Section 307(b)(2).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: April 16, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

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

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

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

Subpart G—Control Strategy

■ 2. Section 51.121 is amended as follows:

■ a. By revising paragraph (c)(2).

■ b. By removing the entry for ''Georgia'' from the tables in paragraphs (e)(2)(i), (e)(4)(iii) and (g)(2)(ii).

■ c. By removing and reserving paragraph (e)(2)(ii)(C).

■ d. By removing paragraph (s).

§ 51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.

* * * * *

(c) * * *

(2) With respect to the 1-hour ozone NAAQS, the portions of Missouri, Michigan, and Alabama within the fine grid of the OTAG modeling domain. The fine grid is the area encompassed by a box with the following geographic coordinates: Southwest Corner, 92 degrees West longitude and 32 degrees North latitude; and Northeast Corner, 69.5 degrees West longitude and 44 degrees North latitude.

* * * * *

[FR Doc. E8–8673 Filed 4–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1009; FRL–8555–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision establishes the State's transportation conformity requirements. The intended effect of this action is to approve the State regulations which will govern transportation conformity determinations in the State of Delaware.

DATES: *Effective Date:* This final rule is effective on May 22, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–1009. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (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 through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at *kotsch.martin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 7, 2007 (72 FR 62807), EPA published a notice of proposed