

discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, 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.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency

provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(f) as it would establishing a special anchorage area.

A preliminary "Environmental Analysis Check List" is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review and documentation.

### List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

### PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.30, by redesignating paragraph (k) as paragraph (k)(1) and adding paragraph (k)(2) to read as follows:

### § 110.30 Boston Harbor, Mass., and adjacent waters.

\* \* \* \* \*

(k)(2) *Weymouth Fore River, in the vicinity of Gull Point (PT)*. All of the waters enclosed by a line beginning at latitude 42°15'05" N, longitude 70°57'26" W; thence to latitude 42°15'00" N, longitude 70°57'26" W; thence to latitude 42°15'15" N, longitude 70°56'50" W; thence to latitude 42°15'18" N, longitude 70°56'50" W; thence to the point of the beginning. *DATUM:* NAD 83.

**Note to paragraph (k)(2):** The area is principally for use by recreational craft. All anchoring in the area shall be under the supervision of the local harbor master or such other authority as may be designated by the authorities of the Town of Weymouth, Massachusetts. All moorings are to be so placed that no moored vessel will extend beyond the limit of the anchorage area.

\* \* \* \* \*

Dated: January 17, 2008.

**Timothy S. Sullivan,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. E8–2692 Filed 2–13–08; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Region 2 Docket No. EPA–R02–OAR–2008–0078; FRL–8529–9]

### Determinations of Attainment of the Eight-Hour Ozone Standard for Various Ozone Nonattainment Areas in Upstate New York State

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to determine that three ozone nonattainment areas in New York, the Albany-Schenectady-Troy, Jefferson County and Rochester areas, have attained the eight-hour National Ambient Air Quality Standard for ozone. New York State has requested these determinations, which are based upon three years of complete, quality-assured ambient air monitoring data for the years 2004–2006. These data demonstrate that the eight-hour ozone standard has been attained in these areas. In addition, data for 2007 show that the areas continue to attain the standard. If these proposed determinations are made final, the requirements for the State to submit certain reasonable further progress

plans, attainment demonstrations, contingency measures and any other planning requirements of the Clean Air Act related to attainment of the eight-hour ozone standard shall be suspended for so long as the areas continue to attain the eight-hour ozone standard. One area requested by New York, Essex County, does not have sufficient air quality data to demonstrate attainment of the standard. EPA is not proposing to act on New York State's request for Essex County at this time.

**DATES:** Comments must be received on or before March 17, 2008. Public comments on this action are requested and will be considered before taking final action.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R02-OAR-2008-0078, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov).
- *Fax:* 212-637-3901.

- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R02-OAR-2008-0078. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://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 <http://www.regulations.gov> or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail 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, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

#### SUPPLEMENTARY INFORMATION:

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#### I. Proposed Action

The EPA is proposing to determine that three ozone nonattainment areas in New York, the Albany-Schenectady-Troy, Jefferson County and Rochester areas, have attained the eight-hour National Ambient Air Quality Standard (NAAQS) for ozone. These determinations are based upon three years of complete, quality-assured ambient air monitoring data for the years 2004-2006. These data demonstrate that the eight-hour ozone NAAQS has been attained in these areas. In addition, data for 2007 show that the areas continue to attain the standard. Pursuant to 40 CFR section 51.918, if these proposed determinations are made final, the requirements for the State to submit certain reasonable further progress plans, attainment demonstrations, and contingency measures under section 172(c)(9) and any other planning State Implementation Plans (SIPs) related to attainment of the eight-hour ozone NAAQS, will be suspended for so long as the area continues to attain the ozone NAAQS.

#### II. Background

On April 30, 2004 (69 FR 23857), EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent

years (2001-2003) of air quality data. At that time, a number of areas in New York State, including the areas discussed in this notice, were designated as nonattainment. The Albany-Schenectady-Troy area encompasses its 1999 metropolitan area, plus Greene County which was part of the previously existing one-hour ozone area. The Rochester area is the 1999 metropolitan area. Jefferson County is not part of a metropolitan area and was designated nonattainment as a single county. Air monitoring data on Whiteface Mountain violated the air quality standard but surrounding areas at lower elevations did not violate the standard, so the portion of Essex County above 1900 feet in the Whiteface Mountain area was designated as nonattainment. (See 40 CFR 81.333.)

On March 19, 2007, New York State Department of Environmental Conservation (New York) petitioned to EPA to find that air monitoring data from four areas of upstate New York were showing attainment of the eight-hour ozone standard for the most recent three years of ozone data, from 2004 to 2006. These areas were the Albany-Schenectady-Troy, Jefferson County, Essex County and Rochester nonattainment areas. On June 14, 2007, New York updated its submittal to document its public review process, including notice and comment.

EPA's ozone implementation rule at 40 Code of Federal Regulations (CFR) sections 51.900-918, promulgated under sections 172 and 182 of the Clean Air Act, describes the Clean Air Act requirements for areas designated as not attaining the eight-hour ozone standard. For areas where air quality is attaining the standard, section 51.918 of the implementation rule provides that, upon a determination of attainment by EPA, the requirements for a State to submit certain required planning SIPs related to attainment of the eight-hour NAAQS, such as attainment demonstrations, reasonable further progress plans and contingency measures, shall be suspended. EPA's action only suspends the requirements to submit the SIP revisions discussed above. If this rulemaking is finalized and EPA subsequently determines after notice and comment rulemaking in the **Federal Register** that any of these areas have violated the standard, the basis for the suspension of these requirements for that area would no longer exist, and the area would thereafter have to address the pertinent requirements within a reasonable period of time. EPA would establish that period taking into account the individual circumstances

surrounding the particular submissions at issue.

The determinations that EPA proposes with this **Federal Register** notice, that air quality data show attainment of the ozone standard, are not equivalent to the redesignation of the areas to attainment. Using monitoring data to show attainment of the ozone NAAQS is only one of the criteria set forth in Clean Air Act section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the State must submit and receive full approval of a redesignation request for the area that

satisfies all of the criteria of section 107(d)(3)(E), including a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and a fully-approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully-approved maintenance plan.

**III. Analysis of Air Quality Data**

In New York's petition, it certified the air quality data submitted by the State for the years 2004, 2005, and 2006 was accurate and properly quality-assured and met state and EPA monitoring requirements. New York submitted

these data to EPA's Air Quality System, where it is available to the public via <http://www.epa.gov/ttn/airs/airsaqs/>. After New York submitted its petition, New York supplied additional quality-assured air quality data from 2007 to EPA's Air Quality System database. EPA has reviewed these data to determine if the areas proposed by New York remain in attainment when the additional data from 2007 are included. Table I summarizes the ozone air quality data for these four areas of upstate New York and EPA's evaluation of whether these areas meet EPA's requirements for attaining the eight-hour ozone NAAQS.

TABLE I.—FOURTH HIGHEST CONCENTRATIONS AND DESIGN VALUES FOR THE EIGHT-HOUR OZONE STANDARD FOR MONITORING SITES IN FOUR AREAS OF UPSTATE NEW YORK  
[In parts per million]

Area/Site/EPA Site ID	Fourth highest concentration				Average of fourth highest concentration		Attainment	
	2004	2005	2006	2007	2004–6	2005–7	2004–6	2005–7
Albany-Schenectady-Troy, NY							Yes	Yes.
Loudonville 360010012	0.072	0.080	0.069	0.075	0.073	0.074		
Schenectady 360930003	0.068	0.077	0.061	0.067	0.068	0.068		
Grafton Lakes 360830004	0.076	0.081	0.072	0.078	0.076	0.077		
Stillwater 360910004	0.077	0.084	0.073	0.081	0.078	0.079		
Essex Co. (Whiteface Mt.), NY							No*	No.*
Whiteface Mt. Summit, NY 360310002	0.077	0.079	0.071	0.084	0.071	0.078		
Whiteface Mt. Base, NY 360310003	0.071	0.073	0.071	0.078	0.078	0.074		
Jefferson Co., NY 360450002	0.071	0.083	0.073	0.083	0.075	0.077	Yes	Yes.
Rochester, NY							Yes	Yes.
Rochester #2 360551007	0.057	0.080	0.081	0.078	0.072	0.079		
Williamson 361173001	0.065	0.065	0.065	0.081	0.065	0.070		

Note: All values in parts per million (ppm).

\* Whiteface Mountain Summit monitor recorded less than 75% data capture for the ozone seasons of 2004 and 2005 and does not have complete data for those years. The design value is the average of each year's fourth highest concentration as described in Appendix I to 40 CFR part 50. From 40 CFR part 50, Appendix I, Section 2.2: The standard-related summary statistic is the annual fourth-highest daily maximum 8-hour average ozone concentration, expressed in parts per million, averaged over three years. The 3-year average shall be computed using the three most recent, consecutive calendar years of monitoring data meeting the data completeness requirements described in this appendix. The computed 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations shall be expressed to three decimal places (the remaining digits to the right are truncated.)

As noted in Table I, an area achieves attainment of the eight-hour ozone standard when an area's monitoring sites all have a design value of less than 0.085 ppm, calculated as described in 40 CFR part 50, Appendix I. In this case, all of the sites have a design value less than 0.085 ppm, but the Whiteface Mountain summit site in Essex County does not have complete data for 2004 and 2005, so there is not enough data to ensure the area is meeting the standard. Appendix I of 40 CFR part 50 stipulates that in order to be used for showing attainment of the standard, the three years of data must have an average percent of days with valid ambient monitoring data of greater than 90%, and no single year with less than 75% data completeness. The monitor at the summit of Whiteface Mountain recorded 64 and 74 percent of the required data

in 2004 and 2005, respectively. Therefore, Essex County does not have sufficient data to support a determination that it is an area attaining the eight-hour ozone standard, and EPA is not proposing in this notice to make such a determination.

EPA proposes to determine that quality-assured data from 2004 through 2006 from Albany-Schenectady-Troy, Jefferson County and Rochester demonstrate that these areas met the eight-hour ozone standard. EPA has reviewed the latest quality-assured data, through September 2007, and preliminary data through the end of the ozone season of 2007 to insure that these areas still attain the ozone standard.

EPA notes that New York's March 19, 2007 and June 14, 2007 requests also petitioned EPA to find that the Albany-

Schenectady-Troy, Jefferson County, Essex County and the Buffalo-Niagara one-hour ozone nonattainment areas were showing attainment of the one-hour ozone standard. (The Rochester area was not designated as nonattainment for the one-hour standard, only the eight-hour standard.) EPA is not addressing that portion of the petition in this notice, but intends to propose action on this part of New York's request in a future, separate **Federal Register** notice.

EPA is soliciting public comments on the issues discussed in this notice. EPA will consider these comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to EPA as discussed in the **ADDRESSES** section of this **Federal Register**.

#### IV. Summary

EPA is proposing to determine that the Albany-Schenectady-Troy, Jefferson County and Rochester ozone nonattainment areas have attained the eight-hour ozone standard based on three years of complete, quality-assured monitoring data at all ozone monitoring sites in the areas. Data through the 2007 ozone season demonstrate that the areas continue to attain the standard. As provided in 40 CFR 51.918, if EPA's determinations that these areas have attained the eight-hour ozone standard are made final, they would suspend the requirements under section 182(b)(1) for submission of the reasonable further progress plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning submission of contingency measures and any other planning SIP relating to attainment of the eight-hour NAAQS. This suspension of requirements would be effective as long as the areas continue to attain the eight-hour ozone standard. EPA will await additional, complete data before determining whether the Whiteface Mountain area in Essex County is attaining the standard.

EPA emphasizes that its proposed determinations are contingent upon the continued monitoring and continued attainment and maintenance of the eight-hour ozone NAAQS in these affected areas. If these determinations are finalized and EPA subsequently determines, after notice and comment rulemaking, that an area violated the standard, the basis for the suspension of the planning requirements would no longer exist, and the area would thereafter have to address the pertinent requirements.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to make a determination

based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it proposes to determine that air quality in the affected area is meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act.

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Under Executive Order 12898, EPA finds that this rule involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

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

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

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

Dated: February 6, 2008.

**Alan J. Steinberg,**

*Regional Administrator, Region 2.*

[FR Doc. E8-2781 Filed 2-13-08; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Parts 271 and 272

[EPA-R08-RCRA-2006-0501 FRL-8524-6]

#### North Dakota: Final Authorization of State Hazardous Waste Management Program Revisions and Incorporation by Reference of Approved Hazardous Waste Program

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

**ACTION:** Proposed rule.

**SUMMARY:** North Dakota has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA proposes to grant final authorization to the hazardous waste program changes submitted by North Dakota. In addition, EPA is proposing to codify in the regulations entitled "Approved State Hazardous Waste Management Programs", North Dakota's authorized hazardous waste program. EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State statutes and regulations that are authorized and that EPA will enforce under the Solid Waste Disposal Act, as amended and commonly referred to as RCRA. In the "Rules and Regulations" section of this **Federal Register**, we are authorizing the State's program changes and codifying and incorporating by reference the authorized hazardous waste program as an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe these actions are not controversial and do not expect comments to oppose them. We have explained the reasons for this authorization and incorporation-by-reference in the preamble to the immediate final rule. Unless we get written comments opposing this authorization and incorporation by reference during the comment period, the immediate final rule will become