

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 50 and 51

[EPA-HQ-OAR-2016-0202; FRL-9950-24-OAR]

RIN 2060-AS82

### Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing nonattainment area classification thresholds and implementation requirements for the strengthened 2015 ozone national ambient air quality standards (NAAQS) (2015 ozone NAAQS) that were promulgated on October 1, 2015. This proposal is largely an update to the implementing regulations previously promulgated for the 2008 ozone NAAQS, and we propose to retain without significant revision the majority of those provisions to implement the 2015 ozone NAAQS. This proposal addresses the timing of attainment dates for each nonattainment area classification and a range of nonattainment area state implementation plan (SIP) requirements for the 2015 ozone NAAQS. The proposed SIP requirements pertain to attainment demonstrations, reasonable further progress (RFP) and associated milestone demonstrations, reasonably available control technology (RACT), reasonably available control measures (RACTM), major nonattainment new source review (NNSR), emission inventories, the timing of required SIP submissions, and compliance with emission control measures in the SIP. Other issues addressed in this proposed rule are the revocation of the 2008 ozone NAAQS, anti-backsliding requirements that would apply when the 2008 ozone NAAQS are revoked, and reconsideration of the ozone NAAQS interprecursor trading (IPT) provisions (in response to a petition for reconsideration).

**DATES:** *Comments.* Written comments must be received on or before January 17, 2017. *Public Hearing.* If anyone contacts us requesting a hearing on or before December 2, 2016, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document. *Information*

*Collection Request.* Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before December 19, 2016.

**ADDRESSES:** *Comments:* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2016-0202, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, Cloud or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/comments.html>.

**FOR FURTHER INFORMATION CONTACT:** For further general information on this proposed rule, contact Mr. Robert Lingard, Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, at (919) 541-5272 or [lingard.robert@epa.gov](mailto:lingard.robert@epa.gov); or Mr. Lynn Dail, OAQPS, U.S. EPA, at (919) 541-2363 or [dail.lynn@epa.gov](mailto:dail.lynn@epa.gov). For information on the Information Collection Request (ICR), contact Mr. Butch Stackhouse, OAQPS, U.S. EPA, at (919) 541-5208 or [stackhouse.butch@epa.gov](mailto:stackhouse.butch@epa.gov). For information on the public hearing, contact Ms. Pamela Long, OAQPS, U.S. EPA, at (919) 541-0641 or [long.pam@epa.gov](mailto:long.pam@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

ACT Alternative Control Techniques  
AERR Air Emissions Reporting Requirements

AVERT AVoided Emissions geneRation Tool  
BSMP Basic Smoke Management Practices  
CAA Clean Air Act  
CAIR Clean Air Interstate Rule  
CBI Confidential Business Information  
CFR Code of Federal Regulations  
CO Carbon Monoxide  
CSAPR Cross-State Air Pollution Rule  
CTG Control Techniques Guidelines  
DOI Department of the Interior  
DOT Department of Transportation  
DV Design Value  
EE/RE Energy Efficiency and Renewable Energy  
EPA Environmental Protection Agency  
FIP Federal Implementation Plan  
FLM Federal Land Managers  
FR Federal Register  
ICR Information Collection Request  
I/M Inspection and Maintenance  
IPT Interprecursor Trade or Interprecursor Trading  
MCD Milestone Compliance Demonstration  
MPO Metropolitan Planning Organization  
NAAQS National Ambient Air Quality Standards  
NNSR Nonattainment New Source Review  
NO<sub>x</sub> Nitrogen Oxides  
O<sub>3</sub> Ozone  
OAQPS Office of Air Quality Planning and Standards  
OMB Office of Management and Budget  
OTR Ozone Transport Region  
PAMS Photochemical Assessment Monitoring Station  
PM<sub>2.5</sub> Fine Particulate Matter  
ppm Parts per Million  
PRA Paperwork Reduction Act  
PSD Prevention of Significant Deterioration  
PTE Potential to Emit  
PUC Public Utility Commission  
RACT Reasonably Available Control Measures  
RACT Reasonably Available Control Technology  
RFP Reasonable Further Progress  
ROP Rate of Progress  
RPS Renewable Portfolio Standard  
SIP State Implementation Plan  
SO<sub>2</sub> Sulfur Dioxide  
tpy Tons per Year  
TAR Tribal Authority Rule  
TAS Treatment as a State  
TGD Technical Guidance Document  
TIP Tribal Implementation Plan  
TIP Transportation Improvement Program  
TSD Technical Support Document  
USB U.S. Background  
U.S.C. United States Code  
USDA U.S. Department of Agriculture  
VOC Volatile Organic Compounds

##### B. Does this action apply to me?

Entities potentially affected directly by this proposed rule include state, local and tribal governments and air pollution control agencies (“air agencies”) responsible for attainment and maintenance of the NAAQS. Entities potentially affected indirectly by this proposed rule as regulated sources include owners and operators of sources of emissions of volatile organic compounds (VOCs) and nitrogen oxides

(NO<sub>x</sub>) that contribute to ground-level ozone formation.

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

When submitting comments, remember to:

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

*D. How can I find information about a possible hearing?*

To request a public hearing or information pertaining to a public hearing regarding this document, contact Ms. Pamela Long, OAQPS, U.S. EPA, at (919) 541-0641 or [long.pam@epa.gov](mailto:long.pam@epa.gov).

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

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at <http://www.epa.gov/ozone-pollution>.

*F. How is this notice of proposed rulemaking organized?*

The information and proposals presented in this notice are organized as follows:

I. General Information

- A. Preamble Glossary of Terms and Acronyms
- B. Does this action apply to me?
- C. What should I consider as I prepare my comments for the EPA?
- D. How can I find information about a possible hearing?

- E. Where can I get a copy of this document and other related information?
- F. How is this notice of proposed rulemaking organized?

II. Summary of Proposed Rule and Background

- III. Provisions of the 2008 Ozone NAAQS Implementing Regulations To Be Retained Without Significant Revision
  - A. Submitting Nonattainment Area and OTR SIP Elements Due Under CAA Sections 182 and 184 for the 2015 Ozone NAAQS
  - B. Applicability of Existing NAAQS Implementation Provisions in 40 CFR Part 51
  - C. General Classification and Nonattainment Area Planning Provisions
  - D. Redesignation to Nonattainment Following Initial Designations
  - E. Determining Eligibility for 1-Year Attainment Date Extensions for the 2015 Ozone NAAQS Under CAA Section 181(a)(5)
  - F. Modeling and Attainment Demonstration Requirements
  - G. Requirements for RFP
  - H. Requirements for RACT and RACM
  - I. CAA Section 182(f) NO<sub>x</sub> Exemption Provisions
  - J. General Nonattainment NSR Requirements
  - K. Ambient Monitoring Requirements
  - L. Requirements for an OTR
  - M. Fee Programs for Severe and Extreme Nonattainment Areas That Fail To Attain
  - N. Applicability
- IV. Provisions of the 2008 Ozone NAAQS Implementing Regulations To Be Retained With Specific Revisions
  - A. Application of Classification and Attainment Date Provisions in CAA Section 181 to Areas Subject to Subpart 2 of Part D of Title I of the CAA
  - B. Transition From the 2008 Ozone NAAQS to the 2015 Ozone NAAQS and Anti-Backsliding Requirements
  - C. Requirements for RFP: Milestone Compliance Demonstrations (MCD)
  - D. Requirements for RACT: Deadlines for Submittal and Implementation of RACT SIP Revisions
  - E. Requirements for RACM: Consideration of Sources of Intrastate Transport of Pollution
  - F. Nonattainment NSR Offset Requirement: Precursor Trading for Ozone Offsets
  - G. Emissions Inventory and Emissions Statement Requirements
- V. Additional Considerations
  - A. Managing Emissions From Wildfire and Wildland Prescribed Fire
  - B. Transportation Conformity and General Conformity
  - C. Requirements for Contingency Measures in the Event of Failure To Meet a Milestone or To Attain
  - D. International Transport and Background Ozone
  - E. Additional Policies and Programs for Achieving Emissions Reductions
  - F. Additional Requirements Related to Enforcement and Compliance
  - G. Applicability of Proposed Rule to Tribes
- VI. Environmental Justice Considerations
- VII. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act (PRA)
- C. Regulatory Flexibility Act (RFA)
- D. Unfunded Mandates Reform Act (UMRA)
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act (NTTA)
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

VIII. Statutory Authority

**II. Summary of Proposed Rule and Background**

On October 1, 2015,<sup>1</sup> the EPA announced that it was strengthening the primary and secondary NAAQS for ozone to a level of 0.070 parts per million (ppm).<sup>2</sup> Since the 2015 primary and secondary NAAQS for ozone are identical, for convenience, we refer to both as “the 2015 ozone NAAQS” or “the 2015 ozone standards.” The 2015 ozone NAAQS retains the same general form and averaging time as the 0.075 ppm NAAQS set in 2008, but is set at a more protective level.

The revisions to the ozone NAAQS trigger a process under which states recommend area designations (*i.e.*, as nonattainment, attainment, or unclassifiable) to the EPA. The EPA then evaluates air quality data and other factors prior to making its proposed and final determinations regarding area designations. To aid the states developing their recommendations, the EPA issued area designations guidance on February 25, 2016.<sup>3</sup> Areas designated as nonattainment for the revised ozone NAAQS will be classified at the time of designation. With this action, the EPA is proposing and seeking comment on air quality thresholds and attainment dates for each nonattainment area classification, which it will finalize upon or before promulgating final area

<sup>1</sup> See 80 FR 65292.

<sup>2</sup> Annual fourth highest daily maximum 8-hour average concentration, averaged over 3 years. For a detailed explanation of the calculation of the 3-year 8-hour average, see 40 CFR part 50, Appendix P.

<sup>3</sup> The EPA’s guidance on the area designations for the 2015 ozone NAAQS is available at <https://www.epa.gov/ozone-designations/epa-guidance-area-designations-2015-ozone-naaqs>.

designations and classifications for the 2015 ozone NAAQS.

The Clean Air Act (CAA or Act) does not require that the EPA promulgate new or revised implementing regulations or guidance every time that a NAAQS is revised. State, local and tribal air agencies (hereinafter, referred to simply as air agencies) are required to submit SIPs as provided in the CAA and in EPA regulations. Where the nature of revisions to a NAAQS indicate that additional regulations or guidance (or revisions to existing regulations or guidance) may be helpful, the EPA endeavors to provide such regulations or guidance to facilitate the designations process and preparation of timely SIP submittals. It is important to note, however, that the existing EPA regulations in 40 CFR part 51 applicable to SIPs generally and to particular pollutants (e.g., ozone and its precursors) continue to apply even without such updates. This rule is proposing revisions to existing regulations and guidance as appropriate to aid in the implementation of the 2015 ozone NAAQS.

The EPA believes that the overall framework and policy approach of the implementation provisions associated with the 2008 ozone NAAQS provide an effective and appropriate template for the general approach air agencies should follow in planning for attainment of the revised ozone standards. However, to assist with the implementation of the revised ozone standards, the EPA is proposing this additional ozone NAAQS implementation rule.

We are proposing multiple actions in this rule pertaining to nonattainment area classification thresholds and associated attainment dates, as well as submittal deadlines and specific CAA requirements for the content of nonattainment area and Ozone Transport Region (OTR) SIPs for the 2015 ozone NAAQS. As a general matter, this proposed rule follows the same basic principles and approach that the EPA applied to interpret the CAA's part D, subpart 2 ozone nonattainment area requirements in developing the classification and implementation rules for the 2008 ozone NAAQS.<sup>4</sup> Additionally, we are proposing and seeking comment on two alternative approaches for revoking the 2008 ozone NAAQS and, where applicable, establishing anti-backsliding requirements for areas that are

designated nonattainment at the time the 2008 ozone NAAQS is revoked.

Regarding the format of this preamble, we organize our discussion of implementation requirements for the 2015 ozone NAAQS around the implementing regulations for the 2008 ozone NAAQS. As stated previously, we propose to retain without significant revision the majority of those existing regulations to implement the 2015 ozone NAAQS, as discussed in Section III of this preamble. We discuss the existing implementing regulations that we propose to retain with specific revisions for implementing the 2015 ozone NAAQS in Section IV of this preamble. For topics where we do not propose any action, we provide guidance on that topic in the preamble. Section V of this preamble addresses several requirements and policies not covered by this proposed rulemaking (with one exception), but for which the EPA is soliciting public comment (e.g., dealing with emissions from wildfires and wildland prescribed fires, and international transport and background ozone).

### III. Provisions of the 2008 Ozone NAAQS Implementing Regulations To Be Retained Without Significant Revision

For purposes of the 2015 ozone NAAQS, we are proposing to retain the majority of existing implementation provisions for the 2008 ozone NAAQS without significant revision. The existing classification and SIP requirement provisions for the 2008 standards are codified at subpart AA of 40 CFR part 51, and the corresponding provisions for the 2015 standards would be codified at the new subpart CC of part 51. As discussed earlier, the EPA believes that the implementing regulations for the 2008 standards generally provide an appropriate approach to follow in attainment planning for the 2015 standards, and we welcome comment on the following proposed provisions.

#### A. Submitting Nonattainment Area and OTR SIP Elements Due Under CAA Sections 182 and 184 for the 2015 Ozone NAAQS

##### 1. Deadlines for Submitting Nonattainment Area and OTR SIP Elements

The EPA is proposing to retain the existing approach to calculating deadlines for submitting nonattainment SIP elements. Section 182 of the CAA requires states with ozone nonattainment areas to submit various SIP elements within specified time

periods after enactment of the CAA Amendments of 1990. For the 2008 ozone NAAQS, the EPA adopted the approach that the SIP elements listed in the proposal are due based on the timeframes provided in CAA section 182 as measured from the effective date of designation, instead of the 1990 date. For reference, the final 2008 Ozone NAAQS SIP Requirements Rule (2008 ozone SRR) provides an extensive discussion of the EPA's current approach and rationale for SIP element submittal deadlines (80 FR 12265; March 6, 2015). The EPA is proposing to retain the same approach for calculating deadlines for submitting nonattainment area SIP elements under CAA section 182 for the 2015 ozone NAAQS, based on the current approach and rationale articulated in the final 2008 Ozone NAAQS SIP Requirements Rule.

Accordingly, states with areas designated nonattainment have 2 years from the effective date of nonattainment designation to submit SIP revisions addressing emission inventories (required by CAA section 182(a)(1)), RACT (CAA section 182(b)(2)) and emissions statement regulations<sup>5</sup> (CAA section 182(a)(3)(B)); 3 years to submit SIP revisions addressing 15 percent rate of progress (ROP) plans (CAA section 182(b)(1)) and Moderate area attainment demonstrations (CAA section 182(b)(1)); and 4 years to submit SIP revisions addressing 3 percent per year<sup>6</sup> RFP plans (CAA section 182(c)(2)) and attainment demonstrations (CAA section 182(c)(2)) for Serious and higher areas, where applicable. If an area is subject to vehicle inspection and maintenance (I/M) program requirements based on its classification, the SIP revision due date, codified in 40 CFR 51.372(b)(2), would be aligned with the due date for the attainment demonstration SIP for the area. The SIP revisions addressing CAA section 185 penalty fee programs in areas initially classified Severe or Extreme would be due 10 years from the effective date of designations. Finally, SIP submissions addressing nonattainment NSR would be due 3 years<sup>7</sup> from the effective date of designations.

We note also that the EPA's implementing regulations for revised ozone NAAQS have required OTR states

<sup>5</sup> See Section IV.G of this preamble for additional information on emissions statements.

<sup>6</sup> 3 percent per year RFP plans are typically submitted in 3-year increments, thus, as 9 percent RFP plans that produce average reductions of 3 percent per year.

<sup>7</sup> See 70 FR 71612, 71672 and 71683 (November 29, 2005); and 80 FR 12264, 12266 and 12267, March 6, 2015.

<sup>4</sup> See the Classifications Rule (77 FR 30160; May 21, 2012) and SIP Requirements Rule (80 FR 12264; March 6, 2015) for the 2008 ozone NAAQS.

to submit RACT SIP revisions based on the timeframe provided in CAA section 184 as measured from the effective date for designations made pursuant to those revised NAAQS. This requirement was first codified in 40 CFR 51.916 for the 1997 ozone NAAQS, and later codified for the 2008 ozone NAAQS in 40 CFR 51.1116. Under those provisions, states in the OTR are required to submit SIP revisions addressing the RACT requirements of CAA section 184 no later than 2 years after the effective date of designations for the revised ozone NAAQS. The EPA is proposing to retain these same general requirements for the 2015 ozone NAAQS (*see* Section III.L of this preamble).

## 2. Form and Content of Nonattainment and OTR SIP Element Submissions Required Under a Revised NAAQS

The EPA is restating the existing requirement that states must submit all nonattainment SIP elements applicable for an area's classification upon revision of the NAAQS, and is providing the following guidance on the form and content of such submissions. As discussed in the preceding section, a SIP submission is due from air agencies for every nonattainment area for each of the SIP elements listed in this proposal, including (but not limited to) emissions statement regulations, nonattainment NSR, and vehicle I/M programs, upon revision of the NAAQS, and they are due based on the timeframes provided in CAA section 182 as measured from the effective date of designation.

The EPA interprets the CAA to require an air agency to provide a SIP submission to meet each nonattainment area planning requirement for the 2015 ozone NAAQS. Many air agencies may already have regulations to address certain requirements in place due to nonattainment designations for a prior ozone NAAQS. Air agencies should review any existing regulation that was previously approved by the EPA to determine whether it is sufficient to fulfill obligations triggered by any revised ozone NAAQS. In cases where a previously-approved provision is modified for any reason, or where no provision exists, air agencies must provide the new or modified provision as a SIP submission. This would include new or modified RACT provisions for states with nonattainment areas and states in an OTR, which must be reviewed to ensure that emissions from affected stationary sources are appropriately controlled. However, where an air agency believes that an existing regulation is adequate to meet the nonattainment requirements of CAA section 182 (or OTR RACT requirements

of CAA section 184) for a revised ozone NAAQS, that air agency's SIP submission may provide a written statement of the rationale for that determination in lieu of submitting new revised regulations. For example, a state may have an emissions statement regulation (per CAA section 182(a)(3)(B)) that has been previously approved by the EPA for a prior ozone NAAQS that covers all of the state's nonattainment areas and relevant classes and categories of sources for the 2015 ozone NAAQS, and is likely to be sufficient for purposes of the emissions statement requirement for the 2015 ozone NAAQS. The EPA has taken action on similar written statements. *See* 80 FR 48036, 48040 (explaining that EPA is approving Georgia's certification that the state's previously approved regulation meets the requirements of CAA section 182(a)(3)(B) for the 2008 ozone standards). Other previously-approved nonattainment SIP elements that may be sufficient for purposes of an area that has been designated nonattainment for a revised NAAQS might include (but are not necessarily limited to): Nonattainment NSR; vehicle I/M programs; and clean fuels requirement for boilers.

An air agency choosing to provide a written statement to meet the submission requirement of the CAA must provide the statement to the EPA as a SIP submission in accordance with CAA section 110 and 40 CFR 51.102, 103 and Appendix V. An air agency should identify the related applicable requirements and how each is met for the revised ozone NAAQS by the regulation previously approved for a prior ozone NAAQS. The purpose of the statement is to demonstrate compliance with the nonattainment plan requirements for the new NAAQS. These written statements must be treated in the same manner as any SIP submission and must be provided to the EPA in accordance with applicable SIP submission requirements and deadlines.

## B. Applicability of Existing NAAQS Implementation Provisions in 40 CFR Part 51

The EPA is proposing to retain its existing general requirement that establishes the applicability of 40 CFR part 51 to the current and prior ozone NAAQS. The general applicability of 40 CFR part 51 to the 2008 ozone NAAQS is codified in 40 CFR 51.1101, and requires that the provisions in subparts A through X of part 51 apply to areas to the extent they are not inconsistent with the specific implementation provisions for the 2008 standards (*i.e.*, subpart AA of part 51). Subparts A

through X of part 51<sup>8</sup> include generally applicable requirements for preparation, adoption, and submittal of implementation plans, as well as specific implementation provisions for the 1997 8-hour ozone NAAQS (codified in subpart X). The EPA is proposing that the same requirements apply for purposes of the 2015 ozone NAAQS at 40 CFR 51.1301, except that the listing of potentially applicable subparts would include the addition of subpart AA of part 51 (*i.e.*, subparts A through AA).

## C. General Classification and Nonattainment Area Planning Provisions

The EPA is proposing to retain its existing general classification and nonattainment area planning provisions, which are codified for the 2008 ozone NAAQS in 40 CFR 51.1102. These provisions require that designated areas be classified in accordance with CAA section 181 (classifications and attainment dates), as interpreted in 40 CFR 51.1103(a), and that designated areas will be subject to the applicable planning requirements of subpart 2 of part D of title I of the CAA (additional provisions for ozone nonattainment areas). The EPA is proposing to retain the same general requirements for the 2015 ozone NAAQS, without revision, and codify them at 40 CFR 51.1302 and 51.1303(a).

## D. Redesignation to Nonattainment Following Initial Designations

The EPA is proposing to retain its existing requirements for areas initially designated attainment for the current ozone NAAQS and subsequently redesignated to nonattainment for the same standards, which are codified for the 2008 ozone NAAQS in 40 CFR 51.1106. These provisions generally allow an extension of any absolute, fixed date for SIP requirements under part 51—excluding attainment dates—equal to the length of time between the effective date of the initial designation for the NAAQS and the effective date of redesignation, unless otherwise provided in the implementation provisions for those standards. The maximum attainment date for a redesignated area would be based on the area's classification (*see* Section IV.A of this preamble for discussion of classification thresholds and attainment dates). The EPA is proposing to retain the same requirements for the 2015 ozone NAAQS, without revision.

<sup>8</sup> Excluding subpart Z (Provisions for Implementation of PM<sub>2.5</sub> NAAQS) and subpart BB (Data Requirements for Characterizing Air Quality for the Primary Sulfur Dioxide (SO<sub>2</sub>) NAAQS).

*E. Determining Eligibility for 1-Year Attainment Date Extensions for the 2015 Ozone NAAQS Under CAA Section 181(a)(5)*

The EPA is proposing to retain its existing eligibility criteria for 1-year attainment date extensions under CAA section 181(a)(5), which are codified for the 2008 ozone NAAQS in 40 CFR 51.1107. An area that fails to attain a specific ozone NAAQS by its attainment date would be eligible for the first 1-year extension if, for the attainment year, the area's fourth highest daily maximum 8-hour average is at or below the level of the standards. The area would be eligible for the second 1-year extension if the area's fourth highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, is at or below the level of the standards. For the second 1-year extension, the area's fourth highest daily maximum 8-hour average for each year (the attainment year and the first extension year) must be determined using the monitor which, for that year, has the fourth highest daily maximum 8-hour average of all the monitors that represent that area (*i.e.*, the area's fourth highest daily maximum 8-hour average for each year could be derived from a different monitor) (*see* 80 FR 12292; March 6, 2015). The EPA is proposing to retain the same general eligibility criteria for the 2015 ozone NAAQS, without revision.

We are also restating in this preamble that, in addition to demonstrating that an area meets these general eligibility criteria, an air agency must demonstrate that it has complied with all requirements and commitments pertaining to the area in the applicable SIP, per CAA section 181(a)(5)(A). Given the state and federal partnership in implementing the CAA, it is reasonable for the EPA to interpret CAA section 181(a)(5)(A) as permitting the agency to rely upon the certified statements of its state counterparts, and the EPA has long interpreted the provision to be satisfied by such statements.<sup>9</sup> In practice, in conjunction with a request for an extension, a state air agency's Executive Officer, or other senior individual with equivalent responsibilities, signs and affirms that their state is complying with their applicable federally-approved SIP.

<sup>9</sup> See memorandum signed by D. Kent Berry, Acting Director, Air Quality Management Division, "Procedures for Processing Bump Ups and Extension Requests for Marginal Ozone Nonattainment Areas." U.S. EPA, February 3, 1994.

*F. Modeling and Attainment Demonstration Requirements*

The EPA is proposing to retain its existing modeling and attainment demonstration requirements, which are codified for the 2008 ozone NAAQS in 40 CFR 51.1108, and to establish criteria and due dates for attainment demonstrations and implementation of control measures. Due dates for attainment demonstrations are established relative to the effective date of area designations, and all control measures in the attainment demonstration must be implemented no later than the beginning of the attainment year ozone season, notwithstanding specific RACT and/or RACM implementation deadline requirements. For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of attainment demonstration elements and related modeling protocols (80 FR 12268; March 6, 2015). The EPA's current procedures for modeling are well developed and described in the EPA's "Draft Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM<sub>2.5</sub>, and Regional Haze" (December 2014).<sup>10</sup> The EPA is proposing to retain the same modeling and attainment demonstration requirements for the 2015 ozone NAAQS, based on the current approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule.

*G. Requirements for RFP*

The EPA is proposing to retain its existing RFP requirements and to add new regulatory provisions codifying statutory requirements for RFP milestone compliance demonstrations (MCDs) (*see* Section IV.C of this preamble). The EPA is also seeking comment on requiring states to use the year of an area's designation as nonattainment as the baseline year for the emission inventory for the RFP requirement.

The RFP requirements for the 2008 ozone NAAQS are codified in 40 CFR 51.1110 and require that nonattainment SIPs provide for the annual incremental emission reductions needed to ensure attainment of the NAAQS. The provisions in 40 CFR 51.1110 are organized by the following major subjects: Submission deadline for SIP revisions; RFP requirements for affected areas;<sup>11</sup> creditability of emission control

<sup>10</sup> Modeling guidance, tools, and supporting documents for SIP attainment demonstration are available at: [http://www3.epa.gov/scram001/guidance\\_sip.htm](http://www3.epa.gov/scram001/guidance_sip.htm).

<sup>11</sup> 40 CFR 51.1110(a)(2)–(4) establish three separate sets of RFP requirements for: (1) Areas

measures; creditability of out-of-area emissions reductions;<sup>12</sup> calculation of non-creditable emissions reductions; and baseline emission inventories for RFP plans. For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of the EPA's rationale and approach for how air agencies can provide for RFP in their nonattainment SIPs (80 FR 12271; March 6, 2015).

The EPA is proposing to retain the same RFP approach and requirements for the 2015 ozone NAAQS, except that they would also apply to areas with approved RFP plans for the 2008 ozone NAAQS, in addition to the 1-hour and 1997 standards. This proposed approach includes continuing to state that the baseline year for RFP should be the calendar year for the most recently available triennial emission inventory at the time ROP/RFP plans are developed (*e.g.*, 2017 for initial designations effective in 2018), but states may elect an earlier alternate year to be used to recognize investments in implementing early reductions to achieve improved air quality. We propose that states may use an alternate year (*i.e.*, other than 2017) between the year of the revised NAAQS issuance (2015) and the year in which nonattainment designation is effective. However, the EPA is inviting comment on an alternate approach of requiring that states use the year of the effective date of an area's designation as the baseline year for the emission inventory for the RFP requirements.

The EPA is proposing to codify our existing interpretation of statutory requirements for RFP MCD, which would be codified into specific provisions of the RFP requirements discussed here (*see* Section IV.C of this preamble).

*H. Requirements for RACT and RACM*

*1. RACT*

The EPA is proposing to retain its existing general RACT requirements, and to add new deadline requirements for certain RACT SIP revisions (*see* Section IV.D of this preamble). The general RACT requirements for the 2008 ozone NAAQS, which are codified in 40 CFR 51.1112(a) and (b), address the content and timing of RACT SIP

with an approved 1-hour or 1997 ozone NAAQS 15 percent VOC rate of progress (ROP) plan; (2) areas for which an approved 15 percent VOC ROP plan for the 1-hour or 1997 ozone NAAQS exists for only a portion of the area; and (3) areas without an approved 1-hour or 1997 ozone NAAQS 15 percent VOC ROP plan.

<sup>12</sup> Per 40 CFR 51.1110(a)(6), creditable emission reductions for fixed percentage reduction RFP must be obtained from sources within the nonattainment area.

submittals and implementation, and major source criteria for RACT applicability.<sup>13</sup> Underlying these general RACT requirements are well-established EPA policies and guidance, including existing control techniques guidelines (CTGs) and alternative control techniques (ACTs).<sup>14</sup> For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of the EPA's current rationale and approach for how air agencies can provide for RACT in their nonattainment SIPs (80 FR 12278; March 6, 2015). With the exception of new implementation deadlines for certain RACT SIP revisions (*see* Section IV.D of this preamble), the EPA is proposing to retain the same RACT requirements for the 2015 ozone NAAQS, based on the current rationale and approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule (80 FR 12278; March 6, 2015).

## 2. RACM

The EPA is proposing to retain its existing RACM requirements, and to clarify the requirement under CAA section 172(c)(6) that air agencies also consider the impacts of emissions from sources outside an ozone nonattainment area but within a state's boundaries, and to require such other measures for emissions reductions from these intrastate sources if needed to attain the ozone NAAQS by the applicable attainment date (*see* Section IV.E of this preamble). The general RACM requirements for the 2008 ozone NAAQS are codified in 40 CFR 51.1112(c). For reference, the final 2008 Ozone NAAQS SIP Requirements Rule describes the EPA's current rationale and approach for how air agencies can provide for RACM in their nonattainment SIPs (80 FR 12282; March 6, 2015). The EPA interprets the RACM provision to require a demonstration that an air agency has adopted all reasonable measures (including RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as

practicable and, thus, that no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area.<sup>15 16 17</sup> As the EPA has previously stated in the final 2008 Ozone NAAQS SIP Requirements Rule,<sup>18</sup> in determining the attainment date that is as expeditious as practicable, an air agency should consider impacts on the nonattainment area of intrastate transport of pollution from sources within its jurisdiction, and potential reasonable measures to reduce emissions from those sources. Further, the EPA requires that air agencies should consider all available measures, including those being implemented in other areas, but must adopt measures for an area only if those measures are economically and technologically feasible and will advance the attainment date or are necessary for RFP. The EPA is proposing to retain its existing general RACM requirements for the 2015 ozone NAAQS—including the requirement to consider measures that address intrastate transport—based on the current rationale and approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule, and the requirements of CAA section 172(c)(6).

The final 2008 Ozone NAAQS SIP Requirements Rule also recommended that if wildfire impacts are significant in an area and contribute to exceedances of the standard, then air agencies should consider RACM for wildfires (which could include the use of prescribed fires). As discussed in Section V.A of this preamble, the EPA is revising its recommendation, such that prescribed fire and related wildland management practices instead be addressed outside of the regulatory framework of nonattainment planning.

## I. CAA Section 182(f) NO<sub>x</sub> Exemption Provisions

The EPA is proposing to retain its existing CAA section 182(f) NO<sub>x</sub> exemption provisions, which are codified for the 2008 ozone NAAQS in 40 CFR 51.1113. These provisions allow a person or an air agency to petition the Administrator for an exemption from NO<sub>x</sub> obligations under CAA section 182(f) for any area designated nonattainment for the 2008 ozone standards and for any area in a CAA section 184 OTR. 40 CFR 51.1113(c) stipulates that NO<sub>x</sub> exemptions granted for previous 1-hour or 1997 ozone NAAQS do not relieve an area from CAA section 182(f) NO<sub>x</sub> obligations under the 2008 standards (*see* 80 FR 12294; March 6, 2015). The EPA is proposing to retain the same requirements for the 2015 ozone NAAQS, stipulating that NO<sub>x</sub> exemptions granted for any prior ozone NAAQS do not relieve an area from CAA section 182(f) NO<sub>x</sub> obligations under a specific revised ozone NAAQS. Consistent with current EPA policy, existing NO<sub>x</sub> waivers for the 2008 ozone standards would remain valid until area designations for the 2015 NAAQS become effective, and we encourage air agencies to consult the EPA's guidance on appropriate documentation for new waiver requests.<sup>19</sup>

## J. General Nonattainment NSR Requirements

With one significant exception, the EPA is proposing to retain its NNSR requirements contained at 40 CFR 51.165 and part 51 Appendix S, which contain provisions for the preconstruction review and issuance of permits to proposed new major stationary sources and major modifications locating in ozone nonattainment areas. The one exception pertains to a proposal to address IPT for ozone. As explained in Section IV.F of this preamble, the EPA is proposing to confirm its policy on ozone IPT, which is currently codified at 40 CFR 51.165(a)(11) and part 51 Appendix S, section IV.G.5, in response to a petition for reconsideration. A basic understanding about how the NNSR requirements would otherwise apply to the 2015 ozone NAAQS can be obtained from the preamble discussion at Section VIII.C in the final rule for the setting of

<sup>13</sup> The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (December 9, 1976, memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, "Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas" and also in 44 FR 53762; September 17, 1979). Availability and feasibility may differ across sources in the same category (June 19, 1985, memorandum from John Calcagni, Chief, Economic Analysis Branch, to G.T. Helms, "Criteria for Determining RACT in Region IV.").

<sup>14</sup> The EPA's CTGs and ACTs are available at: [https://www3.epa.gov/airtoxics/ctg\\_act.html](https://www3.epa.gov/airtoxics/ctg_act.html).

<sup>15</sup> "State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas" 44 FR 20375 (April 4, 1979). "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule." 57 FR 13560 (April 16, 1992).

<sup>16</sup> "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Available at: <http://www3.epa.gov/ttn/caaa/t1/memoranda/revracm.pdf>.

<sup>17</sup> Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: "Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs." Available at: [http://www3.epa.gov/ttn/caaa/t1/memoranda/121400\\_racmmemfin.pdf](http://www3.epa.gov/ttn/caaa/t1/memoranda/121400_racmmemfin.pdf).

<sup>18</sup> *See* the final SIP Requirements Rule for the 2008 ozone NAAQS (80 FR 12264, 12270; March 6, 2015).

<sup>19</sup> Memorandum dated January 14, 2005, "Guidance on Limiting Nitrogen Oxides (NO<sub>x</sub>) Requirements Related to 8-Hour Ozone Implementation" from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Air Directors, Regions I–X. Available at: <http://www3.epa.gov/ttn/caaa/t1/memoranda/guide8hr-oz.pdf>.

the 2015 Ozone NAAQS. *See* 80 FR 65442 (October 26, 2015).

The EPA proposes to codify NNSR requirements for the ozone NAAQS at 40 CFR 51.1314. These provisions would require that for each nonattainment area an air agency must submit an NNSR plan or plan revision for the 2015 ozone NAAQS no later than 36 months after the effective date of the area's nonattainment designation for the 2015 ozone NAAQS. As discussed in Section IV.B of this preamble, we are proposing two options for revoking the 2008 ozone NAAQS. The first approach to revoking the 2008 ozone NAAQS (option 1) would parallel the approach used in revoking the 1-hour and 1997 ozone NAAQS, and would require that a set of protective anti-backsliding requirements be promulgated for all areas that are designated nonattainment for both the 2008 NAAQS and the 2015 NAAQS. Under the second approach (option 2), the 2008 ozone NAAQS would not be revoked in any area designated nonattainment for the 2008 ozone NAAQS until that area is redesignated to attainment with an approved CAA section 175A 10-year maintenance plan; but in no case earlier than 1 year after the effective date of designation for the 2015 ozone NAAQS. If the EPA were to revoke the 2008 ozone NAAQS according to proposed option 1, the EPA is also proposing conforming changes to the existing anti-backsliding provisions at 40 CFR 51.165(a)(12) and part 51 Appendix S section VII. *See* Section IV.B of this preamble for a discussion of the conforming revisions to the anti-backsliding provisions addressing the proposed revocation of the 2008 ozone NAAQS under option 1.

#### K. Ambient Monitoring Requirements

The EPA is not proposing any changes to the existing ozone ambient monitoring requirements are codified in 40 CFR part 58. Monitoring rule amendments published on October 17, 2006, (71 FR 61236) established minimum ozone monitoring requirements based on population and levels of ozone in an area to better prioritize monitoring resources. The minimum monitoring requirements are contained in Table D-2 of appendix D to part 58. The Photochemical Assessment Monitoring Station (PAMS) program, required by CAA section 182(c)(1), collects enhanced ambient air measurements. The rulemaking for the final 2015 ozone NAAQS included revisions to the PAMS requirements (80 FR 65416; October 26, 2015). The revisions were intended to provide a more spatially dispersed network,

reduce potential redundancy, and improve data value while providing monitoring agencies flexibility in collecting additional information needed to understand their specific ozone issues.

#### L. Requirements for an OTR

The EPA is proposing to retain its existing OTR requirements, and to add new deadline requirements for certain RACT SIP revisions (*see* Section IV.D of this preamble). The OTR requirements for the 2008 ozone NAAQS, which are codified in 40 CFR 51.1116, establish the general applicability of CAA sections 176A (interstate transport commissions) and 184 (control of interstate ozone air pollution), and stipulate the criteria and timing for RACT SIP submittals and RACT implementation for those portions of states located in an OTR (*see* 80 FR 12295; March 6, 2015). With the exception of additional submission and implementation deadlines for certain RACT SIP revisions (*see* Section IV.D of this preamble), the EPA is proposing to retain the same requirements for the 2015 ozone NAAQS, without revision.

#### M. Fee Programs for Severe and Extreme Nonattainment Areas That Fail To Attain

The EPA is proposing to retain its existing fee program SIP submission requirements, which are codified for the 2008 ozone NAAQS in 40 CFR 51.1117, and apply to each area classified Severe or Extreme for that standard. Affected areas must submit a SIP revision that meets the requirements of CAA section 185 (Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain) within 10 years of the effective date of designation and classification as a Severe or Extreme area. The EPA is proposing to retain the same SIP submission requirements for the 2015 ozone NAAQS, without revision.

#### N. Applicability

The EPA is proposing to retain the provision that establishes applicability of the current ozone NAAQS implementation provisions, which is codified for the 2008 ozone NAAQS in 40 CFR 51.1119. The provision states that the current provisions (subpart AA of part 51) shall replace those for the previous 1997 standards (subpart X of part 51) after revocation of the 1997 NAAQS, except for anti-backsliding purposes. The EPA is proposing to retain the same requirements for the 2015 ozone NAAQS, except that the proposed new implementation provisions (to be codified in the new

subpart CC of part 51) would replace those for the 2008 ozone NAAQS (subpart AA) if the 2008 standards are revoked for all purposes, except for anti-backsliding purposes. The proposed revocation of, and anti-backsliding requirements for, the 2008 ozone NAAQS are discussed in Section IV.B of this preamble.

### IV. Provisions of the 2008 Ozone NAAQS Implementing Regulations To Be Retained With Specific Revisions

For purposes of the 2015 ozone NAAQS, we are proposing to promulgate some provisions that are similar to those for the 2008 ozone NAAQS, but with minor modifications to reflect application to the 2015 ozone NAAQS, as explained later. The existing classification and SIP requirement provisions for the 2008 standards, and revocation of the 1997 standards are codified at subpart AA of 40 CFR part 51, and the corresponding provisions for the 2015 standards would be codified at the new subpart CC of part 51. These proposed revisions reflect classification thresholds and attainment deadlines relevant to the 2015 ozone standards; MCD for RFP; submission and implementation deadlines for RACT SIP revisions; the consideration of intrastate pollution sources outside of a nonattainment area for attainment planning; NNSR IPT for ozone; emissions inventories and emissions statements; and revoking the 2008 standards. The EPA welcomes comment on the following proposed provisions.

#### A. Application of Classification and Attainment Date Provisions in CAA Section 181 to Areas Subject to Subpart 2 of Part D of Title I of the CAA

##### 1. Background and Summary of Proposal

The EPA is proposing thresholds for classifying nonattainment areas for the 2015 ozone NAAQS, and is proposing the timing of attainment dates for each classification. We are also proposing to grant voluntary reclassification to six California areas designated as nonattainment for the 1997 ozone NAAQS that were voluntarily reclassified under that NAAQS and the subsequent 2008 ozone standards. Each area designated as nonattainment for the 2015 ozone NAAQS will be classified at the same time as the area is designated by the EPA. Accordingly, the EPA intends to finalize classification thresholds on or before the date that it issues area designations.



## 2. Initial Area Designations for the 2015 Ozone NAAQS

After promulgating a new or revised NAAQS, the EPA considers air agencies' recommendations for initial area designations (*i.e.*, as nonattainment, attainment, or unclassifiable). Area designations establish which areas are meeting the NAAQS (attainment) and which areas are not meeting the NAAQS (nonattainment), and the boundaries for those areas. Areas designated unclassifiable cannot be classified as meeting or not meeting the NAAQS based on available information. Based on the schedule provided in section 107(d) of the CAA, states are required to submit designation recommendations for every area in the state to the EPA by no later than October 1, 2016, which is 1 year after the promulgation date of the 2015 ozone NAAQS.<sup>20</sup> In the event that the EPA intends to modify an air agency's recommendation, the EPA will notify the air agency no less than 120 days prior to issuing designations.<sup>21</sup> The CAA requires the EPA to promulgate designations no later than 2 years after the October 1, 2015, promulgation of the revised ozone NAAQS. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.

## 3. Nonattainment Area Classifications

In accordance with CAA section 181(a)(1), each area designated as nonattainment for the 2015 ozone NAAQS will be classified at the time of designation. The planning and emission reduction requirements as well as the maximum attainment date for each area are based on that area's classification.

Under Subpart 2 of part D of title I of the CAA, state planning and emissions control requirements for ozone are determined, in part, by a nonattainment area's classification. These requirements apply in addition to the general SIP planning requirements applicable to all nonattainment areas under subpart 1 of part D. Under CAA subpart 2, ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's "design value," (DV)).<sup>22</sup> Nonattainment areas

with a "lower" classification have ozone levels that are closer to the standard than areas with a "higher" classification. Subpart 2 provides an increasing amount of maximum time from the date of designation to attain the standards for the progressively higher classifications: Marginal (3 years), Moderate (6 years), Serious (9 years), Severe-15 (15 years), Severe-17 (17 years) and Extreme (20 years).

Air agencies with areas in the lower classification levels have fewer mandatory air quality planning and control requirements than those in higher classifications. For instance, air agencies with a Marginal area are only required to adopt an emissions statement rule for major stationary sources, submit a base year emissions inventory, follow the general and transportation conformity requirements in CAA section 176(c), and implement a nonattainment area preconstruction permit program (NNSR). Air agencies with a Moderate area are subject to the Marginal area requirements; in addition air agencies must submit a SIP revision that provides for a 15 percent emissions reduction from the RFP baseline year within 6 years after the baseline year, and a demonstration that the area will attain as expeditiously as practicable, but not later than 6 years after designation. Air agencies with a Moderate area must also adopt (and submit for EPA approval) certain emissions control requirements, such as RACT, a basic vehicle I/M program if the area meets the applicable population thresholds, and provisions for increased offsets for new or modified sources under the state's NNSR program. The higher classifications similarly require additional emissions control programs and stricter NNSR requirements beyond those required for a Moderate area. In addition, the major source threshold for permitting, RACT and emissions reporting decreases progressively from 100 tons per year (tpy) for Marginal areas to 10 tpy for Extreme areas.

## 4. Proposed Classification Thresholds

*a. Background.* The CAA was amended in 1990 to add specific provisions that apply to ozone nonattainment areas. These include timelines for both planning and implementation, and requirements for specific programs to reduce emissions that vary based on an area's classification. The ozone standard in effect at the time of the 1990 CAA

highest daily maximum 8-hour average ozone concentration for a specific monitor. When an area has multiple monitors, the area's DV is determined by the individual monitor with the highest DV.

amendments was a 1-hour exceedance-based standard of 0.12 ppm.<sup>23</sup> Accordingly, the classification provisions in Table 1 in section 181 of subpart 2 of the CAA (also referred to herein as the "subpart 2 classification table") are specific to that 1-hour standard. In 1997, the EPA revised both the form and level of the ozone NAAQS to a 3-year average of annual fourth highest daily maximum 8-hour averages.<sup>24</sup> In a subsequent rulemaking, the EPA adapted the CAA's 1-hour classification thresholds to the new 8-hour standard<sup>25</sup> and used the new 8-hour threshold values to classify certain areas designated nonattainment for the 1997 8-hour NAAQS. We translated the classification thresholds in the subpart 2 classification table from 1-hour DVs to 8-hour DVs based on the percentage by which each classification threshold in the table exceeds the 1-hour ozone NAAQS. We noted that these percentages, as established by Congress in 1990, set the classification thresholds at certain percentages or fractions above the level of the standard.<sup>26</sup> The EPA refers to this method as the "percent-above-the-standard" method. This approach for translating the CAA's 1-hour threshold values to 8-hour threshold values was challenged in litigation and was upheld by the Court. *See South Coast Air Quality Management District v. Environmental Protection Agency*, 472 F.3d at 896–898. After analyzing various alternative options for establishing classification thresholds, the EPA retained the "percent-above-the-standard" approach in its final implementing regulations for the 2008 ozone NAAQS.<sup>27</sup>

*b. Proposed classification threshold method.* In this action, we are proposing to use the same "percent-above-the-standard" methodology as was used for establishing thresholds for classifications for the 1997 and 2008 8-hour ozone standards. The percent-above-the-standard method is a simple and straightforward method for establishing classification thresholds that is based on principles inherent in

<sup>23</sup> For additional discussion on the 1-hour ozone NAAQS and its associated area designations and classifications, *see* 56 FR 56695 (November 6, 1991).

<sup>24</sup> *See* 40 CFR Appendix I.

<sup>25</sup> Referred to as the Phase 1 Rule, *see* 69 FR 23956 to 23966 and part 51, subpart X at 51.903.

<sup>26</sup> The upper thresholds of the Marginal, Moderate, Serious and Severe classifications are precise percentages or fractions above the level of the standard, namely 15 percent (3/20ths more than the standard), 33.33 percent (one-third more than the standard), 50 percent (one-half more than the standard), and 133.3 percent (one and one-third more than the standard).

<sup>27</sup> *See* 77 FR 30162 to 30164 (May 21, 2012).

<sup>20</sup> Area designations guidance for the 2015 ozone NAAQS available at: <https://www.epa.gov/ozone-designations/epa-guidance-area-designations-2015-ozone-naaqs>.

<sup>21</sup> While CAA section 107, which governs the process for initial area designations, specifically addresses states, the EPA intends to follow the same process for tribes to the extent practicable, pursuant to section 301(d) of the CAA regarding tribal authority and the Tribal Authority Rule (TAR) (63 FR 7254; February 12, 1998).

<sup>22</sup> The air quality DV for the 8-hour ozone NAAQS is the 3-year average of the annual fourth



the subpart 2 classification table itself. The principles include the following:

- Areas are grouped by the severity of their air quality problem as characterized by the degree of nonattainment based on their DV.
- Classification would occur “by operation of law” without relying on the EPA exercising discretion for individual situations.<sup>28</sup>
- Classification thresholds are derived from the structure or logic of the CAA’s nonattainment area planning and control requirements, including the subpart 2 classification table, and consistent with the overall goal of subpart 2 of attaining the standards as expeditiously as practicable. At the same time, the CAA provides

mechanisms for voluntary and mandatory reclassification to a higher classification, in the event that the initial maximum attainment date for an area is determined to be insufficient to achieve the standards.

In developing its proposed Classifications Rule for the 2008 ozone standards, the EPA evaluated other options for classifying ozone nonattainment areas but did not find them to be a more reasonable interpretation of the Act’s classification provisions, and did not propose or solicit comment on them in the rule.<sup>29</sup>

Under the proposed percent-above-the-standard method, the classification thresholds in the subpart 2 classification table would be translated into a

corresponding set of 8-hour DVs that are the same percentages above the 2015 ozone NAAQS as the DV levels in the subpart 2 classification table are above the 1-hour ozone NAAQS. For example, the threshold separating the Marginal and Moderate classifications in the subpart 2 classification table (0.138 ppm) is 15 percent above the 1-hour ozone NAAQS (0.12 ppm). Thus, under this approach, the threshold separating the Marginal and Moderate classifications for the 2015 ozone NAAQS would be 0.070 ppm plus 15 percent, or 0.081 ppm. Table 1 depicts this proposed translation for classifications as it would apply for the 2015 ozone NAAQS.

TABLE 1—SUBPART 2 1-HOUR OZONE DESIGN VALUE CLASSIFICATION TABLE TRANSLATION TO 8-HOUR DESIGN VALUES FOR THE 2015 OZONE NAAQS OF 0.070 PPM

Area class		1-Hour design value (ppm)	Percent above 1-hour ozone NAAQS	8-hour ozone design value (ppm)
Marginal .....	From up to <sup>a</sup> .....	0.121	0.833	0.071
		0.138	15	0.081
Moderate .....	From up to <sup>a</sup> .....	0.138	15	0.081
		0.160	33.333	0.093
Serious .....	From up to <sup>a</sup> .....	0.160	33.333	0.093
		0.180	50	0.105
Severe-15 .....	From up to <sup>a</sup> .....	0.180	50	0.105
		0.190	58.333	0.111
Severe-17 .....	From up to <sup>a</sup> .....	0.190	58.333	0.111
		0.280	133.333	0.163
Extreme .....	Equal to or above .....	0.280	133.333	0.163

<sup>a</sup> But not including.

Based on our analysis of air quality information from 2013–2015, we estimate that approximately 57 “hypothetical nonattainment areas” had ambient ozone concentrations exceeding the 2015 ozone NAAQS. We use these 57 “hypothetical nonattainment areas” for purposes of the following discussion. These hypothetical areas are intended to illustrate the potential distribution of areas into the proposed classifications. The actual number of total nonattainment areas, boundaries of those areas, and the classification of each area will depend on decisions made in the separate designations process under CAA section 107(d) and we anticipate that these decisions will be based on air quality information from 2014–2016. Applying the proposed thresholds in Table 1, the 57 hypothetical nonattainment areas based on 2013–2015 air quality data would yield the distribution in each classification as shown in Table 2.

TABLE 2—NUMBER OF HYPOTHETICAL NONATTAINMENT AREAS IN EACH CLASSIFICATION UNDER THE 2015 OZONE NAAQS: PERCENT-ABOVE-THE-STANDARD METHOD

Area classification	2015 Ozone NAAQS (hypothetical areas) <sup>a</sup>
Marginal .....	47
Moderate .....	7
Serious .....	3
Severe-15 .....	0
Severe-17 .....	0
Extreme .....	0
Total .....	57

<sup>a</sup> Hypothetical nonattainment area classifications do not reflect potential voluntary reclassifications of the California areas discussed in Section IV.A.5 of the preamble.

The proposed classification method results in the vast majority of nonattainment areas being classified

Marginal. It is possible that a few areas would have a later maximum statutory attainment date for their existing classification under the 2008 ozone NAAQS than they would have for their new classification under the 2015 NAAQS. For example, an area that would be classified Moderate if designated in 2017 for the more stringent 2015 ozone NAAQS (with a potential maximum statutory attainment date in 2023), may currently be classified Severe for the less-stringent 2008 ozone NAAQS (which has a later maximum statutory attainment date in 2027).<sup>30</sup> This issue also arose under the previously promulgated 8-hour classification threshold structure for the 2008 NAAQS. See Section IV.A.5 of this preamble for additional details on how the EPA intends to address previous voluntary reclassifications under the 2015 ozone NAAQS.

For areas likely to be classified Marginal with a 3-year attainment date

<sup>28</sup> Prior to any application of the 5 percent adjustment provision under CAA section 181(a)(4) which may occur in the 90-day period following initial designations and classifications). See Section IV.A.5 of this preamble for details on how the EPA proposes to interpret previous voluntary

reclassification requests for the 1997 ozone NAAQS under the 2015 ozone NAAQS.

<sup>29</sup> Docket #EPA-HQ-OAR-2010-0885 includes a background information document prepared for the proposed rule titled, Additional Options Considered for Classification of Nonattainment

Areas under the Proposed 2008 Ozone NAAQS (January 2012).

<sup>30</sup> As indicated elsewhere in this preamble, the CAA requires the EPA to designate areas for the 2015 standard by October 1, 2017. Thus, a 6-year attainment deadline would be in 2023.

(e.g., in 2020), a number of federal and state emission reduction programs have already been adopted that are expected to provide reductions of ozone precursor emissions, both within and upwind of the ozone nonattainment areas, lowering peak ozone concentrations by the attainment date. Such programs include more stringent emission standards for on-road and nonroad vehicles and equipment (with associated fleet turnover), regional reductions in power plant emissions to address interstate transport, and future programs to reduce VOC emissions from oil and gas sources.

#### 5. Reclassification of Nonattainment Areas That Have Voluntarily Requested Higher Classifications

The CAA provides three mechanisms for addressing nonattainment areas that may not be able to attain by the attainment date appropriate to their classification. First, CAA section 181(a)(4) provides that within 90 days of designation and classification, the Administrator may exercise discretion

to reclassify an area to a higher (or lower) classification if its DV is within 5 percent of the DV range of the higher (or lower) classification.<sup>31</sup> Any air agency interested in taking advantage of this flexibility should submit a request to the EPA in sufficient time for the Administrator to make a determination within the 90 days provided.

The second mechanism, provided in CAA section 181(b)(2), requires that an area be reclassified to a higher classification (*i.e.*, “bumped-up”) if the EPA determines that the area has failed to attain the standard by the applicable attainment date.

The third mechanism, provided in CAA section 181(b)(3), allows an air agency to voluntarily request that the EPA reclassify the area to a higher classification. The EPA must approve any such requests. Once an area is reclassified to a higher classification, it becomes subject to the associated additional planning and control requirements for that higher classification, and must attain the standard no later than the maximum

attainment date for that classification. Six nonattainment areas in California were granted voluntary reclassifications for both the 1997 and 2008 ozone standards (77 FR 30165; May 21, 2012).

The EPA is again proposing to apply a previous voluntary reclassification for areas in California to the more stringent 2015 ozone standards unless the state of California explicitly requests otherwise in their comments to this proposed action.<sup>32</sup> These areas are listed in Table 3. We believe this is an appropriate mechanism to address the situation for these California areas that were voluntarily reclassified for the 1997 ozone NAAQS and previously used this mechanism for the 2008 ozone NAAQS to ensure the areas would have an attainment date for the more stringent 2015 ozone NAAQS that is no earlier than the area's attainment date for the less stringent 2008 NAAQS. The EPA is proposing this approach in order to minimize burden on the state of California and obviate the need to go through the voluntary reclassification process again.

**TABLE 3—AREAS FOR WHICH THE STATE OF CALIFORNIA REQUESTED A VOLUNTARY RECLASSIFICATION UNDER THE 1997 NAAQS**

Nonattainment area	Original 1997 ozone NAAQS classification (attainment date)	Voluntary reclassification for 1997 ozone NAAQS (attainment date)	Voluntary reclassification for 2008 ozone NAAQS (attainment date)	Hypothetical initial classification under 2015 ozone NAAQS <sup>a</sup> (attainment date)	Potential voluntary reclassification under 2015 ozone NAAQS <sup>a</sup> (attainment date)
Los Angeles-South Coast Air Basin.	Severe-17 (2021) .....	Extreme (2024) .....	Extreme (2032) .....	Serious (2026) .....	Extreme (2037).
San Joaquin Valley ....	Serious (2013) .....	Extreme (2024) .....	Extreme (2032) .....	Serious (2026) .....	Extreme (2037).
Riverside County (Coachella Valley).	Serious (2013) .....	Severe-15 (2019) .....	Severe-15 (2027) .....	Moderate (2023) .....	Severe-15 (2032).
Sacramento Metro ....	Serious (2013) .....	Severe (2019) .....	Severe-15 (2027) .....	Moderate (2023) .....	Severe-15 (2032).
Ventura County .....	Moderate (2010) .....	Serious (2013) .....	Serious (2021) .....	Marginal (2020) .....	Serious (2026).
Western Mojave .....	Moderate (2010) .....	Severe-15 (2019) .....	Severe-15 (2027) .....	Moderate (2023) .....	Severe-15 (2032).

<sup>a</sup>Based on thresholds proposed in this notice and final 2013–2015 design values.

It is important to note that an air agency may request a voluntary reclassification for an area under CAA section 181(b)(3) at any time. If the air agency wants a specific higher classification to apply to an area at the time of initial designation, the EPA encourages the air agency to make such a request prior to or contemporaneous with the designation process.

#### 6. Attainment Dates for Nonattainment Areas in Each Classification of the 2015 ozone NAAQS

The EPA is proposing to retain its current approach in establishing

attainment dates for each nonattainment area classification, which run from the effective date of designation. This approach is codified at 40 CFR 51.1103 for the 2008 ozone NAAQS, and we are proposing to retain the same approach for the 2015 ozone NAAQS without revision.

In the implementing regulations for the 1997 ozone NAAQS, the EPA interpreted these timeframes to run from the date that area designations and nonattainment classifications (by operation of law) became effective (64 FR 23954; April 30, 2004). We adopted an alternative approach in the

classification regulations for the 2008 ozone standards, where the attainment dates would be December 31 of the year that is the specified number of years in the subpart 2 classification table after designation (77 FR 30166; May 21, 2012). The end of calendar year attainment date was challenged in *NRDC v. EPA*, 777 F.3d 456 (D.C. Cir. 2014). On December 23, 2014, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion holding that the EPA's decision to run the attainment periods to the end of the calendar year in which areas were designated was unreasonable. While

<sup>31</sup> Because most areas would be expected to be classified Marginal (*i.e.*, the lowest classification) and the few areas that would be classified in higher classifications are likely to be challenged to attain

by the attainment date for the classification it receives at the time of designation, we do not anticipate receiving requests to reclassify an area to a lower classification.

<sup>32</sup> Areas for which California declines voluntary reclassification would be classified at the time of designation for the 2015 ozone NAAQS based on their DV.

recognizing that there is a “gap” in the statute since the CAA runs the attainment periods from the date of enactment of the CAA Amendments of 1990, the Court concluded that nothing in the statute or congressional intent authorized the EPA to establish the attainment dates for designated ozone nonattainment areas as December 31st of the relevant calendar years, but rather that Congress’s decision to run the “. . . attainment periods starting from the designation date” for the ozone standard existing at the time of the 1990 CAA amendments “strongly suggests that the same trigger date should apply when adapting [applicable attainment dates] to the analogous situation of a revised NAAQS.” 777 F.3d at 466. The EPA subsequently revised its regulations for the 2008 ozone NAAQS to follow the same approach used for the 1997 ozone NAAQS, and this is codified at 40 CFR 51.1103.

Consistent with the regulatory approach for both the 1997 and 2008 ozone NAAQS, we are proposing that the maximum attainment dates for nonattainment areas in each classification under the 2015 NAAQS are as follows: Marginal—3 years from effective date of designation; Moderate—6 years from effective date of designation; Serious—9 years from effective date of designation; Severe—15 years (or 17 years) from effective date of designation; and Extreme—20 years from effective date of designation.

#### *B. Transition From the 2008 Ozone NAAQS to the 2015 Ozone NAAQS and Anti-Backsliding Requirements*

##### 1. Background and Summary of Proposal

The EPA is proposing and seeking comment on two alternative approaches for revoking the 2008 ozone NAAQS and is also seeking comment on whether to revoke the NAAQS at the current time. The first approach to revoking the 2008 ozone NAAQS would parallel the approach used in revoking the 1-hour and 1997 ozone NAAQS. Under this first approach, the 2008 ozone NAAQS would be revoked at essentially the same time for all areas of the U.S., and a set of protective anti-backsliding requirements would be promulgated for all areas that are designated nonattainment for the 2008 and 2015 NAAQS as of one year after the effective date of designation for the 2015 ozone NAAQS. Under the second approach, the 2008 ozone NAAQS would continue to apply in any area designated nonattainment for the 2008 ozone NAAQS until that area is redesignated to attainment with an approved CAA

section 175A 10-year maintenance plan; but in no case earlier than 1 year after the effective date of designation for the 2015 ozone NAAQS. The 2008 ozone NAAQS would be revoked in all other areas 1 year after the effective date of designation for the 2015 ozone NAAQS.

##### 2. Rationale and Authority

The EPA believes that both of the proposed options to revoke the 2008 ozone NAAQS are consistent with the CAA and previous precedent in transitioning from a previous NAAQS to a new, more stringent NAAQS, and would help ensure that areas designated attainment for the revoked NAAQS continue to attain the revoked NAAQS into the future.

*a. Option 1: Revoke the 2008 ozone NAAQS for all purposes in each area 1 year after the effective date of the designation for the 2015 ozone NAAQS.* The EPA’s first proposed option would revoke the 2008 ozone NAAQS for all purposes 1 year following the effective date of the designations for the 2015 ozone standard. The EPA interprets the CAA such that revoking the 2008 ozone NAAQS in an area would require appropriate anti-backsliding measures. Therefore, the EPA is proposing that anti-backsliding provisions would apply to an area in accordance with its designation and its classification for the 2008 (and, if applicable, 1997 and 1-hour) ozone NAAQS as of the effective date of the revocation of the 2008 ozone NAAQS (a more detailed discussion of EPA’s proposed approach to anti-backsliding is provided in Section IV.B.4 of this preamble). Upon revocation of the 2008 NAAQS, the areas that had been initially designated or subsequently redesignated to attainment for the 2008 NAAQS prior to its revocation would be subject only to the general protections of CAA sections 110(l) and 193, whereas areas designated nonattainment for the 2008 NAAQS would also be subject to an extensive set of regulatory anti-backsliding provisions promulgated in accordance with the principles of CAA section 172(e). This approach is consistent with the EPA’s established practice in transitioning from prior to current ozone NAAQS.

After revocation of the 2008 ozone NAAQS, the designations (and the classifications associated with those designations) for that NAAQS would no longer be in effect. However, the EPA would retain the listing of the designated nonattainment areas and their associated classifications for the revoked 2008 ozone NAAQS in 40 CFR part 81, for the sole purpose of identifying the anti-backsliding

requirements that may apply to the areas at the time of revocation. Accordingly, such references to historical designations for the revoked NAAQS should not be viewed as current designations under CAA section 107(d).

The EPA believes it would be appropriate to revoke, rather than retain, the 2008 ozone NAAQS for all purposes because it would ensure that only one ozone NAAQS—in this case the more protective 2015 ozone NAAQS—would directly apply in an area, rather than having a situation in which two standards would apply concurrently. The EPA believes that the permanent retention of two standards, differing only in the ozone concentrations they allow, could result in unnecessarily complex implementation procedures<sup>33</sup> and is not necessary to provide for timely attainment of the more stringent NAAQS. The EPA’s reason for establishing the new standards of 0.070 ppm as requisite to protect public health and welfare was its conclusion that the old standard of 0.075 ppm was not adequate. Revoking (with appropriate anti-backsliding measures) rather than retaining the 2008 ozone NAAQS would facilitate a more seamless transition to demonstrating compliance with the more health and welfare protective 2015 ozone NAAQS, and would ensure an efficient use of state and local resources in working toward attainment of that standard. Moreover, we believe that by requiring adequate anti-backsliding measures we will ensure continued momentum in air agencies’ efforts toward achieving clean air.

The D.C. Circuit held that the EPA had authority to revoke the one-hour NAAQS so long as it introduced adequate anti-backsliding measures. *South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882, 899 (D.C. Cir. 2006). The EPA is proposing to follow the same approach here as was upheld by the D.C. Circuit by requiring adequate anti-backsliding measures, as discussed in this section of the preamble.

*b. Option 2: Revoke the 2008 ozone NAAQS for all purposes in an area only when designated attainment for that NAAQS, no sooner than 1 year after the effective date of the designations for the 2015 ozone NAAQS.* Under this option, the EPA would not revoke the 2008 ozone NAAQS in any area that is designated nonattainment for that NAAQS. For areas designated attainment or unclassifiable for the 2008

<sup>33</sup> For example, if an area’s boundaries for two ozone NAAQS differ from one another the same test of conformity cannot be used for both ozone NAAQS (see 77 FR 30168; May 21, 2012).

NAAQS on the effective date of designations for the 2015 ozone NAAQS, the 2008 ozone NAAQS would be revoked 1 year after the effective date of the 2015 NAAQS designation for that area. For nonattainment areas that are subsequently redesignated attainment (maintenance) for the 2008 ozone NAAQS, the 2008 ozone NAAQS would be revoked upon designation, but in no case sooner than 1 year after the effective date of the designation for the 2015 ozone NAAQS for the area. This proposed approach follows the approach established in revocation of the 1997 primary annual particulate matter (PM<sub>2.5</sub>) NAAQS (*see* 81 FR 58142, August 24, 2016). This option is also consistent with the approach established for the transition from the prior lead and sulfur dioxide (SO<sub>2</sub>) NAAQS to the current lead and SO<sub>2</sub> NAAQS (*see* 73 FR 67043, November 12, 2008; and 75 FR 35581, June 22, 2010, respectively).

Under this proposed approach, areas that are designated nonattainment for the 2008 ozone NAAQS at the time initial area designations are completed for the 2015 NAAQS would be required to continue to meet all applicable implementation requirements for the 2008 NAAQS in those areas, and would continue to seek redesignation to attainment for the 2008 ozone NAAQS when the areas meet the conditions necessary for redesignation. While such an area remains designated nonattainment for the 2008 ozone NAAQS, transportation and general conformity would continue to apply and the EPA would continue to reclassify areas as provided in CAA section 181(b)(2). Further, the designations for the 2008 ozone NAAQS would no longer be in effect in areas where the NAAQS has been revoked, and the sole designations that would remain in effect would be those for the 2015 ozone NAAQS. Transportation and general conformity requirements for the 2008 ozone NAAQS would no longer apply in the areas where that NAAQS has been revoked.

The EPA notes that under proposed option 2, it is unnecessary to propose a specific set of additional anti-backsliding requirements for the 2008 ozone NAAQS, since option 2 would only revoke this NAAQS in areas initially designated or redesignated attainment for the 2008 NAAQS. Special additional anti-backsliding requirements are not necessary for areas that have attained the 2008 NAAQS. In areas that have been redesignated to attainment for the 2008 ozone NAAQS while that NAAQS is in effect, states have fulfilled all applicable attainment

and maintenance plan requirements for that NAAQS, including applicable anti-backsliding requirements for the prior revoked 1997 and 1-hour ozone NAAQS. The area, therefore, is not subject to any specific additional anti-backsliding requirements for the revoked 2008 ozone NAAQS. These areas are required instead to implement their approved CAA section 175A maintenance plan for the 2008 ozone NAAQS and, if designated attainment for the 2008 ozone NAAQS implement a Prevention of Significant Deterioration (PSD) program for this NAAQS. Revisions to the approved maintenance plan for such an area can only be made subject to the CAA's provisions in sections 110(l) and 193, which prevent changes to SIPs if such changes would interfere with attainment and maintenance of the more current 2015 ozone NAAQS.

### 3. Effective Date of the Revocation of the 2008 Ozone NAAQS

Under either option 1 or 2 outlined earlier, the EPA is proposing to revoke the 2008 ozone NAAQS no sooner than one year after the effective date of an area's final designation for the 2015 ozone standards.<sup>34</sup> The proposed timeline for revocation of the standard under either option 1 or 2 outlined earlier is intended to ensure that there is no period during which conformity does not apply in areas that are nonattainment or maintenance for the 2008 ozone NAAQS and that are designated nonattainment for the 2015 ozone NAAQS, and that nonattainment areas for the 2015 ozone NAAQS do not have to perform transportation conformity analyses for both the prior and current ozone standards at the same time.<sup>35</sup> As an example, areas designated

<sup>34</sup> The 2008 Ozone NAAQS SIP Requirements Rule revoked the 1997 ozone standards upon the effective date of that final rule (April 6, 2015), which was 30 days after its publication in the *Federal Register* (80 FR 12296; March 6, 2015). The EPA deemed this approach appropriate because the final SIP requirements rule was being issued more than a year after the effective date of final area designations (July 20, 2012) for the 2008 ozone standards (77 FR 30160; May 21, 2012), an atypical sequence that is not expected to apply in this case.

<sup>35</sup> The EPA believes that these concerns are relevant for either proposed option 1 or option 2, and therefore proposes the same timeline for revocation for either option. Under option 2, the motivation of ensuring that areas do not have to perform transportation conformity analyses for both the prior and current ozone standards at the same time would only be relevant for 2015 ozone NAAQS nonattainment areas that are maintenance areas for the 2008 ozone NAAQS at the time of the initial revocation. Areas that remain designated nonattainment for the 2008 ozone NAAQS at the time of the initial revocation are required to continue to make transportation conformity determinations until they are redesignated to

nonattainment for the first time for the 2015 ozone NAAQS would have a 1-year grace period before transportation conformity applies for those standards. This 1-year grace period before transportation conformity is required would apply to all areas designated nonattainment for the 2015 standards, regardless of their 2008 NAAQS designation status. Transportation conformity for the 2008 standards would, therefore, no longer apply 1 year following the effective date of the 2015 ozone NAAQS designations (*i.e.*, when the 2008 standards are revoked in eligible areas). However, transportation conformity obligations for the 2008 ozone standards would remain applicable during the grace period and would not be affected by the designation of areas for the 2015 NAAQS. Our proposed approach further supports air quality planning in allowing areas to be redesignated to attainment or reclassified to a higher classification until the 2008 ozone NAAQS is revoked.

If the 2008 ozone NAAQS are revoked in an area in a manner consistent with the EPA's first proposed option, the anti-backsliding requirements for those NAAQS would become applicable. The extent of continued implementation efforts for revoked standards derives from administration of anti-backsliding requirements (if any) for the revoked standards. After the 2008 ozone NAAQS is revoked for an area, the EPA will no longer take action to reclassify or to redesignate that area for that NAAQS. Further, the designations for the 2008 ozone NAAQS would be no longer be in effect in such areas, and the sole designations that would remain in effect would be those for the 2015 ozone NAAQS. However, under option 1, the EPA would retain the listing of the designated areas and the associated nonattainment classifications for the revoked 2008 ozone NAAQS in 40 CFR part 81, for the sole purpose of identifying the anti-backsliding requirements that may apply to the areas as of the effective date of the revocation. Such references to historical designations for the revoked standards would not be current designations under CAA section 107(d) and should not be viewed as such. If the EPA finalizes the option 2 approach to revocation of the 2008 ozone NAAQS, the EPA would continue to redesignate areas for the 2008 ozone NAAQS after the initial revocation occurs 1 year after the effective date of designations for the 2015 ozone NAAQS. For any area

attainment for that NAAQS regardless of their designation status for the 2015 ozone NAAQS.

redesignated more than 1 year after the effective date of designations for the 2015 ozone NAAQS, the 2008 ozone NAAQS would be revoked on the effective date of the redesignation to attainment for the 2008 ozone NAAQS.

#### 4. Anti-Backsliding Requirements

“Anti-backsliding” provisions are designed to ensure that for existing ozone nonattainment areas that are designated nonattainment for the revised and more stringent ozone NAAQS, there is protection against degradation of air quality (e.g., the areas do not “backslide”), the areas continue to make progress toward attainment of the new, more stringent NAAQS, and there is consistency with the ozone NAAQS implementation framework outlined in subpart 2 of Part D of the CAA.

Where a NAAQS is relaxed, CAA section 172(e) requires EPA to promulgate regulations that impose on areas, which have not attained a NAAQS prior to a relaxation, controls that are at least as stringent as the controls applicable in nonattainment areas prior to any such relaxation. Such controls are often referred to as “anti-backsliding requirements.” Because the CAA does not speak to what to do where a NAAQS is strengthened, the EPA has historically concluded, and proposes to do so again here, that it is reasonable to look to the principles set forth in CAA section 172 to impose anti-backsliding requirements for purposes of transitioning to a more stringent NAAQS. See 69 FR 23951, 23972 (April 30, 2004); 80 FR 12264, 12297–98 (March 6, 2015). The D.C. Circuit has upheld the EPA’s authority to revoke a superseded NAAQS in its entirety where adequate anti-backsliding measures are retained under the principles of CAA section 7502(e). *South Coast Air Qual. Mgmt. Dist. v. EPA*, 472 F.3d 882, 899 (D.C. Cir. 2006).

Under option 1, the EPA is proposing to retain, for purposes of the transition from the 2008 to the 2015 ozone NAAQS, the existing approach to establishing anti-backsliding requirements. The proposed subpart CC, 40 CFR 51.1300 *et seq.*, provides the set of anti-backsliding requirements that would apply following revocation of the 2008 ozone NAAQS along with the use of the latest approved or adequate motor vehicle emission budgets for a prior ozone NAAQS (i.e., the 2008, 1997 or the 1-hour ozone NAAQS) at 40 CFR 93.109(c)(2) as part of transportation conformity determinations in nonattainment areas for the 2015 NAAQS until 2015 ozone motor vehicle

emissions budgets are available.<sup>36</sup> For reference, the final 2008 Ozone NAAQS SIP Requirements Rule provides an extensive discussion of the EPA’s approach and rationale for establishing anti-backsliding requirements consistent with the first proposed revocation option in this proposal (option 1) (80 FR 12296–12308; March 6, 2015). The EPA is proposing a second approach (option 2) to revoking the 2008 ozone NAAQS that would not require the same extensive set of anti-backsliding requirements. This co-proposal and associated anti-backsliding approach are discussed previously in this section of the preamble.

The following sections discuss the applicable anti-backsliding requirements and how they apply to areas with various designations and classifications for the 2015 standards, the 2008 standards that we are proposing to revoke, and the already revoked 1997 and 1-hour ozone NAAQS. Our proposed approach for revoking the 2008 ozone NAAQS is discussed in Section IV.B of this preamble.

*a. Applicable requirements for anti-backsliding purposes following the revocation of the 2008 ozone NAAQS.* As discussed in more detail in Section IV.B of this preamble, the EPA is proposing and seeking comment on two options for revoking the 2008 ozone NAAQS. As explained in that section, under proposed option 2, it is unnecessary to propose specific new anti-backsliding requirements for the 2008 ozone NAAQS, since option 2 would only revoke this NAAQS in attainment areas. Therefore, the following section would only apply if EPA were to finalize option 1 for revocation of the 2008 ozone standard. For purposes of the revoked 2008 ozone NAAQS if option 1 were to be finalized, the EPA is proposing to retain the same set of anti-backsliding requirements that currently apply for purposes of the revoked 1997 ozone NAAQS, without revision.

For the revoked 2008 ozone NAAQS, the potentially applicable requirements for an area for anti-backsliding purposes would be identical to the requirements

currently codified at 40 CFR 51.1100(o). These requirements include: (1) RACT; (2) Vehicle I/M programs; (3) Major source applicability cut-offs for purposes of RACT; (4) ROP and/or RFP reductions and associated MCDs; (5) the Clean Fuel Fleet program under section 183(c)(4) of the CAA; (6) Clean fuels for boilers under section 182(e)(3) of the CAA; (7) Transportation control measures during heavy traffic hours as provided under section 182(e)(4) of the CAA; (8) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA; (9) Transportation controls under section 182(c)(5) of the CAA; (10) Vehicle miles traveled provisions under section 182(d)(1)(A) of the CAA; (11) NO<sub>x</sub> requirements under section 182(f) of the CAA; (12) Attainment demonstrations; (13) Nonattainment contingency measures; (14) Nonattainment NSR major source thresholds and offset ratios; (15) CAA section 185 requirements for Severe and Extreme areas for failure to attain; (16) RACM; and (17) Contingency measures for SIPs invoking section 182(e)(5) of the CAA. The use of the latest approved or adequate motor vehicle emission budgets for a prior ozone NAAQS (i.e., the 2008, 1997 or the 1-hour ozone NAAQS) as part of transportation conformity determinations in nonattainment areas for the 2015 NAAQS until 2015 ozone motor vehicle emissions budgets are available has also been recognized as a “control” for purposes of defining anti-backsliding requirements. *South Coast Air Qual. Mgmt. Dist. v. EPA*, 489 F.3d at 1248 (clarifying *South Coast*, 472 F.3d at 904–05). This requirement is already codified at 40 CFR 93.109(c)(2). As discussed in the following section, applicability of individual anti-backsliding requirements for an area would depend on its designation and classification for all three of the revoked standards.

*b. Transition requirements for nonattainment and attainment areas.* The EPA is proposing to retain its current approach for applying transition requirements to various categories of nonattainment and attainment areas. This approach is codified at 40 CFR 51.1105, and we are proposing to retain the same approach adopted through the 2008 Ozone NAAQS SIP Requirements Rule in this rulemaking at 40 CFR 51.1305, revised to address the revocation of the 2008 ozone NAAQS in addition to the other prior revoked standards.

Table 4 provides a summary of the four transition categories, and the proposed requirements that would apply for each of those categories. The

<sup>36</sup> The EPA believes it is unnecessary to propose to include the use of existing SIP motor vehicle emissions budgets for transportation conformity purposes in the proposed list of regulatory anti-backsliding requirements subpart CC, 40 CFR 51.1300 *et seq.* because EPA’s regulations (40 CFR 93.109(c)(2)) already require that transportation conformity determinations in nonattainment areas for the new ozone NAAQS continue to be based on the latest approved or adequate motor vehicle emission budgets for a prior ozone NAAQS (i.e., the 2008, 1997 or the 1-hour ozone NAAQS) until 2015 ozone budgets are available.

following sections describe each category in detail.

TABLE 4—2015 OZONE NAAQS TRANSITION OBLIGATIONS

Designation for 2015 NAAQS	Designation for prior NAAQS	Proposed NNSR/PSD obligations	Other proposed transition obligations
1. Attainment .....	Attainment/Maintenance ....	PSD remains in effect .....	<ul style="list-style-type: none"> <li>—Area remains subject to existing CAA section 175A maintenance plan for the prior ozone NAAQS and requirements already in the SIP.</li> <li>—SIP subject to revision consistent with CAA sections 110(l) and 193.</li> <li>—Existing CAA section 175A maintenance plan, in combination with an approved PSD program, satisfies maintenance requirement under CAA section 110(a)(1).</li> </ul>
2. Attainment .....	Nonattainment for 2008 ozone NAAQS.	Nonattainment NSR in effect until revocation of the 2008 ozone NAAQS; then PSD applies.	<ul style="list-style-type: none"> <li>—Area remains subject to control measures that were included in its adopted SIP to meet nonattainment requirements.</li> <li>—Control measures can be modified in, or removed from, active SIP only with a CAA section 110(l) demonstration and a CAA section 193 demonstration if applicable.</li> <li>—Area's approved PSD program satisfies CAA section 110(a)(1) maintenance provision.</li> </ul>
3. Nonattainment .....	Attainment/Maintenance ....	Nonattainment NSR applies based on 2015 ozone NAAQS classification.	<ul style="list-style-type: none"> <li>—Area remains subject to existing CAA section 175A maintenance plan (if applicable) for the prior NAAQS and requirements already in the SIP.</li> <li>—SIP subject to revision consistent with CAA sections 110(l) and 193.</li> </ul>
4. Nonattainment .....	Nonattainment for 2008 ozone NAAQS.	Nonattainment NSR applies based on highest applicable classification.	<ul style="list-style-type: none"> <li>—Area subject to all applicable anti-backsliding requirements for 1-hr, 1997 and/or 2008 NAAQS.</li> <li>—The area is no longer required to adopt any outstanding applicable requirements for 1997 and/or 2008 standards when the area is redesignated to attainment for the 2015 ozone NAAQS, or for the revoked 1-hour, 1997 or 2008 NAAQS when the EPA approves a redesignation substitute.</li> </ul>

*i. Requirements for areas designated attainment for the 2015 ozone NAAQS and maintenance for the 2008 ozone NAAQS.* For this category, the EPA is proposing that for areas designated attainment for the 2015 ozone NAAQS and maintenance for the 2008 ozone NAAQS, the area's approved CAA section 175A maintenance plan for the revoked ozone NAAQS, in combination with an approved PSD program, satisfies both its obligations for maintenance under CAA section 110(a)(1) for the 2015 ozone NAAQS and its obligation to submit a second approvable maintenance plan under CAA section 175A for the revoked ozone NAAQS. This approach recognizes and reflects that such areas have in place an ozone air quality management program that has successfully achieved initial compliance with the 2015 ozone NAAQS and all previous ozone NAAQS. Ongoing compliance with the 2015 ozone NAAQS in such areas will be governed by the provisions of the area's approved SIP and the CAA's general air quality management requirements in sections 107, 110 and 182. Any future revisions to the SIP

would be subject to the general "interference" provisions of CAA section 110(l) and, if applicable, the section 193 savings clause.<sup>37</sup> Should the area subsequently violate the 2015 ozone NAAQS, the contingency measures in the approved maintenance plan would be triggered and the area may become subject to a SIP call (under CAA section 110(k)(5)) or redesignation to nonattainment (under CAA section 107(d)(3)).

*ii. Areas designated attainment for the 2015 ozone NAAQS and nonattainment for the 2008 ozone NAAQS.* For this category, the EPA is proposing that for areas designated attainment for the 2015 ozone NAAQS and nonattainment for the 2008 ozone NAAQS, air agencies are relieved of adopting any outstanding applicable requirements for the revoked

<sup>37</sup> Section 110(l) of the CAA indicates that EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the CAA. Section 193 of the CAA prohibits the modification of any rule adopted before November 15, 1990 in areas designated as nonattainment for an air pollutant unless the modification insures equivalent or greater emission reductions of the relevant pollutant.

standards as of the effective date of the revocation; in other words, these areas would not be subject to anti-backsliding requirements under the principles of CAA section 172(e). We also propose that PSD SIPs for these areas, once approved by the EPA, satisfy the obligation to submit an approvable maintenance plan for the 2015 ozone NAAQS under CAA section 110(a)(1).

Areas designated attainment for the 2015 ozone NAAQS and nonattainment for the 2008 ozone NAAQS have already attained the most stringent existing standard, notwithstanding their existing designation as nonattainment for the 2008 NAAQS. Because it is mathematically impossible to attain the 2015 NAAQS without having first attained the 2008 NAAQS (*i.e.*, 0.070 ppm is necessarily less than 0.075 ppm), EPA considers these areas to have attained the 2008 NAAQS at the time of revocation of that standard. These areas, thus, have implemented an air quality management program that, in combination with federal measures and emissions controls in upwind areas, has produced sufficient emissions reductions to achieve air quality that has both attained the prior ozone

NAAQS and resulted in an attainment designation for the more protective 2015 ozone NAAQS. In this case, EPA proposes that an air agency would not be obligated to implement the applicable anti-backsliding requirements set forth in 51.1300(p) and 93.109(c)(2) at the time the 2008 NAAQS is revoked in these areas. Because CAA section 172(e) only speaks to creation of regulatory anti-backsliding requirements for “areas which have not attained th[e] standard as of the date of [revocation],” the EPA believes it is appropriate to not require the regulatory anti-backsliding requirements listed in 40 CFR 51.1300(p) and 40 CFR 93.109(c)(2) in these areas which have attained the 2008 standard as of the date that standard is revoked (by virtue of an attainment designation for a more stringent standard). These areas would remain subject to the prior emissions control requirements (including contingency measures) already approved into the SIP. The prior nonattainment area control requirements already approved into the SIP can be revised upon a showing that such revision complies with CAA sections 110(l) and 193.

Given the succession of NAAQS of increasing stringency that has occurred, the EPA believes that the burden of developing a separate approvable 110(a)(1) maintenance plan for the 2015 ozone NAAQS would outweigh any compensating benefit for an area that is already attaining that NAAQS and implementing, where applicable, any prior nonattainment requirements that are already incorporated into the SIP and have been sufficient to bring the area into attainment of both the prior and 2015 standards. Ongoing compliance with the 2015 ozone NAAQS in such areas will be governed by the provisions of the area’s approved SIP and the CAA’s general air quality management requirements in sections 107, 110 and 182. Should the area subsequently violate the 2015 ozone NAAQS, it may become subject to a SIP call (under CAA section 110(k)(5)) or redesignation to nonattainment (under CAA section 107(d)(3)).

*iii. Areas designated nonattainment for the 2015 ozone NAAQS and maintenance for the 2008 ozone NAAQS.* For this category, the EPA is proposing that an area’s approved CAA section 175A maintenance plan for the 2008 ozone NAAQS in combination with nonattainment obligations under the 2015 ozone NAAQS would satisfy the obligation to submit a second approvable maintenance plan under CAA section 175A for the revoked 2008 ozone NAAQS. Areas in this category

would already be subject to the provisions of an approved CAA section 175A maintenance plan for the revoked 2008 ozone NAAQS and would have been redesignated to attainment for the revoked 2008 ozone NAAQS. The EPA’s approval of the redesignation request and of the CAA section 175A maintenance plan for the 2008 ozone NAAQS would require the EPA to determine not only that all applicable requirements for the 2008 ozone NAAQS have been met, but also that all applicable anti-backsliding measures for the 1997 and 1-hour standards have been adopted and approved into the SIP. No revision to a CAA section 175A maintenance plan for these areas can be approved unless it complies with the conditions of CAA sections 110(l) and 193, which would ensure the revision would not interfere with attainment and RFP for the 2015 standards.

Areas in this category would also be designated nonattainment for the more stringent 2015 ozone NAAQS and, therefore, would be subject to NNSR and other nonattainment requirements for their classification under the more stringent 2015 ozone NAAQS. Thus, the EPA believes that there is no useful purpose or justification for a second CAA section 175A maintenance plan that would apply only to the revoked 2008 ozone NAAQS, in light of the nonattainment and eventual maintenance requirements that apply for the more protective 2015 ozone NAAQS.

*iv. Areas designated nonattainment for the 2015 ozone NAAQS and nonattainment for the 2008 ozone NAAQS.* For this category, the EPA is proposing that for an area designated nonattainment for the 2015 ozone NAAQS and nonattainment for the 2008 NAAQS (as of revocation of the standard), an air agency would be obligated to implement the applicable anti-backsliding requirements set forth in 40 CFR 51.1300(p) and 40 CFR 93.109(c)(2) for the revoked 2008 ozone NAAQS. This could include, as applicable, anti-backsliding requirements associated with the revoked 1-hour and 1997 ozone NAAQS if the area was also designated nonattainment for one or more of these ozone NAAQS when that NAAQS was revoked and the status of the area with respect to those revoked NAAQS has not been changed through a redesignation substitute. Nonattainment NSR would apply in these areas in accordance with their highest nonattainment classification under any ozone standards for which they are (or were as of the effective date of the

revocation) designated nonattainment.<sup>38</sup> Also, if these areas are classified Severe or Extreme as of the effective date of the revocation of a prior standard, the fee program requirements of CAA section 185 in relation to that prior standard would continue to apply.

*v. Application of transition requirements to nonattainment and attainment areas.* For purposes of determining an area’s transition requirements, we would first look to the area’s initial designation for the 2015 ozone NAAQS. We would then determine the area’s designation and classification status for the 2008 ozone NAAQS as of the effective date the 2008 ozone NAAQS is revoked. Finally, where appropriate, we would determine whether anti-backsliding requirements for the 1997 and 1-hour ozone NAAQS apply in the area and, if so, we would determine the area’s designation and classification status for those standards as of the dates they were revoked.<sup>39</sup>

#### 5. Satisfaction of Anti-Backsliding Requirements for an Area

The EPA is proposing to retain its current approach through which an air agency may demonstrate that it is no longer required to adopt any additional applicable requirements for an area that have not already been approved into the SIP for a revoked ozone NAAQS. The final 2008 Ozone NAAQS SIP Requirements Rule adopted two acceptable procedures that, if followed and approved by the EPA, address anti-backsliding requirements associated with one or more revoked standards. These two procedures—formal redesignation to attainment and redesignation substitute—are described later. We are proposing to retain these two procedures for purposes of revocation of the 2008 ozone NAAQS. After one of these procedures has resulted in an approval by the EPA, an air agency seeking to revise its SIP to remove anti-backsliding measures, such as NNSR provisions, from the active portion of the SIP must demonstrate consistency with CAA sections 110(l) and 193 (if applicable). Requirements could then be shifted from the active portion of the SIP to the contingency

<sup>38</sup> In the case of an approved redesignation substitute, an air agency seeking to remove NNSR provisions associated with a revoked NAAQS from the active portion of the SIP must demonstrate consistency with CAA sections 110(l) and 193.

<sup>39</sup> If an area was initially designated attainment for the 2008 ozone NAAQS or was redesignated to attainment (“Maintenance”) for the 2008 ozone NAAQS prior to the date of revocation of the 2008 NAAQS, then consistent with the position we took in the 2008 rule, the area is no longer required to adopt any outstanding applicable requirements for the revoked 1997 standard.



measures portion of the SIP (80 FR 12304; March 6, 2015).

The first of the proposed procedures is formal redesignation of the area to attainment for the 2015 ozone NAAQS. For areas subject to anti-backsliding requirements for the revoked 1997 or 2008 standards, approval of a request for redesignation to attainment for the 2015 ozone NAAQS would signify that the air agency has satisfied its obligations to adopt anti-backsliding requirements for the revoked 1997 or 2008 standards. Once the area is redesignated, the requirement(s) for NNSR for the 2015 ozone NAAQS and for any prior ozone NAAQS cease to apply, and the air agency may begin implementing the PSD program requirements. Nonattainment NSR requirements may be removed from the SIP, or may be retained as a maintenance plan contingency measure.<sup>40</sup> This procedure is consistent with the EPA's longstanding interpretation of NNSR requirements for areas that are redesignated to attainment.<sup>41</sup> It is important to note that lifting the applicability of NNSR SIP provisions in an area does not relieve sources in the area of their obligations under previously established permit conditions.

Redesignation to attainment would also terminate any obligations to implement CAA section 185 fee programs in a Severe or Extreme area for the 2015 or revoked 1997 or 2008 ozone NAAQS pursuant to the express terms of CAA section 185. All of the remaining anti-backsliding measures that have been approved into the SIP must continue to be implemented unless or until the air agency can show that such implementation is not necessary for maintenance, consistent with CAA sections 110(l) and 193 if applicable.<sup>42</sup>

<sup>40</sup> States in the OTR may not use this flexibility because the CAA requires all areas of the OTR including attainment areas to implement, at a minimum, the NNSR requirements prescribed for Moderate areas.

<sup>41</sup> See *Greenbaum v. EPA*, 370 F.3d 527, 534 (6th Cir. 2004) ("The EPA argues that the Part D NSR program is inapplicable to attainment areas, so that the requirement disappears upon redesignation. After redesignation, Part D NSR is replaced by a PSD, another permitting program designed to ensure maintenance of the NAAQS in attainment areas. . . . The NSR program would not be implemented as approved, as NSR programs are only required in nonattainment areas.")

<sup>42</sup> This showing may be submitted to the EPA at the same time as the maintenance plan, and may be approved by the EPA in a single action. Subject to this process, anti-backsliding requirements contained in the SIP could be shifted to the contingency measures portion of a CAA section 175A maintenance plan or, in limited circumstances (such as nonattainment NSR), removed from the SIP.

The second of the proposed procedures for satisfying the anti-backsliding requirements associated with a specific revoked standard is referred to as a "redesignation substitute." This redesignation substitute showing would serve as a successor to redesignation to attainment, for which the area would have been eligible were it not for revocation. The showing is based on the CAA's criteria for redesignation to attainment (CAA section 107(d)(3)(E)), but differs in some important respects. This procedure does not require air agencies to go through formal SIP submission procedures to submit a request for approval of a redesignation substitute because the action is not a redesignation under CAA section 107(d)(3)(E). States would have to demonstrate that the area has attained the relevant revoked standard and met all of the requirements for redesignation for that standard. An area would then no longer be subject to any remaining applicable anti-backsliding requirements associated with the specific revoked NAAQS, including the major source thresholds and offset ratios associated with the area's classification under those standards.<sup>43</sup> The remaining NSR requirements would be determined by the highest remaining classification to which the area is subject, whether for the 2015 ozone NAAQS or another revoked NAAQS for which the EPA had not approved a redesignation substitute showing.

#### 6. Application of the EPA's Determination of Attainment Regulation ("Clean Data Policy") for Purposes of the Anti-Backsliding Requirements

The EPA is proposing to retain its current approach to implementing the Clean Data Policy, under which a determination of attainment suspends the obligation to submit certain attainment-related planning requirements for the associated NAAQS for an area as long as the area continues to attain those standards.<sup>44</sup> This approach is codified at 40 CFR 51.1118 for the 2008 ozone NAAQS, and we are proposing to retain the same approach

<sup>43</sup> An air agency seeking to remove NNSR provisions associated with a revoked NAAQS from the active portion of the SIP must demonstrate consistency with CAA sections 110(l) and 193.

<sup>44</sup> The EPA initially issued the Clean Data Policy in 1995, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard." Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995. For purposes of the 1997 ozone NAAQS, we codified that policy at 40 CFR 51.918. This codified policy was upheld by the D.C. Circuit in *NRDC v. EPA*, 571 F.3d 1245 (D.C. 2009).

for the 2015 ozone NAAQS at 40 CFR 51.1318, without revision.

The planning elements that would be suspended under 40 CFR 51.1318 are the same as those suspended under existing 40 CFR 51.1118: RFP requirements, attainment demonstrations, RACM, contingency measures and other state planning requirements related to attainment of the relevant standards. For a Severe or Extreme area, a CAA section 185 fee program is expressly linked by the statute itself to an attainment plan. Therefore, suspension of the obligation to submit the attainment plan also necessarily suspends the obligation to submit the fee program which is part of the attainment plan (provided that the EPA has not already determined that the area failed to attain by its attainment deadline and, thus, triggered the obligation to implement a fee program). The EPA notes that a determination of attainment would not, however, suspend obligations to submit non-planning requirements such as NNSR, subpart 2 RACT or emission inventories under CAA section 182(a)(1).

Under this proposed approach, the EPA's long-standing Clean Data Policy, which has been upheld by the D.C. Circuit and all other courts that have considered it, would remain embodied in a regulation applicable for the purpose of all existing and prior ozone NAAQS. We believe that this approach makes the most sense for implementing the 2015 ozone NAAQS.

#### 7. Relationship Between Implementation of the 2015 Ozone NAAQS and the CAA Title V Permits Program

The EPA is proposing to retain its current approach for implementing the title V permit program for sources in areas designated nonattainment for the current ozone NAAQS and subject to anti-backsliding requirements for a prior ozone NAAQS. The final 2008 Ozone NAAQS SIP Requirements Rule adopted an approach under which, following revocation of the prior (1997) ozone NAAQS, major source thresholds for title V would be the same as the major source thresholds applicable for purposes of other requirements such as RACT and NNSR (80 FR 12307; March 6, 2015). We are proposing to retain this approach for purposes of implementing the 2015 ozone NAAQS, without revision.

Under this proposed approach, following revocation of the 2008 ozone NAAQS, major source thresholds for title V would be the same as the major

source<sup>45</sup> thresholds applicable for purposes of other requirements, such as RACT and NNSR. Specifically, the major source threshold associated with the more stringent of the area's classification for the 2015, 2008, 1997 and/or 1-hour ozone NAAQS will be the applicable threshold for title V purposes, to the extent that anti-backsliding requirements for the 2008, 1997 and/or 1-hour ozone NAAQS apply in the area.<sup>46</sup> The final 2008 Ozone NAAQS SIP Requirements Rule amended the definitions of "major source" in 40 CFR 70.2 and 71.2 as related to application of title V thresholds, and we propose to retain these definitions for purposes of the 2015 ozone NAAQS.

As background, the EPA notes that, under CAA section 502, sources are required to operate in accordance with the terms of a title V permit if, among other things, the source is a major source or the source is required to have a permit under part D of title I. Thus, even if a source is not a major source for purposes of title V, it is still required to obtain a title V permit under part D of title I. We believe that maintaining consistency between the NNSR and title V thresholds promotes compliance with CAA requirements by providing a simpler permitting regime, ensuring that sources subject to major source NNSR understand they are also subject to title V, and enabling permitting authorities

<sup>45</sup> One of the ways a source can become subject to title V is as a "major source." See CAA section 502(a); 40 CFR 70.3; 71.3. Furthermore, the definition of "major source" for purposes of title V includes, but is not limited to, a "major stationary source as defined . . . in part D" of title I. (The EPA notes that sources can become subject to title V permitting for other reasons, and nothing in this discussion is intended to suggest that changes in an area's ozone classification would affect those other provisions of title V. Accordingly, sources subject to title V under other provisions would remain subject to title V for those independent reasons.) See CAA section 501(2)(B) and 502(a); 40 CFR 70.2; 71.2. Thus, changes in an area's ozone classification (e.g., from "Serious" to "Severe") by changing the emissions threshold for being deemed a major source (e.g., from 100 tpy to 50 tpy of a relevant pollutant) can result in changes in title V applicability for a source.

<sup>46</sup> It should be noted that, pursuant to CAA section 503(a), a source is subject to a permit program on the later of the date that it becomes a major source and the effective date of a permit program applicable to the source. Thus, if a permitting authority with an approved title V program lacks any authority to permit certain sources that are major sources subject to title V as a result of ozone precursor emissions and an area classification for ozone that has a major source threshold lower than 100 tpy (e.g., "Serious"), then there is no title V permit program "applicable to the source" and those sources have no obligation to apply for a title V permit until after such time as a permit program becomes applicable to them. The EPA works with states to ensure that all approved title V programs are adequate under the CAA.

to identify sources that are potentially subject to major source NNSR.

### *C. Requirements for RFP: Milestone Compliance Demonstrations (MCD)*

#### 1. Background and Summary of Proposal

The EPA is proposing to revise its existing RFP provisions for purposes of the 2015 ozone NAAQS to address MCDs required under CAA section 182(g) for ozone nonattainment areas classified Serious or higher. The existing regulatory provisions characterize the emissions reductions and time intervals that constitute RFP milestones, but do not explicitly address the requirements for demonstrating compliance with these milestones. The following sections discuss the challenges of MCD implementation for ozone, and a proposed approach that would satisfy CAA requirements consistent with milestone demonstrations for other regulated pollutants.

#### 2. CAA Requirements for Ozone Milestone Compliance Demonstrations

CAA section 182(g)(1) requires that states demonstrate whether nonattainment areas classified Serious, Severe, or Extreme have achieved incremental emission reductions needed to ensure attainment of the NAAQS (i.e., RFP) by the applicable attainment date at set time intervals (i.e., milestones). The statute establishes an initial milestone date of 6 years after November 15, 1990, and at intervals of 3 years thereafter. These milestones are mirrored in the general RFP demonstration requirements of CAA sections 182(c)(2)(B) for Serious areas, 182(d) for Severe areas, and 182(e) for Extreme areas. As discussed in Section III.G of this preamble, we propose to retain the existing general RFP requirements for purposes of the 2015 ozone standards.

As noted previously, the existing ozone implementation regulations do not explicitly address the MCDs required under the CAA. Specifically, CAA section 182(g)(2) requires that states submit to the Administrator a demonstration that an RFP milestone has been met, not later than 90 days after the date on which the applicable milestone occurs. For purposes of CAA section 182(g), the statute refers to the required emissions reduction for the time interval as the applicable milestone. Section 182(g)(2) of the CAA states that the form, manner of submittal, and contents of the required compliance demonstration shall be set by the Administrator, by rule.

CAA sections 182(g)(3) and (g)(5) establish measures a state shall elect to implement if the state fails to submit an MCD by the due date or the EPA determines that a milestone was not met. For Serious and Severe areas, an air agency shall elect within 90 days of the failure or determination to: (1) Have the area reclassified to the next higher classification; (2) implement additional measures to meet the next milestone per the applicable contingency plan; or (3) adopt an economic incentive program as described in CAA section 182(g)(4). For an Extreme area, an air agency shall within 9 months of the failure or determination submit a SIP revision to implement a CAA section 182(g)(4) economic incentive program.

#### 3. Proposed Approach for Ozone Milestone Compliance Demonstrations

The EPA is proposing that an air agency will have the option to demonstrate milestone compliance in terms of either: (1) Compliance with control measures requirements in an RFP plan that complies with the requirements of the CAA (e.g., percent implementation), or (2) actual emissions reductions, as demonstrated with periodic emissions inventory data required under CAA section 182(a)(3)(A). In considering the form and content of an ozone MCD submittal, the EPA referenced the parallel statutory requirements for PM<sub>2.5</sub>, which are also addressed in the final implementing regulations for the PM<sub>2.5</sub> NAAQS.<sup>47</sup> Similar to ozone requirements, CAA section 189(c)(1) establishes a 3-year cycle for PM<sub>2.5</sub> milestones, but differs from ozone in how a milestone may be expressed. For PM<sub>2.5</sub>, the statute requires quantitative milestones that demonstrate RFP, whereas for ozone the milestone is expressed as the actual emissions reduction increment that demonstrates progress toward attainment. For both pollutants, the CAA provides Administrator discretion in setting the form and content of the milestone demonstration submittal.<sup>48</sup>

The final implementing regulations for the PM<sub>2.5</sub> NAAQS require that the quantitative milestones be constructed

<sup>47</sup> See 81 CFR 58063–64 (August 24, 2016).

<sup>48</sup> CAA sections 182(g)(2) and 189(c)(2) share the same basic milestone demonstration submittal requirements, i.e., not later than 90 days after the date on which an applicable milestone occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. A demonstration shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. For PM<sub>2.5</sub>, the statute further qualifies that the submittal also demonstrate that all measures in the SIP have been implemented.

such that they can be tracked, quantified and/or measured adequately in order for an air agency to meet its milestone reporting obligations, which come due 90 days after a given milestone date. For PM<sub>2.5</sub>, the EPA interprets CAA section 189(c) to allow air agencies to identify milestones that are suitable for the specific facts and circumstances of the attainment plan for a particular area, so long as they provide an objective means to measure RFP.<sup>49</sup>

We are proposing a similar approach for MCDs for the 2015 ozone NAAQS. We believe it would be sufficient for purposes of CAA section 182(g)(2) for an air agency to demonstrate milestone compliance in terms of compliance with control measures requirements in the approved RFP plan (e.g., percent implementation). The EPA would review each RFP plan submission on a case-by-case basis to determine whether the milestones contained in the plan are specific enough to provide an objective means for evaluating the area's progress toward attainment, consistent with the statutory requirements of CAA section 182(g).

This proposed measure provides a reasonable and feasible means to implement the demonstration requirement in CAA section 182(g)(2) because it is grounded in SIP provisions that correlate control measures and resulting emissions reductions. Conversely, the EPA believes it would not typically be feasible for air agencies to demonstrate compliance with milestones based on an assessment of actual emissions data because such data are not typically expected to be timely available. Compiling and analyzing area-wide emissions data can be a resource intensive and time consuming process that the EPA expects takes many months after the end of an emissions reporting year. In fact, the EPA's triennial emissions reporting rules provide no less than 12 months for states to report annual emissions after the end of the calendar year.<sup>50</sup> This

timing and resource concern is expected to be even greater in a case where the MCD year and triennial emissions reporting year are not aligned, such that the 90-day MCD submittal timeframe would end well before emissions data from that reporting process become available. For example, for an area with an RFP baseline year of 2016, the first MCD year would be 2022 (6 years after RFP baseline year). In this example, the most recent emissions reporting year would be 2020, and the following emissions reporting cycle would not end until 2023. This asynchronous timing would continue through subsequent 3-year MCD cycles after the initial (6-year) MCD submission. Our proposed optional approach would allow an air agency to uncouple MCD submissions from the triennial cycle for periodic emissions inventories, to facilitate compliance with the 90-day MCD submittal timeframe under CAA section 182(g)(2), while preserving the option to rely on periodic emissions inventory data where the appropriate data are obtainable within the 90-day MCD submittal timeframe.

We invite comment on this proposed approach for MCDs, including potential alternatives to reporting actual emissions data as measures for demonstrating RFP that air agencies can reasonably assess and report within 90 days of each milestone.

#### *D. Requirements for RACT: Deadlines for Submittal and Implementation of RACT SIP Revisions*

##### **1. Background and Summary of Proposal**

The EPA is proposing to retain its existing general RACT provisions (see Section III.H of this preamble), and to add new RACT SIP revision submission and implementation deadlines for specific kinds of triggering events that occur after initial area designations under a revised ozone NAAQS. The existing RACT provisions address submission and implementation deadlines for areas (including portions of a state located in an OTR) subject to initial designation and existing RACT requirements, including measures described in existing CTGs. However, existing RACT provisions do not contemplate some RACT SIP revision submittal and implementation deadlines

triggered by events occurring after initial area designations, including area reclassifications and the issuance of new CTGs. The following sections address the proposed new RACT submittal and implementation deadlines for these post-designation scenarios.

##### **2. RACT SIP Revision Submittal and Implementation Deadlines for Newly-Reclassified Areas**

CAA section 182(b)(2) establishes that a state shall submit a revision to a SIP to provide for implementation of RACT by 2 years after November 15, 1990, and provide for RACT implementation as expeditiously as practicable, but no later than May 31, 1995 (approximately 54 months total). For purposes of the 2008 ozone NAAQS, the EPA interpreted this CAA timeframe to require submittal of RACT SIP revision no later than 24 months after the effective date of initial area designations, and implementation of the RACT SIP revisions no later than January 1 of the fifth year after the effective date of initial designations. We did not, however, establish regulatory schedules for submission and implementation of RACT SIP revisions for areas reclassified after initial area designations under an ozone NAAQS.<sup>51</sup> This includes mandatory reclassification to a higher classification upon failure to attain (pursuant to CAA section 181(b)(2)), or voluntary reclassification to a higher classification upon an air agency's request (pursuant to CAA section 181(b)(3)).

To address these reclassification scenarios, we are proposing default submission and implementation deadlines for resulting SIP revisions. The EPA is proposing that, following a reclassification action, RACT SIP revisions be submitted no later than 24 months after the effective date of reclassification, or the deadline established by the Administrator in the action reclassifying an area. We are proposing that the RACT SIP revisions be implemented as expeditiously as practicable, but no later than the start of the ozone season attainment year associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier. We are also proposing that the Administrator would retain existing

<sup>49</sup> In the Addendum to the General Preamble, the EPA suggested (for implementation of the PM<sub>10</sub> NAAQS) possible metrics that "support and demonstrate how the overall quantitative milestones identified for an area may be met," such as percent implementation of control strategies, percent compliance with implemented control measures, and adherence to a compliance schedule. This list was not exclusive or exhaustive but reflected the EPA's view that the purpose of the quantitative milestone requirement is to provide an objective way to determine whether the area is making the necessary progress towards attainment by the applicable attainment date (59 FR 42016; August 16, 1994).

<sup>50</sup> Triennial emissions reporting periods are set by regulation in the Air Emissions Reporting Requirements at 40 CFR part 51, Subpart A. The most recent and upcoming reporting years are 2014,

2017, 2020, 2023 and 2026, where the reports are due to the EPA by December 31 of the calendar year that follows the reporting year. The EPA's implementing regulations for the ozone NAAQS provide that states may use the most recent triennial report period emissions inventory to satisfy the nonattainment area reporting requirements of CAA section 182(a)(3)(A). See 40 CFR 51.1115(b).

<sup>51</sup> For purposes of this preamble discussion, "reclassification" is assumed to encompass nonattainment areas being reclassified, attainment areas being redesignated as nonattainment and assigned an initial Moderate-or-higher classification, and new OTR assignments. Similarly, "RACT SIP revision" is assumed to encompass initial RACT SIPs triggered by an initial area classification of—or reclassification to—Moderate or higher.

authority to establish a different implementation deadline in the action reclassifying an area. For example, for an area initially classified in 2017 as Marginal that is reclassified in 2021 as Moderate, the Administrator could require that a RACT SIP revision be submitted no later than 1 year after the final reclassification action (*i.e.*, 2022). In this case, the RACT SIP revision must then be implemented no later than the start of the ozone season attainment year (*i.e.*, 2023), unless a different implementation deadline were established in the reclassification action. This proposed approach would apply to nonattainment area reclassifications and any portion of a state newly included in an OTR.

For the timeline for implementing RACT SIP revisions triggered by area reclassifications that occur after initial area designations, we propose to establish a deadline relative to the submittal due date for associated RACT SIP revisions. The CAA authorizes the Administrator to adjust applicable SIP submission deadlines as necessary or appropriate to assure consistency among required submissions. Regarding mandatory reclassifications pursuant to CAA section 181(b)(2), CAA section 182(i) allows the Administrator to adjust applicable deadlines (excluding attainment dates), including those for SIP submittals. For voluntary reclassifications, CAA section 181(b)(3) does not establish a precise timeframe for submitting an attainment plan. Current practice is that we establish SIP revision submittal deadlines through the action granting an air agency's request for voluntary area reclassification. Depending on the timing of the reclassification action, the resulting SIP revision submittal deadline might allow adequate lead time for RACT implementation, or impinge on the applicable attainment year (*i.e.*, the ozone season immediately preceding a nonattainment area's maximum attainment date). In the latter case, timely RACT implementation may be difficult or infeasible, with an implementation deadline potentially approaching or exceeding the reclassified area's new maximum attainment date. We still believe it is important to provide a generic implementation deadline, in addition to retaining Administrator discretion in setting a specific implementation deadline where appropriate.

We are proposing a generic RACT SIP implementation deadline of no later than January 1 of the third year after the associated SIP revision submittal deadline. This generic implementation deadline would apply where the

Administrator elects to not establish a specific alternate implementation deadline in an area reclassification action. The proposed interval between the RACT SIP revision submittal deadline and the implementation deadline was developed by drawing a parallel to the construct of the overall RACT SIP revision submittal and implementation timeframe articulated in section 182(b)(2) of the CAA. In the statute, SIP revisions for sources of VOCs were required by 2 years after November 15, 1990, and were required to provide for RACT implementation as expeditiously as practicable, but no later than the start of the ozone season that is the third year after the SIP revision deadline (*i.e.*, May 31, 1995, approximately 54 months total).

We invite comment on the proposed submission and implementation deadlines for SIP revisions resulting from reclassification actions.

### 3. RACT SIP Revision Submittal and Implementation Deadlines Associated With New Control Techniques Guidelines

The CAA is silent regarding the schedule for implementation of RACT SIP revisions triggered by new CTGs. When new CTGs are issued, these RACT SIP revisions would be applicable to areas classified Moderate or higher, and any portion of a state located in an OTR. For CTGs in effect at the time of initial designations for a revised NAAQS, the EPA has interpreted the CAA provisions to require implementation of related RACT SIP revisions as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of initial designations for the revised NAAQS (80 FR 12279; March 6, 2015). For new CTGs issued after initial area designations, we considered several approaches for establishing deadlines for submitting and implementing RACT SIP revisions.

Under the first approach, we are proposing a RACT SIP submission deadline of no later than 24 months after the effective date of the action issuing the CTG, or the deadline established by the Administrator in the action issuing the CTG. We are proposing that the RACT SIP revisions be implemented no later than January 1 of the third year after the associated SIP revision submittal deadline. This deadline is based on the same rationale and approach used for our proposed generic implementation deadline for RACT SIP revisions triggered by reclassification actions, discussed in the preceding section. We are requesting comment on the appropriate implementation deadline, and propose

that it should in no case exceed January 1 of the third year after the SIP revision submittal deadline.

Under the second approach, we would also articulate in the general RACT provisions the Administrator's authority to establish an alternate to the generic deadline for implementing RACT SIP revisions in the action issuing a new CTG. Under this option, setting a RACT SIP revision implementation deadline in a CTG action would allow the Administrator to tailor the implementation timeframe to the particular technical considerations and attainment objectives associated with the sources subject to the CTG.

We are proposing this second combined approach that would establish a generic RACT implementation deadline for SIP revisions resulting from new CTGs, while also articulating the Administrator's authority to set a different implementation deadline in the action issuing a new CTG. This proposed approach would apply to covered sources nonattainment areas and portions of a state located in an OTR subject to new RACT SIP obligations. Under this proposed approach, RACT SIP revisions must be submitted no later than 24 months after the effective date of reclassification, or the deadline established by the Administrator in the action issuing a new CTG. We are proposing that RACT SIP revisions be implemented as expeditiously as practicable, but no later than January 1 of the third year after the associated SIP revision submittal deadline. This generic implementation deadline would apply where the Administrator elects to not establish a specific RACT implementation deadline for an individual new CTG. Note that the CAA already requires that RACT SIP revisions triggered by a new CTG must be submitted within the period specified by the Administrator in the action issuing the new CTG. We invite comment on the proposed submission and implementation deadlines for SIP revisions resulting from new CTGs.

As discussed in Section III.H of this preamble, the EPA is proposing to otherwise adopt all existing RACT requirements for purposes of the 2015 ozone NAAQS, based on the current rationale and approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule.

*E. Requirements for RACM:  
Consideration of Sources of Intrastate  
Transport of Pollution*

1. Background and Summary of  
Proposal

The EPA is proposing to retain its existing general RACM provisions (see Section III.H of this preamble), and to clarify in the rule that, in addition to sources located in an ozone nonattainment area, air agencies must also consider the impacts of emissions from sources outside an ozone nonattainment area (but within a state's boundaries), and must require other measures for emissions reductions from these intrastate sources if needed to attain the ozone NAAQS by the applicable attainment date. This proposed rule provision is consistent with SIP elements required under the CAA, as well as existing EPA policy articulated in previous NAAQS implementation rulemakings.

2. Applicability of CAA Requirements  
and Existing EPA Policy

CAA section 172(c)(6) requires that SIP provisions include enforceable emission limitations and other control measures, means or techniques as may be necessary to attain a standard by the applicable attainment date. The EPA interprets this provision to include "additional reasonable measures," which are those measures and technologies that can be applied to any emission source within an air agency's jurisdiction, including those outside of a nonattainment area. Upwind sources within a state may have a significant impact on air quality in a nonattainment area, and failure to consider and require, as appropriate, reasonable control measures for these sources may preclude the expeditious attainment of a NAAQS in the area. Though not directly a part of RACM, the EPA has addressed this "other control measures" provision in the preamble discussions for previous NAAQS implementation rulemakings,<sup>52</sup> and proposes to codify this interpretation in the ozone implementation rules.

3. Proposed Requirement for RACM,  
Other Control Measures and Sources of  
Intrastate Transport of Pollution

The EPA is proposing that, for each nonattainment area required to submit an attainment demonstration (see Section III.F of this preamble), an air agency shall submit with the attainment demonstration a SIP revision

demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements. This SIP revision shall include, as applicable, other control measures on sources of emissions of ozone precursors located outside the nonattainment area or portion thereof, located within the state if doing so is necessary to provide for attainment of the applicable ozone NAAQS within the area by the applicable attainment date.

We invite comment on the proposed inclusion of this SIP revision requirement for RACM and other control measures in the ozone implementation rule provisions. As discussed in Section III.H of this preamble, the EPA is proposing to otherwise adopt all existing RACM requirements for purposes of the 2015 ozone NAAQS, based on the current rationale and approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule.

*F. Nonattainment NSR Offset  
Requirement: Interprecursor Trading for  
Ozone Offsets*

1. Background

In 2015, the EPA took final action in the 2008 ozone SRR to amend the regulatory text in 40 CFR 51.165 and part 51 Appendix S to allow air agencies to permit IPT for ozone as part of their NNSR programs.<sup>53</sup> See existing 40 CFR 51.165(a)(11)(i) and part 51 Appendix S section IV.G.5(i). These ozone IPT provisions allow any new or modified major stationary source locating in an ozone nonattainment area to satisfy the NNSR emissions offset requirements for ozone with emissions reductions of VOC or NO<sub>x</sub> interchangeably.

On May 5, 2015, a coalition of environmental and health advocate groups<sup>54</sup> filed an administrative petition for reconsideration raising two specific challenges to the EPA's codified IPT policy. Petitioners alleged that the EPA unlawfully failed to provide for adequate public comment on the ozone IPT provisions that we finalized and, in addition, that the CAA specifically

prohibits ozone IPT in the NNSR context. The EPA granted the petition for reconsideration on November 5, 2015, in order to allow for public comment on those provisions.

This action, in response to the petition for reconsideration, proposes and requests comment on ozone IPT provisions for the NNSR offset requirement, as described in Sections IV.F.2 and 4 of this preamble. Under these provisions, IPT cannot be used to meet the NNSR offset requirement unless the precursor substitution is technically supported. For air agencies implementing an EPA-approved NNSR program, these provisions must be approved in the air agency's plan addressing NNSR requirements for ozone. In addition, as explained in Section IV.F.5 of this preamble, the EPA is including a Technical Guidance Document (TGD) (in the Docket to this rulemaking) to assist air agencies and major stationary sources of ozone in the development of ozone IPT ratios tailored to particular ozone nonattainment areas. The EPA also requests comment on the process and framework described in this TGD to establish IPT ratios.

2. Proposed IPT Provisions for Ozone  
Offsets

The EPA proposes to reaffirm its longstanding policy that air agencies may allow major stationary sources to use ozone IPT to satisfy the NNSR offset requirements in ozone nonattainment areas. In addition, the EPA is proposing criteria for developing and implementing ozone IPT programs that will be applicable in particular ozone nonattainment areas. The proposed ozone IPT provisions would replace the existing provisions contained in the NNSR regulations at 40 CFR 51.165 and Appendix S. In addition, the EPA proposes that these ozone IPT provisions would supersede any previous ozone IPT policy articulated in EPA guidance.<sup>55</sup>

In proposing new ozone IPT provisions, it is important to note that the EPA is not proposing to change or seek comment on any existing or traditional NNSR emissions offsets requirements contained in the NNSR regulations at 40 CFR 51.165 and part 51 Appendix S. Existing NNSR emissions

<sup>53</sup> The term interprecursor trading (IPT) is being used in this preamble to describe the EPA's policy supporting the use of emissions reductions of precursors of a pollutant (NO<sub>x</sub> and VOC for ozone) to be used interchangeably as emissions offsets under the NNSR program. The EPA recognizes that other terms, including interpollutant trading, interpollutant offsetting, and interprecursor offset substitution, have also been used in the past. The EPA intends to use "IPT" moving forward to promote consistency in this preamble.

<sup>54</sup> Earthjustice filed the petition on behalf of Sierra Club, Conservation Law Foundation, Downwinders at Risk and the Physicians for Social Responsibility—Los Angeles.

<sup>55</sup> The EPA's prior guidance concerning the use of IPT to satisfy the NNSR requirements for emissions offsets was contained in a 2001 EPA document titled "Improving Air Quality with Economic Incentive Programs" (January 2001). The EPA's policy on IPT for ozone, when finalized through this rulemaking, will supersede the information contained in that earlier document specifically with respect to IPT.

<sup>52</sup> See the Phase 2 final rule to implement the 8-hour ozone NAAQS (70 FR 71623; November 29, 2005) and the final rule to implement the PM<sub>2.5</sub> NAAQS (81 FR 58035; August 24, 2016).

offset requirements are based largely on Part D of title I of the CAA's nonattainment requirements. These existing requirements include the statutory offset ratios applicable in specific ozone nonattainment areas (based on an area's classification for ozone), geographic restrictions as to where creditable emissions reductions may be obtained, and other criteria concerning the creditability of emissions reductions to be used as offsets.

A key component of an ozone IPT program for any ozone nonattainment area is an IPT ratio.<sup>56</sup> An IPT ratio is intended to ensure that the substitution of one ozone precursor for another in an offset transaction, substantiated by modeling or other technical demonstration, provides an equivalent or greater air quality benefit for ozone concentrations in the ozone nonattainment area. The EPA is proposing that air agencies submit to the EPA as part of a plan that must be approved by the Administrator: (1) Their ozone IPT provisions, including the default IPT ratio(s) where applicable; (2) a description of the air quality model(s) that have been used to develop any default ratio(s); and (3) an accompanying modeling demonstration that such ratio(s) provide an equivalent or greater air quality benefit for ozone concentrations in the ozone nonattainment area. The EPA recommends that each air agency implementing an ozone IPT program consult with the appropriate EPA Regional office as the air agency develops a modeling protocol to establish IPT ratios for a particular nonattainment area. The EPA seeks comment on the proposed contents of the plan submission and the approach for establishing area-specific default IPT ratios.

The EPA proposes to provide flexibility for air agencies to incorporate IPT ratios into their IPT programs for ozone nonattainment areas.<sup>57</sup> As stated in the 2008 PM<sub>2.5</sub> NSR rulemaking, the EPA believes the flexibility provided by this policy allows air agencies and sources to take into account the role that ozone precursors play in the formation of ground-level ozone in specific ozone nonattainment areas due to the specific terrain, local and regional source

emissions mixture, and meteorological conditions that exist in each area, and to select the most cost-effective manner to obtain the offsets necessary to ensure that air quality improves. This flexibility will also be beneficial where offsets for one particular precursor are scarce in a particular area. The goal of the CAA is to have air quality that is healthy, *i.e.*, meeting the NAAQS, and there is a strong principle in the CAA that air agencies have discretion to choose from a range of options in designing plans to meet that goal, which may include the choice to use the most cost-effective measures to get there.

When the EPA published its NNSR implementation rules for PM<sub>2.5</sub> in 2008, we indicated that, while the new implementation rules allowed for air agencies to adopt EPA-approved IPT programs to satisfy the NNSR offset requirements for PM<sub>2.5</sub>, such trading for netting purposes was disallowed. *See* 73 FR 28340 (May 16, 2008). Consistent with that policy, the EPA intends that IPT not be allowed for purposes of netting under the NNSR program.

Use of ozone IPT is not permissible where an air agency chooses to include emissions offsets from NNSR air permitting in their initial 15 percent RFP (ROP) plan for those Moderate or higher ozone nonattainment areas that are satisfying this ROP requirement for the first time under CAA section 182(b)(1)(A)(i). The EPA believes that this restriction on the use of IPT is necessitated by the CAA, which provides that this initial RFP (ROP) plan requirement must be satisfied exclusively by reductions in VOC emissions.<sup>58</sup> We seek comment on this restriction on ozone IPT.

### 3. Authority To Establish Ozone NNSR IPT

The EPA previously authorized IPT to satisfy the NNSR offset requirement for PM<sub>2.5</sub> in its NNSR regulations pursuant to the CAA. The EPA continues to believe that the CAA accommodates the use of technically supported IPT to satisfy the NNSR offset requirement.<sup>60</sup> Section 173(c)(1) of the CAA states that the NNSR offset requirement shall "assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or

greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area." Section 302(g) of the CAA defines "air pollutant" to include ". . . any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used." (Emphasis added).

The EPA's NNSR regulations identify both NO<sub>x</sub> and VOC as precursors for ozone, and, as such, NO<sub>x</sub> and VOC are both regulated under NNSR as part of the regulation of ozone (*See* 40 CFR 51.165(a)(xxxvii)(C)(1)). Thus, when applied to ozone, the term "air pollutant" in section 173 of the Act may be read to describe both NO<sub>x</sub> and VOC, which are precursors for the pollutant ozone. The EPA, therefore, reads the Act to allow the total annual tonnage of emissions of one ozone precursor to be offset by reductions in total annual emissions of another ozone precursor (in units of tpy) pursuant to an IPT ratio that shows the reductions will have an equivalent or greater air quality benefit. This cannot replace or supersede the statutory ratio for the applicable area classification, which must be considered in developing the IPT ratio.

Emissions of NO<sub>x</sub> and VOC are not considered interchangeable for all aspects of ozone control. For example, in certain situations for RFP purposes, the CAA NNSR requirements for ozone in the CAA expressly require reductions in VOC emissions. However, in many NNSR permitting situations, with an appropriate technical demonstration, it is possible to establish ratios for using NO<sub>x</sub> decreases to offset VOC increases, or vice versa, that result in an equivalent or greater air quality benefit for ozone concentrations in the ozone nonattainment area.

### 4. Proposed Implementation of Ozone NNSR IPT Provisions

The EPA recognizes that ozone IPT can be implemented in several ways, with the primary variable being the way in which the IPT ratio is established and applied. The EPA proposes that air agencies be allowed to choose any of the options presented later, including a combination if so desired, as a feature of their EPA-approved NNSR programs. However, as explained in Section IV.F.4.c of this preamble, we believe that for implementing ozone IPT in NNSR permits issued pursuant to Appendix S, an air agency will be limited to the use of case-by-case IPT ratios. Accordingly, with the goal of providing flexibility to air agencies/

<sup>56</sup> The IPT ratio is separate and distinct from the statutory ratios contained in the CAA and associated with area classifications for ozone nonattainment areas. Both ratios must be applied in determining the appropriate emissions offset that must be applied for a particular offset transaction.

<sup>57</sup> For a discussion of proposed options for air agencies to implement their ozone IPT provision, *see* Section IV.F.4 of this preamble.

<sup>58</sup> *See* CAA Section 182(b)(1)(a)(1)(i), the final 2008 ozone SRR (80 FR 12269, March 6, 2015) and section III.G of this preamble.

<sup>59</sup> The EPA notes that this proposal concerns only IPT for ozone. Accordingly, this action does not affect the existing requirements concerning PM<sub>2.5</sub> IPT.

<sup>60</sup> *See* 73 FR 28321, 28340 and 28347 (May 16, 2008).

sources, the EPA is proposing and seeking comment on the following implementation options:

*a. EPA approval of case-by-case ozone IPT ratios.* Under a case-by-case ozone IPT ratio option, air agencies would generally require each permit applicant who wishes to use ozone IPT to satisfy the NNSR emissions offset requirement to calculate the ozone IPT ratio that would be used to determine the amount of the required emissions reduction for each proposed project. The EPA believes that this option would be desirable for air agencies that anticipate few requests for ozone IPT and do not want to expend the resources needed to establish an up-front area-specific default ratio as described in Section IV.F.4.b of this preamble. The EPA is proposing that, in choosing this option, the air agency must include for the EPA's approval a plan submission addressing NNSR program provisions that explicitly authorize case-by-case IPT ratios for a particular ozone nonattainment area(s). Such plan submission must include the procedures by which permit applicants may implement ozone IPT in satisfying the NNSR emissions offset requirement, including a description of the model(s) that will be used, and the calculation of the IPT ratio with a demonstration that such IPT ratio provides an equivalent or greater air quality benefit for ozone concentrations in the ozone nonattainment area. The EPA is also proposing that the air agency's ozone IPT provision must provide that any ozone IPT ratio that an applicant proposes for an individual permit must be approved by both the reviewing authority and the EPA.

*b. EPA approval of area-specific default ozone IPT ratio.* Under the area-specific default ozone IPT option, an air agency would adopt in its plan addressing NNSR requirements for ozone an area-specific default IPT ratio to be used for all applicable NNSR permits issued in a particular ozone nonattainment area. This option would require that a description of the model(s) used, along with the calculated default ratio and the technical demonstration substantiating the equivalent or greater ozone benefit in that nonattainment area, be included in a plan submission for EPA approval. A default ratio that has become part of an approved plan and has undergone public comment during the plan approval process would not require further EPA approval, or be subject to additional public comment, each time it is utilized by individual permit applicants.

*c. Limitations for implementing ozone IPT under Appendix S.* In the specific case where an air agency issues permits pursuant to the interim NNSR requirements under Appendix S, the EPA believes that the air agency's only discretionary option for implementing ozone IPT is the case-by-case ratio option described in Section IV.F.4.a of this preamble. The NNSR requirements under Appendix S generally apply to permits issued in ozone nonattainment areas before the air agency receives approval of its plan including an NNSR program. Thus, such air agencies would not have the opportunity to include in their plan an IPT provision that includes an area-specific default ozone IPT ratio. Accordingly, the EPA is proposing regulatory language in the ozone IPT provisions of Appendix S to include the requirement that each permit applicant seeking to satisfy the offset requirement through IPT must identify and substantiate a case-by-case ratio and provide the necessary justification demonstrating an equivalent or greater ozone benefit in the nonattainment area. The EPA is proposing in Appendix S that such ratio must be approved by both the reviewing authority and the EPA. See proposed section IV.G.5 of Appendix S in 40 CFR part 51.

*d. Other implementation considerations.* The EPA is also proposing for consideration a requirement that the air agency periodically review an area-specific default ratio that is included in its EPA-approved ozone IPT program to ensure the default ratio continues to be valid for the area. The air agency would need to submit new modeling to confirm that the default ratio is still appropriate. The EPA proposes that such periodic evaluation occur at least every 3 years from the air agency's prior plan submission including a default area-specific IPT ratio. The EPA believes the 3-year period is reasonable, since it coincides with RFP milestone dates and periodic area-specific emissions inventory submission deadlines. The EPA seeks comment on the need to require that an EPA-approved IPT program include periodic program evaluations by the air agency and the appropriate frequency of such evaluations.

As explained earlier, the EPA believes that it is reasonable for air agencies to have the option of implementing either a case-by-case ozone IPT ratio or an area-specific default IPT ratio, depending on the needs and capabilities of the individual air agencies. The EPA also believes that air agencies having EPA-approved NNSR programs should

have the option of implementing a combination of the two proposed options. This would enable an air agency to develop an area-specific default IPT ratio, but, at the same time, allow an individual permit applicant to propose an alternative case-specific IPT ratio (if it can demonstrate to the satisfaction of both the reviewing authority and the EPA that such alternative ratio is appropriate for the proposed offsetting transaction for a specific permit application).

Finally, IPT programs are discretionary on the part of air agencies and are not required SIP revisions. Therefore, air agencies would not be required to submit a regulatory provision consistent with the proposed IPT provision at 40 CFR 51.165(a)(11)(i) within the 36-month timeframe set forth in 40 CFR 51.1314 for NSR requirements for the revised ozone NAAQS. Air agencies would be permitted to submit an IPT plan revision to the EPA for approval within the 36-month timeframe or at any later date that the air agencies deems to be appropriate.

#### 5. Proposed Technical Guidance Document for Developing Ozone IPT Ratios

As mentioned earlier in the preamble, the EPA is including a TGD in the docket for this rulemaking. The purpose of the proposed TGD is to provide air agencies with guidance on a technical approach to estimate ozone impacts from precursor emissions for a specific nonattainment area or for case-by-case determinations. The TGD provides a framework and associated general methodology to apply existing or new empirical relationships between ozone and precursors to develop IPT ratios. The data sets and analyses included in the TGD may be used by air agencies as appropriate to develop IPT ratios; alternatively, air agencies may use existing modeling or generate their own modeling to provide the basis for the development of IPT ratios. The EPA believes the methodology presented in the TGD may be used by air agencies for developing default IPT ratios for specific nonattainment areas, and by air agencies and major stationary sources for developing appropriate case-by-case IPT ratios.<sup>61</sup> The EPA is seeking comment on all aspects of the TGD.

In addition, in light of proposed changes to EPA's Guideline for Air Quality Models, published as Appendix W to 40 CFR part 51, which provide greater clarity regarding the use of

<sup>61</sup> The EPA does not propose in the regulations to require permitting authorities to use the data or methods described in the TGD.



chemical transport modeling to estimate single-source ozone impacts from precursors, any empirical relationships deemed acceptable for estimating single-source compliance with the NAAQS under PSD permitting could also provide credible and suitable information for air agencies to establish area-specific IPT ratios for purposes of satisfying the NNSR offset requirements. The EPA is seeking comment on the use of technically credible relationships estimated with chemical transport models between single-source ozone impacts and precursors to provide the basis for an IPT ratio. Appendix W (if finalized, as proposed) provides guidelines for area-specific assessments of precursor emissions impacts on ozone and these guidelines may also support the development of case-by-case IPT ratios or area-specific default IPT ratios for ozone precursors.

### *G. Emissions Inventory and Emissions Statement Requirements*

#### 1. Background and Summary of Proposal

The EPA is proposing to clarify its emissions inventory and emissions statement requirements in the context of this action by adding 40 CFR 51.1315. CAA sections 182(a)(1) and 182(a)(3)(A) require states to submit emissions inventories to the EPA. To clarify these statutory requirements within the context of implementing the 2008 ozone NAAQS, the EPA added 40 CFR 51.1115 (80 FR 12264, 12314; March 6, 2015). These statutory and regulatory authorities do not address the associated emissions statement requirements under CAA section 182(a)(3)(B). For purposes of the 2015 ozone NAAQS we are proposing to add 40 CFR 51.1315, which will clarify requirements for the emissions inventories and emissions statements required by CAA sections 182(a)(1), 182(a)(3)(A), and 182(a)(3)(B), respectively. While the proposed 40 CFR 51.1315 is similar to the existing 40 CFR 51.1115, these provisions are not identical, as discussed later. Moreover, we are also clarifying in this preamble how air agencies demonstrate compliance with CAA section 182(a)(3)(B) in the context of the 2015 ozone NAAQS.

#### 2. Emissions Inventories

The emission inventory requirements for the 2008 ozone NAAQS, found at 40 CFR 51.1115, describe the criteria and timing for base year and periodic inventories required under CAA sections 182(a)(1) and 182(a)(3)(A), respectively. For reference, the preamble to the final 2008 Ozone

NAAQS SIP Requirements Rule provides an extensive discussion of the EPA's rationale and approach for emission inventories (80 FR 12289; March 6, 2015). In general, we provided that air agencies may rely, when appropriate, on their 3-year cycle inventory as described by the Air Emissions Reporting Requirements rule (AERR, codified in 40 CFR 51, subpart A) to meet the 182(a)(3)(A) periodic inventory obligations, with additional requirements for the reporting of ozone season day emissions and treatment of partial-county inventories.<sup>62</sup>

To support the periodic emissions inventory requirement, the EPA is proposing revisions to the AERR point source reporting thresholds in AERR Table 1 (40 CFR 51, subpart A, appendix A) to be consistent with the major source thresholds for ozone nonattainment areas. These reporting thresholds are in tons of potential emissions per year. The existing AERR Table 1 includes Moderate area thresholds of 100 tpy for NO<sub>x</sub> and VOC, which are the same as the triennial thresholds for all areas. The existing AERR table also includes lower VOC thresholds for the Serious, Severe, and Extreme areas of 50, 25 and 10 tpy. With this proposed revision, the AERR table would be updated to also explicitly include these same Serious, Severe and Extreme area thresholds for NO<sub>x</sub>. The same thresholds as have existed for VOC also apply for NO<sub>x</sub>, consistent with definition of "major source" in both 40 CFR 70.2 and 40 CFR 71.2. In addition, the VOC and NO<sub>x</sub> thresholds also depend on whether the source is within an OTR in accordance with CAA 184(b)(2). Thus, the EPA proposes to include in the AERR table a 50 tpy potential-to-emit (PTE) VOC threshold for sources within an OTR and a 50 tpy PTE NO<sub>x</sub> threshold for sources both within an OTR and within a Moderate ozone nonattainment area. The latter requirement applies the same definition noted above in 40 CFR 70.2 and 40 CFR 71.2. Finally, this proposal removes the lower 100 tpy PTE carbon monoxide (CO) threshold from Appendix A for ozone nonattainment areas because there is no major source threshold for CO in the current or proposed

implementing regulations for the ozone NAAQS. The EPA notes that these proposed revisions are technical corrections, and we are not proposing or accepting comment on any substantive revisions to the AERR itself.

Air agencies are advised to check the EPA Web site for the currently approved mobile source models and to consult with the EPA Office of Transportation and Air Quality and their Regional office to determine the versions of models to use for their SIPs for the 2015 ozone NAAQS. MOVES2014a, which incorporates both onroad and nonroad emissions estimates, is the most recently approved model for states other than California. The model and additional information are available at: <http://www.epa.gov/otaq/models/moves/index.htm>. Other appropriate methods should be used to estimate emissions of nonroad sources not included in the model. For California, consult with the EPA Region 9 for information on the latest approved version of the EMFAC (Emissions FACtors) model. EMFAC2014 is the most recently approved model.

The EPA is proposing to otherwise adopt the same emission inventory requirements for the 2015 ozone NAAQS, based on the current approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule.

#### 3. Emissions Statements

For nonattainment areas, air agencies must develop, and include in their SIP, emission reporting programs for certain VOC and NO<sub>x</sub> sources in accordance with CAA section 182(a)(3)(B). The required state program defines how air agencies obtain emissions data directly from certain facilities, and these data, along with other information, are then reported to the EPA as part of SIP inventories required by CAA sections 182(a)(1) and 182(a)(3)(a). This state program is generally referred to as an emissions statement regulation, and it outlines how certain facilities must report emissions and facility activity data to an air agency, typically a state. Reports submitted to air agencies must be accompanied by "a certification that the information contained" in the report is "accurate to the best knowledge" of the facility.<sup>63</sup> To properly implement the emissions reporting requirements, emissions statement regulations should be coordinated carefully with the data

<sup>62</sup> States should consult the latest version of the guidance document titled "Emission Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations," EPA-454/R-05-001 (latest final November 2005; revised draft April 2014) and any subsequent updates to that guidance that the EPA makes available at: <https://www.epa.gov/air-emissions-inventories/emissions-inventory-guidance-implementation-ozone-and-particulate-matter>.

<sup>63</sup> Additional details on developing emissions statement regulations can be found in the guidance document titled "Guidance on the Implementation of an Emission Statement Program (DRAFT)," (July 1992) available at: <https://www.epa.gov/air-emissions-inventories/implementation-emission-statement-program>.

elements that are required by the EPA (existing requirements at 40 CFR 51.1115 and proposed at 40 CFR 51.1315). An air agency must submit the emissions statement regulation required by CAA section 182(a)(3)(B), or a written statement certifying a previously-approved regulation, to the EPA as a SIP revision for approval (see Section III.A.2 of this preamble). CAA section 110, in conjunction with 40 CFR 51.102, 103 and Appendix V, establishes the procedure for submitting a SIP revision.

## V. Additional Considerations

This section addresses several important requirements and policies, with one exception, the EPA is not proposing specific regulatory text due to lingering legal issues, scientific unknowns and uncertainties associated with developing and implementing new requirements and/or policies. The one exception concerns proposed new regulatory provisions that require air agencies to demonstrate RACM for Marginal areas for treatment under CAA section 179B (see Section V.D of this preamble). The EPA is using this notice, however, to solicit public comment on these requirements and policies to inform possible future actions.

### A. Managing Emissions From Wildfire and Wildland Prescribed Fire

The final 2008 Ozone NAAQS SIP Requirements Rule discussed the large contribution that wildfire can make to air pollution (including ozone), and wildfire's threat to public safety. The rule also recognized that this effect can be mitigated through management of wildland vegetation, including through prescribed fire. Such mitigation can help manage the contribution of fires to ozone levels in nonattainment areas. Therefore, the EPA recommended as guidance but not as a requirement of the final rule, if wildfire impacts are significant and contribute to exceedances of the standard, then air agencies should consider RACM for wildfires (which RACM could include a required program of prescribed fires). The EPA also recommended that air agencies should consider RACM for managing emissions from prescribed fires (including those prescribed fires conducted to reduce future wildfire emissions). The rule noted that information is available from the U.S. Department of the Interior (DOI) and the U.S. Department of Agriculture (USDA) Forest Service on smoke management programs and basic smoke management practices (BSMP). See 80 FR 12282.

More recently, in its proposed implementation rule for the PM<sub>2.5</sub>

NAAQS, the EPA proposed to recommend as guidance, but not as a requirement of the final rule, if wildfire impacts are significant, and contributed to exceedances of the standard, then air agencies should consider RACM for wildfires (which RACM could include a required program of prescribed fires). The EPA also proposed to recommend that air agencies should consider RACM for managing emissions from prescribed fires (including those prescribed fires conducted to reduce future wildfire emissions). The proposal noted that information is available from the DOI and the USDA Forest Service on smoke management programs and BSMP. The EPA requested comment on the concept of, and practical considerations associated with RACM for wildfire and RACM for prescribed fire, including such issues as how such measures can be characterized in the emissions inventory and attainment demonstration and made federally enforceable for adoption in a SIP (80 FR 15372; March 23, 2015). Upon consideration of public comments and further consultation with other federal agencies, the EPA recommended, as guidance for air agencies as they implement the final PM<sub>2.5</sub> implementation rule, that air agencies follow a different approach to addressing RACM for wildland fire than the approach that the EPA proposed to recommend (81 FR 58038–39; August 24, 2016). We are proposing the same recommended approach for purposes of implementing the 2015 ozone NAAQS, as discussed in this preamble.

Before explaining this recommendation further, the EPA wishes to clarify that the recommendation is focused on wildland fire management. There are other uses of prescribed fire and other types of burning that occur in nonattainment areas, or that affect downwind nonattainment areas, such as burning of land clearing debris, agricultural burning, and burning of logging slash on land where the primary purpose of the logging is for commercial timber sale.<sup>64</sup> The challenges with applying the traditional nonattainment planning framework that are raised in this discussion are particular to wildland fire, and the EPA believes that addressing these other uses of prescribed fire does not present nearly the same level of challenge, and thereby can still be accommodated within the nonattainment planning framework. For

example, where these other types of burning currently contribute to ozone levels in a nonattainment area, air agencies may, with an adequate technical demonstration, be able to take credit for reductions resulting from improvement in smoke management techniques for these types of prescribed fire where the improvement results in a demonstrated reduction in impacts in the nonattainment area. The remainder of this discussion is not meant to address these categories, and is instead focused on prescribed fire on wildlands.

The EPA also wants to clarify that it is not the intention to in any way discourage federal, state, local or tribal agencies or private land owners from taking situation-appropriate steps to minimize impacts from prescribed fire emissions on wildland. The EPA encourages all land owners and managers to apply appropriate BSMP to reduce emissions from prescribed fires, especially where an air agency has determined that prescribed fires are a significant source affecting air quality. The EPA understands that the federal land managers (FLMs) apply these measures routinely and will be available to consult with other agencies and private parties interested in doing the same.

However, for several reasons, the EPA does not believe it would be effective policy or technically appropriate to recommend that control measures for wildland fire be adopted into the SIP as enforceable measures and credited for emissions reductions (of ozone and precursors) that would help the area attain the standard.<sup>65</sup> Instead, EPA recommends that ozone nonattainment plans (and in particular the attainment demonstrations) not expressly account for expected air quality changes over the planning period resulting from changes in the use of wildland prescribed fire to reduce future wildfires, or air quality changes over the planning period resulting from changes in wildland fire emissions due to a program of prescribed fire or due to any other cause including climate change. In most cases, state attainment demonstration modeling should assume that wildland

<sup>64</sup> The EPA notes that some wildland logging operations are conducted for the same purposes as prescribed fire (e.g., reducing fuel load, ecosystem benefits). The fact that some of the removed trees may be sold as timber does not make commercial timber sale the primary purpose of such operations.

<sup>65</sup> These reasons include concerns raised by commenters about the difficulties associated with requiring or even encouraging states to incorporate wildland fire emissions into existing nonattainment planning procedures and practices under the CAA; high year-to-year variability and unpredictability with emissions from wildland fires; uncertainty in the amount of credit to give for reduced wildfire within the planning period and in the amount of benefit that exists after accounting for increases in prescribed fires within the planning period; and finally, the fact that air quality data actually influenced by fire events may ultimately be excluded under the provisions of the Exceptional Events Rule (40 CFR 50.14).

prescribed fire and wildfire emissions in the attainment year will be equal to, and have the same temporal and geographic pattern as, those assumed in the baseline inventory year.

The EPA acknowledges that some temporal and spatial patterns of fire emissions must still be assumed in the attainment demonstration in order to ensure that the required air quality modeling results in a realistic physical and chemical environment and a correspondingly realistic model response against which to analyze the changes from categories where express accounting of changes is still being done. This rule is not intended to constrain the options for states regarding the appropriate assumptions to make for fire emissions. Rather, it simply recommends that once this base level is established, ozone plans should not attempt to expressly project changes over the planning period in emissions from wildfires or prescribed fires on wildland within the nonattainment area, or in upwind areas included in the modeling domain, that are due to variability in wildfire occurrence or changes in the use of prescribed fire or other wildland fire management practices. Moreover, the EPA anticipates that changes in spatial and temporal patterns of wildfire will likewise be too uncertain for them to be allowed to have the effect of reducing or increasing the control requirement on conventional anthropogenic sources. The EPA therefore recommends that baseline wildland fire emissions should generally be held constant over the planning period, regardless of whether wildland fire management practices by land managers are expected, and possibly encouraged, to change.

Air agencies still have flexibility in determining how best to represent baseline wildland fire emissions. As noted earlier, base year emission inventories for the nonattainment areas should represent the conditions leading to nonattainment and be consistent with inventories used for modeling. For fires, the EPA additionally encourages air agencies to use a representative mix of prescribed fire and wildfire in their inventories. Using PM<sub>2.5</sub> as an example, some plans under previous PM<sub>2.5</sub> NAAQS have estimated the actual fire emissions and temporal and spatial patterns from a given year and used this estimate as the assumed future baseline for planning, while others have used average emissions over multiple years. Other approaches may be appropriate as well. Moreover, regardless of the approach used, the EPA still encourages air agencies to submit actual wildfire and prescribed fire activity data that are

critical to developing emissions estimates to the NEI as suggested in the AERR.

A consequence of the recommendation of not expressly accounting for changes in wildland fires in attainment demonstrations is that measures to reduce emissions from wildland fires, such as prescribed fire to prevent catastrophic wildfires and for mitigation purposes or smoke management programs and BSMP for prescribed fires in wildland, need not be included as RACM for the respective fire types. This is because the changes in emissions due to such measures would not be accounted for in determining what is necessary for attainment and/or what would advance the attainment date, which is how the EPA is recommending that RACM be determined. So, for example, in an area that can attain in 6 years with measures that do not address wildland fire, the EPA does not recommend that states attempt to quantify whether increased prescribed fire could advance the attainment date by 1 year, due to aforementioned difficulties associated with such quantification.

To be clear, nothing about this policy regarding RACM is intended to suggest that fires should be ignited in wildland (or elsewhere) without regard to the air quality or public health consequences. As noted earlier, the EPA believes these consequences are important to address, and intends to engage in dialogue with the FLMs, air agencies, tribes, state and private land owners and other stakeholders at appropriate times, such as during the process for the development of land management plans, about how land managers determine when and where prescribed fire is appropriate for particular wildlands and how to identify and implement appropriate mitigation measures. The policy simply makes clear the EPA's view regarding its recommendation for RACM for wildland fires.

Finally, the EPA notes that, because a significant element of the rationale for this policy is the uncertainty in the timing of wildfires, we may reconsider this recommendation in the future, if adequate tools emerge that allow for predicting fire emissions with sufficient specificity. However, even if such tools emerge, due to inherent uncertainties it may be impossible to satisfactorily incorporate the use of such information into an attainment demonstration framework.

## *B. Transportation Conformity and General Conformity*

### *1. What is conformity?*

Conformity is required under CAA section 176(c) to ensure that federal actions are consistent with ("conform to") the purpose of the SIP. Conformity to the purpose of the SIP means that federal activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or interim reductions and milestones. Conformity applies to areas that are designated nonattainment, and those nonattainment areas redesignated to attainment with a CAA section 175A maintenance plan after 1990 ("maintenance areas").

The EPA's Transportation Conformity Rule (40 CFR 51.390 and part 93, subpart A) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. These activities include adopting, funding or approving transportation plans, transportation improvement programs (TIPs) and federally supported highway and transit projects. The EPA first promulgated the Transportation Conformity Rule on November 24, 1993 (58 FR 62188), and subsequently published several amendments. We subsequently restructured the Transportation Conformity Rule in such a manner that existing conformity requirements will apply for any new or revised NAAQS (77 FR 14979; March 14, 2012); the conformity rule, therefore, applies directly and does not need to be updated to reflect the 2015 ozone NAAQS. However, the EPA intends to issue an update to existing transportation guidance related to the implementation of the revised ozone standards. The updates to the existing guidance will address topics that include when conformity applies for the 2015 ozone NAAQS, when conformity may stop applying for the 2008 ozone NAAQS and the baseline year to be used by metropolitan planning organizations (MPOs) in nonattainment areas for the 2015 ozone NAAQS that are required to use one or both of the interim emissions tests to demonstrate conformity before such areas have adequate or approved motor vehicle emissions budgets for the 2015 ozone NAAQS (or adequate or approved budgets for a previous ozone NAAQS). For further information on transportation conformity rulemakings, policy guidance and outreach materials, see the EPA's Web site at <http://www3.epa.gov/otaq/stateresources/transconf/policy.htm>.

With regard to general conformity, the EPA first promulgated general

conformity regulations in November 1993 (40 CFR part 51, subpart W and 40 CFR part 93, subpart B). Subsequently, the EPA finalized revisions to the general conformity regulations on April 5, 2010 (75 FR 17254). The general conformity program ensures that federal actions not covered by the Transportation Conformity Rule will not interfere with the SIP. General conformity also fosters communications between federal agencies and state and local air quality agencies, provides for public notification of and access to federal agency conformity determinations and allows for air quality review of individual federal actions. More information on the general conformity program is available at <http://www3.epa.gov/airquality/genconform/>.

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

The EPA is discussing transportation and general conformity in this proposed rulemaking in order to provide affected parties with information on when conformity must be implemented after nonattainment areas are designated for the 2015 ozone NAAQS. The information presented here is consistent with existing conformity regulations and statutory provisions that are not addressed by this ozone implementation rulemaking. Affected parties include state and local transportation and air quality agencies, MPOs, and federal agencies including the U.S. Department of Transportation (DOT), the U.S. Department of Defense, the DOI and the USDA.

## 3. When would transportation and general conformity apply to areas designated nonattainment for the 2015 ozone NAAQS?

Transportation and general conformity will apply 1 year after the effective date of nonattainment designations for a new or revised ozone NAAQS including the 2015 ozone NAAQS. This is because CAA section 176(c)(6) provides a 1-year grace period from the effective date of initial designations for any new or revised NAAQS before transportation and general conformity apply in areas newly designated nonattainment for a specific pollutant and NAAQS. The grace period applies to newly designated nonattainment for a new or revised ozone NAAQS including the 2015 ozone NAAQS even if the area had been designated nonattainment for a prior ozone NAAQS. With regard to general conformity, the EPA's April 2010 revisions to its general conformity

regulations (*see* 75 FR 17277; April 5, 2010) apply the same 1-year grace period to all new or revised NAAQS—including the 2015 ozone NAAQS—for purposes of general conformity.

With regard to transportation conformity, the conformity grace period will apply to all areas designated nonattainment for a new or revised ozone NAAQS including the 2015 ozone NAAQS. The requirements differ depending on whether the nonattainment area includes any part of an MPO designated under 23 United States Code (U.S.C.) section 134. Within 1 year after the effective date of the initial nonattainment designation for a given pollutant and NAAQS, the MPOs and DOT must make a conformity determination with regard to that pollutant and standard for all of the metropolitan transportation plans and TIPs in the nonattainment area. The conformity requirements for surrounding “donut areas,” including the application of the 1-year conformity grace period, are generally the same as those for metropolitan areas.<sup>66</sup> If, at the end of the grace period, the MPO and the DOT have not made a transportation plan and TIP conformity determination for the relevant pollutant and standard, the area would be in a conformity “lapse.” During a conformity lapse, only certain projects can receive additional federal funding or approvals to proceed.<sup>67</sup> The practical impact of a conformity lapse will vary from area to area. Finally, the 1-year conformity grace period also applies to project level conformity determinations.

Isolated rural nonattainment areas are areas that do not contain or are not part of an MPO (40 CFR 93.101).<sup>68</sup>

<sup>66</sup> For the purposes of transportation conformity, a “donut” area is the geographic area outside a metropolitan planning area boundary, but inside a designated nonattainment or maintenance area boundary that includes an MPO (40 CFR 93.101).

<sup>67</sup> During a conformity lapse, only the following projects can receive additional federal approvals and funding:

1. Projects that are exempt from transportation conformity such as elimination of at-grade railroad crossings, repaving roadways, widening narrow pavements and reconstructing bridges as long as new travel lanes are not added because they are exempt from conformity; and

2. Transportation control measures included in approved SIPs because these projects provide emissions reductions toward attaining or maintaining the NAAQS.

Additionally, any project or project phase that was funded or approved prior to a lapse may proceed but no additional funding or approval decisions may be made until the lapse is ended.

<sup>68</sup> An isolated rural nonattainment area as defined in the transportation conformity rule is distinct from a CAA section 182(h) rural transport area. An isolated rural area for transportation conformity purposes is a nonattainment area that does not contain or is not part of any metropolitan planning area as designated under federal transportation

Conformity requirements for isolated rural nonattainment areas can be found at 40 CFR 93.109(g). One year after the effective date of the initial nonattainment designation for a given pollutant and NAAQS, conformity requirements with regard to that pollutant and standard would apply in any nonattainment areas that are isolated rural areas. Per the Transportation Conformity Rule, at the point that a transportation project in an isolated rural area needs federal funding or approval, the project sponsor (*e.g.*, the state DOT) would prepare the documentation required for the transportation conformity determination, including a regional emissions analysis. The Federal Highway Administration and Federal Transit Administration could then make the transportation conformity determination. This conformity determination may occur significantly after the 1-year grace period has ended. *See* the EPA's July 1, 2004, final rule for further background on how the EPA has implemented this conformity grace period in metropolitan, donut and isolated rural areas (69 FR 40008–14).<sup>69</sup>

## 4. Would transportation and general conformity apply for the 2008 ozone NAAQS once that NAAQS is revoked?

The CAA only requires transportation and general conformity determinations in areas that are designated nonattainment or maintenance for a given pollutant and standard.<sup>70</sup> As discussed in Section IV.B of this preamble, the EPA is proposing two options for revoking the 2008 ozone NAAQS. One option is to revoke the 2008 ozone NAAQS for all purposes as has been done for the 1997 and 1-hour ozone NAAQS one year after the effective date of designations for the 2015 ozone NAAQS. The second option is to revoke the 2008 ozone NAAQS in areas that have always been designated attainment for that NAAQS and in areas that have been redesignated to

planning regulations. (40 CFR 93.101) A rural transport area as defined in CAA section 182(h) is a nonattainment area that is not adjacent to or part of any metropolitan statistical area or consolidated metropolitan area, if one exists. Such an area may be treated as a rural transport area if the Administrator finds that sources of VOC and, if relevant, NO<sub>x</sub> emissions in the area do not make a significant contribution to the ozone concentrations measured in the area or other areas.

<sup>69</sup> Also, *see* the EPA's transportation conformity Web site for more information, including EPA's “Transportation Conformity Guidance for 2008 Ozone NAAQS Nonattainment Areas” at: <http://www3.epa.gov/otaq/stateresources/transconf/2008naqs.htm>.

<sup>70</sup> Maintenance areas are areas that have been redesignated to attainment with an approved CAA section 175A maintenance plan.

attainment with an approved CAA section 175A maintenance plan. Under the second option, the 2008 ozone NAAQS would be revoked in all attainment areas for that NAAQS one year after the effective date of designations for the 2015 ozone NAAQS. EPA will continue to redesignate nonattainment areas for the 2008 ozone NAAQS after the initial revocation. In those areas that are redesignated at a later date, the 2008 ozone NAAQS will be revoked on the effective date of the redesignation but in no case sooner than 1 year after the effective date of the designation for the 2015 ozone NAAQS for the area. Therefore, transportation and general conformity would no longer apply for purposes of the 2008 ozone NAAQS as of the time those standards (and, thus, an area's designation for those standards) are revoked. Accordingly, transportation and general conformity determinations would no longer be required in existing 2008 ozone NAAQS nonattainment and maintenance areas after the 2008 ozone NAAQS is revoked under either of the proposed options. However, under option 2, the revocation for areas designated as nonattainment for the 2008 ozone NAAQS would not occur one year after the effective date of designations for the 2015 ozone NAAQS. The revocation for these areas would only occur on the effective date of their redesignation to attainment for the 2008 ozone NAAQS if such redesignation were to occur.

Under our current Transportation Conformity Rule, the latest approved or adequate emission budgets for a prior ozone NAAQS (*i.e.*, the 2008, 1997 or the 1-hour ozone NAAQS) would continue to be used in transportation conformity determinations for the 2015 ozone NAAQS until emission budgets are established and found adequate or are approved for the 2015 ozone NAAQS (77 FR 14981, 14981; April 20, 1990). The use of the latest approved or adequate motor vehicle emission budgets for a prior ozone NAAQS as part of transportation conformity determinations in nonattainment areas for the 2015 NAAQS until 2015 ozone motor vehicle emissions budgets are available has been recognized as a "control" for purposes of defining anti-backsliding requirements as discussed in section IV.B of this proposal. *South Coast Air Qual. Mgmt. Dist. v. EPA*, 489 F.3d at 1248 (clarifying *South Coast*, 472 F.3d at 904–05). This requirement is already codified at 40 CFR 93.109(c)(2).

5. What impact will the implementation of the 2015 ozone NAAQS have on an air agency's transportation and/or general conformity SIP?

As long as the EPA does not make specific changes to its transportation or general conformity regulations, air agencies should not need to revise their transportation and/or general conformity SIPs. The EPA is not proposing any changes to its transportation conformity or general conformity regulations. Air agencies with new nonattainment areas may need to revise conformity SIPs in order to ensure the state regulations apply in any newly designated areas.

However, if this is the first time that transportation conformity will apply in a state, the air agency is required by the statute and EPA regulations to submit a SIP revision that addresses three specific transportation conformity requirements that address consultation procedures and written commitments to control or mitigation measures associated with conformity determinations for transportation plans, TIPs or projects (40 CFR 51.390). Additional information and guidance can be found in the EPA's "Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)" (<http://www3.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf>).

6. Are there any other impacts related to general conformity based on implementation of the 2015 ozone NAAQS?

As air agencies develop SIP revisions for the 2015 and future ozone NAAQS, the agency recommends that state and local air quality agencies work with federal agencies with large facilities (*e.g.*, commercial airports, ports and large military bases) that might take actions subject to the general conformity regulations to establish an emissions budget in the SIP for those facilities in order to facilitate future conformity determinations under the conformity regulations. Such a budget could be used by federal agencies in determining conformity or identifying mitigation measures for particular projects at those facilities, but only if the budget level is included and identified in the SIP.

In a few cases, tracts of land under federal management may also be included in nonattainment and maintenance area boundaries. The role of fire in these areas should be assessed and emissions budgets developed in concert with those federal land management agencies. In such areas the EPA encourages air agencies to consider

in any baseline, modeling and SIP attainment inventory used and/or submitted to include emissions expected from projects subject to general conformity, including emissions from wildland fire that may be reasonably expected in the area. Where appropriate, air agencies may consider developing plans for addressing wildland fuels in collaboration with land managers and owners. Information is available from DOI and USDA Forest Service on the ecological role of fire and on smoke management programs and BSMP.<sup>71</sup>

### *C. Requirements for Contingency Measures in the Event of Failure To Meet a Milestone or To Attain*

For purposes of the 2015 ozone NAAQS, the EPA is proposing no changes to the requirements for contingency measures articulated in the final 2008 Ozone NAAQS SIP Requirements Rule (80 FR 12285; March 6, 2015).<sup>72</sup> As required by the CAA, nonattainment areas must include in their SIPs contingency measures consistent with CAA section 172(c)(9), and those classified Serious or higher must include contingency measures that are also consistent with CAA section 182(c)(9), with limited exceptions for Extreme nonattainment areas relying on plan provisions approved under CAA section 182(e)(5). These contingency measures must be fully adopted rules or measures that are ready for implementation quickly upon failure to meet milestones or attain by the attainment deadline. Per EPA guidance,<sup>73</sup> these measures should provide 1 year's worth of reductions, or

<sup>71</sup> USDA Forest Service and Natural Resources Conservation Service, Basic Smoke Management Practices Tech Note, October 2011, [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1046311.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046311.pdf).

<sup>72</sup> The EPA acknowledges that the U.S. Court of Appeals for the 9th Circuit recently issued an opinion in *Bahr v. EPA*, No. 14–72327, 2016 U.S. App. LEXIS 16667 (9th Cir. Sept. 12, 2016), which rejected EPA's longstanding interpretation of section 172(c)(9) in the context of a SIP for particular matter standards that allowed states to rely on control measures that are already in effect as a valid means to meet the contingency measure requirement. The EPA is still in the process of assessing and determining how to address the *Bahr* decision, but does not currently plan to alter the Agency's longstanding interpretation outside of the 9th Circuit, especially in light of a prior decision from the U.S. Court of Appeals for the 5th Circuit upholding that interpretation. See *Louisiana Env't'l Action Network v. EPA*, 382 F.3d 575 (5th Cir. 2004); see also 40 CFR 56.5(b).

<sup>73</sup> August 23, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, to Regional Air Directors, "Guidance on Issues Related to 15 Percent Rate-of-Progress Plans." Available at: [http://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19930823\\_shapiro\\_15pct\\_rop\\_guidance.pdf](http://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19930823_shapiro_15pct_rop_guidance.pdf).

approximately 3 percent of the baseline emissions inventory. If these adopted contingency measures are insufficient to attain the standard, an air agency must conduct additional control measure development and implementation for the area as necessary to correct the shortfall.

Regarding content of the 1 year's worth of reductions covered by the contingency measures, the EPA is proposing to continue to allow these reductions of the contingency measures to be based entirely or in part on NO<sub>x</sub> controls if the area has completed the initial 15 percent ROP VOC reduction required by CAA section 182(b)(1)(A)(i) and an air agency's analyses have demonstrated that NO<sub>x</sub> substitution (entirely or in part) would be effective in bringing the area into attainment. The EPA will continue to allow the use of federal measures providing ongoing reductions into the future to be used meet contingency measure requirements for the 2015 ozone NAAQS, consistent with the EPA's longstanding policy.

With respect to Extreme ozone nonattainment areas, CAA section 182(e)(5) allows the agency to exercise discretion in approving Extreme area attainment plans that rely, in part, on the future development of new control technologies or improvements of existing control technologies, where certain conditions are met. This discretion can be applied as long as an air agency has demonstrated that: All RACM, including RACT, have been included in the plan; the area's RFP demonstration during the first 10 years after designation does not rely on anticipated future technologies; and the air agency has submitted enforceable commitments to timely develop and adopt contingency measures to be implemented if the anticipated future technologies do not achieve planned reductions. The EPA is proposing to continue to allow air agencies to submit, for Extreme nonattainment areas, enforceable commitments to develop and adopt contingency measures meeting the requirements of 182(e)(5) to satisfy the requirements for both attainment contingency measures in CAA sections 172(c)(9) and 182(c)(9). These enforceable commitments must obligate the air agency to submit the required contingency measures to the EPA no later than 3 years before any applicable implementation date, in accordance with CAA section 182(e)(5).<sup>74</sup> We note that this does not,

however, relieve air agencies from obligations to submit contingency measures as required by CAA sections 172(c)(9) and 182(c)(9) for periods in the first 10 years after designation.

#### *D. International Transport and Background Ozone*

Most modeled ozone air quality values that exceed the NAAQS in the United States (U.S.) are due primarily to emission sources within the U.S. However, domestic ozone air quality can also be affected by sources of emissions located outside of the U.S. These contributions to U.S. ozone concentrations from sources outside of the U.S., which can be from nearby sources in a bordering country or from sources many thousands of miles away,<sup>75</sup> can affect to varying degrees the ability of some areas to attain and maintain the 2015 ozone NAAQS. The EPA will continue to work with our domestic and international partners to better understand the extent and implications of transboundary flows of air pollutants and, where possible, to mitigate their impact on U.S. domestic air quality.

Congress recognized that some nonattainment areas may be impacted not only by local sources of ozone or ozone precursor emissions, but also sources of emissions from outside of the U.S. Through CAA section 179B, Congress provided the EPA with the authority to approve attainment plans for areas that could attain the relevant NAAQS by the statutory attainment date "but for" emissions emanating from outside the U.S. When applicable, this CAA provision relieves states from imposing control measures on emissions sources in the state's jurisdiction beyond those necessary to address reasonably controllable emissions from within the U.S. Specifically, CAA section 179B(a) provides that the EPA shall approve an attainment plan for such an area if: (i) The attainment plan meets all other applicable requirements of the CAA, and (ii) the submitting state can satisfactorily demonstrate that "but for emissions emanating from outside the United States," the area would

commitments must obligate the state to submit adopted contingency measures to the EPA no later than 2024 (*i.e.*, 3 years before RFP contingency measures for 2027 would be implemented).

<sup>75</sup> Observational and modeling studies have shown that international ozone precursor emissions can lead to ozone formation within the atmospheric boundary layer over far-upwind areas. When meteorological conditions are favorable, this ozone can be transported within the mid- and upper troposphere where ozone lifetimes can exceed one week. Eventually, these ozone plumes can mix down to the surface and contribute to local ozone concentrations within the U.S. (Task Force on Hemispheric Transport of Air Pollution, 2010).

attain and maintain the relevant NAAQS. In addition, CAA section 179B(b) applies specifically to the ozone NAAQS and provides that if a state demonstrates that an ozone nonattainment area would have timely attained the NAAQS by the applicable attainment date "but for emissions emanating from outside of the United States," then the area can avoid extension of the ozone attainment dates pursuant to CAA section 181(a)(5), the application of fee provisions of CAA section 185, and the mandatory reclassification provisions under CAA section 181(b)(2)<sup>76</sup> for areas that fail to attain the ozone NAAQS by the applicable attainment date. Section 179B, thus, provides an important tool that provides states relief from the requirement to demonstrate attainment—and from the more stringent planning requirements that would result from failure to attain—in areas where, even though the air agency has taken appropriate measures to address air quality in the influenced area, emissions from outside of the U.S. prevent attainment.

In the 2008 ozone SIP Requirements Rule, the EPA stated that a section 179B demonstration could include consideration of any emissions from North American or intercontinental sources. (80 FR 12293). The EPA also stated at that time that it did not believe use of section 179B was limited to nonattainment areas adjoining international borders. *Id.* at 12294. The EPA notes, however, that the science review conducted as part of the 2015 ozone NAAQS suggests that the influence of international sources on U.S. ozone levels will be largest in locations that are in the immediate vicinity of Mexico or Canada (80 FR 65292, 65444; October 26, 2015). The EPA, therefore, anticipates that section 179B will most often be used by states with areas along the border with Mexico and Canada. Historically, the EPA has used CAA section 179B authority to approve attainment plans in the immediate vicinity of the Mexican border, including El Paso, Texas,<sup>77</sup> Imperial Valley, California,<sup>78</sup> and

<sup>76</sup> It is EPA's longstanding position that the Clean Air Act contained an erroneous reference to section 181(a)(2) instead of 181(b)(2) in 179B(b). See "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498, 13569 fn. 41 (April 16, 1992).

<sup>77</sup> 59 FR 2532 (January 18, 1994); 68 FR 39457 (July 2, 2003); 69 FR 32450 (June 10, 2004).

<sup>78</sup> 66 FR 53106 (October 19, 2001), overturned in *Sierra Club v. EPA, et al.*, 352 F.3d 1186 (9th Cir. 2003).

<sup>74</sup> For example, where a state intends to rely on CAA section 182(e)(5) commitments to satisfy the CAA section 182(c)(9) contingency measure requirement for an RFP milestone in year 2027, the

Nogales, Arizona.<sup>79</sup> Consistent with the particular showing required by the statutory language, the EPA will consider section 179B demonstrations on a case-by-case basis. The EPA asks for comment on whether the opportunity for such a demonstration should be limited to nonattainment areas adjoining international borders, and on any technical and legal basis for determining whether it is appropriate to have, or conversely whether it is appropriate not to have, such a limitation.

Even if an area is impacted by emissions from outside the U.S., CAA section 179B does not affect the designations process.<sup>80</sup> The designations process is meant to protect public health and welfare. Designating an area nonattainment for a particular NAAQS ensures that the public is informed that the air quality in a specific area does not meet the standard. Congress determined that in nonattainment areas, there should be adequate safeguards to protect public health and welfare. For example, Congress required such areas to have NNSR permitting programs, to ensure that air quality is not further degraded. Accordingly, areas with design values above the 2015 ozone NAAQS will be designated nonattainment and will be classified with a classification as indicated by actual ambient air quality. As a result of designation and classification, the state is subject to the applicable requirements, including NNSR, conformity, and other measures prescribed for nonattainment areas by the CAA. Section 179B of the CAA does not provide for any relaxation of mandatory emissions control measures (including contingency measures) or the prescribed emissions reductions; it only eliminates the obligation for an attainment demonstration that demonstrates attainment and maintenance of the NAAQS, which is conditioned upon the state meeting all other attainment plan requirements,<sup>81</sup> and voids certain consequences of an

area's failure to attain, including mandatory reclassifications.

CAA section 179B does not alter the CAA's general construct expressed in subpart 1 of part D that states with nonattainment areas are expected to adopt reasonable emissions controls to lessen emissions of criteria pollutants to promote citizen health protection. The construct ensures that states will take reasonable actions to mitigate the public health impacts of exposure to ambient levels of pollution that violate the NAAQS by imposing reasonable control measures on the sources that are within the jurisdiction of the state regardless of impacts from interstate or international emissions. The primary purpose of part D of Title I of the CAA is to achieve emission reductions so that people living in a nonattainment area receive the public health protection intended by the NAAQS.

Marginal ozone nonattainment areas are not generally required to implement reasonably available control technology requirements under subpart 2 of part D of Title 1 of the CAA. If an air agency were to apply for treatment under CAA section 179B(b) to avoid mandatory reclassification of a Marginal area after its failure to attain by the applicable attainment date, an area could continue to remain Marginal and, therefore, never implement reasonable emissions controls.

The EPA believes that adopting an interpretation of CAA section 179B that would allow people to continue to be subjected to levels of ozone above the NAAQS that a state could reasonably reduce—in this case not to attainment level, but to a level below the current level—would be antithetical to the objectives of the CAA. The EPA believes it is appropriate for the Administrator to take this general construct of the CAA into account in determining during the application of CAA section 179B whether, “to the satisfaction of the Administrator,” an area would have attained the ozone NAAQS by the applicable attainment date but for emissions emanating from outside of the U.S. Accordingly, the EPA is proposing and seeking comment on a requirement that all demonstrations under CAA section 179B(b), regardless of an area's classification (including nonattainment areas classified as Marginal), must include a showing that the air agency adopted all RACM, including RACT, for the area in accordance with CAA section 172(c)(1), 42 U.S.C. 7502(c)(1). Under this interpretation, if the air agency did not adopt reasonable control measures before making a section 179B(b) demonstration, it will be missing a critical component of the

demonstration that the area would have attained the ozone NAAQS by the attainment date “but for” international impacts, namely a showing that the area could otherwise attain by application of reasonable controls on sources of emissions that are within the state's jurisdiction.<sup>82</sup> We are proposing to add new regulatory provisions at 40 CFR 51.1309 to establish that air agencies must also demonstrate RACM for Marginal areas for treatment under CAA section 179B.

The EPA encourages air agencies to coordinate with their EPA regional office to identify approaches to evaluate the potential impacts of international transport and to determine the most appropriate information and analytical methods for each area's unique situation. The EPA will also work with air agencies that are developing attainment plans for which CAA section 179B is relevant, and ensure the air agencies have the benefit of the EPA's understanding of international transport of ozone and ozone precursors. Air agencies are encouraged to consult with their EPA Regional office to establish appropriate technical requirements for these analyses. The EPA invites comment as to whether the EPA should develop technical guidance for the “but for” analysis in a section 179B demonstration, and invites comment about which methodologies and tools would be most effective to help states develop section 179B demonstrations.

With respect to the larger issue of background ozone (or U.S. background, (USB)), the EPA has solicited input from air agencies, tribes, and interested stakeholders on aspects of USB that are relevant to attaining the 2015 ozone NAAQS in a manner consistent with the provisions of the CAA.<sup>83</sup> To establish a common understanding and foundation for discussion, the EPA released a white paper titled, “Implementation of the 2015 Primary Ozone NAAQS: Issues Associated with Background Ozone” in December 2015, and held a workshop in February 2016 to discuss information in the white paper.<sup>84</sup>

<sup>79</sup> 77 FR 58962 (September 25, 2012).

<sup>80</sup> Monitoring data cannot be excluded for a determination of whether an area has attained a NAAQS based solely on the fact the data are affected by international transport. However, such data may be excluded from consideration if they were significantly influenced by exceptional events as described in CAA section 319(b). Where international transport meets the criteria and procedural requirements contained in the EPA's Exceptional Events Rule (40 CFR 50.14), it may be addressed by that rule. *See* 81 FR 68216 (October 3, 2016).

<sup>81</sup> For a more detailed description of attainment planning requirements, *see* Section III.A of this preamble.

<sup>82</sup> With respect to the demonstration under CAA section 179B(a), regardless of the nonattainment area's classification, where a plan can demonstrate that an area will attain the NAAQS by the attainment date after adopting all reasonable control measures, and, as such, would be potentially approvable by the EPA, such a plan would not also be eligible for approval under CAA section 179B(a) by simply omitting these measures.

<sup>83</sup> For purposes of NAAQS implementation, the EPA considers background ozone to be any ozone formed from sources or processes other than U.S. manmade emissions of NO<sub>x</sub>, VOCs, methane and CO.

<sup>84</sup> The white paper and other workshop details are available at: <https://www.epa.gov/ozone->



Workshop attendees included representatives of state, local and tribal air agencies, and other interested stakeholders. A general theme among attendee comments was a concern that the EPA is underestimating the magnitude and effects of USB, and that available policy solutions do not provide meaningful relief from nonattainment designations in affected areas.<sup>85</sup> The EPA continues to refine and conduct its national and global model simulations to better characterize USB, and is actively evaluating the need for further guidance and/or rules to address USB based on feedback received.

The EPA also recently finalized revisions to the Exceptional Events Rule to further facilitate review and approval of exceptional events that contribute to USB, such as stratospheric intrusions and wildfires (81 FR 68216; October 3, 2016).

#### *E. Additional Policies and Programs for Achieving Emissions Reductions*

##### 1. Multi-Pollutant Planning

Increasingly, state air agencies are considering multi-pollutant emission reduction strategies such as energy efficiency and renewable energy (EE/RE) requirements as compliance options for CAA plans and EPA encourages this multi-pollutant approach when assessing compliance options for ozone RFP and attainment demonstration SIPs. Many states are already implementing cost-effective EE/RE requirements that reduce all types of power generation related emissions (including carbon dioxide, NO<sub>x</sub>, PM<sub>2.5</sub>, SO<sub>2</sub>, and hazardous air pollutants). Effectively assessing these approaches will require strong working relationships between state energy and environmental officials. As state Public Utility Commissions (PUC) and state energy offices implement, increase the stringency of, or adopt new EE/RE requirements, their expertise can assist air agencies to incorporate the NO<sub>x</sub> emission impacts into ozone RFP and attainment demonstration SIPs.

The EPA discussed this approach more completely in the final Clean Power Plan (CPP)<sup>86</sup> and in an

accompanying Technical Support Document (TSD) titled “Incorporating RE and Demand-Side EE into State Plan Demonstrations.”<sup>87</sup> States would be able to use EE/RE requirements as a compliance option in their state plans to meet the CPP’s carbon dioxide emission reduction targets for existing fossil-fired electric generating units (EGUs), and achieve a co-benefit of reducing NO<sub>x</sub> emissions that would be beneficial to managing ozone formation.

The EPA has available several resources to help air agencies incorporate these multi-pollutant strategies in NAAQS SIPs/TIPs. Resources include the “Roadmap for Incorporating EE/RE Programs and Policies in NAAQS SIPs/TIPs”<sup>88</sup> (released August 2012) and the AVOIDed Emissions generation Tool (AVERT), a tool for quantifying NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> avoided emissions<sup>89</sup> (released February 2014). The Roadmap describes four pathways (baseline emissions projection, control strategy, emerging/voluntary measures, and weight of evidence determination) by which EE/RE policies and programs could be included in a SIP. Each pathway is appropriate in certain circumstances (existing vs. new EE/RE, control vs. voluntary measures, etc.) and the Roadmap can help decision-makers consider their options as they decide which pathway(s) to pursue for incorporating EE/RE policies and programs into SIP/TIP demonstrations. The Roadmap’s Appendix I also presents several methods available for quantifying the avoided NO<sub>x</sub> emissions from fossil fuel generation as a result of electricity savings from EE/RE policy/program implementation.<sup>90</sup>

The EPA’s tool, AVERT, can help planners in quantifying the emissions reductions that result from EE/RE policies and programs. AVERT outputs are readily available for SMOKE formatting to incorporate the emission impacts into air quality models.

##### 2. Energy Efficiency/Renewable Energy Policies and Programs

###### *a. State-level EE/RE Requirements.*

State PUCs, primarily through their

*Virginia v. EPA*, No. 15A773, Order at 1 (U.S. Feb. 9, 2016).

<sup>87</sup> U.S. EPA (October 2015) Clean Power Plan TSD: Incorporating RE and Demand-Side EE Impacts into State Plan Demonstrations available at: <https://www.epa.gov/sites/production/files/2015-11/documents/tsd-cpp-incorporating-re-ee.pdf>.

<sup>88</sup> Roadmap for Incorporating EE/RE Programs and Policies in NAAQS SIPs/TIPs available at: <http://www3.epa.gov/airquality/eere/manual.html>.

<sup>89</sup> AVERT available at: <http://www3.epa.gov/avert/>.

<sup>90</sup> Available at: <http://www3.epa.gov/airquality/eere/pdfs/appendixI.pdf>.

utilities, have in recent years been rapidly increasing resources devoted to EE programs. In the five years spanning 2006 to 2011, budgets for EE programs more than tripled, from \$1.6 billion to \$5.9 billion. Additionally, EE spending is projected to continue to grow at a substantial rate.<sup>91</sup> As of March 2015, 23 states have mandatory energy efficiency requirements, two states have voluntary targets, and two states allow energy efficiency as a compliance option for their renewable portfolio standard.<sup>92</sup>

Also, state-level RE requirements have been implemented in 29 states plus Washington, DC, representing all regions of the country.<sup>93</sup> Between the years 2020 and 2030, many state-level renewable portfolio standard (RPS) programs require electric utilities to serve from 15 to 40 percent of their retail sales with renewable power.<sup>94</sup>

In an effort to examine the effects of these programs, EPA developed a counterfactual EE/RE scenario for a couple of areas that were nonattainment for EPA’s 2008 ozone NAAQS, including the New York-New Jersey-Connecticut area.<sup>95</sup> In these illustrative examples the EPA used AVERT to approximate the potential emissions that would have been emitted into the atmosphere without current state-level EE/RE requirements. For the New York-New Jersey-Connecticut area, the EPA estimated that the current state-level RE requirements<sup>96</sup> would avoid over 24 tons per summer day of NO<sub>x</sub> in 2020, and the current state-level EE

<sup>91</sup> American Council for an Energy-Efficient Economy (ACEEE) 2013 State Energy Efficiency Scorecard. November 2013. Available at <http://www.aceee.org/state-policy/scorecard/>.

<sup>92</sup> U.S. EPA 2015. Energy and Environmental Guide to Action, Chapter 4 available at: [http://www3.epa.gov/statelocalclimate/documents/pdf/GTA\\_Chapter\\_4.1\\_508.pdf](http://www3.epa.gov/statelocalclimate/documents/pdf/GTA_Chapter_4.1_508.pdf).

<sup>93</sup> RE requirements include Renewable Portfolio Standards or state-enacted RE requirements on a Mega-Watt (MW) basis. Database of State Incentives for Renewables and Efficiency, March 2013. Available at: <http://www.dsireusa.org>. Accessed January 3, 2016.

<sup>94</sup> U.S. EPA. 2015 Energy and Environment Guide to Action, Chapter 5 available at: [http://www3.epa.gov/statelocalclimate/documents/pdf/guide\\_action\\_chapter5.pdf](http://www3.epa.gov/statelocalclimate/documents/pdf/guide_action_chapter5.pdf).

<sup>95</sup> This area encompasses eight counties in New York, 12 counties in New Jersey, and three counties in Connecticut. The EPA’s analysis is described in the Technical Support Document “Demonstrating NO<sub>x</sub> Emission Reduction Benefits of State-Level Renewable Energy and Energy Efficiency Policies” available in the docket.

<sup>96</sup> The 2020 RE requirements in each state are different and range from 20 percent–30 percent.

*pollution/background-ozone-workshop-and-information.*

<sup>85</sup> A high-level summary of workshop feedback is available at: <https://www.epa.gov/sites/production/files/2016-03/documents/bgo3-high-level-summary.pdf>. Additional written comments from interested parties are located in a separate EPA docket at <http://www.regulations.gov> (Docket ID No. EPA-HQ-OAR-2016-0097).

<sup>86</sup> Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule (Clean Power Plan) (80 FR 64662; October 23, 2015). See, e.g., *West*

programs<sup>97</sup> would avoid nearly 17 tons per summer day of NO<sub>x</sub> in 2020.<sup>98</sup>

### 3. Land Use Planning

Air agencies may also wish to consider strategies that foster more efficient urban and regional development patterns as a long-term air pollution control measure. Resources include the U.S. Department of Housing and Development—DOT-EPA Partnership for Sustainable Communities, as well as the policy and technical guidance documents on land use and related travel efficiency available on the EPA's Office of Transportation and Air Quality Web site.<sup>99</sup> These documents provide communities with the information they need to better understand the link between air quality, transportation and land use, and how certain land use policies have the potential to help local areas achieve and maintain healthy air quality. The documents also include methods to help communities account for the air quality benefits of their local land use in their air quality plans.

If wildfire impacts are significant in a particular area, air agencies and communities may be able to lessen the impacts of wildfires by working collaboratively with land managers and land owners to employ various mitigation measures including taking steps to minimize fuel loading in areas vulnerable to fire.

### 4. Travel Efficiency

Areas may also consider incorporating travel efficiency strategies, such as new or expanded mass transit options, commuter strategies, system operations (e.g., ramp metering), pricing (e.g., parking fees, congestion pricing, roadway tolls), real-time travel information and multimodal freight strategies in their SIPs. The EPA has released several documents that could be useful to air agencies that want to evaluate emissions reductions from travel efficiency strategies. These documents provide information on analysis methods and the potential effectiveness of different combinations of travel efficiency measures for reducing emissions. Additionally, the

EPA has compiled a report about transportation control measures that have been implemented across the country for a variety of purposes, including reducing emissions related to criteria pollutants. All of these documents are available on the EPA's Office of Transportation and Air Quality Web site.<sup>100</sup>

#### *F. Additional Requirements Related to Enforcement and Compliance*

CAA section 172(c)(6) requires nonattainment SIPs to "include enforceable emission limitations, and such other control measures, means or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment . . ." The EPA's current guidance, "Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans (EPA-452/R-93-005, June 1993)"<sup>101</sup> is still relevant to rules adopted for SIPs under the 2015 ozone NAAQS and should be consulted for purposes of developing appropriate enforceable nonattainment plan provisions under CAA section 172(c)(6). The EPA is not proposing any additional specific regulatory provisions related to compliance and enforcement for implementing the 2015 ozone NAAQS.

#### *G. Applicability of Proposed Rule to Tribes*

Section 301(d) of the CAA authorizes the EPA to approve eligible Indian tribes to implement provisions of the CAA on Indian reservations and other areas within the tribes' jurisdiction.<sup>102</sup> The TAR (40 CFR part 49.1–49.11), which implements CAA section 301(d), sets forth the criteria and process for tribes to apply to the EPA for eligibility to administer CAA programs (40 CFR 49.6, 49.7). As discussed in detail in the proposed 2008 Ozone NAAQS SIP Requirements Rule (78 FR 34209; June

6, 2013), tribes are not required to TIPs under the TAR. However, should a tribe choose to develop a TIP, this proposed rule is intended to serve as a guide for addressing key implementation issues for their area of Indian country, particularly for any areas of Indian country that may be designated as nonattainment areas separate from surrounding state areas.

It is important for state and local air agencies and tribes to work together to coordinate planning efforts where nonattainment areas include both Indian country and state land. Coordinated planning in these areas will help ensure that the planning decisions made by the state and local air agencies and tribes complement each other and that the nonattainment area makes reasonable progress toward attainment and ultimately attains the 2015 ozone NAAQS. In reviewing and approving individual TIPs and SIPs, we will determine if together they are consistent with the overall air quality needs of an area.

States have an obligation to notify other states in advance of any public hearing(s) on their state plans if such plans will significantly impact such other states. 40 CFR 51.102(d)(5). Under CAA section 301(d) of the CAA and the TAR, tribes may become eligible to be treated in a manner similar to states (TAS) for this purpose (40 CFR 49.6–49.9). Affected tribes with this status must also be informed of the contents of such state plans and given access to the documentation supporting these plans. In addition to this mandated process, we encourage states to extend the same notice to all affected tribes, regardless of their TAS status.

Executive Orders and the EPA's Indian policies generally call for the EPA to coordinate and consult with tribes on matters that affect tribes. Executive Order 13175, titled, "Consultation and Coordination with Indian Tribal Governments" requires the EPA to develop a process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have Tribal implications." In addition, the EPA's policies include the agency's 1984 Indian Policy relating to Indian tribes and implementation of federal environmental programs, the April 10, 2009, OAQPS guidance "Consulting with Indian Tribal Governments," and the "EPA Policy on Consultation and Coordination With Indian Tribes."<sup>103</sup>

<sup>100</sup> See [http://www.epa.gov/otaq/stateresources/policy/pag\\_transp.htm](http://www.epa.gov/otaq/stateresources/policy/pag_transp.htm).

<sup>101</sup> Available at: <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=00002TCM.txt>.

<sup>102</sup> On January 17, 2014, the United States Court of Appeals for the District of Columbia Circuit issued a decision vacating the EPA's 2011 rule titled "Review of New Sources and Modifications in Indian Country" (76 FR 38748) with respect to non-reservation areas of Indian country (See, *Oklahoma Department of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014)). Under the court's reasoning, with respect to CAA SIPs, a state has primary regulatory jurisdiction in non-reservation areas of Indian country (i.e., Indian allotments located outside of reservations and dependent Indian communities) within its geographic boundaries unless the EPA or a tribe has demonstrated that a tribe has jurisdiction over a particular area of non-reservation Indian country within the state.

<sup>103</sup> Tribal guidance documents are available at: <http://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>.

<sup>97</sup> The EE programs used in each state are different. Connecticut's estimated annual efficiency savings is 2.8 percent, New York's target was 15 percent savings from baseline by 2015, and New Jersey incentivized efficiency improvements through a funding program of \$265 million in FY2014.

<sup>98</sup> For context, the RFP plan for the New York-New Jersey-Connecticut 1997 ozone NAAQS nonattainment area included a 2008 NO<sub>x</sub> emissions projection of 269 tons per summer day.

<sup>99</sup> See [http://www.epa.gov/otaq/stateresources/policy/pag\\_transp.htm](http://www.epa.gov/otaq/stateresources/policy/pag_transp.htm).

Consistent with these policies, the EPA intends to coordinate and consult with tribes on activities potentially affecting the attainment and maintenance of the 2015 ozone NAAQS in Indian country, including our actions on SIPs. We encourage state air agencies to work with tribes with land that is part of the same general air quality planning area during the SIP development process and to coordinate with tribes as they develop their SIPs regardless of whether the tribe's area of Indian country is separately designated.

## VI. Environmental Justice Considerations

The EPA believes this action will not have disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because it would not negatively affect the level of protection provided to human health or the environment under the 2015 ozone NAAQS, which are at levels to protect sensitive populations with an adequate margin of safety.<sup>104</sup> When promulgated, these regulations will clarify the SIP requirements and the NNSR permitting requirements to be met by air agencies in order to attain the 2015 ozone NAAQS as expeditiously as practicable. These requirements are designed to protect all segments of the general population and will not adversely affect the health or safety of minority, low-income or indigenous populations.

## VII. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to OMB for review. Any changes made in response to OMB recommendations have been documented in the docket.

### B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under

the PRA. The ICR document that the EPA prepared has been assigned the EPA ICR No. 2347.03 and OMB Reference No. 2060–0695. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The EPA is proposing these implementing regulations for 2015 ozone NAAQS so that air agencies will know what CAA requirements apply to their nonattainment areas when the air agencies develop their SIPs for attaining and maintaining the NAAQS. The intended effect of these implementing regulations is to provide certainty to air agencies regarding their planning obligations. For purposes of analysis of the estimated paperwork burden, the EPA assumed 57 nonattainment areas,<sup>105</sup> some of which must prepare an attainment demonstration as well as submit an RFP and RACT SIP. The attainment demonstration requirement would appear in 40 CFR 51.1308 which implements CAA subsections 172(c)(1), 182(b)(1)(A) and 182(c)(2)(B). The RFP SIP submission requirement would appear in 40 CFR 51.1310, and the RACT SIP submission requirement would appear in 40 CFR 51.1312, which implements CAA subsections 172(c)(1) 182(b)(2), (c), (d) and (e).

Air agencies should already have information from many emission sources, as facilities should have provided this information to meet 1-hour, 1997, and 2008 ozone NAAQS SIP requirements, operating permits and/or emissions reporting requirements. Such information does not generally reveal the details of production processes. But, to the extent it may, CBI for the affected facilities is protected. Specifically, submissions of emissions and control efficiency information that is confidential, proprietary and trade secret is protected from disclosure under the requirements of subsections 503(e) and 114(c) of the CAA.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to be a total of 41,800 labor hours per year

at an annual labor cost of \$2.5 million (present value) over the 3-year period or approximately \$107,000 per state for the 23 state air agency respondents. The ICR Supporting Statement for the 2015 8-hour Ozone NAAQS Implementation Rule EPA ICR No. 2347.03 in the docket provides the details for the 23 state air agencies that are required to provide the 66 SIP revisions for the 57 hypothetical areas designated nonattainment for the 2015 ozone standard. The average annual reporting burden is 633 hours per response, with approximately 2.87 responses per state for 66 state responses from the state air agencies. There are no capital or operating and maintenance costs associated with the proposed rule requirements. Burden is defined at 5 CFR 1320.3(b).

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

To comment on the agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID No. EPA–HQ–OAR–2016–0202. Commenters should submit any comments related to the ICR to both the EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 17, 2016, a comment to OMB is best assured of having its full effect if OMB receives it by December 19, 2016. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Entities potentially affected directly by this rule include state, local and tribal governments and none of these governments are small governments. Other types of small entities are not directly subject to the requirements of this rule because this

<sup>104</sup> The EPA conducted a regulatory impact analysis (RIA) of its final action establishing the 2015 ozone NAAQS. The demographic analysis conducted as part of the RIA found that in areas with poor air quality relative to the revised standards, the representation of minority populations was slightly greater than in the U.S. as a whole (see Chapter 9, section 9.10 and Appendix 9A of the RIA). Because the air quality in these areas does not currently meet the revised standards, populations in these areas would be expected to benefit from implementation of the strengthened standards. The RIA is available at <https://www3.epa.gov/ttn/ecas/docs/20151001ria.pdf> and in the RIA docket (EPA–HQ–OAR–2013–0169).

<sup>105</sup> The EPA developed a hypothetical list of nonattainment areas for estimating the burden for states to meet their 2015 ozone nonattainment area requirements. The hypothetical nonattainment areas were based on the preliminary 2013–2015 air quality data available. The hypothetical nonattainment areas include multiple counties for most areas based on the existing 2008 and 1997 8-hour ozone nonattainment areas, Combined Statistical Area, or Core Based Statistical Area boundary associated with a violating monitor. Note that these areas are used for analytical purposes only. Actual nonattainment areas and boundaries will be determined through the designations process.

action only addresses how a SIP will provide for adequate attainment and maintenance of the NAAQS and meet the obligations of the CAA. Although some states may ultimately decide to impose economic impacts on small entities, that is not required by this rule and would only occur at the discretion of the state.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action implements mandates specifically and explicitly set forth in the CAA without the exercise of any policy discretion by the EPA.

*E. Executive Order 13132: Federalism*

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

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

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

Although Executive Order 13175 does not apply to this action, the EPA briefed tribal officials in developing this proposal.

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

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

subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

*I. National Technology Transfer and Advancement Act (NTTA)*

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in Section VI of this preamble.

## VIII. Statutory Authority

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

### List of Subjects

*40 CFR Part 50*

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

*40 CFR Part 51*

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

Dated: November 2, 2016.

**Gina McCarthy,**  
Administrator.

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

## PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

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

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

■ 2. In § 50.15, add paragraph (c) to read as follows:

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

\* \* \* \* \*

### Proposed Regulatory Text for Option 1

(c) The 2008 ozone NAAQS set forth in this section will remain applicable to all areas of the country notwithstanding the promulgation of 2015 ozone NAAQS under § 50.19. The 2008 ozone NAAQS set forth in this section will no longer apply to an area 1 year after the effective date of the initial area designation of that area for the 2015 ozone NAAQS pursuant to section 107 of the CAA. For purposes of the anti-backsliding requirements of § 51.1305, § 51.165 and Appendix S to part 51, the area designations and classifications with respect to the revoked 1-hour, 1997 and 2008 ozone NAAQS are codified in 40 CFR part 81.

### Proposed Regulatory Text for Option 2

(c) Notwithstanding the promulgation of 2015 ozone NAAQS under § 50.19, the 2008 ozone NAAQS set forth in this section will remain applicable to any area of the country designated nonattainment for the 2008 ozone NAAQS as of the date of that area's initial designation for the 2015 ozone NAAQS pursuant to section 107 of the CAA. For any other area of the country, the 2008 ozone NAAQS set forth in this section will no longer apply to such area 1 year after the effective date of the initial designation of that area for the 2015 ozone NAAQS pursuant to section 107 of the CAA.

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

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

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

■ 4. Revise § 51.1119 to read as follows:

### Subpart AA—Provisions for Implementation of 8-Hour Ozone National Ambient Air Quality Standards

#### § 51.1119 Applicability.

As of revocation of the 2008 ozone NAAQS in an area, as set forth in § 50.15(c), the provisions of §§ 51.1100 to 51.1118 of subpart AA cease to apply, [Proposed Regulatory Text for Option 1: except for § 51.1107 for the anti-backsliding purposes of § 51.1305(c)(2).]

■ 5. Part 51 is amended by adding subpart CC to read as follows:

**Subpart CC—Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards**

Sec.

- 51.1300 Definitions.
- 51.1301 Applicability of part 51.
- 51.1302 Classification and nonattainment area planning provisions.
- 51.1303 Application of classification and attainment date provisions in CAA section 181 to areas subject to § 51.1302.
- 51.1304 [Reserved]
- 51.1305 Transition from the 2008 ozone NAAQS to the 2015 ozone NAAQS and anti-backsliding.
- 51.1306 Redesignation to nonattainment following initial designations.
- 51.1307 Determining eligibility for 1-year attainment date extensions for an 8-hour ozone NAAQS under CAA section 181(a)(5).
- 51.1308 Modeling and attainment demonstration requirements.
- 51.1309 Demonstrations that areas would have attained but for international emissions under CAA section 179B(b).
- 51.1310 Requirements for reasonable further progress (RFP).
- 51.1311 [Reserved]
- 51.1312 Requirements for reasonably available control technology (RACT) and reasonably available control measures (RACM).
- 51.1313 Section 182(f) NO<sub>x</sub> exemption provisions.
- 51.1314 New source review requirements.
- 51.1315 Emissions inventory requirements.
- 51.1316 Requirements for an Ozone Transport Region.
- 51.1317 Fee programs for Severe and Extreme nonattainment areas that fail to attain.
- 51.1318 Suspension of SIP planning requirements in nonattainment areas that have air quality data that meet an ozone NAAQS.
- 51.1319 Applicability.

**Subpart CC—Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards**

**§ 51.1300 Definitions.**

The following definitions apply for purposes of this subpart. Any term not defined herein shall have the meaning as defined in 40 CFR 51.100.

(a) *1-hour NAAQS* means the 1-hour primary and secondary ozone national ambient air quality standards codified at 40 CFR 50.9.

(b) *1997 NAAQS* means the 1997 8-hour primary and secondary ozone national ambient air quality standards codified at 40 CFR 50.10.

(c) *2008 NAAQS* means the 2008 8-hour primary and secondary ozone NAAQS codified at 40 CFR 50.15.

(d) *2015 NAAQS* means the 2015 8-hour primary and secondary ozone NAAQS codified at 40 CFR 50.19.

(e) *1-hour ozone design value* is the 1-hour ozone concentration calculated according to 40 CFR part 50, appendix H and the interpretation methodology issued by the Administrator most recently before the date of the enactment of the CAA Amendments of 1990.

(f) *8-hour ozone design value* is the 8-hour ozone concentration calculated according to 40 CFR part 50, appendix P for the 2008 NAAQS, and 40 CFR part 50, appendix U for the 2015 NAAQS.

(g) *CAA* means the Clean Air Act as codified at 42 U.S.C. 7401–7671q (2010).

(h) *Attainment area* means, unless otherwise indicated, an area designated as either attainment, unclassifiable, or attainment/unclassifiable.

(i) *Attainment year ozone season* shall mean the ozone season immediately preceding a nonattainment area's maximum attainment date.

(j) *Designation for a NAAQS* shall mean the effective date of the designation for an area for that NAAQS.

(k) *Higher classification/lower classification*. For purposes of determining whether a classification is higher or lower, classifications under subpart 2 of part D of title I of the CAA are ranked from lowest to highest as follows: Marginal; Moderate; Serious; Severe-15; Severe-17; and Extreme.

(l) *Initially designated* means the first designation that becomes effective for an area for a specific NAAQS and does not include a redesignation to attainment or nonattainment for that specific NAAQS.

(m) *Maintenance area* means an area that was designated nonattainment for a specific NAAQS and was redesignated to attainment for that NAAQS subject to a maintenance plan as required by CAA section 175A.

(n) *Nitrogen Oxides (NO<sub>x</sub>)* means the sum of nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(o) *Ozone season* means for each state (or portion of a state), the ozone monitoring season as defined in 40 CFR part 58, appendix D, section 4.1(i) for that state (or portion of a state).

**[Proposed Regulatory Text for Option 1:**

(p) *Applicable requirements* for an area for anti-backsliding purposes means the following requirements, to the extent such requirements apply to the area pursuant to its classification for revoked ozone NAAQS, as codified in 40 CFR part 51, on the effective date of the revocation of those NAAQS:

(1) Reasonably available control technology (RACT) under CAA sections 172(c)(1) and 182(b)(2).

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

(3) Major source applicability thresholds for purposes of RACT under CAA sections 172(c)(2), 182(b), 182(c), 182(d), and 182(e).

(4) Reductions to achieve Reasonable Further Progress (RFP) under CAA sections 172(c)(2), 182(b)(1)(A), and 182(c)(2)(B) and EPA's implementing regulations at § 51.1310.

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

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

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

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

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

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

(11) NO<sub>x</sub> requirements under CAA section 182(f).

(12) Attainment demonstration requirements under CAA sections 172(c)(4), 182(b)(1)(A), and 182(c)(2).

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

(14) Nonattainment NSR major source thresholds and offset ratios under CAA sections 172(a)(5) and 182(a)(2).

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

(16) Contingency measures associated with areas utilizing CAA section 182(e)(5).

(17) Reasonably available control measures (RACM) requirements under CAA section 172(c)(1).]

(q) *CSAPR* means the Cross-State Air Pollution Rule codified at 40 CFR 52.38 and part 97.

(r) *CAIR* means the Clean Air Interstate Rule codified at 40 CFR 51.123, 52.35 and part 95.

(s) *NO<sub>x</sub> SIP Call* means the rules codified at 40 CFR 51.121 and 51.122.

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

(u) *Reasonable further progress (RFP)* means the emissions reductions

required under CAA sections 172(c)(2), 182(c)(2)(B), 182(c)(2)(C), and § 51.1310. The EPA interprets RFP under CAA section 172(c)(2) to be an average 3 percent per year emissions reduction of either VOC or NO<sub>x</sub>.

(v) *Rate-of-progress* (ROP) means the 15 percent progress reductions in VOC emissions over the first 6 years after the baseline year required under CAA section 182(b)(1).

(w) *Revocation of the 1-hour ozone NAAQS* means the time at which the 1-hour ozone NAAQS no longer apply to an area pursuant to 40 CFR 50.9(b). The date of revocation of the 1-hour NAAQS was June 15, 2005 for most areas of the country.

(x) *Revocation of the 1997 ozone NAAQS* means the time at which the 1997 8-hour ozone NAAQS no longer apply to an area pursuant to 40 CFR 50.10(c). The date of revocation of the 1997 ozone NAAQS was April 6, 2015 for all areas of the country.

(y) *Revocation of the 2008 ozone NAAQS* means the time at which the 2008 8-hour ozone NAAQS no longer apply to an area pursuant to 40 CFR 50.15(c).

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

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

(bb) *I/M* refers to the inspection and maintenance programs for in-use vehicles required under the 1990 CAA Amendments and defined by subpart S of 40 CFR part 51.

(cc) An area “*Designated nonattainment for the 1-hour ozone NAAQS*” means, for purposes of 40 CFR

51.1305, an area that is subject to applicable 1-hour ozone NAAQS anti-backsliding requirements as of April 6, 2015, the effective date of the revocation of the 1997 ozone NAAQS.

(dd) An area “*Designated nonattainment for the 1997 8-hour ozone NAAQS*” means, for purposes of 40 CFR 51.1305, an area that is subject to applicable 1997 ozone NAAQS anti-backsliding requirements as of April 6, 2015, the effective date of the revocation of the 1997 ozone NAAQS.

(ee) An area “*Designated nonattainment for the 2008 8-hour ozone NAAQS*” means, for purposes of 40 CFR 51.1305, an area that is subject to applicable 2008 8-hour ozone NAAQS anti-backsliding requirements as of the effective date of the revocation of the 2008 ozone NAAQS.

(ff) *Current ozone NAAQS* means the most recently promulgated ozone NAAQS at the time of application of any provision of this subpart.

(gg) *Base year inventory* for the nonattainment area means a comprehensive, accurate, current inventory of actual emissions from sources of VOC and NO<sub>x</sub> emitted within the boundaries of the nonattainment area as required by CAA section 182(a)(1).

(hh) *Ozone season day emissions* means an average day's emissions for a typical ozone season work weekday. The state shall select, subject to EPA approval, the particular month(s) in the ozone season and the day(s) in the work week to be represented, considering the conditions assumed in the development

of RFP plans and/or emissions budgets for transportation conformity.

#### § 51.1301 Applicability of part 51.

The provisions in subparts A–Y and AA of part 51 apply to areas for purposes of the 2015 ozone NAAQS to the extent they are not inconsistent with the provisions of this subpart.

#### § 51.1302 Classification and nonattainment area planning provisions.

An area designated nonattainment for the 2015 ozone NAAQS will be classified in accordance with CAA section 181, as interpreted in § 51.1303(a), and will be subject to the requirements of subpart 2 of part D of title I of the CAA that apply for that classification.

#### § 51.1303 Application of classification and attainment date provisions in CAA section 181 to areas subject to § 51.1302.

(a) In accordance with CAA section 181(a)(1), each area designated nonattainment for the 2015 ozone NAAQS shall be classified by operation of law at the time of designation. The classification shall be based on the 8-hour design value for the area at the time of designation, in accordance with Table 1 of paragraph (a) of this section. A state may request a higher or lower classification as provided in paragraphs (b) and (c) of this section. For each area classified under this section, the attainment date for the 2015 NAAQS shall be as expeditious as practicable, but not later than the date provided in Table 1 as follows:

TABLE 1—CLASSIFICATIONS AND ATTAINMENT DATES FOR 2015 8-HOUR OZONE NAAQS (0.070 ppm) FOR AREAS SUBJECT TO 40 CFR 51.1302

Area class	8-Hour design value (ppm ozone)	Primary standard attainment date (years after the effective date of designation for 2015 primary NAAQS)
Marginal:		
from .....	0.071	3
up to * .....	0.081	
Moderate:		
from .....	0.081	6
up to * .....	0.093	
Serious:		
from .....	0.093	9
up to * .....	0.105	
Severe-15:		
from .....	0.105	15
up to * .....	0.111	
Severe-17:		
from .....	0.111	17
up to * .....	0.163	
Extreme:		
equal to or above .....	0.163	20

\* But not including.

(b) A state may request, and the Administrator must approve, a higher classification for an area for any reason in accordance with CAA section 181(b)(3).

(c) A state may request, and the Administrator may in the Administrator's discretion approve, a higher or lower classification for an area in accordance with CAA section 181(a)(4).

(d) The following nonattainment areas are reclassified for the 2015 ozone NAAQS as follows: Serious—Ventura County, CA; Severe—Los Angeles-San Bernardino Counties (West Mojave Desert), Riverside County (Coachella Valley), and Sacramento Metro, CA; Extreme—Los Angeles-South Coast Air Basin, and San Joaquin Valley, CA.

#### **§ 51.1304 [Reserved]**

#### **§ 51.1305 Transition from the 2008 ozone NAAQS to the 2015 ozone NAAQS and anti-backsliding.**

(a) *Requirements that continue to apply after revocation of prior ozone NAAQS.* (1) *Areas designated nonattainment for the 2015 ozone NAAQS and nonattainment for a prior revoked ozone NAAQS.* The following requirements apply to an area designated nonattainment for the 2015 ozone NAAQS and also designated nonattainment for a prior ozone NAAQS as of the effective date of the revocation of the respective prior ozone NAAQS unless the area has an approved redesignation substitute: The area remains subject to the obligation to adopt and implement the applicable requirements of § 51.1300(p), for any ozone NAAQS for which it was designated nonattainment as of the effective date of its revocation, in accordance with its classification for that NAAQS as of the effective date of its revocation, except as provided in paragraph (b) of this section or if the area has an approved redesignation substitute.

(2) *Areas designated nonattainment for the 2015 ozone NAAQS and maintenance for a prior revoked ozone NAAQS.* For an area designated nonattainment for the 2015 ozone NAAQS that was redesignated to attainment for a prior ozone NAAQS prior to the effective date of the revocation of the respective prior ozone NAAQS (hereinafter a "maintenance area"), the approved SIP, including the maintenance plan, is considered to satisfy the applicable requirements of 40 CFR 51.1300(p) for the revoked NAAQS. The measures in the approved SIP and maintenance plan shall continue to be implemented in accordance with the

terms in the approved SIP. Any measures associated with applicable requirements that were shifted to contingency measures prior to the effective date of the revocation of the prior ozone NAAQS shall remain in that form. After revocation of a prior NAAQS, and to the extent consistent with any SIP for the 2015 ozone NAAQS and with CAA sections 110(l) and 193, the state may request approval from the EPA to shift obligations under the applicable requirements of § 51.1300(p) to the SIP's list of maintenance plan contingency measures for the area.

(3) *Areas designated attainment for the 2015 ozone NAAQS and nonattainment for a prior revoked ozone NAAQS.* For an area designated attainment for the 2015 ozone NAAQS, and designated nonattainment for the a prior ozone NAAQS as of the effective date of the revocation of the respective prior ozone NAAQS, the area is no longer subject to nonattainment NSR for the 1997 or 2008 ozone NAAQS, if applicable, and the state may request approval from the EPA to either remove the nonattainment NSR provisions from the SIP or shift them to the SIP's list of maintenance plan contingency measures for the area. Such approval must be consistent with CAA sections 110(l) and 193. If the area's nonattainment NSR provisions are removed from the active portion of the SIP for the area, the area's approved PSD SIP shall be considered to satisfy the state's obligations with respect to the area's maintenance of the 2015 ozone NAAQS pursuant to CAA section 110(a)(1). The state may request approval from the EPA, consistent with CAA sections 110(l) and 193, to shift SIP measures adopted to satisfy other applicable requirements of § 51.1300(p) to the SIP's list of maintenance plan contingency measures for the area.

(4) *Requirements for areas designated attainment for the 2015 ozone NAAQS and maintenance for a prior revoked ozone NAAQS.* An area designated attainment for the 2015 ozone NAAQS with an approved CAA section 175A maintenance plan for a prior revoked ozone NAAQS is considered to satisfy the applicable requirements of 40 CFR 51.1300(p) through implementation of the SIP and maintenance plan provisions for the area. After revocation of a prior NAAQS, and to the extent consistent with CAA sections 110(l) and 193, the state may request approval from the EPA to shift obligations under the applicable requirements of 40 CFR 51.1300(p) to the list of maintenance plan contingency measures for the area.

For an area that is initially designated attainment for the 2015 ozone NAAQS and which has been redesignated to

attainment for a prior revoked ozone NAAQS with an approved CAA section 175A maintenance plan and an approved PSD SIP, the area's approved maintenance plan and the state's approved PSD SIP for the area are considered to satisfy the state's obligations with respect to the area's maintenance of the 2015 ozone NAAQS pursuant to CAA section 110(a)(1).

(b) *Effect of Redesignation or Redesignation Substitute.* (1) An area remains subject to the anti-backsliding obligations for a revoked NAAQS under paragraphs (a)(1) and (a)(2) of this section until either: (i) EPA approves a redesignation to attainment for the area for the 2015 ozone NAAQS, in which case regulatory anti-backsliding requirements for the 1997 and 2008 ozone standards, if applicable, are satisfied; or (ii) EPA approves a demonstration for the area in a redesignation substitute procedure for a revoked NAAQS. Under this redesignation substitute procedure for a revoked NAAQS, and for this limited anti-backsliding purpose, the demonstration must show that the area has attained that revoked NAAQS due to permanent and enforceable emission reductions and that the area will maintain that revoked NAAQS for 10 years from the date of EPA's approval of this showing.

(2) If EPA, after notice-and-comment rulemaking, approves a redesignation to attainment, the state may request approval from the EPA to either remove provisions for nonattainment NSR from the SIP for the 1997 and 2008 ozone standards, subject to the requirements of CAA sections 110(l) and 193, or shift them to the SIP's list of maintenance plan contingency measures for the area.

(3) If the EPA, after notice-and-comment rulemaking, approves a redesignation to attainment, the state may request approval from the EPA to shift other anti-backsliding obligations for the 1997 and 2008 ozone standards to contingency measures, provided that such action is consistent with CAA sections 110(l) and 193.

(4) If EPA, after notice and comment rulemaking, approves a redesignation substitute for a revoked NAAQS, the state may request approval from the EPA to either remove provisions for nonattainment NSR for that revoked NAAQS from the SIP, or shift them to the SIP's list of maintenance plan contingency measures for the area.

(5) If EPA, after notice and comment rulemaking, approves a redesignation substitute for a revoked NAAQS, the state may request approval from the EPA to shift other anti-backsliding obligations for that revoked NAAQS to



contingency measures provided that such action is consistent with CAA sections 110(l) and 193.

(6) Areas that are designated nonattainment for the 2008 ozone NAAQS at the time of designation for the 2015 ozone NAAQS may be redesignated to attainment prior to the effective date of revocation of the 2008 ozone NAAQS.

(c) *Portions of an area designated nonattainment or attainment for the 2015 ozone NAAQS that remain subject to the obligations identified in paragraph (a) of this section.* Only that portion of the designated nonattainment or attainment area for the 2015 ozone NAAQS that was required to adopt the applicable requirements in § 51.1300(p) for purposes of a prior revoked ozone NAAQS is subject to the obligations identified in paragraph (a) of this section. Subpart C of 40 CFR part 81 identifies the areas designated nonattainment and associated area boundaries for prior ozone NAAQS as of the effective date of the revocation of the prior NAAQS.

(d) *Obligations under a prior ozone NAAQS that no longer apply after revocation of the prior ozone NAAQS.* (1) *Second 10-year maintenance plans.* As of the effective date of the revocation of a prior ozone NAAQS, an area with an approved maintenance plan for the respective prior ozone NAAQS under CAA section 175A is not required to submit a corresponding second 10-year maintenance plan 8 years after approval of the initial maintenance plan for that prior ozone NAAQS.

(2) *Determinations of failure to attain a prior revoked ozone NAAQS.* (i) As of the effective date of the revocation of a prior ozone NAAQS, the EPA is no longer obligated to determine pursuant to CAA section 181(b)(2) or section 179(c) whether an area attained the respective prior ozone NAAQS by that area's attainment date for that prior ozone NAAQS.

(ii) As of the effective date of the revocation of a prior ozone NAAQS, the EPA is no longer obligated to reclassify an area to a higher classification for the respective prior ozone NAAQS based upon a determination that the area failed to attain that prior ozone NAAQS by the area's attainment date for that prior ozone NAAQS.

(iii) For a prior revoked ozone NAAQS, the EPA is required to determine whether an area attained the prior ozone NAAQS by the area's attainment date solely for anti-backsliding purposes to address an applicable requirement for nonattainment contingency measures and CAA section 185 fee programs. In

making such a determination, the EPA may consider and apply the provisions of CAA section 181(a)(5) and former 40 CFR 51.907 and 51.1107 in interpreting whether a 1-year extension of the attainment date is applicable.

(e) *Continued applicability of the Federal Implementation Plan (FIP) and SIP requirements pertaining to interstate transport under CAA section 110(a)(2)(D)(i) and (ii) after revocation of prior ozone NAAQS.* All control requirements associated with a FIP or approved SIP in effect for an area as of the effective date of the revocation of a prior ozone NAAQS, such as the NO<sub>x</sub> SIP Call, the CAIR, or the CSAPR shall continue to apply after revocation of the prior ozone NAAQS. Control requirements approved into the SIP pursuant to obligations arising from CAA section 110(a)(2)(D)(i) and (ii), including [NOTE: Update listing as necessary to reflect CSAPR update rule due summer 2016] 40 CFR 51.121, 51.122, 51.123 and 51.124, may be modified by the state only if the requirements of §§ 51.121, 51.122, 51.123 and 51.124, including statewide NO<sub>x</sub> emission budgets continue to be in effect. Any such modification must meet the requirements of CAA section 110(l).

(f) *New source review.* An area designated nonattainment for the 2015 ozone NAAQS and designated nonattainment for a prior revoked ozone NAAQS remains subject to the obligation to adopt and implement the major source threshold and offset requirements for nonattainment NSR that apply or applied to the area pursuant to CAA sections 172(c)(5), 173 and 182 based on the highest of: (i) The area's classification under CAA section 181(a)(1) for the 1-hour NAAQS as of the effective date of revocation of the 1-hour ozone NAAQS; (ii) the area's classification under 40 CFR 51.903 for the 1997 ozone NAAQS as of April 6, 2015, which is the effective date of revocation of the 1997 ozone NAAQS; (iii) the area's classification under 40 CFR 51.1103 for the 2008 ozone NAAQS as of the date a permit is issued or as of the effective date of revocation of the 2008 ozone NAAQS for that area, whichever is earlier; and (iv) the area's classification under § 51.1303 for the 2015 ozone NAAQS. Upon the approval of the EPA of removal of nonattainment NSR obligations for a revoked NAAQS under § 51.1305(b), the state remains subject to the obligation to adopt and implement the major source threshold and offset requirements for nonattainment NSR that apply or applied to the area for the remaining applicable NAAQS consistent with this paragraph.

#### **§ 51.1306 Redesignation to nonattainment following initial designations.**

For any area that is initially designated attainment for the 2015 ozone NAAQS and that is subsequently redesignated to nonattainment for the 2015 ozone NAAQS, any absolute, fixed date applicable in connection with the requirements of this part other than an attainment date is extended by a period of time equal to the length of time between the effective date of the initial designation for the 2015 ozone NAAQS and the effective date of redesignation, except as otherwise provided in this subpart. The maximum attainment date for a redesignated area would be based on the area's classification, consistent with Table 1 in § 51.1303.

#### **§ 51.1307 Determining eligibility for 1-year attainment date extensions for an 8-hour ozone NAAQS under CAA section 181(a)(5).**

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

(1) For the first 1-year extension, the area's 4th highest daily maximum 8-hour average in the attainment year is no greater than the level of that NAAQS.

(2) For the second 1-year extension, the area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, is no greater than the level of that NAAQS.

(b) For purposes of paragraph (a)(1) of this section, the area's 4th highest daily maximum 8-hour average for a year shall be from the monitor with the highest 4th highest daily maximum 8-hour average for that year of all the monitors that represent that area.

(c) For purposes of paragraph (a)(2) of this section, the area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, shall be from the monitor in each year with the highest 4th highest daily maximum 8-hour average of all monitors that represent that area.

#### **§ 51.1308 Modeling and attainment demonstration requirements.**

(a) An area classified Moderate under § 51.1303(a) shall submit an attainment demonstration that provides for such specific reductions in emissions of VOCs and NO<sub>x</sub> as necessary to attain the primary NAAQS by the applicable attainment date, and such demonstration is due no later than 36 months after the effective date of the area's designation for the 2015 ozone NAAQS.

(b) An area classified Serious or higher under § 51.1303(a) shall be

subject to the attainment demonstration requirement applicable for that classification under CAA section 182(c), and such demonstration is due no later than 48 months after the effective date of the area's designation for the 2015 ozone NAAQS.

(c) Attainment demonstration criteria. An attainment demonstration due pursuant to paragraph (a) or (b) of this section must meet the requirements of Appendix W of this part and shall include inventory data, modeling results, and emission reduction analyses on which the state has based its projected attainment date; the adequacy of an attainment demonstration shall be demonstrated by means of a photochemical grid model or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(d) Implementation of control measures. For each nonattainment area, the state must provide for implementation of all control measures needed for attainment as expeditiously as practicable. All control measures in the attainment plan and demonstration must be implemented no later than the beginning of the attainment year ozone season, notwithstanding any alternate RACT and/or RACM implementation deadline requirements in § 51.1312.

**§ 51.1309 Demonstrations that areas would have attained but for international emissions under CAA section 179B(b).**

For purposes of CAA section 179B(b), 42 U.S.C. 7509a(b), in order to establish to the satisfaction of the Administrator that, with respect to an ozone nonattainment area classified as Marginal in such State, such State would have attained the national ambient air quality standard for ozone by the applicable attainment date, but for emissions emanating from outside the United States, a State must demonstrate that all reasonably available control measures have been implemented in the nonattainment area in accordance with CAA section 172(c)(1), 42 U.S.C. 7502(c)(1).

**§ 51.1310 Requirements for reasonable further progress (RFP).**

(a) *RFP for nonattainment areas classified pursuant to § 51.1303.* The RFP requirements specified in CAA section 182 for that area's classification shall apply.

(1) *Submission deadline.* For each area classified Moderate or higher pursuant to § 51.1303, the state shall submit a SIP revision no later than 36 months after the effective date of designation as nonattainment for the 2015 ozone NAAQS that provides for

RFP as described in paragraphs (a)(2) through (4) of this section.

(2) *RFP requirements for areas with an approved prior ozone NAAQS 15 percent VOC ROP plan.* An area classified Moderate or higher that has the same boundaries as an area, or is entirely composed of several areas or portions of areas, for which EPA fully approved a 15 percent plan for a prior ozone NAAQS is considered to have met the requirements of CAA section 182(b)(1) for the 2015 ozone NAAQS and instead:

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

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

(B) Provides for an additional emissions reduction of 3 percent per year from the end of the first 6-year period after the baseline year up to the beginning of the attainment year if a baseline year earlier than 2017 is used; and

(C) Relies on either NO<sub>x</sub> or VOC emissions reductions (or a combination) to meet the requirements of paragraphs (a)(2)(i)(A) and (B) of this section. Use of NO<sub>x</sub> emissions reductions must meet the criteria in CAA section 182(c)(2)(C).

(ii) If classified Serious or higher, the area is also subject to RFP under CAA section 182(c)(2)(B) and shall submit a SIP revision no later than 48 months after the effective date of designation providing for an average emissions reduction of 3 percent per year:

(A) For all remaining 3-year periods after the first 6-year period after the baseline year until the year of the area's attainment date; and

(B) That relies on either NO<sub>x</sub> or VOC emissions reductions (or a combination) to meet the requirements of (a)(2)(ii)(A) and (B). Use of NO<sub>x</sub> emissions reductions must meet the criteria in CAA section 182(c)(2)(C).

(3) *RFP requirements for areas for which an approved 15 percent VOC ROP plan for a prior ozone NAAQS exists for only a portion of the area.* An area that contains one or more portions for which EPA fully approved a 15 percent VOC ROP plan for a prior ozone NAAQS (as well as areas for which EPA has not fully approved a 15 percent plan for a prior ozone NAAQS) shall meet the requirements of either paragraph (a)(3)(i) or (ii) of this section.

(i) The state shall not distinguish between the portion of the area with a previously approved 15 percent ROP plan and the portion of the area without such a plan, and shall meet the requirements of paragraph (a)(4) of this

section for the entire nonattainment area.

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

(A) For the portion of the area without an approved 15 percent VOC ROP plan for a prior ozone NAAQS, the state shall submit a SIP revision as required under paragraph (a)(4) of this section.

(B) For the portion of the area with an approved 15 percent VOC ROP plan for a prior ozone NAAQS, the state shall submit a SIP as required under paragraph (a)(2) of this section.

(4) *ROP Requirements for areas without an approved prior ozone NAAQS 15 percent VOC ROP plan.*

(i) For each area, the state shall submit a SIP revision consistent with CAA section 182(b)(1). The 6-year period referenced in CAA section 182(b)(1) shall begin January 1 of the year following the year used for the baseline emissions inventory.

(ii) For Moderate areas, the plan must provide for an additional 3 percent per year reduction from the end of the first 6-year period after the baseline year up to the beginning of the attainment year if a baseline year other than the most recent triennial inventory year is selected under paragraph (b) of this section.

(iii) For each area classified Serious or higher, the state shall submit a SIP revision consistent with CAA section 182(c)(2)(B). The final increment of progress must be achieved no later than the attainment date for the area.

(5) *Creditability of emission control measures for RFP plans.* Except as specifically provided in CAA section 182(b)(1)(C) and (D), CAA section 182(c)(2)(B), and 40 CFR 51.1310(a)(6), all emission reductions from SIP-approved or federally promulgated measures that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements in this section, provided the reductions meet the requirements for creditability, including the need to be enforceable, permanent, quantifiable, and surplus.

(6) *Creditability of out-of-area emissions reductions.* For purposes of meeting the RFP requirements in § 51.1310, in addition to the restrictions on the creditability of emission control measures listed in § 51.1310(a)(5), creditable emission reductions for fixed percentage reduction RFP must be obtained from emissions sources located within the nonattainment area.

(7) *Calculation of non-creditable emissions reductions.* The following four categories of control measures listed in CAA section 182(b)(1)(D) are no longer required to be calculated for

exclusion in RFP analyses because the Administrator has determined that due to the passage of time the effect of these exclusions would be *de minimis*: (i) Measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990; (ii) regulations concerning Reid vapor pressure promulgated by November 15, 1990; (iii) measures to correct previous RACT requirements; and (iv) measures required to correct previous I/M programs.

(b) *Baseline emissions inventory for RFP plans.* For the RFP plans required under this section, at the time of designation as nonattainment for an ozone NAAQS the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to EPA under the provisions of subpart A of this part. States may use an alternative baseline emissions inventory provided that the year selected is between the year of designation as nonattainment for that NAAQS and the year that NAAQS was promulgated. All states associated with a multi-state nonattainment area must consult and agree on a single alternative baseline year. The emissions values included in the inventory required by this section shall be actual ozone season day emissions as defined by § 51.1300(ee).

(c) *Milestones.* (1) *Applicable milestones.* Consistent with CAA section 182(g)(1) for each area classified Serious or higher, the state shall determine at specified intervals whether each area has achieved the reduction in emissions required under paragraphs (a)(2) through (4) of this section. The initial determination shall occur 6 years after the baseline year, and at intervals of every 3 years thereafter. The reduction in emissions required by the end of each interval shall be the applicable milestone.

(2) *Milestone compliance demonstrations.* For each area subject to the milestone requirements under paragraph (c)(1) of this section, not later than 90 days after the date on which an applicable milestone occurs (not including an attainment date on which a milestone occurs in cases where the ozone standards have been attained), each state in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. The demonstration under this paragraph must provide for objective evaluation of reasonable further progress toward timely attainment of the ozone NAAQS in the area, and may take the form of:

(i) Such information and analysis as needed to quantify the actual reduction in emissions achieved in the time interval preceding the applicable milestone; or

(ii) Such information and analysis as needed to demonstrate progress achieved in implementing the approved SIP control measures, including RACM and RACT, corresponding with the reduction in emissions achieved in the time interval preceding the applicable milestone.

#### **§ 51.1311 [Reserved]**

#### **§ 51.1312 Requirements for reasonably available control technology (RACT) and reasonably available control measures (RACM).**

(a) *RACT requirement for areas classified pursuant to § 51.1303.* (1) For each nonattainment area classified Moderate or higher, the state shall submit a SIP revision that meets the VOC and NO<sub>x</sub> RACT requirements in CAA sections 182(b)(2) and 182(f).

(2) *SIP submission deadline.* (i) For a RACT SIP required pursuant to initial area designations, the state shall submit the RACT SIP for each area no later than 24 months after the effective date of designation for a specific ozone NAAQS.

(ii) For a RACT SIP required pursuant to reclassification, the SIP revision deadline is either 24 months from the effective date of reclassification, or the deadline established by the Administrator in the reclassification action.

(iii) For a RACT SIP required pursuant to the issuance of a new Control Techniques Guideline (CTG) under CAA section 183, the SIP revision deadline is either 24 months from the date of CTG issuance, or the deadline established by the Administrator in the action issuing the CTG.

(3) *RACT implementation deadline.* (i) For RACT required pursuant to initial area designations, the state shall provide for implementation of such RACT as expeditiously as practicable, but no later than January 1 of the 5th year after the effective date of designation.

(ii) For RACT required pursuant to reclassification, the state shall provide for implementation of such RACT as expeditiously as practicable, but either no later than January 1 of the 3rd year after the associated SIP revision submission deadline or the deadline established by the Administrator in the final action issuing the area reclassification.

(iii) For RACT required pursuant to issuance of a new CTG under CAA section 183, the state shall provide for implementation of such RACT as

expeditiously as practicable, but either no later than January 1 of the 3rd year after the associated SIP submission deadline or the deadline established by the Administrator in the final action issuing the CTG.

(b) *Determination of major stationary sources for applicability of RACT provisions.* The amount of VOC and NO<sub>x</sub> emissions are to be considered separately for purposes of determining whether a source is a major stationary source as defined in CAA section 302.

(c) *Reasonably Available Control Measures (RACM) requirements.* For each nonattainment area required to submit an attainment demonstration under § 51.1308(a) and (b), the state shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements. The SIP revision shall include, as applicable, other control measures on sources of emissions of ozone precursors located outside the nonattainment area or portion thereof, located within the state if doing so is necessary to provide for attainment of the applicable ozone NAAQS in such area by the applicable attainment date.

#### **§ 51.1313 Section 182(f) NO<sub>x</sub> exemption provisions.**

(a) A person or a state may petition the Administrator for an exemption from NO<sub>x</sub> obligations under CAA section 182(f) for any area designated nonattainment for a specific ozone NAAQS and for any area in a CAA section 184 ozone transport region.

(b) The petition must contain adequate documentation that the criteria in CAA section 182(f) are met.

(c) A CAA section 182(f) NO<sub>x</sub> exemption granted for a prior revoked ozone NAAQS does not relieve the area from any NO<sub>x</sub> obligations under CAA section 182(f) for a current ozone NAAQS.

#### **§ 51.1314 New source review requirements.**

The requirements for nonattainment NSR for the ozone NAAQS are located in § 51.165. For each nonattainment area, the state shall submit a nonattainment NSR plan or plan revision for a specific ozone NAAQS no later than 36 months after the effective date of the area's designation of nonattainment or redesignation to nonattainment for that ozone NAAQS.

#### **§ 51.1315 Emissions inventory requirements.**

(a) For each nonattainment area, the state shall submit a base year inventory

as defined by § 51.1300(dd) to meet the emissions inventory requirement of CAA section 182(a)(1). This inventory shall be submitted no later than 24 months after the effective date of designation. The inventory year shall be selected consistent with the baseline year for the RFP plan as required by § 51.1310(b).

(b) For each nonattainment area, the state shall submit a periodic emission inventory of emissions sources in the area to meet the requirement in CAA section 182(a)(3)(A). With the exception of the inventory year and timing of submittal, this inventory shall be consistent with the requirements of paragraph (a) of this section. Each periodic inventory shall be submitted no later than the end of each 3-year period after the required submission of the base year inventory for the nonattainment area. This requirement shall apply until the area is redesignated to attainment.

(c) The emissions values included in the inventories required by paragraphs (a) and (b) of this section shall be actual ozone season day emissions as defined by § 51.1300(ee).

(d) In the inventories required by paragraphs (a) and (b) of this section, state shall report emissions from point sources according to the point source emissions thresholds of the Air Emissions Reporting Requirements (AERR), 40 CFR part 51, subpart A.

(e) The data elements in the emissions inventories required by paragraphs (a) and (b) of this section shall be consistent with the detail required by 40 CFR part 51, subpart A. Since only emissions within the boundaries of the nonattainment area shall be included as defined by § 51.1300(ee), this requirement shall apply to the emissions inventories required in this section instead of any total county requirements contained in 40 CFR part 51, subpart A.

#### **§ 51.1316 Requirements for an Ozone Transport Region.**

(a) *In general.* CAA sections 176A and 184 apply for purposes of the 2015 ozone NAAQS.

(b) *RACT requirements for certain portions of an Ozone Transport Region.* (1) The state shall submit a SIP revision that meets the RACT requirements of CAA section 184(b) for all portions of the state located in an ozone transport region.

(2) *SIP submission deadline.* (i) For a RACT SIP required pursuant to initial area designations, the state shall submit the RACT SIP revision no later than 24 months after the effective date of

designation for a specific ozone NAAQS.

(ii) For a RACT SIP required pursuant to reclassification, the SIP revision deadline is 24 months from the effective date of reclassification, or the Administrator will establish the SIP revision submission deadline in the reclassification action.

(iii) For a RACT SIP required pursuant to the issuance of a new control techniques guideline (CTG) under CAA section 183, the SIP revision deadline is 24 months from the date of CTG issuance, or the Administrator will establish the SIP revision submission deadline in the action issuing the CTG.

(3) *RACT implementation deadline.* (i) For RACT required pursuant to initial area designations, the state shall provide for implementation of RACT as expeditiously as practicable, but no later than January 1 of the 5th year after the effective date of designation.

(ii) For RACT required pursuant to reclassification, the state shall provide for implementation of such RACT as expeditiously as practicable, but either no later than January 1 of the 3rd year after the associated SIP revision submission deadline or no later than a superseding deadline established by the Administrator in the final action issuing the area reclassification.

(iii) For RACT required pursuant to issuance of a new CTG under CAA section 183, the state shall provide for implementation of such RACT as expeditiously as practicable, but either no later than January 1 of the 3rd year after the associated SIP submission deadline or no later than a superseding deadline established by the Administrator in the final action issuing the CTG.

#### **§ 51.1317 Fee programs for Severe and Extreme nonattainment areas that fail to attain.**

For each area classified Severe or Extreme for a specific ozone NAAQS, the state shall submit a SIP revision within 10 years of the effective date of designation for that ozone NAAQS that meets the requirements of CAA section 185.

#### **§ 51.1318 Suspension of SIP planning requirements in nonattainment areas that have air quality data that meet an ozone NAAQS.**

Upon a determination by EPA that an area designated nonattainment for a specific ozone NAAQS has attained that NAAQS, the requirements for such area to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures for failure to attain or make reasonable

progress and other planning SIPs related to attainment of the ozone NAAQS for which the determination has been made, shall be suspended until such time as: The area is redesignated to attainment for that NAAQS or a redesignation substitute is approved as appropriate, at which time the requirements no longer apply; or EPA determines that the area has violated that NAAQS, at which time the area is again required to submit such plans.

#### **§ 51.1319 Applicability.**

As of revocation of the 2008 ozone NAAQS, as set forth in § 50.15(c), the provisions of Subpart CC shall replace the provisions of subpart AA, §§ 51.1100 to 51.1118, which cease to apply except for § 51.1107 for the anti-backsliding purposes of § 51.1305(d)(2). See Subpart AA § 51.1119.

■ 6. In Appendix S to part 51, revise paragraphs IV.G.5. Introductory, (i) and section VII to read as follows:

#### **Appendix S to Part 51—Emission Offset Interpretative Ruling**

\* \* \* \* \*

#### **IV. \* \* \***

##### **G. \* \* \***

\* \* \* \* \*

5. *Interpollutant offsetting, or interpollutant trading or interprecursor trading or interprecursor offset substitution.* In meeting the emissions offset requirements of paragraph IV.A, Condition 3 of this Ruling, the emissions offsets obtained shall be for the same regulated nonattainment NSR pollutant unless interpollutant offsetting, interpollutant trading, interprecursor trading or interprecursor offset substitution is permitted for a particular pollutant as specified in this paragraph IV.G.5 and the reviewing authority chooses to review such trading on a case by case basis as described in this section.

(i) The offset requirements of paragraph IV.A, Condition 3 of this Ruling for emissions of the ozone precursors NO<sub>x</sub> and VOC may be satisfied by offsetting reductions of emissions of either of those precursors, if all other requirements contained in this Ruling for such offsets are also satisfied. Such precursor substitutions shall be made on a case-by-case basis, subject to the approval of the reviewing authority and the Administrator, with the permit applicant submitting the following information to the reviewing authority:

(a) A description of the air quality model(s) used to establish the appropriate ratio for the precursor substitution;

(b) a proposed ratio for the precursor substitution and accompanying calculations;

(c) a demonstration substantiating that the ratio achieves an equivalent or greater air quality benefit for ozone in the nonattainment area.

(ii) \* \* \*

\* \* \* \* \*

## VII. Anti-Backsliding Measures for Revoked Ozone NAAQS

Nonattainment area new source review obligations for prior ozone NAAQS.

A. Except as provided in paragraph VII.B of this Ruling, an area designated nonattainment for the 2015 ozone NAAQS and designated nonattainment for a prior ozone NAAQS, as of the effective date of the revocation of the respective prior ozone NAAQS, remains subject to the obligation to adopt and implement the major source threshold and offset ratio requirements for nonattainment NSR that apply or applied to the area pursuant to sections 172(c)(5), 173 and 182 of the CAA based on the highest of: (i) The area's classification under section 181(a)(1) of the CAA for the 1-hour ozone NAAQS as of the effective date of revocation of that NAAQS; (ii) the area's classification under § 51.903 for the 1997 ozone NAAQS as of the effective date of revocation of the 1997 ozone NAAQS; (iii) the area's classification under § 51.1103 for the 2008 ozone NAAQS as of the date a permit is issued or as of the effective date of revocation of the 2008 ozone NAAQS, whichever is earlier; and (iv) the area's classification under § 51.1303 for the 2015 ozone NAAQS.

B.1. An area remains subject to the obligations for a revoked NAAQS under paragraph VII.A of this Ruling until either: (i) The area is redesignated to attainment for the 2015 ozone NAAQS, in which case regulatory anti-backsliding requirements related to the 1997 and 2008 ozone standards are satisfied; or (ii) the EPA approves a demonstration for the area in a redesignation substitute procedure for a revoked NAAQS per the provisions of § 51.1305(b). Under this redesignation substitute procedure for a revoked NAAQS, and for this limited anti-backsliding purpose, the demonstration must show that the area has attained that revoked NAAQS due to permanent and enforceable emission reductions and that the area will maintain that revoked NAAQS for 10 years from the date of EPA's approval of this showing.

2. Effect of redesignation to attainment for 2015 ozone NAAQS or approval of a redesignation substitute for a revoked ozone NAAQS. After redesignation to attainment for the 2015 ozone NAAQS, the state may request that provisions for nonattainment

NSR for the 1997 and 2008 ozone standards, if applicable, be removed from the SIP, subject to the requirements of CAA sections 110(l) and 193. After EPA approval of a redesignation substitute for a revoked NAAQS under the provisions of § 51.1305(b), the state may request that provisions for nonattainment NSR for that revoked NAAQS be removed from the SIP, subject to the requirements of CAA sections 110(l) and 193. Upon removal of nonattainment NSR provisions for a revoked NAAQS, the state remains subject to the obligation to adopt and implement the major source threshold and offset ratio requirements for nonattainment NSR that apply or applied to the area for the remaining applicable NAAQS consistent with paragraph VII.A of this Ruling.

\* \* \* \* \*

■ 7. In § 51.165, revise paragraphs (a)(11)(i) and (12) to read as follows:

### § 51.165 Permit requirements.

(a) \* \* \*

(11) \* \* \*

(i) The plan may allow the offset requirement in paragraph (a)(3) of this section for emissions of the ozone precursors NO<sub>x</sub> and VOC to be satisfied, where appropriate, by offsetting reductions of emissions of either of those precursors, if all other requirements contained in this section for such offsets are also satisfied.

(A) The plan shall indicate whether such precursor substitutions for ozone precursors are to be based on a default ratio for the applicable ozone nonattainment area, case-by-case ratios established for individual permits, or a combination of these approaches whereupon a permit applicant may propose a case-by-case permit-specific ratio in lieu of the default ratio for a particular ozone nonattainment area.

(B) The plan shall include any default ratio for precursor substitutions for ozone and shall be accompanied by a description of the air quality model(s) used and the technical demonstration substantiating the equivalent or greater

air quality benefit for ozone in the nonattainment area. Any default ratio for precursor substitutions for ozone shall be subject to the approval of the Administrator.

(C) The plan shall provide that for any case-by-case ratios used for individual permit, the ratio shall be approved by the reviewing authority and the Administrator, and should require that the permit applicant submit information to the reviewing authority, including the proposed ratio for the precursor substitution for ozone, a description of the air quality model(s) used, and the technical demonstration substantiating the equivalent or greater air quality benefit for ozone in the nonattainment area.

(ii) The plan may allow the offset requirements in paragraph (a)(3) of this section for direct PM<sub>2.5</sub> emissions or emissions of precursors of PM<sub>2.5</sub> to be satisfied by offsetting reductions in direct PM<sub>2.5</sub> emissions or emissions of any PM<sub>2.5</sub> precursor identified under paragraph (a)(1)(xxvii)(C) of this section if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

(12) The plan shall require that in any area designated nonattainment for the 2015 ozone NAAQS and designated nonattainment for the 2008 ozone NAAQS as of the effective date of revocation of the 2008 ozone NAAQS, the requirements of this section applicable to major stationary sources and major modifications of ozone shall include the anti-backsliding requirements contained at § 51.1305.

\* \* \* \* \*

### Appendix A to Subpart A of Part 51—Tables

■ 8. In Appendix A to subpart A of part 51: Revise table 1 to read as follows:

TABLE 1 TO APPENDIX A OF SUBPART A—EMISSION THRESHOLDS<sup>1</sup> BY POLLUTANT FOR TREATMENT AS POINT SOURCE UNDER 40 CFR 51.30

Pollutant	Every-year	Triennial	
	Type A sources <sup>2</sup>	Type B sources	NAA sources <sup>3</sup>
(1) SO <sub>2</sub> .....	≥2500 .....	≥100 .....	≥100. PM <sub>2.5</sub> (Serious) ≥70. ≥100.
(2) VOC .....	≥250 .....	≥100 .....	within OTR ≥50. O <sub>3</sub> (Serious) ≥50. O <sub>3</sub> (Severe) ≥25. O <sub>3</sub> (Extreme) ≥10. PM <sub>2.5</sub> (Serious) ≥70.
(3) NO <sub>x</sub> .....	≥2500 .....	≥100 .....	≥100. O <sub>3</sub> (Moderate within OTR) ≥50. O <sub>3</sub> (Serious) ≥50. O <sub>3</sub> (Severe) ≥25. O <sub>3</sub> (Extreme) ≥10.

TABLE 1 TO APPENDIX A OF SUBPART A—EMISSION THRESHOLDS <sup>1</sup> BY POLLUTANT FOR TREATMENT AS POINT SOURCE UNDER 40 CFR 51.30—Continued

Pollutant	Every-year	Triennial	
	Type A sources <sup>2</sup>	Type B sources	NAA sources <sup>3</sup>
(4) CO .....	≥2500 .....	≥1000 .....	PM <sub>2.5</sub> (Serious) ≥70. ≥1000. CO (all areas) ≥100.
(5) Lead .....		≥0.5 (actual) .....	≥0.5 (actual).
(6) Primary PM <sub>10</sub> .....	≥250 .....	≥100 .....	≥100. PM <sub>10</sub> (Serious) ≥70.
(7) Primary PM <sub>2.5</sub> .....	≥250 .....	≥100 .....	≥100. PM <sub>2.5</sub> (Serious) ≥70.
(8) NH <sub>3</sub> .....	≥250 .....	≥100 .....	≥100. PM <sub>2.5</sub> (Serious) ≥70.

<sup>1</sup> Thresholds for point source determination shown in tons per year of potential to emit as defined in 40 CFR part 70, with the exception of lead. Reported emissions should be in actual tons emitted for the required time period.

<sup>2</sup> Type A sources are a subset of the Type B sources and are the larger emitting sources by pollutant.

<sup>3</sup> NAA = Nonattainment Area. The point source reporting thresholds vary by attainment status for SO<sub>2</sub>, VOC, NO<sub>x</sub>, CO, PM<sub>10</sub>, PM<sub>2.5</sub>, and NH<sub>3</sub>.

<sup>4</sup> OTR = Ozone Transport Region (see 40 CFR 51.1300(t)).

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