(c) *Conditions for retroactive induction.* Retroactive induction into a rehabilitation program may be authorized for a past period under a claim for vocational rehabilitation benefits when all of the following conditions are met:

(1) The past period is within—

(i) A period under § 21.40(c) during which a servicemember was awaiting discharge for disability; or

(ii) A period of eligibility under §§ 21.41 through 21.44 or 38 U.S.C. 3103.

(2) The individual was entitled to disability compensation under 38 U.S.C. chapter 11 during the period or would likely have been entitled to that compensation but for active-duty service.

(3) The individual met the criteria for entitlement to vocational rehabilitation benefits and services under 38 U.S.C. chapter 31 in effect during the period.

(4) VA determines that the individual's training and other rehabilitation services received during the period were reasonably needed to achieve the goals and objectives identified for the individual and may be included in the plan developed for the individual (*see* §§ 21.80 through 21.88, and §§ 21.92 through 21.98).

(5) VA has recouped any benefits that it paid the individual for education or training pursued under any VA education program during any portion of the period.

(6) An initial evaluation was completed under § 21.50.

(7) A period of extended evaluation is not needed to be able to determine the reasonable feasibility of the achievement of a vocational goal.

(Authority: 38 U.S.C. 3102, 3103, 3108, 5113)

(d) *Effective date for retroactive induction.* The effective date for retroactive induction is the date when all the entitlement conditions set forth in paragraph (c) of this section are met, and for a veteran (except as to a period prior to discharge from active duty) in no event before the effective date of a VA rating under 38 U.S.C. chapter 11 establishing a qualifying level under § 21.40 of service-connected disability.

(Authority: 38 U.S.C. 5113)

[FR Doc. E9–10806 Filed 5–7–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2008–0117, FRL–8901–2]

Disapproval of Air Quality Implementation Plans; Connecticut; Attainment Demonstration for the Connecticut Portion of the New York-N. New Jersey-Long Island, NY-NJ-CT 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing action on the ozone attainment demonstration portion of a comprehensive State Implementation Plan (SIP) revision submitted by Connecticut to meet Clean Air Act (CAA or Act) requirements for attaining the 8-hour ozone national ambient air quality standard. EPA is proposing to disapprove Connecticut's demonstration of attainment of the 1997 8-hour ozone standard for the Connecticut portion of the New York-N. New Jersey-Long Island, NY-NJ-CT 8-hour ozone nonattainment area (New York City ozone nonattainment area).

DATES: Written comments must be received on or before June 8, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2008–0117, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: arnold.anne@epa.gov.*

3. *Fax:* (617) 918–0047.

4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2008–0117'', Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2008–0117. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency; the Bureau of Air Management, Department of Environmental

Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630. It has also been posted on the Connecticut DEP Web site at: *http://www.ct.gov/dep/cwp/view.asp?a=2684&q=385886&depNav_GID=1619.*

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1664, fax number (617) 918–0664, e-mail *Burkhart.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. What Action Is EPA Proposing?

The Environmental Protection Agency has reviewed Connecticut's comprehensive State Implementation Plan revision for attaining the 0.08 parts per million (ppm) 8-hour ozone national ambient air quality standards (NAAQS or standard) [1] in the Connecticut portion of the New York City ozone nonattainment area along with other related Clean Air Act requirements necessary to ensure attainment of the standard. This SIP was submitted by Connecticut on February 1, 2008. The EPA is proposing to disapprove Connecticut's 8-hour ozone attainment demonstration for the Connecticut portion of the New York-N. New Jersey-Long Island, NY-NJ-CT nonattainment area, because the EPA has determined that the photochemical modeling does not demonstrate attainment and the weight of evidence analysis that Connecticut uses to support the attainment demonstration for this area does not include sufficient evidence to provide confidence that the area will attain the NAAQS by the June 2010 deadline.

EPA's analysis and findings are discussed in this proposed rulemaking. Additional technical support memoranda for this proposal are available on line at *www.regulations.gov,* Docket No. EPA–R01–OAR–2008–0117. Specifically, the docket contains the following:

1. The February 1, 2008 State Implementation Plan Revision Regarding Attainment of the 8-Hour Ozone Standard in Connecticut.

2. An EPA memorandum, dated December 23, 2008, from Bob McConnell, entitled, ''Emissions Trends in the New York-N. New Jersey-Long Island, NY-NJ-CT 8-hour Ozone Nonattainment Area.''

3. An EPA memorandum, dated January 7, 2009, from Anne McWilliams, entitled, ''Air Quality Trends in the New York-N. New Jersey-Long Island, NY-NJ-CT 8-hour Ozone Nonattainment Area.''

II. Background Information

A. History and Time Frame for the State's Attainment Demonstration SIP

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These designations became effective on June 15, 2004. In addition, EPA promulgated its Phase 1 Rule for implementation of the 8-hour standard, which provided how areas designated nonattainment for the 8-hour ozone standard would be classified. (See April 30, 2004 (69 FR 23951).) The entire state of Connecticut is designated nonattainment, divided between two moderate ozone nonattainment areas, the New York-N. New Jersey-Long Island, NY-NJ-CT nonattainment area, and the Greater Connecticut nonattainment area. The Connecticut portion of the New York City ozone nonattainment area consists of the following Connecticut counties: Fairfield; New Haven; and Middlesex. The Greater Connecticut area covers the rest of the state. Today's proposed disapproval is only for the Connecticut portion of the New York City ozone nonattainment area. We will propose action on the ozone attainment demonstration for the Greater Connecticut nonattainment area in a separate rulemaking.

The designations referenced above triggered the Act's requirements under section 182(b) for moderate nonattainment areas, including a requirement to submit an attainment demonstration. EPA's Phase 2 8-hour ozone implementation rule (Phase 2 Rule), published on Nov. 29, 2005 (70 FR 71612), specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007. (See 40 CFR 51.908(a).)

B. Moderate Area Requirements

On November 29, 2005, EPA published the Phase 2 Implementation rule which addresses the control obligations that apply to areas designated nonattainment for the 8-hour NAAQS. Among other things, the Phase 1 and Phase 2 Rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas, modeling and attainment demonstrations were due by June 15, 2007, along with reasonable further progress plans, reasonably available control measures, motor vehicle emissions budgets (MVEBs) and contingency measures (40 CFR 51.908(a), and (c), 51.910, and 51.912). Today's action addresses Connecticut's demonstration of attainment of the 8-hour ozone standard for the Connecticut portion of the New York-N. New Jersey-Long Island, NY-NJ-CT nonattainment area, which for moderate areas is to be attained by June 2010. In order to demonstrate attainment by June 2010, the area must adopt and implement all controls necessary for attainment by the

[1] In 2008, EPA promulgated a more stringent 8-hour standard of 0.075 ppm. (*See* 73 FR 16435 (March 27, 2008).) All references to the 8-hour ozone standard in this rulemaking refer to the 8-hour standard promulgated in 1997.

beginning of the 2009 ozone season and demonstrate that the level of the standard will be met during the 2009 ozone season.

C. Clean Air Act Requirement for Multi-State Ozone Nonattainment Areas

Section 182(j) of the Clean Air Act requires each state within a multi-state ozone nonattainment area to specifically use photochemical grid modeling and take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned. Under this subsection of the Clean Air Act, EPA may not approve any SIP revision for a State that fails to comply with these requirements.

III. What is included in Connecticut's SIP submittal?

After completing the appropriate public notice and comment procedures, Connecticut made a submittal to address the Act's 8-hour ozone moderate nonattainment area requirements identified in Section II.B. On February 1, 2008, Connecticut submitted a comprehensive 8-hour ozone SIP for the Connecticut portion of the New York City ozone nonattainment area. It included an attainment demonstration, a reasonable further progress (RFP) plan, a reasonably available control measures (RACM) analysis, contingency measures, and on-road MVEBs for 2008, 2009, and 2012.

Only the attainment demonstration portion of the SIP submittal is evaluated in this proposal. EPA will take action on the other portions of Connecticut's February 1, 2008 SIP submittal in a separate, forthcoming **Federal Register.**

IV. EPA's Review and Technical Information

A. What Are the Components of an Attainment Demonstration?

Section 110(a)(2)(k) of the Clean Air Act requires states to prepare air quality modeling to show how they will meet ambient air quality standards. EPA determined that states must use photochemical grid modeling, or any other analytical method determined by the Administrator to be at least as effective, to demonstrate attainment of the ozone health-based standard in areas classified as 'moderate' or above, and to do so by the required attainment date. (*See* 40 CFR 51.908(c); and Section 182(j) of the CAA.) In 40 CFR 51.903, EPA specified how areas would be classified with regard to the eight-hour ozone standard set by EPA in 1997. EPA followed these procedures and classified the New York-N. New Jersey-Long Island, NY-NJ-CT ozone nonattainment area as moderate (69 FR 23858). Since the attainment date is June 2010 for moderate areas, these areas must achieve emission reductions by the beginning of the ozone season of 2009 in order for ozone concentrations to be reduced, and meet the level of the standard during the last complete ozone season before the 2010 deadline. (*See* 40 CFR 51.908(d).)

EPA's photochemical modeling guidance is found at *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM2.5, and Regional Haze,* EPA–454/B–07–002, April 2007. The photochemical modeling guidance is divided into two parts. One part describes how to use a photochemical grid model for ozone to assess whether an area will come into attainment of the air quality standard. A second part describes how the user should perform supplemental analyses, using various analytical methods, to determine if the model over predicts, under predicts, or accurately predicts the air quality improvement projected to occur by the attainment date. The guidance indicates that states should review these supplemental analyses, in combination with the modeling analysis, in a ''weight of evidence'' assessment to determine whether each area is likely to achieve timely attainment.

Connecticut's SIP submittal addresses each of the elements of a modeling attainment demonstration. The plan explains how on warm, sunny days, winds at the surface and aloft move emissions from sources of ozone-forming chemicals within and outside Connecticut to create high ozone concentrations in Connecticut. In addition, emissions from large out of state combustion sources are transported by upper-level winds to Connecticut, adding to the ozone formed locally.

The Ozone Transport Commission's (OTC's) Modeling Committee developed a protocol for modeling the ozone problem in the northeastern United States. The OTC Modeling Committee coordinated preparing and running the photochemical grid model. It chose the Community Multi-scale Air Quality Model (CMAQ) as the photochemical grid model of choice. EPA concurs that this model is appropriate for modeling the formation and distribution of ozone. The model domain covered almost all of the eastern United States, with a high-resolution grid covering the states in the northeast ozone transport region, including Connecticut.

The OTC Modeling Committee used weather data for the entire 2002 ozone season in the CMAQ. The year 2002 was the base year for the attainment plans and the year of the emission inventory used in the base year modeling. Using a full ozone season covered many different weather conditions when ozone episodes occur and exceeds EPA's recommendations for episode selection. The OTC Modeling Committee used MM5, a weather forecast model, to provide weather conditions for the photochemical grid model. Details about how the states used the MM5 model is in Appendix 8 of Connecticut's SIP.

States across the eastern United States provided emissions information from their sources to be used in the model. The Mid Atlantic Regional Air Management Association (MARAMA) collected and quality assured the states' emissions data and processed these data for use by the photochemical grid model. The states also included the control measures that were already adopted, as well as the control measures that the states are committing to adopt from a list of ''Beyond On the Way'' (BOTW) control measures. The lists of control measures provided by the states to be included in the modeling are summarized in Connecticut's submittal in Appendix 4.

The performance of the CMAQ photochemical grid model in predicting ozone, and the chemicals that form ozone, met EPA's guidelines for model performance. The model outputs are generally consistent with the day-to-day patterns of observed data, with low bias and error. The OTC Modeling Committee noted that the modeling system tends to over predict low concentrations and slightly under predict peak concentrations.

For the attainment test, the state used the results from the photochemical grid model in a relative sense, as recommended by EPA's photochemical modeling guidance, by calculating the difference from ozone predicted in 2002 to ozone predicted with the emission controls Connecticut and other states planned to have in place in 2009. Details can be found in the state's submittal in Section 8.

B. What Are the Results of the Connecticut's Attainment Demonstration and Weight of Evidence Analysis?

According to Table 8.4.4.1 in the Connecticut SIP submittal entitled ''CMAQ Modeling Results for Connecticut for 2009 and 2012,'' the basic photochemical grid modeling used by Connecticut predicts that the

maximum 2009 design value [2] in the New York City ozone nonattainment area will be 87 parts per billion (ppb). Thus, the photochemical model predicts Connecticut will not reach the 84 ppb concentration level that marks attainment of the ozone standard, by the 2009 ozone season. Table 8.4.4.1 does, however, show that attainment is predicted by 2012, with a maximum predicted design value of 83 ppb.

1. EPA's Requirements

EPA's photochemical modeling guidance strongly recommends states complement the photochemical air quality modeling in situations where modeling predicts the area to be close to (within several parts ppb of) the 84 ppb ozone standard. Connecticut did perform additional analyses to bolster their attainment analysis. EPA can accept results of a weight of evidence determination to supplement the attainment demonstration; however, the greater the difference between the ozone standard and the photochemical modeling predictions, the more compelling the additional evidence produced by these additional analyses needs to be. In its photochemical modeling guidance, EPA notes that, if the concentration predicted by the photochemical model is 88 ppb or higher, it is far less likely that the more qualitative arguments made in a weight of evidence determination can be sufficiently convincing to conclude that the ozone standard will be attained. In Connecticut's case, the submitted photochemical model prediction of 87 ppb in the New York City ozone nonattainment area does not exceed 88 ppb. Connecticut, however, used non-guideline methods in its analysis. As shown below, if EPA guidance is followed, the design value for the Connecticut portion of the New York City ozone nonattainment area is predicted to be 90 ppb at the Stratford, Connecticut monitor at the end of the 2009 ozone season. This value is greater than 88 ppb, the upper range for a normal weight of evidence analysis. Thus, if 90 ppb is the appropriate level based on the modeling, the additional evidence needed to show that this area will actually attain the ozone standard, must be very compelling for EPA to approve the attainment demonstration.

2. EPA's Analysis

The photochemical modeling results, used according to EPA's guidelines, predict the New York City ozone nonattainment area will not attain by 2009. Connecticut's SIP deviates from the EPA guideline methods to adjust for perceived flaws in the photochemical grid model and to account for ozone reductions that may be produced by additional measures not included in the model. Connecticut supports their alternative analyses using data and other research to make the case that the New York City ozone nonattainment area may attain the ozone standard by the 2009 ozone season.

EPA has carefully reviewed Connecticut's attainment demonstration including their supplementary data and research. EPA attempted to determine if the additional information provided by Connecticut is an acceptable supplement to the photochemical grid modeling and can be approved by EPA to meet the Clean Air Act requirement as ''* * * any other analytical method determined * * * to be at least as effective'' to supplement the photochemical grid modeling (40 CFR 51.908). EPA has evaluated the information provided by the State and other information relevant to whether or not this ozone nonattainment area will attain the ozone standard by 2009 and concludes that this information does not demonstrate that Connecticut will attain the ozone standard by 2009.

EPA's review shows that Connecticut's attainment demonstration uses a method for determining the baseline 2002 ozone design value that is not consistent with EPA's modeling guidance. Connecticut uses a linear average of five fourth highest ozone values for each monitor in the nonattainment area for the years 2000–2004. This results in a baseline design value at the Stratford, Connecticut ozone monitor of 95.4 ppb. EPA's modeling guidance recommends using an average of the three years of design value centered on 2002, which creates a weighted five-year average. While Connecticut's SIP notes that EPA's method of providing a weighted average baseline value weights the base year of 2002 more heavily than other years, EPA intended this, so that the resulting value was influenced the most by the ozone data from the base year of the emission inventory. Using the EPA's modeling guidance method yields a baseline design value of 98.3 ppb at that same monitor.

The straight five-year average method used by Connecticut, while centered on 2002, is skewed by giving 2004 as much influence as other years. The ozone data from 2004 includes the effects of reductions made between the base year 2002 and the attainment year of 2009, when a major reduction in nitrogen oxides (NO_X) occurred. Since these emission reductions are accounted for in the photochemical grid modeling, we believe it is inappropriate to also consider them in determining the baseline design value. Specifically, EPA's NO_X SIP Call and NO_X Budget Trading Program produced significant reductions before the 2004 ozone season. The summer of 2004 was also a cooler than normal summer, possibly biasing the baseline design value further downward toward attainment. In an unweighted five-year average, 2004 has as much influence on the result as each of the other four years, so it provides a significant bias toward attainment. Selecting only a method that is lower than the recommended method is not a balanced use of the weight of evidence analysis. EPA does not find Connecticut's selected method of adjusting the baseline design value to be sufficiently justified and cannot accept it as a supplemental method of demonstrating attainment.

Using the baseline design value for the Stratford site of 98.3 ppb (derived using EPA's recommended method), and the 0.919 relative reduction factor calculated for this monitoring location yields a 2009 design value of 90 ppb. This is outside the upper bound of 88 ppb for a simple weight of evidence analysis, and significantly above the 84 ppb concentration used as the benchmark for attaining the ozone air quality standard. EPA does not rule out the use of alternative methods even when the photochemical grid modeling results are far from attaining the standard, but EPA's modeling guidance notes that more qualitative results are less likely to support a conclusion differing from the outcome of the modeled attainment test. The guidance notes that, in most cases, considerable amounts of precursor control (e.g., 20–25 percent or more, which are huge reductions) would be needed to lower projected ozone design values even by 3 ppb.

In Connecticut's weight of evidence analysis, they include a variety of analyses to support their conclusion ''that there is a credible case for attainment throughout all of Southwest Connecticut by the end of the 2009 ozone season.'' Connecticut's weight of evidence analysis (Section 8.5 of their

[2] Under EPA regulations at 40 CFR Part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 parts per million (ppm) (i.e., 0.084 ppm, based on the rounding convention in 40 CFR Part 50, Appendix I). This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm (84 parts per billion (ppb)) at each monitor within the area, then the area is meeting the 1997 ozone NAAQS. (*See* 69 FR 23857 (April 30, 2004) for further information.)

submittal) includes discussions about the following topics:

- Modeling Uncertainties Indicate the CMAQ Model May Overpredict 2009 Ozone Levels (Section 8.5.1)
- Air Quality Trends Indicate the CMAQ Model May Overpredict 2009 Ozone Levels (Section 8.5.2)
- Attainment Levels Have Been Achieved During a Previous Cool Summer (Section 8.5.3)
- ''Clean Data'' in 2009 Would Qualify SWCT for Clean Air Act Extension Year(s) (Section 8.5.4)
- Modeling Does Not Include Several Important Emission Control Strategies (Section 8.5.5)

We discuss the details of Connecticut's analyses and EPA's conclusions in the sections that follow.

• Modeling Uncertainties Indicate the CMAQ Model May Overpredict 2009 Ozone Levels

Section 8.5.1 of Connecticut's SIP cites research of ozone levels during an electrical blackout in the recent past that suggests the model under predicts the amount of ozone reduction that actually occurred during the electrical blackout, or at least points out the CMAQ model ''stiffness'' to power plant emission reductions. (See Section 8.5.1.2, entitled ''Modeling Uncertainty Related to CMAQ's Response to Emission Reductions'' of the Connecticut SIP submittal.) During the blackout, measured ozone was lower than expected because some power plants and some other major sources of ozone-forming compounds were shut down. There are at least two ways to determine what ozone concentrations would have been if the major sources of ozone-forming compounds operated on that day. One way is to model the changes with the power plants operating, and with the power plants not operating and comparing the results. The other is by comparing the blackout day with a past high ozone day with similar weather and wind patterns, when the power plants operated. The research cited by Connecticut compared the blackout episode with days in the past with similar weather conditions, when the sources were operating. However, EPA concludes that the past episode when the power plants operated is not similar enough to the blackout day to draw a valid comparison. The comparison day had winds coming from areas that were not the ones most affected by the blackout, so the comparison is not convincing. There may be other days that were more similar to the meteorological patterns on the blackout day, but the fact remains that no two days are the same. The emissions precursors, ozone, and meteorological patterns on the day of and the days preceding the blackout will never occur the same way twice.

Connecticut cited the work of other researchers who ran a photochemical grid model on the blackout day with and without the blacked-out emissions. The modeled change in ozone was smaller than the change in ozone measured between the comparison day and the blackout day, so Connecticut concluded that the model did not reduce ozone as much between the blackout and non-blackout emissions. Thus, this may be a sign that the model is not responsive enough to emission reductions, or ''stiff.'' However, the differences between the modeled change and the change between monitored days may be because a sufficiently similar day was not found to determine how much ozone was really reduced on the blackout day. The other researchers cited by Connecticut also believed, on the blackout day, that the shutdown power plants had a limited effect on ozone in this area. Another point is that these studies did not look at the effect of the blackout on air quality in the urban nonattainment areas like those featured in this notice. There is no comparison using modeling of these blackout days and similar days with the goal of determining the effect of blacked out sources on ozone in the northeast corridor's urban areas or other studies that would have attempted to explain and perhaps quantify the extent of the transport issue in the states' application of the photochemical grid model.

After careful review of these studies, EPA has found uncertainties in the Connecticut SIP technical analysis and therefore does not accept Connecticut's conclusion that the modeling system under predicts changes in ozone as emissions change. Arguments in Connecticut's SIP that the model may not give full credit for emission reductions are supported by limited modeling work. Connecticut has not tested its hypothesis with its own modeling. There are other studies and ambient data that suggest contradictory conclusions. EPA believes any additional ozone reductions beyond the photochemical modeling are likely to be far less than claimed in Connecticut's SIP.

Connecticut also argues that the inadequate incorporation by the modeling system of NO_X emissions occurring during high electric demand days (HEDD) may also be one of the contributors to modeling uncertainty that may result in overestimation by CMAQ of projected 2009 design values. (*See* Section 8.5.1.1, entitled ''Modeling Uncertainty Related to HEDD Emissions'' of the Connecticut SIP submittal.)

The Connecticut SIP discusses how NO_X emissions from the electricity generating source sector vary widely both diurnally and on a day-to-day basis, dependent upon the demand for electricity and the emission characteristics of the mix of electric generating units (EGUs) dispatched to meet changing demand and reserve capacity requirements. Connecticut notes that the highest level of EGU emissions typically occur on hot summer days, when the demand for air conditioning results in dispatch of load-following and quick-start EGU peaking units, most of which emit NO_X at much higher rates (per unit of heat input or power output) than base-load units. The SIP includes a number of graphs that depict the variability of EGU emission profiles in New England and in the metropolitan New York City-New Jersey area upwind from Connecticut.

The Connecticut SIP states that the ''large (i.e., factor of two) underestimate of EGU NO_X emissions on high demand days has implications for CMAQ modeling results in both the baseline and future year modeling scenarios. Effectively doubling modeled levels of EGU emissions on high demand days (which are often high ozone days) increases the importance of the EGU sector relative to other source categories. As a result, post-2002 controls on the EGU sector, such as the CAIR program and potential HEDD strategies, may result in greater improvements in actual future year ozone levels than the current modeling results indicate.'' (*See* page 8–20 of Section 8.5.1.1.)

EPA agrees that the underestimate of EGU NO_X emissions on high demand days has implications for CMAQ modeling results. The solution to this, however, is to model them as accurately as possible in the modeling, not to theorize about how the results might change if they were properly accounted for in the modeling analysis. Moreover, Connecticut's argument regarding HEDD emissions only supports their current SIP submittal's prediction of attainment by 2009, if there are substantial reductions from the EGU sector that are occurring between now and the beginning of the 2009 ozone season. Connecticut's SIP submittal contains insufficient evidence to support this.

• Air Quality Trends Indicate the CMAQ Model May Overpredict 2009 Ozone Levels

Section 8.5.2 of Connecticut's SIP depicts the significant improvement in measured 8-hour ozone values and 8-

hour design values over the last 25 years or so. Based on its analysis through the 2006 ozone season, Connecticut contends that the ''improvements in measured ozone levels suggest that Southwest Connecticut is on-track to achieve the necessary design value of less than 85 ppb to attain the 8-hour NAAQS by the end of the 2009 ozone season.'' (*See* page 8–26 of Section 8.5.2.1.) Connecticut also points out that measured design values in the New York-N. New Jersey-Long Island, NY-NJ-CT area for the 2004 through 2006 time period were close to the concentrations predicted by the photochemical grid model for 2009.

When final quality assured air quality data for 2007 are included in the analysis, however, the design value remains the same or increases for each of the Connecticut ozone monitors in the New York-N. New Jersey-Long Island, NY-NJ-CT area. (See Table 1 below.) The design values for the 2004 through 2006 time period were biased low by the cooler-than-normal summer of 2004. The design values for the 2005 through 2007 are generally greater that the values predicted by the photochemical grid modeling (using the EPA guideline methodology), which suggests that the photochemical modeling is not under predicting as suggested.

Based on preliminary 2008 ozone data, the design values for the 2006 through 2008 time period have decreased somewhat, but not in a fashion that supports the argument that the modeling system is over predicting ozone in the attainment year. (*See* Table 1 below.)

TABLE 1—TREND IN THE 8-HR DESIGN VALUE FOR SELECTED MONITORS IN THE CONNECTICUT PORTION OF THE NEW YORK CITY NONATTAINMENT AREA

Monitor location	Monitor ID	8-Hour ozone design values (ppm)					
		2001–2003	2002–2004	2003–2005	2004–2006	2005–2007	2006–2008
Danbury, CT	090011123	0.096	0.093	0.091	0.092	0.094	0.088
Greenwich, CT	090010017	0.100	0.092	0.087	0.087	0.090	0.089
Madison, CT	090093002	0.102	0.095	0.090	0.088	0.093	0.088
Middletown, CT	090070007	0.098	0.092	0.090	0.089	0.092	0.088
Stratford, CT	090013007	0.102	0.095	0.090	0.088	0.092	0.088
Westport, CT	090019003	0.097	0.092	0.089	0.087	0.087	0.087

Currently, the overall design value in the nonattainment area is 89 ppb, which is significantly above the NAAQS given that there is only one summer remaining before the 2009 attainment deadline. EPA has analyzed the emission reductions that the states are predicting between now and the 2009 ozone season, and does not believe there will be enough improvement to reduce the preliminary 2006–2008 ozone design value ppb in the New York-N. New Jersey-Long Island, NY-NJ-CT area from 89 ppb to the level of 84 ppb necessary for attainment in 2009.

Table 2 below contains a summary of the predicted emissions expected to occur by sector in the New York-N. New Jersey-Long Island, NY-NJ-CT area in 2008 and 2009 compared to 2002 levels. These data were derived from the ozone attainment plans submitted by Connecticut, New Jersey, and New York for their respective portions of the New York-N. New Jersey-Long Island, NY-NJ-CT nonattainment area. More details on these calculations can be found in the EPA memorandum, dated December 23, 2008, from Bob McConnell, entitled, ''Emissions Trends in the New York-N. New Jersey-Long Island, NY-NJ-CT 8-hour Ozone Nonattainment Area.''

TABLE 2—SUMMARY OF ESTIMATED EMISSIONS IN THE NEW YORK CITY NONATTAINMENT AREA FOR 2002, 2008, AND 2009

Sector	2002		2008				2009			
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	% rdxn	NO_X (tpd)	% rdxn	VOC (tpd)	% rdxn	NO_X (tpd)	% rdxn
Point	93.4	358.9	78.0	16.5	263.5	26.6	76.6	18.0	263.6	26.6
Area	788.9	109.9	701.6	11.1	105.9	3.6	684.0	13.3	105.4	4.1
On-road	468.1	808.9	263.9	43.6	415.9	48.6	246.0	47.4	383.9	52.5
Non-road	471.1	378.2	352.3	25.2	316.6	16.3	337.0	28.5	307.7	18.6
Total	1,821.5	1,655.9	1,395.8	23.4	1,101.9	33.5	1,343.6	26.2	1,060.6	36.0

As illustrated in Table 2, anthropogenic VOC and NO_X emissions were predicted to decline between 2002 and 2008 by 23.4% and 33.5%, respectively. By 2009, anthropogenic VOC and NO_X emissions are predicted to decline from 2002 levels by 26.2% and 36.0%, respectively. Between 2008 and 2009, ozone precursor emission reductions in the area are modest compared with the predicted reductions between 2002 and 2008. These modest levels of reductions between 2008 and 2009 do not support a conclusion that there will be an accelerated level of ozone reduction between the 2008 and 2009 ozone seasons, which would be necessary for the nonattainment area to either attain by 2009 or be eligible for a one-year extension of the attainment date.[3]

[3] To demonstrate attainment by the end of the 2009 ozone season, the average of the 4th highest level at each of the monitors for the ozone seasons of 2007–2009, would need to be at or below 84 ppb. To be eligible for a 1-year attainment date extension, the 4th highest level at each of the monitors for the 2009 ozone season would need to be at or below 84 ppb.

Also, in addition to the local emission reductions, improvements in ozone air quality in the past five years were also assisted by reduced regional emissions from EPA's NO_X SIP Call and NO_X Budget Trading Program and large fleet turnover in the automobile fleet (retiring older more polluting cars and replacing them with new cleaner cars). These measures produced a significant decrease in ozone. However, the reductions from the NO_X SIP Call and NO_X Budget Trading Program are completed, so further reductions in transported ozone are likely to be minimal. Thus, it is not likely that ozone will continue to decrease at the rate observed in the past five years unless local emission reductions are expanded to amounts well beyond those in the present state SIPs.

In summary, EPA's analysis is that recent ozone data do not support Connecticut's adjustments to the modeling results in its weight of evidence analyses. Also, 2008 ozone data do not support the State's contention that the model is under predicting ozone for 2009, because if this was the case, these areas would be closer to attainment based on 2007 and 2008 data. Since only a modest amount of additional emission reductions are quantified to occur in the New York City ozone nonattainment area between 2008 and 2009, EPA finds the case for attainment in 2009 unacceptable.

• Attainment Levels Have Been Achieved During a Previous Cool Summer

Connecticut argues in Section 8.5.3 of its SIP that the occurrence of one or more cool summers would increase the prospects of attaining the ozone standard in Southwest Connecticut by the end of 2009. They point to the 2004 summer as an example when there were only 6 days with maximum temperatures of 90 °F or higher (an average summer has 17 days ≥90 °F), and, as a result, all Connecticut ozone monitors, except for Danbury, recorded 4th highest 8-hour ozone levels that were less than the 8-hour ozone NAAQS of 85 ppb. Connecticut further argues that emissions have decreased significantly since the 2004 ozone season, and ''[b]ased on that level of emission reduction, if one or more of the summers of 2007, 2008 and 2009 are similar to, or even slightly warmer than the summer of 2004, compliance with the NAAQS could be achieved.'' This argument is flawed for a number of reasons.

The Clean Air Act requires that SIPs provide for the reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the NAAQS by the applicable attainment date. (*See* Section 182(b)(1)(A).) It is not appropriate to rely on favorable meteorology as a method for predicting attainment, but rather emission reductions should be achieved that will ensure attainment even under unfavorable meteorological conditions, which can occur as frequently as those that are favorable. Moreover, the summers of 2007 and 2008 have already occurred, and as noted previously, the preliminary design value for the area based on 2006 through 2008 data is 89 ppb. In order for this area to reach attainment by the end of 2009, the ozone monitors in this area would have to record uncharacteristically low 4th high 8-hour ozone levels in 2009.

• ''Clean Data'' in 2009 Would Qualify SWCT for Clean Air Act Extension Year(s)

Section 8.5.4 of Connecticut's SIP discusses the Clean Air Act provisions under sections 172(a)(2)(C) and 181(a)(5), which provide for the opportunity of up to two one-year extensions of the attainment date. The SIP notes that ''Southwest Connecticut could reach attainment of the NAAQS in 2011 and still comply with CAA requirements for moderate nonattainment areas.'' However, the SIP does not make a compelling case that this will actually happen.

The provisions of 40 CFR Section 51.907 state:

''For purposes of applying sections 172(a)(2)(C) and 181(a)(5) of the CAA, an area will meet the requirement of section 172(a)(2)(C)(ii) or 181(a)(5)(B) of the CAA pertaining to 1-year extensions of the attainment date if:

(a) For the first 1-year extension, the area's 4th highest daily 8-hour average in the attainment year is 0.084 ppm or less.

(b) For the second 1-year extension, the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

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

EPA has looked at the historical ozone monitoring data for the New York-N. New Jersey-Long Island, NY-NJ-CT nonattainment area, and does not believe that the ozone trends in the area support the view that the area is on track to meet these provisions. Since the promulgation of the 1997 ozone standard, over 10 years ago, the entire nonattainment area has always had multiple monitors during each ozone season with a 4th highest daily 8-hour average above 84 ppb, even in summers that were not meteorologically conducive for ozone formation. In 2007, 14 of the 22 ozone monitors located in the nonattainment area recorded a 4th highest 8-hour ozone average above 0.084 ppm. Based on preliminary 2008 data, it appears at least 5 monitors recorded a 4th highest 8-hour ozone average above 0.084 ppm, and EPA believes it is unlikely that every monitor in 2009 will have a 4th highest 8-hour ozone average below this level. (For more information see EPA memorandum, dated January 7, 2009, from Anne McWilliams, entitled, ''Air Quality Trends in the New York-N. New Jersey-Long Island, NY-NJ-CT 8-hour Ozone Nonattainment Area.'')

• Modeling Does Not Include Several Important Emission Control Strategies

Section 8.5.5 of Connecticut's SIP attempts to quantify some emission reductions not included in the modeling. Connecticut contends that the CMAQ modeling conducted for the attainment demonstration does not account for several control strategies that are expected to provide additional emission reductions in the 2009 timeframe, thereby increasing the likelihood that ozone levels in 2009 will be lower than the modeled levels. Table 8.5.5 of the Connecticut submittal articulates what these measures are but does not make any quantifiable assessment of what the emission reduction potential of these measures might be or how that might effect future ozone levels. It appears to EPA that many of these measures, such as energy efficiency and high electricity demand day emission controls, have the potential to reduce emissions over time as they are phased in and fully implemented. However, none of them appear to have the potential to substantially reduce emissions before the 2009 ozone season which would be necessary to support approval of Connecticut's attainment demonstration. Moreover, the most effective way to predict changes in ozone is through air quality modeling and Connecticut did not perform additional modeling runs including these additional measures. Finally, in order for a control measure's benefit to be creditable towards attainment, the measures must be enforceable by the state and EPA and included in the SIP. Therefore, these measures cannot be relied upon to make up the difference

between the modeling projection and attainment.

Moreover, Connecticut also has several emission control rules and regulations that it uses in the CMAQ model, but has not yet submitted to EPA for final approval into the SIP. These include regulations for industrial, commercial and institutional boilers. In addition, new rules for adhesives and sealants and asphalt paving, as well as revisions to the state's municipal waste combustor rules, were not included in the February 1, 2008 SIP submittal but were more recently submitted and are currently under review by EPA. EPA cannot approve the attainment demonstration SIP until all of the measures relied on in the attainment demonstration SIP are submitted by Connecticut and approved into the SIP by EPA.

3. Summary of Weight of Evidence Discussion

With Connecticut's photochemical grid modeling results predicting a 2009 projected design value above the air quality health standard for the New York-N. New Jersey-Long Island, NY-NJ-CT nonattainment area, the State carries a heavy burden to demonstrate that the weight of evidence supports a conclusion that attainment will be timely reached. Connecticut needed to supply a substantial amount of evidence that the model is seriously overestimating future ozone concentrations. Modeling and air quality studies provided by Connecticut do not support an argument that the model over predicts concentrations in 2009. Air quality data through 2008 are far above the level needed for attainment and do not support the hypothesis that the models are incorrect. In order to be persuasive in demonstrating the area would timely attain, present air quality concentrations should be closer to the standard since Connecticut is only one summer from when it should be attaining the standard.

Reductions anticipated taking effect between now and the beginning of the 2009 ozone season are also not enough to close this gap. Connecticut has suggested that it will be adopting additional emission reduction strategies which will reduce ozone, but these reductions are not yet in place and they are not likely to reduce ozone enough to provide for attainment by 2009.

The information and calculations provided by Connecticut's SIP emphasize methods or data that support their claims that the nonattainment area could attain the standard by the deadline. EPA's review of the ''weight of evidence'' analyses must evaluate a spectrum of likely alternative calculations, not only those that tend to show the area will attain the ozone standard. The scale cannot be weighted only one way, toward lower design values. As noted before, the method recommended by EPA's guidance and other reasonable variations on EPA's methods predict the area will not attain the ozone standard by 2009. Connecticut has provided information in support of its ''weight of evidence.'' However, EPA has determined this information does not demonstrate that the proposed adjustments to the photochemical grid model's attainment year forecast will give a more accurate answer than the calculations based on EPA's recommendations in its modeling guidance.

C. What Is EPA's Evaluation of the SIP?

EPA has carefully evaluated the information provided by Connecticut and other information it deems relevant to help determine if the New York City ozone nonattainment area will attain by its deadline, as required by the CAA and as allowed in EPA's modeling guidance. The result of the evaluation using EPA's recommended methods predicts that the New York City ozone nonattainment area will not attain the standard in the attainment year of 2009. EPA finds Connecticut's argument that attainment in the New York City ozone nonattainment area is achievable in 2009 is unconvincing, and does not satisfy the requirements of the Clean Air Act that SIPs provide for attainment of the NAAQS by the applicable attainment date.

EPA is also concerned that Connecticut did not meet the requirements of section 182(j) of the Clean Air Act which requires each state within a multi-state ozone nonattainment to take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans. Although Connecticut did coordinate with New York and New Jersey on the initial modeling analyses, there are a number of areas where the weight of evidence analyses and conclusions regarding the modeling differ. Most importantly, the New York Department of Environmental Conservation (NY DEC) concluded that attainment was not possible by 2009 and, on April 4, 2008, submitted a request to EPA to voluntarily reclassify its portion of the New York City ozone nonattainment area from moderate to serious. The attainment plan submitted by NY DEC on February 8, 2008 contained a demonstration of attainment by June 15, 2013, consistent with a serious classification. In a letter dated November 17, 2008, EPA recommended that Connecticut DEP make a similar request. In a response dated December 5, 2008, the Connecticut DEP chose not to request a voluntary reclassification.

In general, EPA's conclusions can be summarized as follows:

- Connecticut's modeling, using an appropriate photochemical grid model and EPA's guidance methods, does not predict attainment in the New York City ozone nonattainment area by 2009.
- Connecticut's attainment demonstration greatly relied on adjustments to the baseline design value calculations that differ from EPA's modeling guidance and, more importantly, is not sufficiently justified and is biased toward a conclusion that the New York City ozone nonattainment area will attain the standard.
- Regardless of the issues raised by Connecticut regarding the performance of EPA's recommended air quality models, the air quality measured in the New York City ozone nonattainment area during 2007 and preliminary 2008 data exceeded the ozone standard by a significant margin. Even a linear comparison of the percentage of additional emission reductions planned by the state with the needed improvement in air quality between 2008 and 2009 indicates it is unlikely that air quality in the New York City ozone nonattainment area will improve enough to meet the ozone standard by 2009.
- When comparing the measured ozone concentrations in 2007 to the ozone concentrations predicted for 2009 by using EPA's recommended application of the photochemical grid modeling, the photochemical grid model does not exhibit the magnitude of inaccuracies suggested in Connecticut's attainment demonstration. Preliminary data from the 2008 ozone season also does not support Connecticut's demonstration of attainment by 2009.
- Air quality trend data indicate that it is unlikely that the New York City ozone nonattainment area will qualify for a one-year extension of the attainment date.
- Connecticut's attainment demonstration relies in part on emission reductions resulting from a commitment to adopt and implement a number of regulations prior to the start of the 2009 ozone season. Some of these were included in the photochemical grid modeling. These include regulations for industrial, commercial and institutional boilers. As of the date of this action, these controls have not yet been submitted to EPA for approval into the

SIP. In addition, new rules for adhesives and sealants and asphalt paving as well as revisions to the state's municipal waste combustor rules, were not included in the February 1, 2008 SIP submittal but were more recently submitted and are currently under review by EPA. EPA cannot approve the attainment demonstration SIP until all of the measures relied on in the attainment demonstration SIP are submitted by Connecticut and approved into the SIP by EPA.

• Connecticut did not take all reasonable steps as required by CAA section 182(j) to coordinate, substantively and procedurally, with the other states in the multi-state nonattainment area on the revisions and implementation of State implementation plans applicable to the nonattainment area.

For these reasons, EPA proposes to disapprove the attainment demonstration portion of Connecticut's February 1, 2008 SIP submittal. The photochemical grid modeling, if performed according to EPA's guidelines, predicts Connecticut's nonattainment area will fall short of attaining the ozone standard by a substantial margin. Connecticut provides additional information to support its argument that the area will attain the standard by 2009, but the additional information does not provide the level of compelling evidence for EPA to have confidence that this nonattainment area will attain the NAAQS by the deadline.

V. What Are the Consequences of a Disapproved SIP?

This section explains the consequences of a disapproval of a SIP under the Act. The Act provides for the imposition of sanctions and the promulgation of a federal implementation plan (FIP) if a state fails to submit a plan revision that corrects the deficiencies identified by EPA in its disapproval.

A. What Are the Act's Provisions for Sanctions?

If EPA disapproves a required SIP or component of a SIP, such as the Attainment Demonstration SIP, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the Act. If the state has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to sanction a broader area, but is not proposing to take such action in today's rulemaking.

B. What Federal Implementation Plan Provisions Apply if a State Fails To Submit an Approvable Plan?

In addition to sanctions, if EPA finds that a state failed to submit the required SIP revision or disapproves the required SIP revision, or a portion thereof, EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected within that time period.

C. What Are the Ramifications Regarding Conformity?

One consequence of EPA's disapproval of a control strategy SIP is a conformity freeze whereby affected metropolitan planning organizations (MPOs) cannot make new conformity determinations on long range transportation plans and transportation improvement programs (TIPs). If we finalize the disapproval of the attainment demonstration SIP, a conformity freeze will be in place as of the effective date of the disapproval. (40 CFR 93.120(a)(2)) This means that no transportation plan, TIP, or project not in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of 40 CFR 93.104(f) during a 12-month lapse grace period [4] may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budgets are found adequate or the attainment demonstration is approved. In addition, if the highway funding sanction is implemented, the conformity status of the transportation plan and TIP will lapse on the date of implementation of the highway sanctions. During a conformity lapse, only projects that are exempt from transportation conformity (e.g., road resurfacing, safety projects, reconstruction of bridges without adding travel lanes, bicycle and pedestrian facilities), transportation control measures that are in the approved SIP and project phases that were approved prior to the start of the lapse can proceed during the lapse. No new project-level approvals or conformity determinations can be made and no new transportation plan or TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate.

[4] Additional information on the implementation of the lapse grace period can be found in the final transportation conformity rule published on January 24, 2008. (73 FR 4423–4425)

VI. Proposed Action

EPA is proposing to disapprove Connecticut's attainment demonstration for the New York-N. New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area submitted to EPA on February 1, 2008. Connecticut's demonstration does not provide the level of compelling evidence needed/required for EPA to have confidence that this nonattainment area will attain the ozone standard by the June 2010 deadline. EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental

jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

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

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 ''for State, local, or tribal governments or the private sector.'' EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997).This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary

authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 28, 2009.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. E9–10660 Filed 5–7–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2008–0497, FRL–8901–3]

Approval and Promulgation of Implementation Plans; New Jersey Ozone Attainment Demonstration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on the ozone attainment demonstration portion of a comprehensive State Implementation Plan revision submitted by New Jersey to meet Clean Air Act requirements for attaining the 8-hour ozone national ambient air quality standard. EPA is proposing to disapprove New Jersey's demonstration of attainment of the 8-hour ozone standard.

DATES: Comments must be received on or before June 8, 2009.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R02–OAR–2008–0497, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov.*
- *Fax:* 212–637–3901
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket No. EPA–R02–OAR–2008–0497. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Kelly (*kelly.bob@epa.gov*) Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action is EPA Proposing?

The Environmental Protection Agency (EPA) has reviewed New Jersey's comprehensive State Implementation Plan (SIP) revision for attaining the 0.08 ppm 8-hour ozone national ambient air quality standards (NAAQS or standard) [1] in the State of New Jersey's moderate nonattainment areas along with other related Clean Air Act (Act) requirements necessary to insure attainment of the standard. The EPA is proposing to disapprove New Jersey's 8-hour ozone attainment demonstration because the EPA has determined that the photochemical modeling does not demonstrate attainment and the weight of evidence analysis that New Jersey uses to support the attainment demonstration does not provide

[1] Unless otherwise specifically noted in the action, references to the 8-hour ozone standard are to the 0.08 ppm ozone standard promulgated in 1997.