Michigan or her on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or her on-scene representative.

Dated: March 30, 2015.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2015–08345 Filed 4–9–15; 8:45 am]

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37 CFR Part 202

Preregistration and Registration of Claims to Copyright

CFR Correction

In Title 37 of the Code of Federal Regulations, revised as of July 1, 2014, on page 614, in § 202.2, in paragraph (b)(1), the second copyright symbol, following the words ''. . . or, in the case of a sound recording, the symbol'', is corrected to read ''℗''.

[FR Doc. 2015–08383 Filed 4–9–15; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0132; FRL–9925–27–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Attainment Demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Washington, DC-MD-VA Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the attainment demonstration and associated contingency measures and motor vehicle emission budgets (MVEBs) for the Washington, DC-MD-VA, moderate ozone nonattainment area (Washington Area) for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) as submitted by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia as revisions to each of their State Implementation Plans (SIPs). EPA has determined that each of the three SIP revisions including specifically the attainment demonstration, contingency measures and MVEBs meet the applicable requirements of the Clean Air Act (CAA or Act), and EPA is approving each revision.

DATES: This final rule is effective on May 11, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2013–0132. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia. Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th Floor, Washington, DC 20002; the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by email at *cripps.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The District of Columbia, the State of Maryland, and the Commonwealth of Virginia submitted formal SIP revisions on June 12, 2007, June 4, 2007, and June 12, 2007, respectively (hereafter the June 2007 SIP revisions). These June 2007 SIP revisions were submitted to address CAA requirements for the 1997 ozone NAAQS and included the 2002 base year emissions inventory, the 15 percent reasonable further progress plan (RFP) (15% RFP plan), RFP contingency measures, an attainment demonstration to show attainment of the 1997 ozone NAAQS by June 15, 2010, a reasonably available control measures (RACM) analysis, and contingency measures for failure to attain. In addition, the submission included the transportation conformity 2008, 2009, and 2010 year MVEBs associated with the RFP plan, the attainment demonstration and contingency measures, respectively. The District of Columbia Department of the Environment (DDOE), the Maryland Department of the Environment (MDE), and the Virginia Department of Environmental Quality (VADEQ) (hereafter referred to as the three States) jointly developed the June 2007 SIP revisions.[1]

These elements of the Washington Area 8-hour ozone plan were required for the Washington Area by sections 172(c), 182(a), and 182(b)(1) of the CAA due to the classification of the Washington Area as a moderate ozone nonattainment area under the 1997 ozone NAAQS. The boundaries of the Washington Area are defined in the tables for ''1997 8-Hour Ozone NAAQS (Primary and Secondary)'' in 40 CFR 81.309, 81.321 and 81.347.[2]

On September 11, 2011 (76 FR 58116), EPA approved portions of the June 2007 SIP revisions for the three States including the 2002 base year emissions inventory, 15% RFP plan and associated MVEBs for 2008, RFP contingency measures, and the RACM analysis. In this rulemaking action, EPA is approving the remaining portions of the June 2007 SIP revisions for the 1997 ozone NAAQS including the attainment demonstration, the contingency measures, and the associated 2009 and 2010 year MVEBs.[3] In a March 20, 2013 notice of proposed rulemaking (the March 20, 2013 NPR), EPA proposed to approve these remaining elements of the June 2007 SIP revisions. 78 FR 17161.

[1] The three States developed and submitted the ''Plan to Improve Air Quality in the Washington, DC-MD-VA Region, State Implementation Plan (SIP) for 8-Hour Ozone Standard, Moderate Area SIP'' (hereafter the Washington Area 8-hour ozone plan).

[2] Effective July 20, 2012 (77 FR 30088, May 21, 2012), EPA designated and classified nonattainment areas under the 2008 ozone NAAQS codified at 40 CFR 50.15 for most areas of the country including the Washington Area. The Washington Area was designated as nonattainment and classified as marginal nonattainment. The boundaries of the ozone nonattainment area classified as moderate under the 1997 ozone NAAQS are the same as those of the ozone nonattainment area classified as marginal under the 2008 ozone NAAQS. *See* 40 CFR 81.309, 81.321 and 81.347. Hereafter, when referring to the Washington Area in relation to SIP requirements required *solely* due to the 2008 ozone NAAQS, the term ''Washington 2008 Ozone Nonattainment Area'' will be used.

[3] The attainment demonstration was required under 40 CFR 51.908 to demonstrate attainment of the 1997 ozone NAAQS by the applicable attainment date of June 15, 2010 (the June 2010 attainment date).

The initial comment period closed on May 9, 2013 (78 FR 27160); however, EPA reopened the comment period until June 10, 2013. In this final rule, EPA is approving the portions of the June 2007 SIP revisions which we proposed for approval in the March 20, 2013 NPR: the attainment demonstration, contingency measures, and 2009 and 2010 year MVEBs.

II. Summary of SIP Revision

The June 2007 SIP revisions addressed the attainment demonstration required under 40 CFR 51.908, contingency measures, and the associated 2009 and 2010 year MVEBs for the 1997 ozone NAAQS for the Washington Area. Specific requirements for CAA attainment demonstrations, contingency measures and MVEBs for the 1997 ozone NAAQS and the rationale for EPA's proposed action were explained in the NPR and will not be restated here.

III. Attainment Status Based Upon Recent Air Quality Data

Since the March 20, 2013 NPR, the three States have submitted and certified complete ambient air quality monitoring (AQ data) for the entire 2013 ozone monitoring season. EPA has released the final 2011–2013 design values and posted these at *http://www.epa.gov/airtrends/values.html.* The 2011–2013 design values show the Washington Area continues to attain the 1997 ozone NAAQS. Table 1 shows these design values for monitors in the Washington Area in parts per billion (ppb) ozone. These design values in Table 1 demonstrate that the Washington Area continues to meet the 1997 ozone NAAQS.

TABLE 1—ACTUAL MONITORED DESIGN VALUES (DVS) FOR 2011 TO 2013 PERIOD

Site data			DV (ppb)	
AIRS ID	Site name	County/City	State	2011–2013
11–001–0041	River Terrace		DC	72
11–001–0043	McMillan		DC	79
24–009–0010	Calvert	Calvert Co	MD	77
24–017–0010	Southern MD	Charles Co	MD	77
24–021–0037	Frederick Municipal Airport	Frederick Co	MD	74
24–031–3001	Rockville	Montgomery Co	MD	74
24–033–0030	HU-Beltsville	Prince George's Co	MD	76
24–033–8003	PG Equestrian Center	Prince George's	MD	81
24–033–8003	Beltsville	Prince George's	MD	72
51–013–0020	Aurora Hills	Arlington County	VA	79
51–059–0030	Franconia	Fairfax County	VA	79
51–107–1005	Ashburn	Loudoun County	VA	71
51–153–0009	Long Park	Prince William County	VA	69

EPA has also examined available 2014 ozone season AQ data. EPA notes that this AQ data is preliminary. EPA examined the data entered into EPA's Air Quality System (AQS) available as of February 10, 2015. It has not undergone all the quality assurance/quality control review and certification necessary to be used for regulatory purposes, and as of February 10, 2015 may not cover the entire 2014 ozone season for the Washington Area which ended October 31, 2014. *See* Table D–3 ''Ozone Monitoring Season by State'' in appendix D to 40 CFR part 58.

The highest *preliminary* design value in the Washington Area for the 2012–2014 period is 76 ppb which is meeting the 1997 ozone NAAQS. Until the 2014 AQ data is quality assured and certified, this design value is preliminary and subject to change. However, the preliminary data indicates that the Washington Area continues to attain the 1997 ozone NAAQS. For the March 20, 2013 NPR, EPA prepared a technical support document (February 26, 2013 TSD) which is in the docket for this rulemaking and is available online at *www.regulations.gov* as document number EPA–R03–OAR–2013–0132–0006.

EPA has also prepared a supplement to the February 26, 2013 TSD, ''Supplement to Technical Support Document for Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland and Virginia; Attainment Demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Washington, DC-MD-VA Moderate Nonattainment Area,'' dated February 12, 2015 (TSD Supplement);[4] this TSD Supplement provides additional analysis of the 2013 and 2014 AQ data. The TSD Supplement and other documents concerning the 2013 and 2014 AQ data have been added to the docket for this action and are available online at *www.regulations.gov* at docket number EPA–R03–OAR–2013–0132.

[4] The February 26, 2013 TSD is titled ''Technical Support Document for Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland and Virginia; Attainment Demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Washington, DC-MD-VA Moderate Nonattainment Area,'' dated February 26, 2013 and is in the docket for this rulemaking as document number EPA–R03–OAR–2013–0132–0006.

IV. Comments Received on the 2010 Attainment Demonstration, MVEBs, and Contingency Measures and EPA's Responses

EPA received comments adverse to the proposed approval of the attainment demonstration, MVEBs and contingency measures from the June 2007 SIP revisions. A summary of these adverse comments and EPA responses follows.

Comment: EPA received comments asserting that EPA must disapprove the attainment demonstrations in the June 2007 SIP revisions because the 2010–2012 AQ data demonstrates that the Washington Area is not attaining the 1997 ozone NAAQS. The commenter asserts that 40 CFR 51.112(a) provides that attainment demonstrations should be done with air quality modeling and with ''data bases'' such as EPA's ambient air quality monitoring database, AQS. The commenter concludes that the three States' attainment demonstration SIPs are therefore not adequate to attain and maintain the 1997 ozone NAAQS. The commenter cites *Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto Ins. Co.,* 463 U.S. 29, 30–31 (1983) to support its claim that failure to consider the 2010–2012 AQ data would amount to a final rule that is arbitrary and capricious because ''[T]he

agency must . . . examine the relevant data and articulate a satisfactory explanation for its action.'' *Id.* Finally, a commenter stated that the weight of evidence demonstration in EPA's March 20, 2013 NPR is not rational because 2010–2012 AQ data is more representative of real world conditions.

Response: EPA disagrees with the commenter's assertion that EPA must disapprove the attainment demonstrations submitted in June 2007 based upon the results of the 2010–2012 AQ data. EPA did in fact consider some air quality data beyond the 1997 ozone NAAQS June 15, 2010 attainment date. EPA considered 2009–2011 air quality data when proposing approval of the three States' June 2007 SIP revisions which are the subject of this rulemaking. *See* Table 2 ''Modeled Predicted 2009 Design Values versus Actual Monitored Design Values'' and Table 3 ''Actual Monitored Design Values 2009 to 2011'' in the February 26, 2013 TSD in the docket for this action (Docket ID#: EPA–R03–OAR–2013–0132). EPA examined the actual monitored ozone design values through 2011 while evaluating the three States' attainment demonstrations and concluded that the overall trend of ozone air quality in the Washington Area was improving. Because EPA concluded the trend was improving and because the Washington Area attained the 1997 ozone NAAQS by the attainment date of June 15, 2010, EPA determined that the 3 States' June 2007 SIP revisions adequately demonstrated attainment of the ozone standard by the attainment date and EPA proposed to approve the demonstrations. 78 FR at 17165. As discussed in Section III of this rulemaking action, EPA has examined ozone design values for the Washington Area for 2011–2013 and has examined preliminary monitoring data from 2014 which demonstrate the Washington Area continues to attain the 1997 ozone NAAQS and demonstrate the overall ozone design value trend is decreasing from 2003 to 2014. *See also* the TSD Supplement. Thus, EPA has considered relevant data and disagrees with the commenter that EPA must disapprove the attainment demonstrations from the June 2007 SIP revisions due to the 2010–2012 data for the Washington Area.

The CAA is very prescriptive in section 110(k)(3) concerning under what conditions EPA must approve a SIP revision: ''[t]the Administrator *shall* approve such [SIP revision] submittal as a whole if it meets all of the *applicable* requirements of this chapter'' (with emphasis added). As relevant to the moderate area attainment plan for the Washington Area, section 182(b)(1)(A)(i) requires that: ''By no later than 3 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to . . . provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone *by the attainment date applicable under this chapter.''* (Emphasis added.)

The applicable attainment date for areas classified as moderate like the Washington Area for the 1997 ozone NAAQS was no later than June 15, 2010 pursuant to Table 1 of 40 CFR 51.903(a) (*i.e.,* six years after the June 15, 2004 effective date of nonattainment designation for 8-hour NAAQS). *See* 69 FR 23858 (April 30, 2004). Application of 40 CFR 51.908(d) results in a *de facto* attainment date by the close of calendar year 2009, which included the last complete ozone monitoring season prior to June 15, 2010. *See* 69 FR at 23951 and 23989 (stating that the determination of attainment for an area with an attainment date in May 2010 would be based on AQ data from 2007, 2008 and 2009). CAA sections 172 and 182 require the SIPs for the Washington Area to demonstrate attainment with the 1997 ozone NAAQS but do not require the plan to address continued maintenance of the standard after the attainment date. That requirement is specified as a component of redesignation in CAA section 107(d)(3)(E) and is detailed in section 175A(a). Thus, a state is not required to develop a plan to maintain the standard until such time as it has air quality meeting the NAAQS and is seeking redesignation to attainment.

The attainment demonstrations submitted by the three States addressed all of the applicable requirements for such plans in CAA sections 172 and 182 as explained in the March 20, 2013 NPR. In addition, the Washington Area did in fact attain the 1997 ozone NAAQS by its attainment date of June 15, 2010. *See* 77 FR 11739 (February 28, 2012). A violation of the NAAQS for the period 2010–2012, which is after the attainment date, is not determinative of whether the plan was adequate for showing that the standard would be met by the attainment date, and EPA disagrees with the commenter that the SIP must be disapproved now on the basis of that data. Because EPA based approval of the attainment demonstrations partially on the overall improving ozone air quality trends in addition to the fact that the Area attained by its attainment date, EPA notes that the area continued to meet the 1997 ozone NAAQS based on its design value for 2008–2010, 2009–2011, and 2011–2013. Preliminary data from 2014 also indicate that it is likely that the Washington Area is meeting the 1997 ozone NAAQS for the period of 2012–2014. Thus, EPA disagrees that EPA must disapprove the June 2007 SIP revisions after considering the 2010–2012 data suggested by commenter because the Washington Area's attainment by the attainment date plus overall trend of attaining the 1997 ozone NAAQS supports approval.

Comment: EPA received comments asserting that EPA should exercise caution in approving the attainment demonstrations from the June 2007 SIP revisions because the ambient air quality monitoring data through 2012 indicated that air quality has degraded over time as indicated by ozone concentrations in the DC area having steadily increased over time. The commenters assert that such degradation is not consistent with the goal in the CAA of moving towards redesignation to attainment of the 1997 ozone NAAQS. The comments state that the worsening air quality for the Washington Area after 2009 for the 1997 ozone NAAQS casts doubt about the improvement in air quality through 2009 being due to permanent and enforceable reductions from the implementation of the applicable implementation plan and applicable Federal air pollutant control regulations which the commenter asserts is necessary for redesignation of the Washington Area to attainment for the 1997 ozone NAAQS pursuant to section 107 of the CAA.[5] [6] One commenter noted that the design value for the Washington Area rose as follows: 0.080 parts per million (ppm) for 2007 to 2009, 0.081 ppm for 2008 to 2010, 0.082 ppm for 2009 to 2011, and 0.087 ppm for 2010 to 2012.

Response: The attainment demonstration provisions of the Act do not require the state to demonstrate that the measures adopted to attain the standard will ensure continued maintenance of the NAAQS. Also, as the commenter notes in the comments, the issue of whether reductions are due to permanent and enforceable emission reductions is aligned with redesignation for a specific standard and with one of

[5] The comments cite section 107(d)(3)(E)(iii) which is one of the prerequisites to redesignation to attainment from nonattainment.

[6] The comments assert that the violation based upon the 2010 to 2012 AQ data was recorded despite the implementation by the three States of all control programs and contingency measures committed to in the attainment SIP and full implementation of Clean Air Interstate Rule (CAIR).

the redesignation criteria in section 107(d)(3)(E). EPA does note, however, that increased ambient ozone levels are not necessarily associated with the measures in the SIP not being permanent and enforceable. Rather, air quality is based on a complicated mix of factors that include, but go beyond the level of emissions. Other factors include air temperature, wind patterns, and emissions from upwind sources outside of the nonattainment area. For that reason, it is not unusual that an area's design value can vary year-to-year and that for some years it may be higher than for an earlier year. The design value did show a slight increase between the 2009 design value and the 2011 design value and then had a more significant jump for the 2012 design value. However, the 2013 design value was lower than that for 2012 and met the 1997 NAAQS and preliminary data indicates that the 2014 design value will also be lower than that for 2012 and will also meet the 1997 ozone NAAQS.

If the states choose to submit a request to redesignate the Washington Area, they will need to demonstrate that they have met the requirements of section 107(d)(3)(E), including the requirement that the improvements in air quality are due to permanent and enforceable reductions in emissions; however, as EPA has explained, that issue is not relevant for determining whether the area demonstrated that it would attain the 1997 NAAQS by the applicable attainment date.

Comment: Another commenter asserts that EPA cannot approve the attainment demonstrations from the June 2007 SIP revisions because neither the SIP submittals nor EPA provide any analysis pursuant to CAA section 110(l). Specifically, the commenters claim there is no analysis of whether or not EPA's approval of the attainment demonstrations for the 1997 ozone NAAQS will interfere with any applicable requirements regarding the 2008 ozone NAAQS and the 2010 nitrogen dioxide (NO_2) NAAQS.[7] The commenter claims because the attainment demonstrations in the June 2007 SIP revisions do not require any additional emission reductions, the attainment demonstrations may interfere with attaining the 2008 ozone NAAQS as expeditiously as practicable;[8] the commenter specifically asserts that requiring additional nitrogen oxide (NO_X) emission reductions for the attainment demonstrations will result in more expeditious attainment of and in reasonable further progress for the 2008 ozone NAAQS and result in implementation of RACM. The commenter also asserts that EPA must conduct this analysis and provide the public with an opportunity to review and comment on this analysis.

Response: EPA disagrees that a CAA section 110(l) analysis is required for the purpose suggested by the commenter. Section 110(l) prohibits approval of a SIP revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . and any other applicable requirement of this chapter.'' EPA notes that our approval of the June 2007 SIP revisions does not remove any SIP requirements nor reduce any requirements in the three States' SIPs. Thus, EPA disagrees that EPA cannot approve the 2007 SIP revisions without a section 110(l) analysis.

However, even though EPA believes a section 110(l) analysis is not required here as no applicable requirements are being removed or reduced, EPA does note that the volatile organic compounds (VOC) and NO_X reductions achieved to attain the 1997 ozone NAAQS for the Washington Area will also provide benefits for attaining and/or maintaining the 2008 ozone NAAQS, and NO_X reductions will provide benefits for attaining and/or maintaining the 2010 NO_2 NAAQS. Thus, EPA finds our approval of the June 2007 SIP revisions will not interfere with the requirements applicable for those other two NAAQS. EPA also disagrees with the commenter's assertion that the three States' attainment demonstrations may interfere with attaining the 2008 ozone NAAQS as no additional NO_X reductions are required because the pollutants reduced in the Washington Area in its attaining the 1997 ozone NAAQS are the same pollutants that need to be regulated for the 2008 ozone NAAQS.

The commenter does not make any specific claim regarding the analysis for the 2010 NO_2 NAAQS, but rather simply asserts that a section 110(l) analysis was not done. EPA notes that no part of the Washington Area has been designated as nonattainment for the 2010 NO_2 NAAQS. *See* 77 FR 9532 (February 17, 2012) and 40 CFR 81.309, 81.321 and 81.347. Therefore, no part of the Washington Area is subject to ''Part D'' planning requirements (such as sections 172(b), 172(c), 181 or 182) for the 2010 NO_2 NAAQS because these ''Part D'' requirements apply only to SIPs required for nonattainment areas. EPA notes that the affected States have all made SIP submissions to address the applicable requirements in section 110(a)(1) and (2) for the 2010 NO_2 NAAQS. The commenter does not suggest nor is EPA aware of anything in the attainment demonstration submissions for the 1997 ozone NAAQS that would undercut or undermine the requirements in the section 110 SIPs submitted for the 2010 NO_2 NAAQS.

The commenter's claim regarding interference with the 2008 ozone NAAQS also ignores the structure of the statute. Under the CAA, EPA is required to periodically review and revise as necessary the NAAQS. When EPA revises a NAAQS, a planning cycle begins for that new NAAQS. EPA is first required to designate areas and, for those areas designated nonattainment, a time clock for submission of plans to address nonattainment begins at the time of designation. EPA designated areas for the 2008 ozone NAAQS effective June 2012, and nonattainment area SIPs for that standard are generally due in June 2015. The interpretation set forth by the commenter ignores that structure and instead suggests that once a new NAAQS is promulgated, the state must demonstrate any time it revises its SIP that such revisions will also fulfill requirements applicable for the new standard (*e.g.,* demonstrate attainment, meet RACM). In other words, the commenter is reading section 110(l) to supersede the more prescriptive and descriptive provisions in Part D of title I of the CAA that govern nonattainment area planning. It is untenable to read that much detail and meaning into the word ''interfere.'' EPA's reasonable interpretation is that this provision means that a plan cannot undermine or impede applicable requirements for the same or other NAAQS.[9] And, in this circumstance, the reductions relied on for attainment of the 1997 ozone NAAQS will not undermine or impede progress toward meeting the newer NAAQS because it regulates the same pollutants that need to be regulated for

[7] These are codified at 40 CFR 50.15 and 40 CFR 50.11, respectively.

[8] The commenter cited section 172(a)(2) for the proposition that attainment dates are to be the date by which attainment can be achieved as expeditiously as practicable. Because EPA is implementing the 1997 and 2008 ozone NAAQS under ''subpart 2'' (sections 181 through 185B) by classifying all ozone nonattainment areas under both these NAAQS under section 181, EPA notes that the proper citation for this proposition should be section 181(a)(1) and 40 CFR 51.1103 (implementing the 2008 ozone NAAQS under section 181) which requires attainment of the ozone NAAQS be ''as expeditiously as practicable'' but no later than the date provided in Table 1 of 40 CFR 51.1103.

[9] *See also* Webster's Ninth New Collegiate Dictionary, defining ''interfere'' as ''to interpose in a way that hinders or impedes.''

the 2008 ozone NAAQS and the 2010 NO_2 NAAQS. Any further reductions needed for attaining the 2008 ozone NAAQS will be addressed through the attainment planning process provided in Part D of title I of the CAA for the 2008 ozone NAAQS.

Comment: Another commenter claims that because the air quality in the Washington Area does not meet either the 1997 and 2008 ozone NAAQS, one cost-effective and expeditious method to deal with this problem is to impose an emission limit of 0.07 pounds per million British thermal units (lb/mmbtu) on each coal-burning electric generating unit (EGU) and each coal fired unit at the Capitol Heat Plant in the Washington Area.[10] The commenter claims such a limit is a reasonably available control measure and cited court decisions, EPA preamble text and other documents to support this conclusion.[11] The commenter suggests various specifics related to such a limit such as applicability, prohibition of inter-unit averaging, averaging periods, compliance dates and other details. The commenter also suggested limits for ''ammonia slip'' because states need to assume that ammonia is a fine particulate matter ($PM_{2.5}$) precursor.

Response: As an initial matter, EPA does not have authority under the CAA to condition approval of the attainment demonstrations in the 2007 June SIP revisions upon adoption of a specific measure such as the NO_X limit suggested by the commenter for EGUs or any ammonia slip requirement. Under the cooperative federalism structure of the SIP program designed by Congress, the states have the authority to choose the measures needed for attainment of the NAAQS. *See Train* v. *Natural Resources Defense Council,* 421 U.S. 60, 79 (1975) (stating ''so long as the ultimate effect of a State's choice of emission limitations is compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation''); *Union Electric Co.* v. *EPA,* 427 U.S. 246, 269 (1976) (finding Congress via section 110 ''plainly left to the states the power to determine which sources would be burdened by regulations and to what extent''). *See also Virginia* v. *EPA,* 108 F.3d 1397, 1407–08 (D.C. Cir. 1997) (stating EPA cannot question the wisdom of a state's choices of emission limitations for a SIP if the plan satisfies the standards of section 110(a)(2)).

The commenter appears to be claiming that the identified NO_X control measures for EGUs and the Capitol Power Plant and an ammonia slip requirement must be adopted by the states in order to meet the RACM requirement in CAA section 172. Because EPA previously approved the States' RACM portions of the June 2007 SIP revisions on September 20, 2011 (76 FR 58116), this issue as raised now by the commenter has not been timely raised and no further response is necessary. However, EPA further notes that EPA's longstanding interpretation of the RACM requirement in CAA section 172 involves an evaluation of whether the measures will advance the attainment date by one year. *See Sierra Club* v. *EPA,* 314 F.3d 735, 744–745 (5th Cir. 2002) and *Sierra Club* v. *EPA,* 294 F.3d, 155, 162 (D.C. Cir. 2002). *See also* 57 FR 13498, 13560 (April 16, 1992); 44 FR 20372, 20374 (April 4, 1979). Notably, the attainment date for the Washington Area (June 15, 2010) has passed and the Area is in fact attaining the 1997 ozone NAAQS as mentioned previously. Thus, at this juncture, the NO_X or ammonia control measures suggested by the commenter are not ones that could advance the attainment date of the Washington Area and would not qualify as RACM, even if EPA were evaluating RACM for the 1997 ozone NAAQS for the Area.

Comment: EPA received comments that assert EPA cannot approve the attainment demonstrations in the June 2007 SIP revisions because 40 CFR 51.112(a) provides that attainment demonstrations must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements. The commenters also claim that 40 CFR 51.908(d) further supports the claim that the attainment demonstration SIP must provide for maintenance as part of attainment demonstrations because it requires implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The commenters assert that the language of ''no later than'' does not allow for this requirement to stop after the attainment year ozone season, and the plain language of this regulation provides for control measures needed for attainment after the attainment year.

Response: For the reasons provided in the March 20, 2013 NPR and in this final rule, EPA has determined that the modeled attainment demonstration in the June 2007 SIP revisions and supporting analyses show that measures, rules and regulations contained in the June 2007 SIP revisions provide for timely attainment of the 1997 ozone NAAQS. EPA disagrees with the commenter that EPA cannot approve the attainment demonstrations because the demonstrations do not provide for *maintenance* of the 1997 ozone NAAQS. The regulatory provision cited by the commenter, 40 CFR 51.112(a), was first promulgated in 1986, prior to enactment of the CAA Amendments of 1990. This provision establishes broad principles applicable to ''control strategy'' SIPs and both attainment demonstrations and maintenance plans are types of control strategy SIPs. Under the CAA, as amended in 1990, those two SIPs are addressed separately in the Act, and the Act establishes separate timeframes for submission of those two SIPs. Specifically, maintenance SIPs are now specifically required under CAA section 175A as a prerequisite to redesignation of an area to attainment with the NAAQS under section 107(d)(3) of the CAA and thus are to be submitted after an area has attained the NAAQS. Thus, EPA applies 40 CFR 51.112(a) in the context of the control strategy SIP under review and consistent with the structure of the Act. For example, maintenance plans need not project timely attainment because an area must have actually attained a NAAQS before a maintenance plan can support a redesignation request under section 107(d)(3)(E). Similarly, as discussed in an earlier response to comment, attainment demonstrations are due several years after designation as nonattainment and are for the purpose of demonstrating how an area will attain the NAAQS ''by'' a specific date but are not required to address air quality after the attainment date. In other words, consistent with the structure of the Act, EPA does not read 40 CFR 51.112(a) to require an attainment demonstration to demonstrate maintenance of a NAAQS nor to require a maintenance plan to demonstrate attainment of the NAAQS.

The commenter's interpretation that 40 CFR 51.908(d) supports a requirement that attainment demonstrations must include a demonstration of maintenance of the NAAQS beyond the attainment date is also misplaced. The sole purpose of this regulatory provision was to make clear

[10] EPA assumes the commenter is referring to the Capitol Power Plant which is located in Washington, DC which provides steam and chilled water used to heat and cool buildings throughout the U.S. Capitol campus.

[11] Regarding suggested NO_X control measures, the commenter cites for support generically to EPA's Cross State Air Pollution Rule, 76 FR 48208, 48282 (August 8, 2011), which addresses interstate transport of emissions for the 1997 ozone NAAQS and to *Appalachian Power* v. *EPA,* 135 F.3d 791, 819 (D.C. Cir. 1998) which addressed NO_X limits on EGUs under Title IV of the CAA. The commenter also cites to *NRDC* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013) (remanding $PM_{2.5}$ implementation rule) in support of the comment that EPA should require ammonia control measures.

to states the date by which all measures relied on for purpose of demonstrating attainment must be in place. Specifically, they must be implemented by the beginning of the final ozone season before the attainment date. The provision says or implies nothing beyond that simple requirement. This is further supported by the discussion in the preamble to the final rule promulgating this provision to implement the 1997 ozone NAAQS in which EPA consistently spoke only of the analysis needed to demonstrate timely attainment of the ozone NAAQS requirements and never of any need to demonstrate ''maintenance'' of the ozone NAAQS. *See* 70 FR 71612, 71615, 71626–71627 (November 29, 2005) (''Phase 2'' final rule for implementation of 1997 ozone NAAQS). EPA referenced sections 172(c), 182(b), and 182(c) as the applicable CAA provisions regarding attainment demonstrations for the 1997 ozone NAAQS and did not cite or discuss the maintenance plan provision in section 175A. *Id.*

Comment: EPA received comments asserting that the SIP for the Washington Area relies on CAIR to address the ''transport'' problem and note that CAIR was remanded after the June 2007 SIP revisions were submitted. The commenters assert that because reduction of transported emissions still depend on the remanded CAIR, key modeling assumptions made for the attainment demonstrations in the June 2007 SIP revisions are questionable. These comments assert that EPA's own modeling analysis for the Cross State Air Pollution Rule (CSAPR) indicates that transported pollution and ozone precursors from upwind jurisdictions play a significant role in the Washington region and that up to 75 percent of the ozone pollution in the Washington Area comes from states outside of the nonattainment area.[12] These commenters state that the three States relied on emissions reductions in upwind states to meet the 1997 ozone NAAQS. The commenters state that despite attempts by EPA, the full benefits of a replacement rule have not been realized and state it is premature to approve the attainment demonstrations without a viable transport strategy in place. The comments conclude that the burden remains on EPA to persevere to replace CAIR so that further reductions are made to minimize contributions from upwind states. The comments suggested EPA could use CAA section 110(k)(5) to initiate a SIP call to merge addressing transport for the 1997 ozone NAAQS with addressing transport for the 2008 ozone NAAQS. The commenters conclude that EPA's proposed action to fully approve the attainment demonstrations from the June 2007 SIP revisions without sufficiently addressing transport should not proceed and that a partial approval should be granted at most of such things as the MVEBs.

Response: EPA disagrees with the commenters that it is premature to approve the attainment demonstrations from the June 2007 SIP revisions for the 1997 ozone NAAQS due to concerns raised by the commenters regarding CAIR and transport of pollution. CAIR, as relied on for purposes of the attainment demonstration (and as described in more detail below) was being implemented through the attainment date. As provided in our earlier responses to comments, attainment demonstrations are required to demonstrate that an area will attain the NAAQS ''by'' a specific date, and EPA does not review such SIPs to determine whether they will show continued maintenance of the NAAQS. EPA is unclear about what the commenters are suggesting regarding a SIP Call—*i.e.,* whether they are suggesting that EPA issue a SIP Call for the SIPs for the Washington DC Area or whether they are make a broader suggestion that EPA issue a new SIP Call rule. In either case, the comment is not relevant to the present rule. The issue in this present rulemaking is whether EPA should approve specific SIP submissions pending before the Agency and not whether EPA should issue a SIP Call for the already-approved SIPs for the Washington DC area. Nor, does this rulemaking action purport to address the broader issue of whether EPA should issue a new ''SIP Call'' rule requiring upwind states to address transported pollution for any NAAQS.

Although not relevant for purposes of whether the attainment demonstration demonstrates attainment by the attainment date, EPA notes that EPA also disagrees with the characterization by the commenter that the transport rules are not reducing transported emissions. Despite the litigation regarding CAIR and CSAPR, the rules are providing a continuous mandate to states to address upwind transport as described in this response.

CAIR was promulgated May 12, 2005 (70 FR 25162) and required 28 states and the District of Columbia to adopt and submit revisions to their SIPs to eliminate sulfur dioxide (SO_2) and NO_X emissions from EGUs that contribute significantly to downwind nonattainment of the 1997 $PM_{2.5}$ and ozone NAAQS. The three States developed their attainment demonstrations for the June 2007 SIP revisions after CAIR was promulgated and being implemented in Maryland, Virginia, and the District of Columbia. CAIR was remanded to EPA in 2008, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008), but it was not vacated and implementation of the program continued for most areas. EPA subsequently promulgated CSAPR to replace CAIR and address transport for the 1997 ozone NAAQS. 76 FR 48208 (August 8, 2011). Implementation of CSAPR was scheduled to begin on January 1, 2012, when CSAPR would have superseded the CAIR program. However, numerous parties filed petitions for review of CSAPR, and on December 30, 2011, the D.C. Circuit issued an order staying CSAPR pending resolution of the petitions and directing EPA to continue to administer CAIR. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Dec. 30, 2011), Order at 2.

In 2012, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), vacating CSAPR and ordering EPA to continue administering CAIR pending the promulgation of a valid replacement. On April 29, 2014, the Supreme Court reversed the D.C. Circuit's decision on CSAPR and remanded the case to the D.C. Circuit for further proceedings. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). After the Supreme Court decision, EPA filed a motion to lift the stay on CSAPR and asked the D.C. Circuit to toll CSAPR's compliance deadlines by three years, so that the Phase 1 emissions budgets apply in 2015 and 2016 (instead of 2012 and 2013), and the Phase 2 emissions budgets apply in 2017 and beyond (instead of 2014 and beyond). On October 23, 2014, the D.C. Circuit granted EPA's motion. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Oct. 23, 2014), Order at 3. EPA issued an interim final rule to clarify how EPA will implement CSAPR consistent with the D.C. Circuit's order granting EPA's motion requesting lifting the stay and tolling the rule's deadlines. 79 FR 71663 (December 3, 2014) (interim final rulemaking).

Throughout the litigation described previously in this rulemaking action, EPA continued to implement CAIR

[12] CSAPR was issued by EPA to replace CAIR and to help states reduce air pollution and attain CAA standards. *See* 76 FR 48208 (August 8, 2011) (final rule). CSAPR requires substantial reductions of SO_2 and NO_X emissions from EGUs in 28 states in the Eastern United States that significantly contribute to downwind nonattainment of the 1997 $PM_{2.5}$ and ozone NAAQS and 2006 $PM_{2.5}$ NAAQS.

which led to significant reductions in emissions of SO_2 and NO_X from EGUs. However, on December 31, 2014, EPA sunset CAIR's provisions, and implementation of CSAPR began on January 1, 2015 in accordance with our interim final rule. 79 FR 71663. Now that implementation of CSAPR has begun, the emission reductions in SO_2 and NO_X from implementation of CAIR at EGUs will continue through CSAPR implementation. *See* 76 FR 48208.

Comment: One commenter asserts that EPA has changed its position on whether or not EPA could approve the attainment demonstrations from the June 2007 SIP revisions for the Washington Area as well as other ozone nonattainment areas under the 1997 ozone NAAQS. The commenter claims that at one time EPA stated that it could not approve the attainment demonstration portions of the June 2007 SIP revisions because the modeling was based on CAIR; the commenter links the uncertainty about CAIR to doubts about assurances that the 1997 ozone NAAQS would be attained. The commenter asserts that EPA's proposed approval relies upon the same modeling which continues to be based on CAIR (which was remanded to EPA) and claims the change in policy seems to be based on ambient air quality monitoring data which allowed EPA to declare that the Washington Area attained the 1997 ozone NAAQS. The commenter claims EPA should not approve an attainment demonstration that relies on modeling which was based in part on CAIR.

Response: As explained previously in response to a prior comment, EPA sunset its implementation of CAIR on December 31, 2014 and is now implementing CSAPR pursuant to the Supreme Court's upholding of CSAPR as a means to address transport of pollution for the 1997 ozone NAAQS, pursuant to the D.C. Circuit's lifting the stay on CSAPR, and pursuant to our interim final rule which provided clarification that CSAPR would be implemented as of January 1, 2015. During the litigation in the D.C. Circuit over CAIR and CSAPR, EPA continued to review and evaluate SIPs such as the June 2007 SIP revisions in accordance with CAA requirements. EPA disagrees that it ''changed its position'' on the approvability of the attainment demonstrations from the June 2007 SIP revisions. During the pendency of litigation concerning CAIR and CSAPR, EPA merely exercised caution in reviewing data which relied upon CAIR, and EPA proposed approval of the June 2007 SIP revisions when EPA concluded reliance upon data related to CAIR was appropriate given the litigation in the D.C. Circuit. However, as mentioned previously, EPA continued to implement CAIR during the litigation in the D.C. Circuit, and emission reductions of SO_2 and NO_X from EGUs occurred through CAIR. The States appropriately relied on CAIR and CAIR emission reductions in the June 2007 SIP revisions. EPA believes that continued and further reductions will occur with CSAPR. While the air quality data for the Washington Area has changed and improved generally over time, the air quality data presently indicates the Washington Area is attaining the 1997 ozone NAAQS and the Washington Area did attain by its attainment date of June 15, 2010 when EPA was implementing CAIR.

As explained in the March 20, 2013 NPR, in the February 26, 2013 TSD, in the TSD Supplement, and in response to prior comments, EPA based our decision to approve the attainment demonstrations upon the fact that the Washington Area did in fact attain the 1997 ozone NAAQS by the required June 15, 2010 attainment date and upon our evaluation that the Area continues to attain the 1997 ozone NAAQS. EPA believes the attainment demonstrations are in accordance with CAA requirements in sections 172 and 182 and believes the improving air quality data supports our decision to approve these attainment demonstrations for the 1997 ozone NAAQS. Thus, for the reasons detailed in the March 20, 2013 NPR and in this rulemaking action, EPA finds the attainment demonstration in accordance with CAA requirements, and EPA disagrees with commenters that any concerns with CAIR prevent our approval of these attainment demonstrations.

Comment: One commenter noted that although speedy approval of SIPs is desirable, at this juncture, approval of the attainment demonstrations from the June 2007 SIP revisions sends the wrong message to states and the public. The commenter claims that approval will not force state actions to address the 1997 and 2008 ozone NAAQS and therefore will result in continuation of unhealthy air for citizens of the Washington Area.

Response: EPA disagrees with the commenter that action on the SIP ''sends the wrong message'' to the public. Under the CAA, states are required to develop plans for each NAAQS and EPA is required to act on such submittals. Thus, to the extent the commenter is suggesting that EPA not act on the submission, such inaction is not allowed under the CAA. *See* CAA section 110(k)(1)–(3). The commenter's claim that action on an attainment SIP for the 1997 NAAQS will not force action by the state on a SIP for the 2008 NAAQS or will ''continue'' unhealthy air is misguided. The 2008 ozone NAAQS is a separate NAAQS with a separate statutory schedule for state adoption and submission of SIPs. EPA's action on a SIP required to address the 1997 ozone NAAQS has no effect on the obligation of the state to adopt rules and plans to meet the 2008 ozone NAAQS. In addition, SIPs for the 2008 ozone NAAQS are not yet due. Although, the attainment SIP for the 1997 ozone NAAQS is not intended to demonstrate how the state will meet the tighter 2008 ozone NAAQS, the reductions achieved by the attainment SIP will also provide benefits for that newer 2008 ozone standard.

Comment: One commenter asserted that if the proposed 2008 SIP Requirements Rule moves forward as currently written and the 1997 ozone NAAQS is entirely revoked, EPA could consider a process similar to that conducted during transition from the 1-hour standard to the 1997 8-hour standard. Under such process, the Washington Area's ''moderate'' area requirements under the 1997 standard could be continued under the 2008 standard, at least until the region is designated ''attainment'' for the 1997 standard, as suggested in CAA section 172(e).

Response: This comment addresses the substance of a separate rule for implementing the 2008 ozone NAAQS and is not related to whether EPA should approve the attainment demonstration addressed in this action rulemaking. EPA will address in the final action on that separate rule concerning implementation of the 2008 ozone NAAQS, the issue of how long the requirements applicable for the 1997 NAAQS remain in place as areas transition to implementation of the 2008 ozone NAAQS.

Comment: Several commenters noted that because of the determination of attainment by the attainment date and clean data determination for the Washington Area issued on February 28, 2012, EPA will not have to reclassify the Washington Area under the 1997 ozone NAAQS and that the three States are not required to submit any planning SIPs related to attainment of the 1997 ozone NAAQS standard unless a violation of the standard occurs. The commenters assert that violation of the 1997 ozone NAAQS has occurred and called for action by EPA. These commenters asserted that section 110(k)(5) requires EPA to issue a SIP call because the attainment demonstrations in the June 2007 SIP revisions are inadequate to

maintain the 1997 ozone NAAQS in the Washington Area. EPA received other comments that suggested EPA merge the SIP call requirement in section 110(k)(5) under the 1997 ozone NAAQS with requirements under the 2008 ozone NAAQS. One commenter asserted that in addition to section 110(k)(5), EPA could use section 110(k)(6) to correct prior actions when EPA finds a previously approved SIP inadequate. One commenter speculated that EPA has not moved with an action under section 110(k)(5) perhaps because the area has been designated nonattainment for the 2008 ozone standard.

Response: The comments do not address EPA's action on the attainment demonstration, but instead suggest that EPA take additional rulemaking pursuant to CAA section 110(k)(5) or 110(k)(6) and thus are outside the scope of this rulemaking action. EPA notes that although the 2012 design value was violating the 1997 ozone NAAQS, the area is attaining that NAAQS based on the 2013 design value and preliminary data from 2014 indicates that it is continuing to meet the 1997 ozone NAAQS.

Comment: EPA received comments claiming that EPA should promptly revoke the determination of attainment EPA issued for the Washington Area on February 28, 2012 (77 FR 11739) based on the 2010 to 2012 air quality data showing a violation of the 1997 ozone NAAQS.

Response: The comments do not address this action on the attainment demonstration, but instead suggest that EPA take additional rulemaking action to revoke our prior clean data determination for the Washington Area; thus the comments are outside the scope of this rulemaking action. As discussed previously, EPA notes that based on air quality data from 2011 to 2013 and on preliminary data from 2012 to 2014, the Washington Area is attaining the 1997 ozone NAAQS and thus currently has clean data for the 1997 ozone NAAQS.

Comment: EPA received comments claiming that EPA explained in its proposed approval of the Washington Area attainment demonstrations from the June 2007 SIP revisions that the actual monitored values from the attainment year confirm the model over-predicted ozone concentrations by 0.002 ppm (2 ppb) and also claiming that the actual design values upon which EPA based these findings of model over-prediction are from years that are not representative of the same kind of meteorology chosen for the modeling. The commenter claims that the attainment year period was cooler and wetter and would be expected to generate less ozone. The commenter asserts that the design values for the Washington Area have increased for four straight years now that data from 2009 is not included in the design value calculation. The commenter notes that the most recent air quality data indicates the model-predicted ozone values are just as likely to be correct rather than an over-prediction. In addition, the commenter notes that EPA also cited a descending trend in ozone values as weight of evidence that the modeling over-predicts ozone for the region. Now that design values no longer include 2009 ozone season data, the commenter claims design value trends are increasing and do not show continued attainment of the 1997 ozone NAAQS. These comments conclude that EPA must disapprove the attainment demonstration based on the current values.

Response: As EPA has explained previously, the issue for approving the attainment demonstration is not whether the area has continued to maintain the NAAQS several years following the attainment date, but rather whether the modeled attainment demonstration demonstrated that the area would attain by its attainment date. For the reasons provided in the proposed rule and this final rule, EPA has determined that the attainment demonstrations in the June 2007 SIP revisions show attainment by the Area's attainment date of June 15, 2010. Furthermore, monitored attainment, including the 2009 design value, support that the Washington Area attained the standard by its attainment date.

EPA notes that in the March 20, 2013 NPR, EPA stated that the modeling conducted by the three States for the June 2008 SIP revisions over predicted 2009 ozone design values relative to the actual monitored 2009 to 2011 design values for most cases and always for four monitors for which the modeled design values were in the range of 82 to 87 ppb. *See* 78 FR at 17164. EPA also stated in the March 20, 2013 NPR that the modeling in the three States' June 2007 SIP revisions over predicted 2009 predicted design values when compared to actual monitored design values since 2009. *Id.* EPA compared the modeled design values to the actual design values based upon air quality data in Table 2, ''Modeled Predicted 2009 Design Values versus Actual Monitored Design Values'' in the February 26, 2013 TSD. This comparison showed that the actual attainment year design values were below the model predicted values, but more significantly were below the 1997 ozone NAAQS of 84 ppb.[13]

At the time EPA issued the March 20, 2013 NPR, EPA did not have certified 2012 or 2013 data. When EPA proposed in 2013 to approve the attainment demonstrations in the June 2007 SIP revisions, EPA considered the overall downward trend in monitored ozone air quality in the Washington Area and that the Area attained the 1997 ozone NAAQS by the attainment date applicable under section 181 of the CAA. While the 2010–2012 air quality design value does show an increase over the design values EPA previously considered, EPA continues to believe the air quality data for the Washington Area supports our approval of the June 2007 SIP revisions as the 2011–2013 AQ data (and the 2012–2014 AQ data based upon the preliminary 2014 data) shows the Washington Area is attaining the 1997 ozone NAAQS.

EPA agrees with the commenters that weather plays an important role in ozone formation. However, EPA believes that these considerations do not require EPA to disapprove the attainment demonstrations in the June 2007 SIP revisions. None of the design values predicted in the modeling from the three States in the June 2007 SIP revisions were above 87 ppb. Therefore, as explained in the February 26, 2013 TSD, a weight of evidence demonstration could be considered and was considered by EPA. The three States presented downward trends in design values (through 2006 as the States submitted the SIP in 2007), in numbers of exceedances, in nitrogen dioxide and carbon monoxide levels, and in emissions levels, as well as a decrease in the spatial extent of nonattainment in the Washington area and a decrease in the number of days the 1997 ozone NAAQS was exceeded when the maximum temperature exceeded 90 degrees Fahrenheit. For the proposed approval in the March 20, 2013 NPR, EPA also considered monitored ozone design values for years after 2006 which declined from an area-wide maximum 91 ppb for the 2004–2006 period to 80 ppb for the 2007–2009 (the effective applicable attainment period). At best, EPA believes that a modeled attainment demonstration with a supporting weight of evidence demonstration is a prediction about future events. For attainment

[13] The 1997 ozone NAAQS as codified at 40 CFR 50.10 is 0.08 ppm, but EPA's interpretation (and under the interpretation in Appendix I to 40 CFR part 50) of the 1997 ozone NAAQS after considering the number of significant figures requires a design value equal to or greater than 0.085 ppm (85 ppb) to be a violation.

demonstrations, EPA has recommended using model predictions in a relative rather than absolute sense and using weight of evidence to lessen the problems posed by less than ideal model performance on individual days by anchoring the future predicted concentrations to real ambient values and to address associated uncertainties in model results and projections.[14] In addition, EPA believes that the form of the 1997 8-hour ozone NAAQS necessitates such an attainment test.[15]

In general, EPA does not consider the monitored ambient air quality data for periods after the attainment date to be particularly dispositive when acting on an attainment demonstration due under section 182(b). As explained previously in response to prior comments, EPA must approve a SIP submission such as an attainment SIP if the SIP submission meets applicable requirements in CAA sections 172 and 182. If an area does attain by its applicable attainment date, EPA has no authority to reclassify the area even if the area subsequently violates the ozone NAAQS.[16] EPA believes this evinces a preference for actual air quality results over modeled predictions, and we believe that EPA must place great weight upon monitored attainment by the statutorily required attainment date when evaluating an attainment demonstration for compliance with CAA requirements.

As noted in response to other comments, EPA believes that an attainment demonstration required under sections 172 and 182(b) need not demonstrate maintenance of the ozone NAAQS after the applicable attainment date and need only demonstrate timely attainment by the attainment date. While the commenters raise concerns for maintenance of the 1997 ozone NAAQS based on the 2010–2012 design value for the Washington Area, the 2011–2013 design values (and preliminary data for 2012–2014) show attainment with the 1997 ozone NAAQS as mentioned previously. EPA did not in the March 20, 2013 NPR propose any sort of finding regarding sufficiency of any state's SIP with regards to maintenance of the 1997 ozone NAAQS in the Washington Area. In addition, maintenance of the 1997 ozone NAAQS is not a requirement for our approval of an attainment SIP required by CAA sections 172 and 182 as discussed previously in response to a prior comment and will be addressed in a separate SIP if the Washington Area seeks redesignation.

Finally, EPA believes that section 110(k)(5) provides a separate remedy, outside the scope of this rulemaking action, via a ''SIP call'' which provides the necessary authority to require remedial action through additional measures for a SIP where an ozone nonattainment area attains the ozone NAAQS by the applicable attainment date under section 181 but later violates that ozone NAAQS. *See* 64 FR 70205, 70206 (December 16, 1999) (final SIP call rule for Birmingham, Alabama marginal 1-hour ozone nonattainment area to address inadequacy of a SIP) and 79 FR 27830, 27832 (May 15, 2014) (proposed SIP call for the New York-New Jersey-Long Island moderate 1997 8-hour ozone nonattainment area).

Comment: EPA received a comment that it is arbitrary and capricious for the attainment demonstration modeling to only model for design values at monitoring stations. The commenter states that the whole metropolitan DC area is designated nonattainment, not just the tiny area covered by the monitoring stations. The commenter states that the NAAQS apply everywhere and that people are located throughout the Washington Area, not just at the monitoring stations. The commenter claims the model is capable of having a receptor grid that provides design values for the entire Washington Area and that by looking at design values at the monitoring station, EPA is deliberately ignoring an important aspect of the problem, that is whether the SIP provides people throughout the Washington Area with air that contains ozone below the health-based limit in the NAAQS.

Response: EPA disagrees with the comment that it was arbitrary and capricious for the attainment demonstration modeling to only model for design values at monitoring stations and not for the entire Washington Area. The three States' attainment demonstration modeling was in accordance with EPA's 2007 Modeling Guidance for Ozone, $PM_{2.5}$, and Regional Haze and considered appropriate data. As an initial matter, the performance of the air quality model used in a SIP submission can only be assessed by comparison of the model predicted ozone concentrations for the baseline year in the vicinity of any air quality monitors in place with the actual monitored ozone concentrations recorded at air quality monitors in place during the baseline year. EPA's 2007 Modeling Guidance for Ozone, $PM_{2.5}$, and Regional Haze in section 2.0 provides for using the modeling results in a relative sense, that is, the ratio, called a ''relative response factor'' (RRF), of the model's future to current (baseline) predictions at monitors is used to determine if attainment is predicted.[17] In section 2.4 of that guidance, EPA explained its reasons for using the models in a relative sense. These RRFs are used to estimate concentrations at existing monitoring sites by multiplying a modeled RRF at locations ''near'' each monitor by the observation-based, monitor-specific, ''baseline'' design value. The resulting predicted ''future concentrations'' are compared to the NAAQS as part of the modeled attainment test and attainment demonstration.

While the 2007 Modeling Guidance for Ozone, $PM_{2.5}$, and Regional Haze recommends a test, the ''unmonitored area analysis,'' which provides estimates of future year values in unmonitored areas, the guidance notes this test is particularly needed in nonattainment areas where the ozone monitoring network just meets or minimally exceeds the size of the network required to report data to AQS. EPA asserts that the Washington Area's monitoring network is not such a network.

The air quality monitoring network in the Washington Area far exceeds the minimum required under 40 CFR part 58. The Washington Area is part of the larger Washington-Arlington-Alexandria (DC–VA–MD–WV) Metropolitan Statistical Area (MSA) (known as the Washington-A–A MSA). Under Table D–2 of appendix D of 40 CFR part 58, the absolute minimum monitoring network for the Washington-A–A MSA based upon its population would be 3 ozone monitors, but the Washington-A–A MSA in fact contains 15 ozone monitors of which 13 are in the designated nonattainment area. Consistent with the factors found in section 4.1(b) of appendix D of 40 CFR part 58, the additional monitors in the Washington Area are located based on a variety of reasons such as providing for more than one maximum concentration site within the MSA, characterizing

[14] *See* ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze,'' EPA–454/B–07–002, dated April 2007 (2007 Modeling Guidance for Ozone, $PM_{2.5}$ and Regional Haze), which is available at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf* and is also included in the docket for this action and available online at *www.regulations.gov* in docket number EPA–R03–OAR–2013–0132.

[15] *See* 2007 Modeling Guidance for Ozone, $PM_{2.5}$, and Regional Haze.

[16] As noted previously, when an area does not attain by its applicable attainment date, the area is subject to reclassification or other provisions pursuant to section 182(b) of the CAA.

[17] The 2007 Modeling Guidance for Ozone, $PM_{2.5}$ and Regional Haze is included in the docket for this action as an attachment to docket item EPA–R03–OAR–2013–0132–0006.

population exposure, and addressing factors including geographic size, population density, and complexity of terrain and meteorology in the MSA as well as air pollution transport.[18] Given the extensive size and coverage of the Washington Area monitoring network and the factors considered for the size of the network, EPA disagrees with the comment that it was arbitrary and capricious for the attainment demonstration modeling to only model for design values at monitoring stations and not consider the entire Washington Area. The three States' attainment demonstration modeling considered appropriate data from monitors in the Washington Area, which EPA reviewed in accordance with the 2007 Modeling Guidance for Ozone, $PM_{2.5}$, and Regional Haze. EPA has explained in the March 20, 2013 NPR and in this rulemaking that the June 2007 SIP revisions including the attainment demonstration modeling meet CAA requirements for attainment plans in sections 172 and 182.

Comment: EPA received comments that it is arbitrary and capricious to approve the attainment demonstrations in the June 2007 SIP revisions because, the commenter claims, the Area actually attained because of the ''recession'' or weather. A commenter also stated that recent 2010 and 2012 AQ data shows that 2009 was perhaps an ''outlier year'' with regards to ozone formation and that the attainment demonstration must model 2012 meteorological conditions (and not 2002 conditions), or model even warmer meteorological conditions to demonstrate that the emission limits and other nonattainment SIP provisions will attain the NAAQS. The commenter also stated that the attainment demonstration must consider climate change.

Response: EPA disagrees that these comments provide a basis to disapprove the attainment demonstrations in the June 2007 SIP revisions. The overarching concerns that seem to be raised by the commenter are that meteorology less conducive to ozone formation in 2009 resulted in attainment and that the attainment demonstration did not adequately account for meteorological variability.[19]

First, meteorological variability is addressed in the form of the 1997 ozone NAAQS. In choosing the *form* of the 1997 ozone NAAQS as the 3-year average of the fourth highest daily maximum 8-hour average ozone concentration, the EPA Administrator adopted the Clean Air Scientific Advisory Committee's recommendation that ''a more robust, concentration-based form would minimize . . . instability and provide some insulation from the impacts of extreme meteorological events that are conducive to [ozone] formation.'' *See* 62 FR 38856, 38868 (July 18, 1997). The form of the 1997 ozone NAAQS is intended to minimize the effect of not only those years with more extreme meteorological events conducive to ozone formation but also those years with more meteorological events *not* conducive to ozone formation. Thus, EPA does not agree that meteorological conditions for any one year are the basis for an area meeting or not meeting the NAAQS.

Second, EPA notes that as an adjunct to the modeled attainment demonstration, the three States did assess for the June 2007 SIP revisions the potential effects of meteorological variations on the results of the modeled attainment test. The future year model-predicted ozone design value was determined by the three States by multiplying a baseline ozone design value derived from ambient air quality monitoring by the model-derived RRF.[20] [21] This future year model-predicted ozone design value therefore directly depends upon the value of the baseline design value. The three States assessed the performance of air quality modeling by inputting meteorological data such as wind patterns and temperatures for 2002 and relevant emissions for 2002 and comparing the results to the actual monitored ozone concentrations for each day modeled.

EPA believes that, in practice, the choice of the ''baseline design value'' can be critical to the determination of the estimated future year design values. EPA's 2007 Modeling Guidance for Ozone, $PM_{2.5}$, and Regional Haze noted several possible methods for computing a baseline design value and recommended using the average of the three design values for three successive three-year periods which include the baseline inventory year, which was 2002 for the Washington Area. According to information in the June 2007 SIP revisions, the three States were concerned that weighting the 2002 concentrations three times in the calculation could place too much (or too little) weight on that individual year's meteorology and would not necessarily reflect climate variability which has a significant impact on future design value projections. The three States used two additional methods for computing a baseline design value in order to assess the effect on future design value projections. These computations and the resulting future model-predicted attainment year design values are discussed in section 10.5.9 ''Alternative Design Value Calculation Techniques'' of the three States' 2007 attainment demonstration plan document dated May 23, 2007 (hereafter the May 23, 2007 plan document) and Section III. C. ''Weight of Evidence Demonstration'' and Appendix A of the February 26, 2013 TSD.[22] For most, but not all, monitoring sites, a baseline design value computed as the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration over the period 2001 to 2003 produced the highest baseline design value for each monitor and therefore the highest future year model-predicted design value.[23] [24] By considering these alternate baseline design values, the three States assessed meteorological variability as reflected in ozone design values or other averaged annual fourth-highest daily maximum 8-hour average ozone concentrations that included monitoring data for the 2002 baseline modeling year.

Thus, EPA concludes the three States considered meteorological variability in conducting its attainment demonstrations, and we assessed the

[18] Additionally, the monitors in the Washington Area are located to measure areas of expected highest concentration downwind of urban cores, to ''background'' concentrations entering an area, and to represent some spatial scale to reflect neighborhoods.

[19] The commenter also cites to ''climate change'' without any explanation, but EPA presumes it is being raised as part of the more general argument regarding meteorological variability.

[20] Attainment of the 1997 ozone NAAQS is determined using a design value, which is the 3-year annual fourth-highest daily maximum 8-hour average ozone concentrations at each monitoring location. For modeling for attainment demonstrations, EPA has concluded that modeled RRFs should be applied to an average of annual fourth-highest daily maximum 8-hour average ozone concentrations including those of the baseline modeling year, which is 2002 for the 1997 ozone NAAQS for the Washington Area.

[21] EPA discusses RRFs in the 2007 Modeling Guidance for Ozone, $PM_{2.5}$, and Regional Haze. EPA also discussed the use of RRFs in response to another comment in this rulemaking.

[22] The May 23, 2007 plan document and the February 26, 2013 TSD are included in the docket for this rulemaking action and are available online at *www.regulations.gov*.

[23] EPA used monitored design values based upon 2001 to 2003 monitoring data to classify the Washington Area as moderate ozone nonattainment for the 1997 ozone NAAQS. *See* 69 FR 23858, 23864 (April 30, 2004).

[24] EPA's recommended method for determining baseline design value was to average the monitored design values determined for three successive periods: 2000 to 2002; 2001 to 2003, and 2002 to 2004 which weights the 2002 data by a factor of 3, 2001 and 2003 data each by a factor of 2, and 2000 and 2004 data each by a factor of one. The last method computed a simple average of the annual fourth-highest daily maximum 8-hour average ozone concentrations over the period 2000 through 2004 (inclusive) which weights each year's value equally.

three States' modeling when reviewing and proposing to approve the June 2007 SIP revisions because the revisions meet CAA requirements. EPA therefore disagrees with the commenter that our approval of the attainment demonstrations is arbitrary or capricious because attainment of the 1997 ozone NAAQS may have occurred due to influences from meteorological variability not otherwise addressed by the standard and the attainment demonstrations.[25]

Furthermore, to the extent the commenters are suggesting that the modeled attainment demonstration is defective because it was based on 2002 meteorological conditions and not those from 2009 or a later year, EPA disagrees. Congress set explicit deadlines for submission of the attainment demonstration SIP due under section 182(b)(1), and the attainment demonstrations for the 1997 ozone NAAQS were required to be submitted by June 15, 2007. Thus, it was not feasible nor possible for the states to use meteorological conditions from future years for purposes of the attainment demonstration.

The States' choice of 2002 meteorological conditions was inherently reasonable and is well supported in Chapter 10 and Appendix G of the three States' May 23, 2007 plan document.[26] EPA designated nonattainment areas for the 1997 ozone NAAQS generally using 2001 to 2003 AQ data. *See* 69 FR 23858 (April 30, 2004).[27] Thus, the 2002 meteorological data represented meteorological conditions contemporaneous with the data used to designate and classify the Washington Area under the 1997 ozone NAAQS. Moreover, the 2007 attainment demonstration was based upon modeling the entire 2002 ozone season. For that reason alone, it was reasonable for the States to rely on the meteorological data for the same year.

However, the States supported their selection of 2002 meteorology based upon a qualitative analysis and a quantitative analysis.[28] The quantitative analysis analyzed the entire Ozone Transport Region (OTR) and considered ozone and meteorological data for a seven year period (1997–2003) to capture the full range of OTR ozone episode characteristics and to insure statistical significance of the recent episode characteristics.[29] The qualitative analysis describes each 2002 high ozone episode in terms of the weather patterns (movement of warm or cold fronts, air movement patterns—speed and direction of wind), cloud cover, temperature patterns, and locations of higher and lower ozone concentrations for each episode day. The analysis of regional ozone episode conditions over the OTR concluded that regional ozone episode conditions can be reasonably well described by a set of five different episode types each associated with a unique set of distinguishing characteristics. Data from the 2002 ozone season were analyzed within the framework of the five identified episode types with respect to frequencies of occurrence of each type and characteristics of the ozone and meteorological conditions within each type in 2002. The analysis noted one difference between 2002 and the other years in that the frequency of exceedances of the 1997 ozone NAAQS at one or more monitoring sites within the OTR occurred more frequently than the average of the other years, namely 1997–2001 plus 2003. There were 71 exceedance days during the May–September season in 2002 as compared to an average of 55 days per season during these other years. This analysis concluded that while ozone exceedances were more frequent during 2002, this higher than average exceedance rate in 2002 is by itself not an indication of any lack of representativeness of the 2002 exceedance events. In addition, not only did the 2002 ozone season have more days during which the 1997 ozone NAAQS was exceeded, but the fourth highest daily maximum values for the ozone monitors were higher during the 2002 ozone season than in any of the years 2000 through 2004, inclusive. In this time period, monitored fourth highest daily maximum concentrations exceeded 100 ppb (0.100 ppm) only during 2002. Such values over 100 ppb were recorded at nine of 17 monitors then in operation.[30] Such values of the fourth highest daily maximum concentrations have not been recorded since.[31] EPA finds the States' use of data from 2002 reasonable, well documented and supported. In contrast, the commenter has provided no support for the allegation that our approval of the attainment demonstrations is arbitrary or capricious based on the three States' use of 2002 data for the attainment demonstration instead of a subsequent year.

To the extent the commenters are suggesting that the States must remodel using meteorological conditions for years long after the 2007 submittal date (and after the attainment date), EPA notes that is neither mandated by the statute nor reasonable. Congress imposed deadlines on the States that clearly envisioned an end to the preparation of the attainment demonstration and did not establish any requirement for states to submit new, revised attainment demonstrations in the absence of a call from EPA pursuant to CAA section 110(k)(6) to do so or to submit a new attainment demonstration for a new, future attainment date based on a failure to attain by the attainment date.[32]

V. Final Action

EPA is approving the attainment demonstrations, contingency measures, and associated 2009 and 2010 year MVEBs for the Washington Area which were submitted to EPA as SIP revisions by the three States in the June 2007 SIP revisions based on a determination that they meet applicable requirements in the CAA.

[25] The commenter also claims that attainment is due to ''the recession,'' but provides no support for this claim and therefore EPA provides no further response to the unsupported claim.

[26] The May 23, 2007 plan document is included in the docket for this rulemaking action and is available online at *www.regulations.gov.*

[27] *See e.g.* 69 FR at 23860 (''In making designations and classifications, we use the most recent 3 years of monitoring data. Therefore, today's designations and classifications are generally based on monitoring data collected in 2001–2003 although other relevant years of data may have been used in certain circumstances'').

[28] These documents are provided in Appendix G of Attachment 2 of the May 23, 2007 plan document and docketed as document item ID# EPA–R03–OAR–2013–0132–0005 under ''state submittal: Appendix G Attainment Modeling Demonstration and Documentation (Part 1)'' in the docket for this rulemaking action.

[29] *See* Attachment 2 to Appendix G and Chapter 10 of the May 23, 2007 plan document which is docket item EPA–R03–OAR–2013–0132–0005 in the docket for this rulemaking action.

[30] *See* the ozone monitor value reports for 2000 through 2004 attached to the TSD Supplement or the column labeled ''Annual 4th Highest 8-Hour Ozone (ppm)'' in the table titled ''Design Value—BY 2002'' on page 1, Appendix G Attachment 11, of the May 23, 2007 plan document (the attachment titled ''state submittal: Appendix G Attainment Modeling Demonstration and Documentation (Part 4)'' under document ID EPA–R03–OAR–2013–0132–0005 in the docket available at *www.regulations.gov.*

[31] EPA believes that air quality monitoring data (number of exceedances or highest recorded values) cannot be used as a surrogate for meteorological conditions when comparing years after 2004 to years before 2004 because the NO_X SIP call drastically reduced NO_X emissions from EGUs in the years after 2004. *See* 75 FR 45210, 45214, columns 2 and 3 (August 2, 2010) (discussing the change in ozone air quality since the 2001–2003 time period used to designate and classify 1997 ozone nonattainment areas within the rulemaking for the NO_X SIP call).

[32] This does not preclude a State by *its own choice* from updating a previously submitted attainment demonstration.

VI. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the approved SIP, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

VII. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- 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 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to 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.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by June 9, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the attainment demonstrations, contingency measures, and associated 2009 and 2010 year MVEBs for the Washington Area for the 1997 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

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.

Dated: March 13, 2015.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (e) is amended by adding the entries for Attainment Demonstration Contingency Measure Plan and 8-hour Ozone Modeled Demonstration of Attainment and Attainment Plan for the 1997 ozone national ambient air quality standards to reads as follows:

§ 52.470 Identification of plan.

* * * * *

(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	*	* *
Attainment Demonstration Contingency Measure Plan.	Washington, DC-MD-VA 1997 8-Hour Ozone Nonattainment Area.	June 12, 2007	4/10/15 [*Insert Federal Register citation*].	2010 motor vehicle emissions budgets of 144.3 tons per day (tpd) NO_X.
8-hour Ozone Modeled Demonstration of Attainment and Attainment Plan for the 1997 ozone national ambient air quality standards.	Washington, DC-MD-VA 1997 8-Hour Ozone Nonattainment Area.	June 12, 2007	4/10/15 [*Insert Federal Register citation*].	2009 motor vehicle emissions budgets of 66.5 tons per day (tpd) for VOC and 146.1 tpd of NO_X.

■ 3. Section 52.476 is amended by adding paragraphs (h) and (i) to read as follows:

§ 52.476 Control strategy: ozone.

* * * * *

(h) EPA approves revisions to the District of Columbia State Implementation Plan consisting of the attainment demonstration required under 40 CFR 51.908 demonstrating attainment of the 1997 ozone NAAQS by the applicable attainment date of June 15, 2010 and the failure to attain contingency measures for the Washington, DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Acting Director of the District of Columbia Department of the Environment on June 12, 2007.

(i) EPA approves the following 2009 attainment demonstration and 2010 motor vehicle emissions budgets (MVEBs) for the Washington, DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Acting Director of the District of Columbia Department of the Environment on June 12, 2007:

TRANSPORTATION CONFORMITY EMISSIONS BUDGETS FOR THE WASHINGTON, DC-MD-VA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Effective date of adequacy determination or SIP approval
Attainment Demonstration	2009	66.5	146.1	February 22, 2013 (78 FR 9044), published February 7, 2013.
Contingency Measures Plan	2010	.....	144.3	February 22, 2013 (78 FR 9044), published February 7, 2013.

Subpart V—Maryland

■ 4. In § 52.1070, the table in paragraph (e) is amended by adding the entries for Attainment Demonstration Contingency Measure Plan and 8-hour Ozone Modeled Demonstration of Attainment and Attainment Plan for the 1997 ozone national ambient air quality standards . The added text reads as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA Approval date	Additional explanation
* *	*	*	*	* *
Attainment Demonstration Contingency Measure Plan.	Washington, DC-MD-VA 1997 8-Hour Ozone Nonattainment Area.	June 4, 2007	4/10/15 [Insert **Federal Register** citation].	2010 motor vehicle emissions budgets of 144.3 tons per day (tpd) NO_X.
8-hour Ozone Modeled Demonstration of Attainment and Attainment Plan for the 1997 ozone national ambient air quality standards.	Washington, DC-MD-VA 1997 8-Hour Ozone Nonattainment Area.	June 4, 2007	4/10/15 [Insert **Federal Register** citation].	2009 motor vehicle emissions budgets of 66.5 tons per day (tpd) for VOC and 146.1 tpd of NO_X.

■ 5. Section 52.1076 is amended by adding paragraphs (aa) and (bb) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(aa) EPA approves revisions to the Maryland State Implementation Plan consisting of the attainment demonstration required under 40 CFR 51.908 demonstrating attainment of the 1997 ozone NAAQS by the applicable attainment date of June 15, 2010 and the failure to attain contingency measures for the Washington, DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Maryland Department of the Environment on June 4, 2007.

(bb) EPA approves the following 2009 attainment demonstration and 2010 motor vehicle emissions budgets (MVEBs) for the Washington, DC–MDVA 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Maryland Department of the Environment on June 4, 2007:

TRANSPORTATION CONFORMITY EMISSIONS BUDGETS FOR THE WASHINGTON, DC-MD-VA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Effective date of adequacy determination or SIP approval
Attainment Demonstration	2009	66.5	146.1	February 22, 2013 (78 FR 9044), published February 7, 2013.
Contingency Measures Plan	2010	.....	144.3	February 22, 2013 (78 FR 9044), published February 7, 2013.

Subpart VV—Virginia

■ 6. In § 52.2420, the table in paragraph (e) is amended by adding the entries for Attainment Demonstration Contingency Measure Plan and 8-hour Ozone Modeled Demonstration of Attainment and Attainment Plan for the 1997 ozone national ambient air quality standards to reads as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA Approval date	Additional explanation
* *	*	*	*	* *
Attainment Demonstration Contingency Measure Plan.	Washington, DC-MD-VA 1997 8-Hour Ozone Nonattainment Area.	June 12, 2007	4/10/15 [Insert **Federal Register** citation].	2010 motor vehicle emissions budgets of 144.3 tons per day (tpd) NO_X.
8-hour Ozone Modeled Demonstration of Attainment and Attainment Plan for the 1997 ozone national ambient air quality standards.	Washington, DC-MD-VA 1997 8-Hour Ozone Nonattainment Area.	June 12, 2007	4/10/15 [Insert **Federal Register** citation].	2009 motor vehicle emissions budgets of 66.5 tons per day (tpd) for VOC and 146.1 tpd of NO_X.

■ 7. Section 52.2428 is amended by adding paragraphs (j) and (k) to read as follows:

§ 52.2428 Control Strategy: Carbon monoxide and ozone.

* * * * *

(j) EPA approves revisions to the Virginia State Implementation Plan consisting of the attainment demonstration required under 40 CFR 51.908 demonstrating attainment of the 1997 ozone NAAQS by the applicable attainment date of June 15, 2010 and the failure to attain contingency measures for the Washington, DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Director of the Virginia Department of Environment Quality on June 12, 2007.

(k) EPA approves the following 2009 attainment demonstration and 2010 motor vehicle emissions budgets (MVEBs) for the Washington, DC–MDVA 1997 8-hour ozone moderate

nonattainment area submitted by the Director of the Virginia Department of Environment Quality on June 12, 2007:

TRANSPORTATION CONFORMITY EMISSIONS BUDGETS FOR THE WASHINGTON, DC-MD-VA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Effective date of adequacy determination or SIP approval
Attainment Demonstration	2009	66.5	146.1	February 22, 2013 (78 FR 9044), published February 7, 2013.
Contingency Measures Plan	2010	.....	144.3	February 22, 2013 (78 FR 9044), published February 7, 2013.

[FR Doc. 2015–07957 Filed 4–9–15; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0647; FRL–9923–88–Region 9]

Approval and Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze State and Federal Implementation Plans; Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a source-specific revision to the Arizona State Implementation Plan (SIP) that establishes an alternative to best available retrofit technology (BART) for Steam Units 2 and 3 (ST2 and ST3) at Arizona Electric Power Cooperative's (AEPCO) Apache Generating Station (Apache). Under the BART Alternative, ST2 will be converted from a primarily coal-fired unit to a unit that combusts pipeline-quality natural gas, while ST3 will remain as a coal-fired unit and would be retrofitted with selective non-catalytic reduction (SNCR) control technology. The SIP revision also revises the emission limit for nitrogen oxides (NO_X) applicable to Apache Steam Unit 1 (ST1), when it is operated in combined-cycle mode with Gas Turbine 1 (GT1). EPA has determined that the BART Alternative for ST2 and ST3 would provide greater reasonable progress toward natural visibility conditions than BART, in accordance with the requirements of the Clean Air Act (CAA) and EPA's Regional Haze Rule (RHR). Accordingly, we are approving all elements of the SIP revision, with the exception of a provision pertaining to affirmative defenses for malfunctions. In conjunction with this final approval, we are withdrawing those portions of the Arizona Federal Implementation Plan (FIP) that address BART for Apache.

DATES: *Effective date:* This rule is effective May 11, 2015.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2014–0647 for this action. Generally, documents in the docket are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. Please note that while many of the documents in the docket are listed at *http://www.regulations.gov,* some information may not be specifically listed in the index to the docket and may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports, or otherwise voluminous materials), and some may not be available at either locations (*e.g.,* confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Thomas Webb, U.S. EPA, Region 9, Planning Office, Air Division, Air-2, 75 Hawthorne Street, San Francisco, CA 94105. Thomas Webb may be reached at telephone number (415) 947–4139 and via electronic mail at *webb.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.
- The initials *AEPCO* mean or refer to Arizona Electric Power Cooperative.
- The words *Arizona* and *State* mean the State of Arizona.
- The initials *BART* mean or refer to Best Available Retrofit Technology.
- The initials *CEMS* mean or refer to a continuous emissions monitoring system.
- The term *Class I area* refers to a mandatory Class I Federal area.
- The words *EPA, we, us,* or *our* mean or refer to the United States Environmental Protection Agency.
- The initials *FIP* mean or refer to Federal Implementation Plan.
- The initials *GT1* mean or refer to Gas Turbine Unit 1.
- The initials *IWAQM* mean or refer to Interagency Workgroup on Air Quality Modeling.
- The initials *LNB* mean or refer to low-NO_X burners.
- The initials *MMBtu* mean or refer to million British thermal units
- The initials *NO_X* mean or refer to nitrogen oxides.
- The initials *PM_{10}* mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers.
- The initials *RHR* mean or refer to EPA's Regional Haze Rule.
- The initials *SNCR* mean or refer to Selective Non-Catalytic Reduction.
- The initials *SIP* mean or refer to State Implementation Plan.
- The initials *SO_2* mean or refer to sulfur dioxide.
- The initials *ST1* mean or refer to Steam Unit 1.
- The initials *ST2* mean or refer to Steam Unit 2.
- The initials *ST3* mean or refer to Steam Unit 3.

Table of Contents

I. Proposed Action

On September 19, 2014, EPA proposed to approve a revision to the Arizona Regional Haze SIP concerning Apache Generating Station (''Apache SIP Revision'').[1] As described in the proposal, the Apache SIP Revision consists of two components: a BART alternative for ST2 and ST3 (''Apache

[1] 79 FR 56322. Please refer to that notice of proposed rulemaking for background information concerning the CAA, the RHR and the Arizona Regional Haze SIP and FIP.