to be "substance abuse professionals" and to perform counseling services with its employees, and the Federal Health Resources Services Administration has included MFTs on its list of five core mental health disciplines.

(5) The petitioner states that the licensing and regulation of MFTs is done by all fifty states. The petitioner states that although licensing is conducted by individual states, the vast majority of states require candidates to pass the national MFT examination, which is administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB). The National MFT examination tests prospective MFTs on their knowledge of substance abuse issues and treatment. The petitioner states that in terms of substance abuse issues, the AMFTRB tests prospective MFTs on their knowledge of how substance abuse and dependency affect the individual and the functioning of his or her family; the effects of addictive behavior on the individual and the family system; and addiction treatment modalities.

The petitioner provided the following documents as attachments to its petition for rulemaking. These documents are not included in this publication. (See the **ADDRESSES** section of this document for instructions on accessing a copy of the petition for rulemaking.)

- California Business & Professions Code § 498.36, § 1887.3, § 29, § 2914, § 1382.3, and § 4996.2;
- Yale School of Medicine Bulletin;
- NAADAC Guide to Certification; and
- Employee Assistance Professionals Association, "How to Become a CEAP".

In summary, the petitioner believes that MFTs should be included in the list of credentialed professionals presented in 10 CFR 26.187(b). The petitioner states that it realizes the importance of the role SAEs play in safeguarding the United States and its citizens, and believes that the members of CAMFT who are qualified to be SAEs would be a credit to the NRC.

Dated at Rockville, Maryland, this 18th day of August 2010.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2010–21022 Filed 8–23–10; 8:45 am]

BILLING CODE 7590–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2008–0462, FRL–9192–7]

RIN 2060–AP30

Proposed Rule To Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: New Source Review Anti-Backsliding Provisions for Former 1-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed action would clarify the obligation to retain 1-hour nonattainment new source review (NSR) program requirements for certain areas designated nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS). The EPA proposes to revise the rule for implementing the 1997 8-hour ozone NAAQS to address how NSR requirements that applied by virtue of the area's 1-hour ozone NAAQS classification should apply under the anti-backsliding provisions of the 1997 8-hour implementation rule. This proposed rule responds to the ruling by the U.S. Court of Appeals for the District of Columbia Circuit that the 1-hour major NSR program, as it applies to areas that were designated 1-hour nonattainment on the date of designation for the 1997 8-hour NAAQS, is a required control to prevent backsliding. EPA has separately proposed to remove the vacated provisions of the rule that allowed States to remove (or not include, if not yet adopted) 1-hour major NSR for nonattainment areas from their State implementation plans (SIPs).

DATES: *Comments.* Comments must be received on or before September 23, 2010.

Public Hearing. If anyone contacts us requesting a public hearing by September 3, 2010, we will hold a public hearing approximately 30 days after publication of this proposal in the **Federal Register**. Additional information about the hearing would be published in a subsequent **Federal Register** notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0462, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2008–0462, Environmental Protection Agency, 1301 Constitution Ave., NW., Washington, DC 20460. Mail Code: 2822T. Please include two copies if possible.
- *Hand Delivery:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2008–0462, Environmental Protection Agency in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, Air and Radiation Docket and Information Center.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0462. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or e-mail. The *http://www.regulations.gov* Web Site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

Public Hearing: If a hearing is held, it will be held at the U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For information on 1-hour major NSR, contact: Mr. David Painter, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (C504–03), Research Triangle Park, NC 27711, telephone number (919) 541–5515, fax number (919) 541–5509 or by e-mail at *painter.david@epa.gov.*

To request a public hearing, contact Mrs. Pamela Long, Office of Air Quality Planning and Standards (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0641 or by e-mail at *long.pam@epa.gov,* fax number (919) 541–5509.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected directly by this action include certain State and Tribal governments that manage air quality for areas designated nonattainment for the 1997 ozone NAAQS. *See* Table 1 in this notice for a list of potentially affected areas.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed to be CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

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

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

In addition to being available in the docket, an electronic copy of this notice is also available on the World Wide Web. A copy of this notice will be posted at *http://www.epa.gov/nsr.*

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

To request a public hearing or information pertaining to a public hearing on this document, contact Mrs. Pamela Long at (919) 541–0641 before 5 p.m. on September 3, 2010. Persons interested in presenting oral testimony should contact Mrs. Pamela Long at (919) 541–0641. Any person who plans to attend the hearing should also contact Mrs. Pamela Long at (919) 541–0641 or visit the EPA's Web Sites at *http://www.epa.gov/nsr* to learn if a hearing will be held.

E. How is this notice organized?

The information presented in this notice is organized as follows:

II. Background for This Proposal

A. Anti-Backsliding Provisions

The EPA codified the anti-backsliding provisions governing the transition from the revoked 1-hour ozone NAAQS to the 1997 8-hour ozone NAAQS in 40 CFR 51.905(a) (part of the "Phase 1 Rule"). These provisions, as promulgated, retained 13 requirements specified under section 182 of the Clean Air Act (CAA or Act), as those requirements applied for the 1-hour ozone standard.[1] These 13 requirements were identified as "applicable requirements" in the regulation. 40 CFR 51.900(f). The applicable requirements include: (1) Reasonably available control technology (RACT) for major stationary sources; (2) vehicle inspection and maintenance (I/M) programs; (3) major source applicability thresholds for purposes of RACT; (4) rate of progress reductions; (5) stage II gasoline vehicle refueling vapor recovery; (6) clean fuels fleet program under section 183(c)(4) of the CAA; (7) clean fuels for boilers under

[1] *See* Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 1 (69 FR 23951, April 30, 2004).

section 182(e)(3) of the CAA; (8) transportation control measures; (9) enhanced (ambient) monitoring; (10) transportation controls under section 182(c)(5); (11) vehicle miles traveled provisions; (12) NO_X requirements under section 182(f) of the CAA; and (13) attainment demonstrations. Under the Phase 1 Rule, these requirements continue to apply to an area after revocation of the 1-hour NAAQS if the requirements were applied in the area based on the area's 1-hour ozone designation and classification as of the effective date of its 1997 8-hour designation (for most areas the effective date of the 1997 8-hour designation was June 15, 2004). 40 CFR 51.900(h).

The rule further provides that an area remains subject to these applicable requirements until the area attains the 1997 8-hour NAAQS. 40 CFR 51.905(b). Additionally, such obligations cannot be removed from a SIP, even if we redesignate the area to attainment for the 8-hour NAAQS. However, upon redesignation to attainment of the 8-hour ozone standard, a State could request that such requirements be moved to the contingency measures portion of the SIP (40 CFR 51.905(b)).

In the Phase 1 Rule and in two subsequent reconsideration rules (which are described below), EPA explicitly excluded 1-hour major NSR from the list of retained applicable requirements (§ 51.905(e)).[2] The Phase 1 Rule provided at § 51.905(e)(4)(i) that when we revoked the 1-hour standard, the State would no longer be required to retain the major NSR provisions associated with the 1-hour NAAQS in its SIP for areas that were designated nonattainment for the 1-hour ozone standard. Instead, the State could revise its SIP to replace the 1-hour NSR requirements with those specific to its new 8-hour ozone designation and classification status. In many cases, this would allow an area to adopt higher major NSR source applicability thresholds and lower offset ratios associated with the area's lower 8-hour classification. This would have the effect of reducing the number of sources subject to major NSR source requirements, including more stringent emission limitations and offsets.

The Phase 1 Rule also contained a provision directed specifically at areas that were designated 8-hour attainment and 1-hour nonattainment. That provision addressed the applicable requirements listed in § 51.900(f) as well as 1-hour NSR requirements. With respect to the 1-hour NSR requirement, § 51.905(a)(3) stated: "For such areas, the state may request that the nonattainment NSR provisions be removed from the SIP on or after the date of revocation of the 1-hour NAAQS and need not be shifted to contingency measures subject to paragraph (e)(4) of this section."

B. Reconsideration of Certain Provisions of the Phase 1 Rule

Following publication of the Phase 1 Rule, the Administrator received three petitions pursuant to section 307(b)(7)(B) of the CAA requesting reconsideration of several aspects of the final rule.[3] EPA addressed certain issues raised in these petitions in two rulemakings. In the first reconsideration rulemaking, EPA further clarified the implementation rule in two respects: (a) CAA section 185 penalty fees under the 1-hour standard would no longer be applicable after revocation of the 1-hour standard, and (b) the effective date of designations under the 1997 8-hour standard (*i.e.,* for almost all areas, June 15, 2004) is the date for determining which 1-hour control measures continue to apply in an area once the 1-hour standard is revoked.[4] Additionally, EPA clarified that the requirement to retain 1-hour contingency measures for failure to make progress or failure to attain would no longer apply once we revoked the 1-hour standard.

In the second reconsideration rulemaking, we proposed and took comment on the issue of whether we should interpret the Act to require 8-hour ozone nonattainment areas to retain major NSR requirements that applied on the basis of the areas' 1-hour ozone nonattainment classification (70 FR 17018, April 4, 2005). We took final action on this NSR issue on June 30, 2005 (70 FR 39413, July 8, 2005), determining not to require States to retain major NSR under the 1-hour standard once it was revoked.

C. South Coast Decision

In *South Coast Air Quality Management District, et al.,* v. *EPA,* 472 F.3d 882 (DC Cir. 2006) *(South Coast),* the Court vacated EPA's waiver of 1-hour major nonattainment NSR requirements as they apply to the 1-hour standard and stated that removing them from a SIP "would constitute impermissible backsliding." The decision was based on challenges by several parties to EPA's Phase 1 Rule and the two reconsideration rules. The Court upheld certain challenges and rejected others, but purported to vacate the Phase 1 Rule in its entirety. *South Coast Air Quality Management District, et al.,* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). The EPA requested rehearing and clarification of the ruling, and, on June 8, 2007, the Court clarified that it vacated the rule only to the extent that it had upheld the petitioners' challenges. *South Coast Air Quality Management District, et al.,* v. *EPA,* 2007 U.S. App. LEXIS 13303 (DC Cir. 2007). Thus, the Court vacated the provisions that waived obligations as they applied under the revoked 1-hour standard for major nonattainment NSR, CAA section 185 penalty fees, and contingency measures for failure to attain or to make reasonable progress toward attainment.

We have separately proposed to remove these provisions from the regulations at 40 CFR part 51 in order to ensure that the published regulatory text is consistent with the Court's vacatur. 74 FR 2936 (January 16, 2009). With regard to NSR, the *South Coast* decision means that the 1-hour major NSR thresholds and offsets remain applicable to those areas that had not been redesignated to 1-hour attainment by the date of designation for the 8-hour ozone NAAQS (except where the area has since been redesignated to attainment for the 8-hour standard). As previously stated in the October 3, 2007, memo from Robert J. Meyers to the Regional Administrators, States are to comply with the *South Coast* decision as quickly as possible. States should take appropriate steps to implement the 1-hour major NSR requirements in accordance with the *South Coast* decision without waiting for completion of this rulemaking.

III. This Action

This action proposes regulatory language to clarify the obligation to retain 1-hour major nonattainment NSR requirements and proposes when States can request that these requirements be removed from their SIPs.

This proposal focuses on the nonattainment NSR aspects of the *South Coast* decision that can be clarified through additions of new rule language. In a separate action, we have proposed to remove the vacated regulatory

[2] Note that if the area is nonattainment for the 1997 8-hour standard, the CAA requires that nonattainment NSR would apply to the area based on its classification for the 1997 8-hour standard.

[3] Petitions for reconsideration of the Phase 1 Rule were filed by: (1) Earthjustice on behalf of the American Lung Association, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, Clean Air Task Force, Conservation Law Foundation, and Southern Alliance for Clean Energy; (2) the National Petrochemical and Refiners Association and the National Association of Manufacturers; and (3) the American Petroleum Institute, American Chemistry Council, American Iron and Steel Institute, National Association of Manufacturers and the U.S. Chamber of Commerce.

[4] 70 FR 30592 (May 26, 2005).

provisions in § 51.905(e)(4) which waived the requirement to retain 1-hour requirements for nonattainment NSR in SIPs.[5] Also, EPA is proposing to amend § 51.905(a)(3), which details how areas transition from 1-hour NAAQS to 8-hour NAAQS, and to remove the phrase "subject to paragraph (e)(4) of this section" because paragraph (e)(4) was vacated.

A. Applicability of 1-Hour NSR Requirements

In *South Coast,* the Court concluded that the 1-hour major NSR requirements are controls, and that withdrawing them from the 8-hour nonattainment NSR SIP "would constitute impermissible backsliding." 472 F.3d. 882, 900. The Court vacated the provision of the Phase 1 Rule that allowed States, regardless of the 8-hour designation for an area, to request that the SIP be revised to remove 1-hour major NSR requirements upon revocation of the 1-hour standard.[6] As noted above, we have previously proposed to remove that vacated provision. 74 FR 2936 (January 16, 2009). In this action, we are proposing to add new regulatory text to make it clear that any 8-hour nonattainment area designated as 1-hour nonattainment as of the date of 1997 8-hour NAAQS designation must continue to apply NSR requirements consistent with that area's 1-hour classification.[7] Such areas cannot remove 1-hour major NSR requirements from their SIPs based solely on revocation of the 1-hour standard. The implications for areas that are designated attainment for the 1997 8-hour standard, or have been redesignated to attainment for that standard, and that were designated nonattainment for the 1-hour standard at the time of designation for the 1997 8-hour standard are discussed in section III.B.1. of this preamble.

The areas for which anti-backsliding requirements would have applied as of June 15, 2004, are listed in Table 1. The areas in Table 1 had a 1-hour NAAQS nonattainment classification with more stringent NSR program requirements than the classification under the 1997 8-hour standard on the date of designation under the 8-hour standard, June 15, 2004. Some areas potentially affected have been redesignated to attainment for the 1997 ozone NAAQS since June 15, 2004, and would be treated as described in section III.B.

TABLE 1—OZONE NONATTAINMENT AREAS POTENTIALLY AFFECTED BY THIS RULE

State	Part 81, 1997 8-hour NAA		Part 81, 1-Hour, NAA	
	Area	Classification	Area	Classification
AZ	Phoenix-Mesa, AZ	Subpart 1	Phoenix, AZ	Serious.
CA	Los Angeles South Coast Air Basin, CA	Severe-17	Los Angeles South Coast Air Basin, CA	Extreme.
CA	Los Angeles-San Bernardino Cos (West Mojave), CA.	Moderate	Southeast Desert Modified AQMA, CA	Severe-17.
CA	Riverside (Coachella Valley), CA	Serious	Southeast Desert Modified AQMA, CA	Severe-17.
CA	Sacramento Metro, CA	Serious	Sacramento Metro, CA	Severe-15.
CA	San Joaquin Valley, CA	Serious	San Joaquin Valley, CA	Extreme.
CA	Ventura Co, CA	Moderate	Ventura Co, CA	Severe-15.
CT	Greater Connecticut, CT	Moderate	Greater Connecticut, CT	Serious.
DC-MD-VA	Washington DC-MD-VA	Moderate	Washington DC-MD-VA	Severe-15.
GA	Atlanta, GA	Marginal	Atlanta, GA	Severe-15.
IL-IN	Chicago-Gary-Lake County, IL-IN	Moderate	Chicago-Gary-Lake County, IL-IN	Severe-17.
LA	Baton Rouge, LA	Marginal	Baton Rouge, LA	Severe-15.
MA	Boston-Lawrence-Worcester (E. MA), MA	Moderate	Boston-Lawrence-Worcester (E. Mass), MA-NH.	Serious.
MA	Springfield (Western MA), MA	Moderate	Springfield (Western MA), MA	Serious.
MD	Baltimore, MD	Moderate	Baltimore, MD	Severe-15.
NH	Boston-Manchester-Portsmouth (SE), NH	Moderate	Boston-Lawrence-Worcester, NH	Serious.
NH	Boston-Manchester-Portsmouth (SE), NH (Portsmouth-Dover-Rochester, NH part).	Moderate	Portsmouth-Dover-Rochester, NH	Serious.
NY	Albany-Schenectady-Troy, NY	Subpart 1	Albany-Schenectady-Troy, NY	Marginal.
NY	Buffalo-Niagara Falls, NY*	Subpart 1	Buffalo-Niagara Falls, NY.	Marginal
NY	Essex Co, NY*	Subpart 1	Essex Co, NY	Marginal.
NY-NJ-CT	New York-N. New Jersey-Long Island, NY-NJ-CT.	Moderate	New York-N. New Jersey-Long Island, NY-NJ-CT.	Severe-17.
PA	Allentown-Bethlehem-Easton, PA*	Subpart 1	Allentown-Bethlehem-Easton, PA-NJ	Marginal.
PA	Altoona, PA*	Subpart 1	Altoona, PA	Marginal.
PA	Erie, PA*	Subpart 1	Erie, PA	Marginal.
PA	Harrisburg-Lebanon-Carlisle, PA*	Subpart 1	Harrisburg-Lebanon-Carlisle, PA	Marginal.
PA	Johnstown, PA*	Subpart 1	Johnstown, PA	Marginal.
PA	York, PA*	Subpart 1	York, PA	Marginal.
RI	Providence, RI (All counties in RI)	Moderate	Providence, RI (All counties in RI)	Serious.
TX	Beaumont-Port Arthur, TX	Marginal	Beaumont-Port Arthur, TX	Serious.
TX	Dallas-Fort Worth, TX	Moderate	Dallas-Fort Work, TX	Serious.
TX	Houston-Galveston-Brazoria, TX	Moderate	Houston-Galveston-Brazoria, TX	Severe-17.
WI	Milwaukee-Racine, WI	Moderate	Milwaukee-Racine, WI	Severe-17.

* Indicates area has been redesignated to "attainment" as of July 2010 for the 1997 8-hour ozone standard. Areas that have been redesignated to attainment are no longer required to implement nonattainment NSR, but must at a minimum implement the PSD program.

[5] In addition, that separate proposed rule addresses two other aspects of the rule vacated by the Court in *South Coast:* (1) How EPA will classify areas that it had placed under subpart 1 in the Phase 1 Rule, and (2) anti-backsliding requirements for contingency measures that apply for failure to make progress toward or to attain the 1-hour standard.

[6] These same provisions also allowed States which had not yet adopted such programs to not adopt and submit such SIPs. The Court also vacated the regulation to the extent it waived the obligation to submit such SIPs.

[7] In most areas, the date of designation was June 15, 2004.

B. Removal of 1-Hour NSR Requirements

1. Treatment of 8-Hour Attainment Areas

EPA does not interpret the *South Coast* decision as requiring that 1-hour nonattainment NSR be retained in areas designated attainment for the 1997 8-hour standard. Accordingly, in this notice EPA is clarifying that it will continue to follow the provisions of 40 CFR 51.905(a)(3) with regard to removal of 1-hour NSR requirements in 1997 8-hour ozone NAAQS attainment areas. EPA is not proposing to change its treatment of such areas. As explained previously, 51.905(a)(3) allows 1997 8-hour NAAQS attainment areas, that were designated nonattainment for the 1-hour standard at the time of their attainment designation for the 8-hour standard, to request that the 1-hour nonattainment NSR provisions be removed from the SIP. (We note that EPA's practice since the revocation of the 1-hour standard has also been to allow 1997 8-hour ozone NAAQS nonattainment areas, that were designated nonattainment for the 1-hour standard at the time of their 8-hour nonattainment designation, to request that the 1-hour nonattainment NSR requirements be removed from their SIPs upon redesignation of the area to attainment of the 1997 8-hour NAAQS.) In lieu of nonattainment NSR, these areas, with the exception of those located in the Ozone Transport Region (OTR), are subject to prevention of significant deterioration (PSD) program requirements based on their 8-hour attainment designation or redesignation. For areas that are located in the OTR, ozone nonattainment NSR requirements associated with the moderate nonattainment classification apply regardless of an area's designation.

In the *South Coast* litigation, the petitioners' briefs characterized the Phase 1 Rule as removing "requirements to control pollution from new and modified stationary *sources in nonattainment areas.*" Opening Brief of Environmental Petitioners and South Coast Air Quality Management District at 17 (emphasis added); *see also* Brief for the Commonwealth of Massachusetts *et al.* at 14. Thus, the issue before the Court was whether EPA had acted unlawfully by "permitting 8-hour nonattainment areas to only meet weaker requirements under their 8-hour classifications." Opening Brief of Environmental Petitioners and South Coast Air Quality Management District at 20. The Court distinguished the *South Coast* decision from the decision in *Greenbaum* v. *EPA,* 370 F.3d 527 (6th Cir. 2004) in part because "*Greenbaum* involved a different ultimate question, namely, whether NSR is required for *attainment* areas." 472 F.3d. at 902. As the Court noted, "NSR is a permitting process that restricts major modifications and new construction based on an area's air-quality classification * * *. As relevant, NSR requires major facilities to include technology consistent with the lowest achievable emissions rate ("LAER") and to offset any increased emissions with greater reductions elsewhere." 472 F.3d. at 900. The Court stated that "EPA decided that 1-hour NSR requirements are no longer required under the Act and that areas should be constrained only by the NSR requirements for their eight-hour classification * * *. This marked a change from its 2003 notice of proposed rulemaking, in which EPA indicated that 'the major source applicability cut-offs and offset ratios continue to apply to the extent that the area has a higher classification for the 1-hour standard than for the 8-hour standard.'" 472 F.3d. at 901. The Court stated that the result of the change from the 2003 proposal to the approach adopted in the final Phase 1 Rule was "to subject fewer areas to LAER and to offset requirements that themselves are weakened." Thus, the issue before the Court involved the substitution of one set of nonattainment NSR requirements for another, and not the replacement of nonattainment NSR with a PSD program in areas attaining the current NAAQS.

EPA has determined that 1-hour nonattainment major NSR should not apply to areas designated attainment for the 1997 8-hour standard, regardless of the area's designation for the 1-hour standard at the time of designation for the 8-hour standard. The interpretation that NSR does not apply to areas designated attainment for a NAAQS and thus is not needed in the SIP for such an area is consistent with *Greenbaum* v. *EPA,* 370 F.3rd 527, at 536 ("It would make little sense for [NSR] to be included in the post-attainment SIP, as the Clean Air Act * * * explicitly states that attainment area SIPs must include a PSD program."). As the DC Circuit held in *Alabama Power,* 636 F.3d 323, at 365 (DC Cir. 1979), the applicability of PSD is geographically limited by the language of CAA section 165(a), which states that unless specified conditions are met, "[n]o major emitting facility * * * may be constructed *in any area to which this part [Part C] applies*" (emphasis added). Thus, with respect to ozone, areas designated attainment for the 1997 8-hour standard are subject to section 165(a) but not to the section 172(c)(5) SIP requirement. For this reason, EPA is not requiring that areas designated attainment for the 1997 8-hour standard retain 1-hour NSR provisions. Instead, 8-hour attainment areas may request that 1-hour nonattainment NSR provisions be removed from their SIPs, with PSD taking the place of the nonattainment NSR program for ozone. For the same reason, as set forth below, EPA is proposing to revise the regulations to clarify that this treatment also applies to areas that are redesignated to attainment for the 1997 8-hour standard.

2. Treatment of Areas Designated Nonattainment for Both 1-Hour and 8-Hour Ozone NAAQS

Although the Court in *South Coast* determined that 1-hour nonattainment NSR must be retained as an anti-backsliding measure in 1997 8-hour nonattainment areas that were designated nonattainment for the 1-hour standard at the time of the 8-hour designations, the Court did not specifically address how long such requirements must remain in place. In our Phase 1 Rule, we linked removal of the 1-hour requirements retained as "applicable requirements" to attainment of the 8-hour NAAQS. The rule at § 51.905(b) provides that an 8-hour nonattainment area will remain subject to the 13 applicable requirements listed in § 51.900(f) until it attains the 8-hour standard. Section 51.905(b) further provides that after an area attains the 8-hour standard, the State may request that the 1-hour obligations be shifted to contingency measures, but may not remove them completely from the SIP. The preamble to the Phase 1 Rule clarified that, "it is appropriate to maintain these mandated controls to remain as part of the implemented SIP until an area attains the 8-hour NAAQS and is redesignated to attainment." (69 FR 23983).

In deciding how to adopt regulatory text consistent with the *South Coast* decision, we do not believe it is appropriate to add the 1-hour nonattainment NSR obligation to the list of applicable requirements in § 51.900(f) because we do not believe it should remain in the SIP as a contingency measure after redesignation for the 8-hour standard. Consistent with *Greenbaum* v. *EPA,* 370 F.3rd 527, 536, nonattainment major NSR requirements are no longer a necessary SIP element once an area is redesignated to attainment for a NAAQS. Upon redesignation to attainment, the PSD program requirements would apply to

the area.[8] Therefore, nonattainment major NSR requirements may be removed from the SIP, and do not need to be retained as contingency measures for a NAAQS.

In lieu of adding 1-hour major NSR to the § 51.900(f) list of applicable requirements, we are proposing to add a new § 51.905(g) and an analogous new Section VII in Appendix S. The new sections clarify the obligation for any 1997 8-hour nonattainment area with a 1-hour nonattainment designation as of the effective date of designation for the 8-hour standard (June 15, 2004 for most areas) to continue to apply 1-hour nonattainment NSR requirements consistent with the area's 1-hour classification, as listed in 40 CFR part 81 subpart C.

Although we are not proposing to add NSR to the list of applicable requirements in 51.900(f), we are proposing that, as with those requirements, 1-hour NSR requirements continue to be required SIP elements until redesignation to attainment of the 1997 8-hour ozone NAAQS.[9] Under EPA's proposed revision set forth above, the 1-hour major NSR requirements may be removed only after an area has attained and been redesignated for the 1997 8-hour NAAQS. Under this approach, the 1-hour NSR requirements would be treated in a manner similar to the 13 applicable requirements listed at § 51.900(f), except that the State would not be required to retain the 1-hour NSR requirements as contingency measures. Instead, PSD would apply upon redesignation to attainment for the 1997 8-hour standard, and 1-hour NSR requirements could be removed entirely from the SIP.

As set forth in section III.B.2.b., we are also requesting comment on a separate and additional basis—attainment of the 1-hour ozone NAAQS (plus specified criteria)—for allowing States to remove 1-hour NSR requirements. This opportunity to remove 1-hour NSR requirements from the approved SIP would be in addition to the approach of allowing States to remove 1-hour NSR upon redesignation to attainment for the 8-hour NAAQS. Under this additional approach, where an area attains the 1-hour standard and meets certain other conditions (as determined by EPA, in a rulemaking described below) but is still violating the 8-hour standard, the State would be permitted, but not required, to remove the 1-hour nonattainment NSR requirements and apply the NSR requirements associated with the 8-hour classification.

We note that neither EPA's proposal nor the separate, additional approach to removal would have any effect on any source permit conditions established during the time period the 1-hour major NSR program applied. The NSR regulations do not provide a mechanism for major NSR permit conditions established under the 1-hour standard to be removed from a permit or modified when a SIP is later revised to remove the 1-hour NSR thresholds and offset requirements. Replacement or removal of NSR SIP provisions does not relieve sources of their obligations under previously established permit conditions.

In addition, we note that this proposal to allow removal of the 1-hour major NSR requirements after an area has attained and been redesignated for the 1997 8-hour NAAQS could be affected by the transition to a newer ozone standard.

a. Rationale for Removal of 1-Hour NSR Upon Redesignation to Attainment of 8-Hour NAAQS

We are proposing to require areas to retain 1-hour major NSR requirements until the area attains and is redesignated for the 1997 ozone 8-hour standard, regardless of when, if ever, the area attains the 1-hour standard. The rationale for this approach, as set forth in the June 2, 2003, Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard (68 FR 32824), was that the 1997 8-hour standard was the standard that EPA determined would protect public health and the environment. We adopted this approach for the 13 listed applicable requirements in § 51.900(f), as discussed in the final Phase 1 Rule (69 FR 23982–83). We believe this rationale also applies to NSR. As stated in the Phase 1 Rule, Congress contemplated that States implement certain requirements mandated under Subpart 2, including specific NSR thresholds and offsets. Once an area demonstrates that it has met and can maintain the more health protective standard (the 1997 8-hour NAAQS), it would be appropriate to remove 1-hour NSR requirements. In addition, adopting this approach for NSR would result in similar treatment of NSR and the applicable requirements in § 51.900(f), the only difference being that States would not need to include nonattainment NSR as a contingency measure. We believe it is appropriate to treat NSR in a manner consistent with the § 51.900(f) applicable requirements. While we are taking comment on the possibility of allowing States to remove NSR earlier than the other requirements in some instances (*see* discussion below on the additional basis), we do not plan to finalize that approach unless we are persuaded that NSR is sufficiently different from the applicable requirements identified in 51.900(f) to warrant different treatment.

EPA's proposed approach aligns with EPA's current practice regarding areas that were initially designated as attainment for the 1997 8-hour NAAQS or have been redesignated to attainment for the 1997 8-hour ozone NAAQS. As noted above, EPA's current practice is to allow areas to revise their SIPs to remove the 1-hour NSR requirements. This approach harmonizes the treatment of areas initially designated as 8-hour attainment and nonattainment areas that are redesignated to attainment for the 8-hour standard. In lieu of nonattainment NSR, these areas become subject to PSD programs based on their 8-hour attainment designation or redesignation.

Additionally, we propose adding language to the CFR to clarify applicability of section 181(b)(4)(B) for areas not attaining the NAAQS. Notwithstanding revocation of earlier ozone NAAQS, States with areas designated nonattainment for earlier ozone NAAQS, and classified as severe or extreme for such standards as provided in 40 CFR part 81, remain subject to the obligation to adopt programs under sections 181(b)(4) of the CAA. Section 181(b)(4)(B) specifies applicability of NSR per requirements for extreme areas for specific instances of failure to meet attainment schedules.

b. Supplemental Proposal: Removal of 1-Hour NSR Upon Attainment of 1-Hour NAAQS and Determination of Eligibility To Remove NSR Requirements

(1) Attainment of 1-Hour NAAQS and Related Criteria

We are requesting comment on an additional approach that would allow States to remove the 1-hour NSR requirements upon attainment of the 1-hour ozone NAAQS and satisfaction of other criteria discussed below in section ii. After notice and comment rulemaking, EPA would make a determination that the area has attained the 1-hour standard and met the additional requisite criteria. This would serve as a "determination of eligibility to remove 1-hour NSR requirements." An area that receives such a determination

[8] The one exception to this is that all areas located in the Ozone Transport Region, including those designated attainment, are subject to the obligation to have a nonattainment NSR program.

[9] We note that although the regulatory text provides that the requirements of section 51.900(f) apply until an area "attains" the 8-hour ozone NAAQS, the accompanying preamble text clarifies that these requirements apply until an area is redesignated as attainment for the 1997 8-hour ozone NAAQS. 69 FR 23982–83.

would still be required to implement the nonattainment NSR requirements associated with its 8-hour classification.

In our 2003 proposed rule, we took comment on the option of allowing 1-hour obligations to be removed upon attaining the level of the 1-hour standard. We noted that the rationale for allowing 1-hour obligations to be removed upon attaining the level of the 1-hour standard was that "Congress intended an area to continue to implement these obligations until it attained the 1-hour standard, at which time the area would be able to discontinue implementation upon a showing of continued maintenance" (68 FR 32824, June 2, 2003). While we did not finalize this option for the § 51.900(f) applicable requirements, we are requesting comment on whether we should adopt a variant of it for NSR, and whether doing so would be consistent with the CAA and the *South Coast* decision. In the final Phase 1 Rule, EPA decided that attaining the 1-hour standard would not be a basis for allowing States to remove from the SIP the 13 applicable requirements related to 1-hour nonattainment identified at 51.900(f). The question is whether NSR thresholds and offsets are more closely linked to a particular standard than the 13 requirements listed in 51.900(f), and thus might be removed following a determination of attainment of that standard, coupled with other safeguards.

As noted above in the discussions of 8-hour attainment areas and whether NSR requirements should become a contingency measure in a maintenance plan attainment SIP, Congress clearly intended that nonattainment major NSR was required only until the area was redesignated to attainment. After that point, nonattainment major NSR for that area would normally be superseded by the PSD program, whose purpose is "to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipated to occur * * * notwithstanding attainment and maintenance." 42 U.S.C. 7470. In the case of areas that remain nonattainment for the 8-hour standard after attaining the 1-hour standard, however, the 8-hour major NSR requirements would apply rather than PSD. Thus, the concern regarding the retention of nonattainment major NSR requirements in an attainment SIP is not present here.

We are interested in comments addressing whether 1-hour NSR is sufficiently different from the applicable requirements identified in the Phase 1 Rule that we should allow States to remove it from their SIPs prior to redesignation for the 1997 8-hour ozone standard.

(2). Defining "Eligibility To Remove NSR Requirements" Associated With the Revoked 1-Hour Standard

In this section, we address which requirements, in addition to attainment for the 1-hour ozone standard, the Supplemental Option would impose on an area seeking to remove from its SIP 1-hour NSR requirements prior to redesignation for the 1997 8-hour standard. In the Phase 1 Rule, we stated that upon revocation of the 1-hour standard, EPA was no longer obligated to determine whether an area had attained that standard. However, under this supplemental approach, we are proposing that a determination by EPA that an area has attained the 1-hour standard would be among the criteria for issuance of a determination of eligibility to remove 1-hour NSR obligations. Prior to the time that the 1-hour standard was revoked, a change in an ozone nonattainment area's designation status required that the area satisfy the criteria in section 107(d)(3)(E) of the CAA. These criteria include: (i) A finding of attainment of the 1-hour standard based upon the most recent three consecutive years of complete, quality assured air quality data; (ii) the applicable implementation plan for the area under section 110(k) has been fully approved by the Administrator; (iii) the improvement in air quality leading to attainment of the 1-hour NAAQS is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and Federal air pollutant control regulations and other permanent and enforceable reductions; (iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (v) the State containing such area has met all requirements applicable to the area under CAA section 110 and part D that pertain to the 1-hour ozone standard.

Under this alternative, additional approach, we are taking comment on which of the five criteria that would have applied for purposes of redesignating an area for the 1-hour standard should apply for declaring that an area has attained the 1-hour standard and is eligible to remove 1-hour NSR requirements.

Under EPA's supplemental option, removal of the 1-hour requirements would be permitted upon a determination of eligibility to remove NSR requirements. To remove such programs, States would need to submit a revision to their SIP, subject to the provisions of section 110(l) which states that EPA may not approve a SIP revision "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act."

In our Phase 1 Rule, which was vacated by the Court, we concluded that a State's removal of 1-hour NSR requirements would not interfere with 8-hour attainment or reasonable further progress. However, upon additional consideration we now believe that we do not currently have adequate data on the extent to which States may be relying on particular major NSR thresholds and offset ratios for the growth projections contained in their 8-hour attainment plans. Therefore, we are not proposing an advance section 110(l) determination as part of this action. We believe a case-by-case approach to section 110(l) under the supplemental option detailed in this proposal will ensure that any SIP changes upon a determination of eligibility to remove NSR requirements for the 1-hour ozone NAAQS would not interfere with reasonable further progress towards attainment of the 8-hour ozone NAAQS.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a significant regulatory action because it raises novel legal or policy issues arising out of legal mandates. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action sets forth EPA's proposed rule for addressing portions of the partial vacatur of EPA's Phase 1 Rule for implementation of the 1997 8-Hour ozone NAAQS. However, OMB has previously approved the information collection requirements contained in the existing Phase 1 Rule (April 30, 2004; 69 FR 23951) and the Phase 2 Rule (November 29, 2005; 70 FR 71612) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB Control Number 2060–0594. The OMB control numbers

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) regulations at 13 CFR part 201; (2) a small government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Rather, we are issuing this rule to give additional clarity to States on the transition from 1-hour to 8-hour major NSR requirements. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (URMA), 2 U.S.C. 1531–1538 for State, local, and Tribal governments and the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Therefore, this action is subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because is contains no regulatory requirements that might significantly or uniquely affect small governments. This action proposes to revise the rule for implementing the 1997 8-hour ozone NAAQS to address how nonattainment major NSR requirements associated with the former 1-hour ozone NAAQS should apply under the anti-backsliding provisions of the implementation rule. Also proposed is a framework for allowing States to remove and/or no longer implement the 1-hour major NSR requirements when certain prescribed conditions are met. This proposed rule responds to the ruling by the U.S. Court of Appeals for the District of Columbia Circuit that the 1-hour major NSR program, as it applies to areas that failed to attain the 1-hour standard by the required date, is a required control to prevent backsliding.

E. Executive Order 13132—Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action sets forth EPA's proposed rule for addressing portions of the partial vacatur of EPA's Phase 1 Rule for implementation of the 1997 8-Hour ozone NAAQS. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13121 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

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

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has to develop a SIP under this proposal. Furthermore, this proposed rule does not affect the relationship or distribution of power and responsibilities between the Federal Government and Indian Tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal Government and Tribes in developing plans to attain the NAAQS, and these proposed revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on the proposed rule from Tribal officials.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the agency does not believe the environmental health or safety risks addressed by this action present a disproportional risk to children. This action sets forth EPA's proposed rule for addressing portions of the partial vacatur of EPA's Phase 1 Rule for implementation of the 1997 8-Hour ozone NAAQS. The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of this proposed action.

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

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action sets forth EPA's proposed rule for addressing portions of the partial vacatur of EPA's Phase 1 Rule for implementation of the 1997 8-Hour ozone NAAQS.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed revisions implement a previously promulgated health-based Federal standard (the 8-hour ozone NAAQS) that is designed to protect all segments of the general population. As such, they do not adversely affect the health or safety of minority or low income populations and are designed to protect and enhance the health and safety of these and other populations.

K. Determination Under Section 307(d)

Pursuant to section 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to "such other actions as the Administrator may determine."

List of Subjects in 40 CFR Part 51

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

Dated: August 18, 2010.

Lisa P. Jackson,

Administrator.

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

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

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

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

2. Section 51.905 is amended by revising paragraph (a)(3)(i), and by adding a new paragraph (g) to read as follows:

§ 51.905 How do areas transition from the 1-hour NAAQS to the 8-hour NAAQS and what are the anti-backsliding provisions?

(a) * * *

(3) * * *

(i) Obligations in an approved SIP. For an area that is designated 8-hour NAAQS attainment/1-hour NAAQS nonattainment, the State may request that obligations under the applicable requirements of § 51.900(f) be shifted to contingency measures, consistent with sections 110(l) and 193 of the CAA, after revocation of the 1-hour NAAQS; however, the State cannot remove the obligations from the SIP. For such areas, the State may request that the nonattainment major NSR provisions that applied based on the area's designation and classification under the 1-hour NAAQS be removed from the SIP on or after the date of revocation of the 1-hour NAAQS and need not be shifted to contingency measures.

* * * * *

(g) *What other requirements for the 1-hour standard apply?* (1) The requirements for nonattainment new source review that applied pursuant to sections 172(c)(5), 173, and 182 of the Clean Air Act based on the area's classification under the 1-hour NAAQS continue to be required elements of an approvable implementation plan for any ozone nonattainment area that was designated nonattainment for the 1-hour NAAQS at the time of designation as ozone nonattainment for the 8-hour NAAQS. Notwithstanding the revocation of the 1-hour NAAQS, the designation and classification of the area for the 1-hour standard as provided in 40 CFR Part 81 shall apply for determining the applicable 1-hour NSR obligation for an area. These requirements remain required elements of the implementation plan until such time as the area is redesignated to attainment for the 1997 8-hour attainment area for the ozone NAAQS pursuant to Clean Air Act section 107(d)(3)(E).

(2) Notwithstanding revocation of the 1-hour ozone NAAQS, States with areas designated nonattainment for the 1-hour ozone NAAQS and classified as severe or extreme for that standard as provided in 40 CFR Part 81 remain subject to the obligation to adopt programs under sections 181(b)(4) of the CAA for the 1-hour ozone NAAQS.

3. Section 51.914 is revised to read as follows:

§ 51.914 What new source review requirements apply for ozone nonattainment areas?

(a) The requirements for new source review for the 8-hour ozone standard are located in § 51.165.

(b) For areas designated nonattainment for the 1-hour ozone standard as of the effective date of designation for the 8-hour standard, values for applicability thresholds and offset requirements as required under § 51.165 shall be determined by the 1-hour nonattainment classifications listed for those areas in 40 CFR Part 81, Subpart C. The 1-hour applicability thresholds and offset requirements shall be retained until such time as the area is redesignated to attainment for the 1997 8-hour ozone NAAQS under section 107(d)(3)(E) of the Clean Air Act, at which point the State may request their removal.

4. Appendix S to part 51 is amended by adding section VII. to read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

VII. Anti-Backsliding Measures

1-hour ozone NAAQS nonattainment area new source review.

Any 8-hour ozone nonattainment area that was designated nonattainment for the 1-hour ozone NAAQS at the time of designation for the 8-hour NAAQS must continue to apply new source review requirements consistent with that area's 1-hour classification, as listed in 40 CFR Part 81, Subpart C. These requirements remain applicable until such time as the 8-hour nonattainment area is redesignated to attainment for the 8-hour ozone NAAQS standard under 107(d)(3)(E) of the Clean Air Act.

[FR Doc. 2010–20992 Filed 8–23–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R01–OAR–2010–0442; A–1–FRL–9167–8]

Outer Continental Shelf Air Regulations Consistency Update for Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule-consistency update.

SUMMARY: EPA is proposing to update to a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain