



North Carolina Department of Environment and Natural Resources

Division of Air Quality

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Air and Radiation Docket and Information Center  
Environmental Protection Agency  
1301 Constitution Ave. NW  
Washington, DC 20460  
Mail Code: 2822T

Office of Information and Regulatory Affairs  
Office of Management and Budget  
Attn: Desk Officer for EPA  
725 17<sup>th</sup> St. NW  
Washington, DC 20503

Subject: Implementation of the 2008 National Ambient Air Quality Standards for Ozone:  
State Implementation Plan Requirements

Dear Sir/Madam:

The North Carolina Division of Air Quality (NCDAQ), within the Department of Environment and Natural Resources, appreciates the opportunity to comment on the proposed rule "*Implementation of the 2008 National Ambient Air Quality Standards [NAAQS] for Ozone: State Implementation Plan [SIP] Requirements*" published in the *Federal Register* on June 6, 2013 (78 FR 34178). I would like to offer the attached detailed comments for your consideration.

North Carolina is committed to protecting the health of our citizens and solving our air quality problems. We believe that improving our air quality is critical to the health of our citizens and to our future growth, prosperity, and quality of life. We look forward to a continued dialogue with EPA and all of our other partners as we work together to implement the 2008 Ozone NAAQS. Thank you for your consideration of these comments.

Sincerely,

Sheila C. Holman

SCH/ssm

cc: John E. Skvarla, III, Secretary, NC Department of Environment and Natural Resources  
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**NCDAQ Comments on EPA's Proposed Rule,  
"Implementation of the 2008 National Ambient Air Quality Standards for Ozone:  
State Implementation Plan Requirements"**

**Section III - SIP Requirements**

Nonattainment Area SIP Deadlines (pg 34183-4)

*1. The U.S. Environmental Protection Agency (EPA) is proposing two approaches regarding the deadlines for submitting various SIP elements: (1) period of time provided in Section 182 of the 1990 Clean Air Act (CAA) and (2) state's choice – submit according to deadlines established in the CAA OR consolidated SIP submittal due 30 months after designation or period of time provided by the statute. Under the consolidated approach, the state can choose for a particular nonattainment area, to submit all SIP elements in accordance with the time provided by the statute or no later than 30 months after the effective date of the area's designation for the 2008 ozone NAAQS. The consolidated approach represents a more expeditious schedule for areas to submit attainment demonstrations and Reasonable Further Progress (RFP) SIPs for the 2008 ozone NAAQS, but it provides slightly more time for submittal of emission inventories and Reasonably Achievable Control Technology (RACT) SIPs. As part of this alternative proposal, a state with more than one nonattainment area can select the option that is most preferable for each area. This approach applies only to areas designated Moderate and above for the 2008 ozone NAAQS.*

The NCDAQ believes that states should have maximum flexibility when submitting the various SIP elements for nonattainment areas. We prefer the second option. It allows states to undertake a more consolidated and less burdensome planning process, including having one period for public review and opportunity for public hearing for all the SIP elements involved.

Modeling and Attainment Demonstration (pg 34184)

*1. The EPA is proposing to continue to require states with an area classified as Moderate to submit an attainment demonstration based on photochemical modeling or another equivalent analytical method that is determined to be at least as effective, as is required under the CAA for Serious and above areas and multistate nonattainment areas.*

The NCDAQ agrees with the flexibility offered in allowing alternative analytical methods to be substituted for or used to supplement a photochemical modeling-based assessment of an emissions control strategy.

*2. The EPA is proposing that control measures relied upon to demonstrate attainment should be implemented by the beginning of the last full ozone season prior to the area's attainment date.*

The NCDAQ agrees that future modeling year should be selected such that all emissions control measures relied on for attainment will have been implemented by that year.

RFP Requirements (pg 34187-91)

*1. The CAA places certain restrictions on the emission reductions that are creditable toward meeting the RFP requirements. To be creditable, the reductions must meet the conditions in CAA Sections 182(b) and 182(c), including that reductions: (1) must be from measures required in the SIP, in a Title V permit, or from rules promulgated by the EPA; (2) must occur during the RFP period; (3) may not come from the pre-1990 EPA rules for motor vehicle exhaust and evaporative emissions; and (4) may not come from the EPA rules limiting the Reid vapor pressure (RVP) of gasoline that were implemented by 1992.*

*The EPA is proposing that, except as specifically provided in CAA Section 182(b)(1)(D), all SIP approved or federally promulgated emissions reductions that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements, provided the reductions meet the standard requirements for credibility. Additionally, to receive SIP credit, the reductions must be enforceable, quantifiable, permanent and surplus.*

The NCDAQ agrees with this proposal.

*2. The EPA is proposing that the RFP plan for a 2008 nonattainment area must provide for a 15 percent reduction in volatile organic compound (VOC) emissions from the baseline emissions in the 6 years following the baseline emissions inventory year if no portion of that 2008 nonattainment area has already fulfilled the 15 percent RFP plan requirement for VOC. In the alternative, the EPA is proposing to allow an area to meet the 15 percent RFP requirement in whole or in part with nitrogen oxide (NOx) reductions in lieu of VOC reductions if that area can demonstrate that it has in fact achieved a 15 percent reduction in VOC emissions from a 1990 baseline. As a further alternative, if the proposal is not finalized to allow any area to substitute NOx reductions for VOC reductions where such area can demonstrate that it has achieved a 15 percent reduction in VOC emissions from a 1990 baseline, the EPA is proposing to allow such substitution only for areas located in the Ozone Transport Region (OTR) that would be subject to the 15 percent RFP requirement for the first time as a designated nonattainment area for the 2008 ozone NAAQS.*

As stated by EPA, due to the success of VOC control measures over the past twenty years in certain areas of the United States, future reductions in anthropogenic VOC may have little to no impact on ambient ozone levels. NCDAQ believes that requiring a 15% reduction in VOC emissions when it is no longer technologically and financially feasible to do so frustrates the purpose of Congress in enacting the RFP provisions in Section 182, which is to achieve reasonable further progress toward reaching the ambient ozone standard. Addressing NOx levels could have a greater impact on attainment of the ozone standard. Allowing states to substitute NOx reductions for VOC reductions in moderate nonattainment areas will help carry out

Congress' intent to reduce ozone levels while allowing for flexibility in applying Section 182(b). In addition, NCDAQ believes the alternative of allowing NO<sub>x</sub> substitution represents a narrow yet feasible method of making reasonable further progress toward ozone attainment.

*3. For 2008 ozone nonattainment areas that consist entirely (or pieces) of one or more nonattainment areas for a former ozone NAAQS, the EPA is proposing that such 2008 nonattainment areas have met the CAA requirement for a 15 percent VOC reduction plan and are not required to fulfill that requirement again.*

The NCDAQ supports this proposal.

*4. The EPA is proposing that the state choose between two approaches for addressing RFP requirements for 2008 ozone nonattainment areas that include portions consisting of all or a piece of one or more nonattainment areas for a previous NAAQS and which fulfilled the 15 percent RFP plan requirement for VOC for that previous NAAQS and portions that have never been subject to or never have fulfilled the 15 percent RFP plan requirement for VOC for a previous NAAQS. First, the state could choose to treat the entire area as an area that never met the 15 percent requirement, and meet the requirements of subsection III.C.2.c. Second, the state could choose to treat the 2008 nonattainment area as divided into two portions: the former non-RFP plan portion and the former RFP plan portion. For the former non-RFP plan portion of the 2008 nonattainment area, the plan would establish a separate 15 percent VOC reduction requirement under Section 182(b)(1) of subpart 2. However, VOC emissions reductions to meet the 15 percent requirement may come from across the entire 2008 nonattainment area, provided that the former RFP plan portion of the area also has a VOC reduction target as part of its RFP plan for the 2008 ozone NAAQS. If the RFP plan for the 2008 ozone NAAQS for the former nonattainment area relies solely on NO<sub>x</sub> reductions, then the portion of the nonattainment area never before subject to nonattainment requirements is still responsible for the 15 percent VOC reductions.*

The NCDAQ requests maximum flexibility in dealing with nonattainment areas. As mentioned previously, we believe air quality improvements are better accomplished with current scientific understanding rather than mandates in a law from a generation ago that was aimed at achieving compliance with a different air quality standard prior to emission reduction achievements from many sources of VOC and NO<sub>x</sub>.

*5. CAA Section 182(b)(1)(D) specifies four categories of control measures that are not creditable toward the 15 percent RFP requirement under CAA Section 182(b)(1)(A): (i) Measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990; (ii) regulations concerning RVP promulgated by November 15, 1990; (iii) measures to correct previous RACT requirements; and (iv) measures required to correct I/M programs. The EPA is proposing as one alternative to eliminate the obligation for states to continue to perform this calculation because these reductions are now very small and will continue to further decrease in future years. We are proposing to remove the burden of performing this calculation for purposes*

*of RFP for the 2008 ozone NAAQS based on the de minimis nature of these non-creditable reductions. If the final rule requires states to account for these noncreditable reductions, we are proposing in the alternative that the calculation should be performed as described in Appendix C to this preamble.*

Calculating noncreditable reductions could continue to be a resource-intensive process requiring multiple modeling runs and extensive staff time. We agree that with the exception of the first category, reductions from above measures were achieved many years ago and the question of creditability is moot for RFP credit for the 2008 ozone NAAQS. For the motor vehicle standards, only a small amount of reduction will occur due to fleet turnover. The NCDAQ supports relief from having to perform the calculations.

*6. The EPA is taking comment on allowing states to use additional alternative approaches to achieving RFP goals, citing President's Executive Order 13563 which directs federal agencies to offer and support flexible, common sense approaches. One alternative is an air quality-based approach that would measure RFP in terms of actual ambient air quality improvements tied to an area's percent emission reduction requirements. Such an approach would involve work on the part of the state to translate an area's RFP emissions reduction targets (tons) into ozone improvement targets (ppb) based on air quality modeling or other appropriate analyses. Another alternative approach would be to adjust (or "weight") the amount of RFP credit given for reductions of individual species (or similar groups) of VOCs based on their ozone forming potential (i.e., photochemical reactivity). Reductions of VOCs with relatively high photochemical reactivity would be given more credit toward RFP requirements and reductions of VOCs with relatively low photochemical reactivity would be given less credit toward those requirements. Such an approach would target those VOC reductions that will have the greatest impact on actual ozone formation. For both of these alternative approaches, the EPA is seeking comment on the usefulness and practicality of the approach, and specifically on whether there is adequate legal basis under the CAA to approve SIPs that would employ these approaches.*

The NCDAQ believes the first approach is feasible given the current state of science and modeling tools available to measure RFP in terms of ozone improvement targets. It can serve as a menu of choices that states and EPA can use to measure progress toward and to attain the ozone standard. This approach also allows RFP milestones to be satisfied if the area implements the target emissions reduction strategies and achieves the targeted ozone air quality improvement over the relevant RFP assessment period. It would retain a state's accountability for making consistent incremental progress while focusing on the most direct measurement of improvement, namely air quality. We recognize that a similar approach is already included in the implementation rules that govern SIP development for the June 6, 2012 court decision on PM<sub>2.5</sub> NAAQS (40 CFR 51.1009(g) and (h)), and the same logic could be applied for 2008 ozone NAAQS implementation.

Recognizing that the CAA requires a percentage reduction "from baseline emissions," we believe Sections 1 (b)(4) and 6(a) of the Executive Order 13563 could be applied to serve the

overall intent of the CAA to attain the NAAQS in an expeditious manner. In particular Section 1 (b)(4) states, “to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt” and Section 6 (a) states, “To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.”

The NCDAQ supports the use of science supported policy decisions regarding the treatment of highly reactive VOCs.

*7. The EPA is proposing that states use the calendar year for the most recently available triennial emission inventory as the baseline year for RFP at the time RFP plans are developed. EPA is also proposing to allow a state the flexibility to use an alternative baseline year if it shows that the alternative year is appropriate and justifiable. EPA is proposing that for a multi-state nonattainment area, all states associated with the nonattainment area must consult and agree on the same alternate year to use as the baseline year for RFP.*

The NCDAQ supports the use of the most recently available triennial emission inventory at the time RFP plans are developed as well as the multi-state proposal.

*8. The EPA is proposing to not allow credit for VOC and NOx reductions occurring outside ozone nonattainment areas for purposes of meeting the 15 percent and 3 percent RFP requirements of Sections 172(c)(2), 182(b)(1) and (c)(2)(B). This means that RFP credit for meeting the 15 percent VOC requirement for moderate and above ozone nonattainment areas in Section 182(b)(1) and the additional 3 percent per year requirement for serious and above ozone nonattainment areas in Section 182(c)(2)(B) could come only from emission reductions from within ozone nonattainment areas.*

*The EPA is basing its approach on the United States Court of Appeals’ July 2009 ruling regarding RACT that the phrase “in the area” means that all reductions needed for RACT must be obtained from within the area and not from outside the area [NRDC v EPA, 571 F. 3d 1245 (D.C. Cir. 2009)]. Based on that ruling, EPA is proposing, as it did in its 2010 RFP proposal, to apply the Court’s RACT standard to RFP so that all needed RFP reductions will have to come from within the same nonattainment area, as they do for RACT. However, EPA has acknowledged that there may be valid policy reasons for allowing credit for emission reductions outside a nonattainment area to satisfy RFP requirements. EPA is taking comments on how the baseline emission inventory should be determined if reductions from outside the nonattainment area were to be creditable for RFP requirements.*

The NCDAQ understands EPA’s proposal to require RFP related emission reductions to come only from within ozone nonattainment area to be consistent with the NRDC decision, and

concur with EPA that valid policy reasons exist to allow credit for reductions outside a nonattainment area. The NCDAQ believes that certain areas of the country with few local air pollution sources are affected by pollutant transport from neighboring areas. EPA has long recognized that air pollutants do not respect jurisdictional boundaries and that ozone is a regional problem in large parts of the country. Accordingly, EPA does not discount transported pollutants when it designates and classifies areas for NAAQS designations and allows consideration of out-of-area reductions for attainment demonstrations.

Given that many nonattainment areas receive significant portions of their nonattainment pollutants, as documented in numerous EPA actions and stated in CAA Section 182(h) that “ozone standard violations in some rural areas may be almost entirely attributable to emissions from outside the nonattainment area”, it is technically sound policy to allow emission reductions generated in one area to be counted towards RFP in adjoining areas. Additionally, if attainment modeling for an area considers those reductions and the area can show attainment by its applicable deadline, there should be no practicable reason to not allow RFP credit for those outside area reductions. Therefore, we believe that EPA should allow RFP credit for outside area emission reductions if states present scientific or technical evidence to justify inclusion of such sources.

#### RACT Requirements (pg 34191-4)

*1. The EPA is soliciting comment on modifying existing guidance to provide additional flexibility in implementing Section 182(b)(2) RACT requirements. In some nonattainment areas additional reductions of anthropogenic VOC emissions have been scientifically demonstrated to have a limited impact on reducing ozone concentrations. EPA is soliciting comment on whether such a demonstration is an appropriate factor to consider in determining what is “reasonable” in a RACT analysis. EPA is also taking comments on whether this flexibility should be provided on an individual source basis or also on a source category basis.*

As noted in the *NRDC v. EPA* decision cited by EPA in this proposed rulemaking, 78 Fed. Reg. 34,187, the term “reasonably available control technology” as used in § 172(c)(1) is ambiguous. EPA’s proposed interpretation of RACT as used in § 182(b)(2), which references § 172(c)(1), is reasonable. As stated in *NRDC v. EPA*, EPA’s interpretation of RACT as only those control technologies that advance attainment is reasonable in light of § 172(c)(1)’s requirement of achieving attainment as expeditiously as practicable. In addition, consideration of the environmental benefit in the context of the “economic feasibility” factor in the RACT determination is reasonable as well.

If additional reductions of anthropogenic VOC emissions have been scientifically demonstrated to have a limited impact on reducing ozone concentrations, then control technology aimed at anthropogenic VOC emission reduction is not RACT. North Carolina has demonstrated that the state is NO<sub>x</sub>-limited for purposes of ozone, so reductions in VOC are expensive while being of

little or no benefit<sup>1</sup>. For the Rocky Mount (Nash and Edgecombe Counties) ozone nonattainment area, North Carolina demonstrated through photochemical grid modeling that even if all the anthropogenic VOCs in the entire state were removed there would be no improvement in ozone in the area. Studies conducted by other states, EPA, and other groups have formed the same conclusions<sup>2</sup>.

The NCDAQ proposes that if ozone modeling shows that reductions in anthropogenic VOC emissions have limited impacts on reducing ozone concentration, then control technology aimed at reducing anthropogenic VOC is of negligible benefit and should not be considered RACT. Further, if control technology aimed at reducing anthropogenic VOC shows some benefit, but is not needed to attain and maintain the ozone standard because other measures are shown to be more than enough, then it should not be considered RACT. The NCDAQ requests this flexibility for individual sources as well as source categories.

*2. The EPA is proposing two alternatives for when states would be required to submit RACT SIPs. Under the first alternative, states with Moderate and higher classified areas would be required to submit RACT SIPs within the period specified in Section 182(b) with the time running from the effective date of an area's designation for the 2008 ozone NAAQS (i.e., within 2 years from the effective date of designation). Under the second alternative, states would be given the choice of submitting RACT SIPs for Moderate and higher classified areas either as part of a consolidated SIP submittal 30 months after the effective date of designation, or within the period of time provided in Section 182(b), as described above. The 30-month option would align the submission date for the RACT SIP with the proposed submission date for other SIP elements for the area's classification in order to relieve states of the added burden that can result from processing different SIP elements at different times.*

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<sup>1</sup> Supplement to the Redesignation Demonstration and Maintenance Plan for The Charlotte-Gastonia-Rock Hill, NC-SC 1997 8-Hour Ozone Nonattainment Area, North Carolina Department of Environment and Natural Resources Division of Air Quality, March 28, 2013, [http://www.ncair.org/planning/MetroLina\\_Redesignation\\_SIP\\_Narrative.pdf](http://www.ncair.org/planning/MetroLina_Redesignation_SIP_Narrative.pdf).

Redesignation Demonstration and Maintenance Plan for The Rocky Mount, North Carolina 8-Hour Ozone Nonattainment Area, North Carolina Department of Environment and Natural Resources Division of Air Quality, June 19, 2006, <http://www.ncair.org/planning/rockymountozoneredesig.shtml>

<sup>2</sup> The Sensitivity of U.S. Surface Ozone Formation to NO<sub>x</sub> and VOCs as Viewed From Space, Duncan, B., Yoshida, Y., Retscher, C., Martin, R., Sillman, S., Presented at the 8<sup>th</sup> Annual CMAS Conference, Chapel Hill, NC, October 19-21, 2009, [http://www.cmascenter.org/conference/2009/abstracts/duncan\\_sensitivity\\_us\\_2009.pdf](http://www.cmascenter.org/conference/2009/abstracts/duncan_sensitivity_us_2009.pdf)

Air Pollution Controls for Summer Surface Ozone as Deduced by OMI, NASA, October 2009, (<http://aura.gsfc.nasa.gov/science/feature-102009b.html>).

Appendix A: Sensitivity of Ozone Concentrations in Atlanta to NO<sub>x</sub> and VOC Controls Inside and Outside the Nonattainment Area, from "Proposed Georgia's 15% Reasonable Further Progress State Implementation Plan Revision for the Atlanta 8-Hour Ozone Nonattainment Area", Georgia Department of Natural Resources – Environmental Protection Division, Air Protection Branch, submitted to USEPA 21 October 2009, [http://www.georgiaair.org/airpermit/downloads/planningsupport/regdev/sips\\_and\\_revisions/atlanta\\_15%25rfp\\_8hr\\_ozone/appendixa.pdf](http://www.georgiaair.org/airpermit/downloads/planningsupport/regdev/sips_and_revisions/atlanta_15%25rfp_8hr_ozone/appendixa.pdf).



*EPA is also proposing a specific deadline by which RACT measures are to be implemented. Section 182(b)(2) requires RACT measures to be implemented as expeditiously as practicable. For the 2008 ozone NAAQS, EPA is proposing that areas must implement RACT measures no later than January 1 of the fifth year after the effective date of a nonattainment designation. Nonattainment designations for all areas of the country were effective July 20, 2012. RACT measures for affected areas would be required to be implemented by January 1, 2017.*

The NCDAQ wants states to have maximum flexibility in scheduling submission of RACT SIPs, and prefers the second alternative. EPA should recognize that rule making process in many states is lengthy and labor intensive. States should be given sufficient time to adopt rules in the event EPA issues updates to Control Techniques Guidelines (CTG) or Alternative Control Techniques Guidelines (ACT).

#### Vehicle Inspection and Maintenance (I/M) Programs (pg 34194-6)

*1. The EPA is requesting comments on “modernizing” and “right sizing” I/M for the current and future fleet.*

The NCDAQ believes that states should have maximum flexibility when developing an I/M program. We believe that our current state program takes a reasonable approach, but recognize that future improvements in vehicle technology and communications software could open up other possibilities that could cost effectively achieve I/M’s primary goal of reducing emissions from the fleet in-use.

*2. The EPA is proposing to align deadlines for the attainment SIP and the I/M SIP so that both are due at the same time.*

The NCDAQ requests that states be given the option of deciding based on their individual circumstances. In the proposal, EPA identifies alternative implementation options to modernize I/M programs from the last time new I/M programs were required. In order to pursue such options, states will need time to analyze various I/M program designs to determine which combination of program parameters is capable of meeting the emission reduction needs of the attainment SIP, present the concept to stakeholders, seek the appropriate legal authority from legislative bodies, and adopt a rule which could take 1-2 years to undergo a state’s administrative process.

#### Contingency Measures Requirements (34198-9)

*1. The EPA is proposing that the contingency measures required for Moderate and above areas under CAA Sections 172(c)(9) and 182(c)(9) must provide for the implementation of specific measures if the area fails to meet any applicable milestone. These measures must be submitted for approval into the SIP as adopted measures that would take effect without further rulemaking action by the state or the Administrator upon a determination that an area failed to attain or meet the applicable milestone.*

*Contingency measures represent 1 year's worth of progress for the nonattainment area, which would be achieved while the area is revising its plan. EPA has stated that prior contingency measure guidance specifying a minimum of 0.3 percent of the emission reductions (i.e., one-tenth of the total 3 percent requirement) must be from VOCs is no longer necessary. The EPA is proposing that for Moderate and above areas that have completed the initial 15 percent VOC reduction required by CAA Section 182(b)(1)(A)(i), the 3 percent emissions reductions of the contingency measures may be based entirely on NOx controls if that is what the state's analyses have demonstrated would be most effective in bringing the area into attainment. There is no minimum VOC requirement.*

The NCDAQ agrees with EPA's proposal and is taking the position that only measures that are expected to offer a worthwhile reduction in ozone (i.e., NOx controls) should be considered for contingency measures. The NCDAQ also agrees with EPA that federal measures that provide ongoing reductions into the future can be used as contingency measures, where appropriate.

EPA is allowing innovative measures such as energy efficiency programs or renewable energy programs that meet the requirements of CAA Section 172(c)(9) and Section 182(c)(9) for areas classified as Serious or higher to be used as contingency measures. We support the integration of such programs in all nonattainment area classifications.

#### Emission Inventory Requirements (pg 34201 – 34202)

*1. For areas designated nonattainment for the 2008 ozone NAAQS, EPA is proposing that the base year emission inventory submission be due no later than 2 years after the effective date of designation, or alternatively, 30 months following the effective date of designation under the consolidated SIP submittal option described in Section III.A of the preamble. EPA has also stated that it would be appropriate for states with periodic inventory obligations under 182(a)(3)(A) to rely on their 3-year cycle inventory as described in the Air Emissions Reporting Rule to satisfy their 182(a)(3)(A) periodic inventory obligation. EPA further proposes that the emissions reporting requirements of the AERR be applied to determine all of the data elements required for such inventories.*

The NCDAQ believes that states should have maximum flexibility when submitting the various SIP elements for nonattainment areas. We prefer the state's choice option for meeting the SIP submittal due date. Regarding the data elements requirements, the NCDAQ agrees with aligning the requirements with AERR. However, if EPA decides to pursue ambient monitoring approach for RFP determinations, the agency may need to consider adjustments to details of the emission inventory requirements.

#### Ambient monitoring requirements (pg 34203)

*On July 16, 2009, the EPA proposed revised rules for monitoring ambient ozone (74 FR 34525). This proposal also included modified minimum monitoring requirements in urban areas, new minimum monitoring requirements in non-urban areas and an extended required ozone monitoring season in some states. EPA states in the ozone SIP requirements proposal that the schedule for finalizing any or all aspects of the ozone monitoring proposal remains unclear at this time.*

The NCDAQ continues to be sensitive to the cost of monitoring programs. We propose that any additional monitoring requirements be fully funded by EPA.

#### 1-year attainment deadline extensions (pg 34203)

*For determining eligibility for 1-year extension of the attainment deadline, the EPA is proposing to use the same approach used in the 1997 ozone NAAQS Phase 1 rule, applicable to concentration-based standards.*

The NCDAQ agrees with this approach.

#### Emissions Reduction Benefits of Energy Efficiency/Renewable Energy (EE/RE) Policies and Programs (34206)

*1. The EPA encourages states to incorporate EE/RE measures in SIPs and references its July 2012 Roadmap document to utilize four pathways which consider air pollution reductions from state level EE/RE policies and programs. The EPA is offering assistance to states in the form of tools for quantifying the emissions impacts, training and technical assistance, and energy savings information.*

The NCDAQ supports EPA's approach to incorporate EE/RE measures in SIPs. However, significant uncertainty still remains on the availability of energy models required to perform the certain SIP demonstrations. We request that EPA approve regional models that have been submitted for such purposes, and expand the capacity in states to perform energy and emissions forecasting. We also request that EPA provide assistance and resources to generate SMOKE ready output such that air quality impacts of electricity offsets in nonattainment areas and surrounding areas/states can be modeled and used appropriately in a SIP.

#### Clean Data Policy (pg 34210)

*1. The EPA, in its Phase 1 Rule, codified its long-standing interpretation under the Clean Data Policy in a regulation. Under 40 CFR 51.918, a determination of attainment suspends the obligation to submit attainment planning SIP elements for the 1997 ozone NAAQS. This*

*determination suspended the obligation to submit any attainment-related SIP elements not yet approved in the SIP, for so long as the area continued in attainment. The EPA in this rulemaking is proposing to apply this same approach with respect to determinations of attainment for the 2008 ozone NAAQS.*

The NCDAQ supports policies that reduce burdens on our areas that attain the NAAQS.

#### **Section IV – Anti-Backsliding Requirements**

##### Timing of the 1997 Ozone NAAQS Revocation (34213)

*1. The EPA is proposing to revoke the 1997 primary and secondary ozone NAAQS upon the publication of the final SIP Requirements Rule in the **Federal Register**. The EPA's Classifications Rule for the 2008 ozone NAAQS provides that the 1997 ozone NAAQS will be revoked 1 year after the effective date of initial area designations for the 2008 ozone NAAQS for purposes of transportation conformity. Therefore, the 1997 ozone NAAQS will be revoked for all purposes upon the publication of the final SIP Requirements Rule in the **Federal Register**. The EPA is taking comment on alternate dates for revocation of the 1997 ozone NAAQS for all purposes other than transportation conformity.*

The NCDAQ supports the revocation of the 1997 primary and secondary ozone NAAQS for all remaining purposes upon the publication of the final SIP Requirements Rule in the Federal Register. This will ensure that only one ozone NAAQS, the more protective 2008 ozone NAAQS, applies for implementation purposes. The NCDAQ requests EPA to expeditiously redesignate and/or reclassify areas using its CAA Section 107(d)(3) authority for which states have submitted “clean data” certification and redesignation/maintenance SIPs.

##### Anti-Backsliding Requirements During Transition to 2008 Ozone NAAQS (pg 34215-7)

*1. EPA proposes to establish a new subpart to provide comprehensive antibacksliding requirements for transition to the 2008 standard, whereby, upon revocation of the 1997 standard, the proposed subpart AA would take effect. Subpart AA would address antibacksliding requirements for the previously revoked 1-hour standard and the 1997 standard. Applicable requirements would be outlined in a new Section 51.1100(o) and include those currently listed in Section 51.900(f) (except Stage II) and three antibacksliding requirements that resulted from the South Coast decision: nonattainment and NSR thresholds and offset ratios, nonattainment contingency measures for failure to attain by the applicable deadline or to meet RFP milestones, and Section 185 fee program requirements. Other requirements include RACT, I/M, major source applicability cut-offs for RACT, ROP and/or RFP reductions, clean fuels program, clean fuels for boilers, TCMS during heavy traffic hours, enhanced monitoring, VMT provisions, NOx requirements, attainment demonstrations, nonattainment contingency measures, nonattainment NSR and Section 185 requirements for Severe and Extreme areas.*

The NCDAQ supports this proposal.

*2. The EPA is proposing that nonattainment new source review (NNSR) be added to the list of applicable requirements. For areas designated nonattainment for the 2008 ozone NAAQS, NNSR will be required for any prior ozone standard for which they remain designated nonattainment. The obligation to implement the requirements associated with two or more standards means that the area must implement the thresholds and offset ratios associated with the highest nonattainment classification. The EPA is proposing two options for lifting NNSR requirements for areas designated nonattainment for the 2008 ozone NAAQS: redesignation for the 2008 NAAQS or a redesignation substitute for the 1997 and/or 1 hour ozone NAAQS. In the latter approach, NNSR requirements for the revoked NAAQS would be lifted while retaining the NNSR for the 2008 ozone NAAQS. The EPA is soliciting comment on additional routes to lifting NNSR requirements tied to the revoked 1997 and 1-hour ozone NAAQS, in areas where the 2008 NNSR requirements would remain in place.*

The NCDAQ supports both options.

*3. While the EPA interprets the present regulatory text in 40 CFR 51.166(i)(2) and 52.21(i)(2) in the manner described above, these provisions do not expressly say that a nonattainment designation for a revoked standard does not trigger the exemption. To avoid confusion in the regulatory text and to clarify its intent, EPA is alternatively proposing that an amendment to 40 CFR 51.166(i)(2) and 52.21(i)(2) would be appropriate to make it clear that a nonattainment designation for a revoked NAAQS, once the revocation becomes effective in an area, would not trigger the PSD exemption in those provisions and would not prevent application of PSD requirements for that pollutant. The EPA is taking comment on whether such an amendment to 40 CFR 51.166(i)(2) and 52.21(i)(2) is necessary or whether it is sufficient for the EPA to articulate the interpretation of these provisions described in the preceding paragraph. The EPA is also request comment on how such an amendment to 40 CFR 51.166(i)(2) and 52.21(i)(2) should be worded.*

The NCDAQ supports this proposal.

#### Application of Transition Requirements to Nonattainment and Attainment Areas (34217-22)

*1. EPA proposes, as its preferred approach, that areas designated attainment for the 2008 standard and nonattainment 1997 standard (as of revocation of the 1997 standard) not be required to adopt any outstanding applicable requirements for the 1997 standard. EPA also proposes that the approved PSD SIPs for these areas be deemed to satisfy the obligation to submit an approvable maintenance plan for the 2008 standard under Section 110(a)(1).*

*As an alternative to the above, EPA proposes for areas designated attainment for the 2008 standard and nonattainment for the 1997 standard an approach requiring the areas to show maintenance of the 2008 standard. This showing would be due three years after designations*

*become effective and would be in the form of something other than a formal SIP revision. If the EPA were to adopt this option, the EPA would provide guidance regarding the specific elements of the maintenance showing. The EPA seeks comment on this option.*

The NCDAQ supports the preferred approach, and believes the alternative approach brings additional unnecessary resource burden to the states.

*2. For areas designated attainment for the 2008 ozone NAAQS and maintenance for the 1997 ozone NAAQS (as of the date of revocation of the 1997 ozone NAAQS), the EPA is proposing that the area's approved Section 175A maintenance plan for the revoked 1997 ozone NAAQS satisfies both its obligations for maintenance under Section 110(a)(1) for the 2008 ozone NAAQS and its obligation to submit a second approvable maintenance plan under Section 175A for the revoked 1997 ozone NAAQS.*

The NCDAQ agrees with this proposal because the maintenance areas have already been designated to attainment for both the 1997 and 2008 ozone NAAQS. The Section 175A maintenance plan for the 1997 ozone NAAQS would satisfy the anti-backsliding requirements for all prior standards, and any further 110(a)(1) maintenance plan requirement under the 2008 ozone NAAQS would add unnecessary burden to the states. Additionally, no revision to Section 175A maintenance plans could be approved unless it complies with the anti-backsliding checks in CAA Sections 110(l) and 193.

*3. For areas designated nonattainment for the 2008 ozone NAAQS and maintenance for the 1997 ozone NAAQS, the EPA is proposing that the maintenance plan for the revoked 1997 ozone NAAQS would satisfy the obligation to submit a second approval maintenance plan under Section 175A for the revoked 1997 ozone NAAQS.*

The NCDAQ agrees with this proposal for the reasons cited above.

#### Satisfaction of Antibacksliding Requirements (pg 34222-3)

*1. The EPA proposes two procedures through which a state may demonstrate that it is no longer required to adopt any applicable requirements for an area if the requirements have not already been into the SIP for a revoked ozone NAAQS, through which it may remove NNSR provisions from the SIP and, upon showing consistency with the antibacksliding checks in the CAA, the state may shift to the contingency measures portion of the SIP requirements that are already in the SIP.*

*The first procedure is a formal redesignation of the area to attainment for the 2008 ozone NAAQS. This process is consistent with the approach adopted in the 1997 ozone NAAQS Phase 1 Rule. The second procedure provides a redesignation substitute for the revoked NAAQS. This process requires a more extensive showing than mere attainment of the revoked standard to satisfy anti-backsliding requirements for a revoked standard.*

The NCDAQ is interested in conserving limited state and federal resources, and supports the first procedure which focuses on the more stringent NAAQS.

EPA Determination of Attainment (Clean Data) Regulation for Purposes of Anti-Backsliding Requirements

*1. In its Phase 1 Rule, EPA codified in regulation its long-standing interpretation under the Clean Data Policy: An EPA determination that an area is attaining the 1997 ozone NAAQS suspends the obligation to submit any attainment-related SIP elements for the 1997 standard not yet approved in the SIP for so long as the area continues in attainment of the NAAQS. EPA proposes to apply the same approach to designations of attainment under the 2008 standard.*

The NCDAQ supports this proposal.

2008 Ozone NAAQS Implementation and the Title V Permits Program

1. The EPA is proposing two approaches to interpreting title V applicability requirements following revocation of the 1997 ozone NAAQS: (1) Major source thresholds for title V should be the same as the major source thresholds applicable for purposes of other requirements such as RACT and NSR; and (2) major source thresholds for title V depend solely on the area's classification for the 2008 ozone NAAQS. In particular the EPA solicits comments on whether title V should (or should not) be considered a "control," within the meaning of Section 172(e) in light of the fact that title V generally does not impose new substantive air quality control requirements but is intended to assure compliance with all such existing requirements.

The NCDAQ supports the first option which sets major source title V thresholds to those applied for RACT and NSR. Additionally, title V is NOT a control since the EPA has stated repeatedly that no substantive controls are imposed simply by having a title V permit.

