

Congress, through the Office of Management and Budget explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

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

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

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

In addition, this proposed rule pertaining to the Cecil County 8-hour ozone attainment demonstration plan does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

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

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

Dated: April 28, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2008-0931; FRL-8901-7]**

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Attainment Demonstration for the Baltimore 8-Hour Ozone Moderate Nonattainment Area**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove the ozone attainment demonstration portion of a comprehensive State Implementation Plan (SIP) revision submitted by the State of Maryland to meet the Clean Air Act (CAA) requirements for attaining the 8-hour ozone national ambient air quality standard (NAAQS) for the Baltimore moderate nonattainment area (Baltimore Area). The Baltimore Area comprises Baltimore City and the surrounding Counties of Baltimore, Carroll, Anne Arundel, Howard, and Harford. EPA is proposing to disapprove Maryland's attainment demonstration of the 8-hour ozone NAAQS for the Baltimore Area because EPA has determined that the photochemical modeling does not demonstrate attainment, and the weight of evidence (WOE) analysis that Maryland uses to support the attainment demonstration does not provide the sufficient evidence that Baltimore will attain the NAAQS by the June 2010 deadline.

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

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2008-0931 by one of the following methods:

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

B. *E-mail:* fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2008-0931, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such

deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2008-0931. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

**FOR FURTHER INFORMATION CONTACT:**

Maria Pino, (215) 814-2181, or by e-mail at [pino.maria@epa.gov](mailto:pino.maria@epa.gov).

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**I. What Action Is EPA Proposing?**

EPA is proposing to disapprove the SIP revision consisting of the 8-hour ozone attainment demonstration plan for the Baltimore Area, which comprises Baltimore City and the surrounding Counties of Baltimore, Carroll, Anne Arundel, Howard, and Harford. This SIP revision was submitted by the Maryland Department of the Environment (MDE) on June 4, 2007.

EPA is proposing to disapprove Maryland's 8-hour ozone attainment demonstration plan for the Baltimore Area because EPA has determined that the photochemical modeling does not demonstrate attainment, and the weight of evidence analysis that Maryland uses to support the attainment demonstration does not provide the sufficient evidence that Baltimore will attain the NAAQS by the June 2010 deadline.

EPA's analysis and findings are discussed in this proposed rulemaking and a more detailed discussion is contained in the Technical Support Document (TSD) for this proposal which is available online at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R03-OAR-2008-0931.

**II. What Are the CAA Requirements for a Moderate 8-Hour Ozone Nonattainment Area?****A. History and Time Frame for the State's Attainment Demonstration SIP**

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

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. In addition, EPA promulgated its Phase 1 Rule for implementation of the 8-hour standard, which provided how areas designated nonattainment for the 8-hour ozone standard would be classified. April 30, 2004 (69 FR 23951). Among those nonattainment areas is the SIP revision consisting of the 8-hour ozone attainment demonstration plan for the Baltimore Area. EPA's Phase 2 8-hour ozone implementation rule, published on November 29, 2005 (70 FR 71612) specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007. *See*, 40 CFR 51.908(a).

**B. CAA Requirements**

Pursuant to Phase 1 of the 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951), an area was classified under subpart 2 of Title I of the CAA based on its 8-hour design value if it had a 1-hour design value at

<sup>1</sup> In 2008, EPA promulgated a more stringent 8-hour standard of 0.075 ppm. 73 FR 16436 (March 27, 2008). All references to the 8-hour ozone standard in this rulemaking refer to the 8-hour standard promulgated in 1997.

or above 0.121 ppm. Based on this criterion, the Baltimore 8-hour ozone nonattainment area was classified under subpart 2 as a moderate nonattainment area. On November 29, 2005 (70 FR 71612), EPA published Phase 2 of the 8-hour ozone implementation rule in which it addresses the control obligations that apply to areas classified under subpart 2. Among other things, the Phase 1 and 2 rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment.

**III. What Was Included in Maryland's SIP Submittals?**

On June 4, 2007, Maryland submitted a comprehensive 8-hour ozone SIP for Baltimore. The SIP submittal included an attainment demonstration plan, a reasonable further progress (RFP) plan, reasonably available control measures analysis, contingency measures, on-road motor vehicle emission budgets, and the 2002 base year emissions inventory. These SIP revisions were subject to notice and comment by the public. The State did not receive any comments on the proposed SIP revisions. Only the attainment demonstration sections of this SIP submittal are the subject in this rulemaking. The other sections of this SIP submittal will be addressed in a separate rulemaking.

**IV. What Is EPA's Review of Maryland's Modeled Attainment Demonstration and Weight of Evidence Analysis for the Baltimore Area?**

Section 110(a)(2)(K) of the Clean Air Act requires states to prepare air quality modeling to show how they will meet ambient air quality standards. EPA determined that states must use photochemical grid modeling, or any other analytical method determined by the Administrator to be at least as effective, to demonstrate attainment of the ozone health-based standard in areas classified as 'moderate' or above, and to do so by the required attainment date. *See*, 40 CFR 51.908(c). EPA specified how areas would be classified with regard to the 8-hour ozone standard set by EPA in 1997. *See*, 40 CFR 51.903. EPA followed these procedures and classified the Baltimore Area as moderate. *See*, 69 FR 23858 (April 30, 2004). The attainment date is June 2010 for moderate areas; therefore states must achieve emission reductions by the ozone season of 2009 in order for ozone concentrations to be reduced, and attainment achieved during the last complete ozone season before the 2010 deadline.

As more fully described in the TSD, the basic photochemical grid modeling

used by Maryland in the Baltimore Area SIP meets EPA's guidelines, and when used with the methods recommended in EPA's modeling guidance, is acceptable to EPA. EPA's photochemical modeling guidance is found at *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, PM<sub>2.5</sub>, and Regional Haze*, EPA-454/B-07-002, April 2007. Using EPA's methods, the photochemical grid model, containing the modeled emission reduction strategies prepared by Maryland and the Ozone Transport Commission states, predicts that the 2009 ozone design value in the Baltimore Area to be 85 parts per billion (ppb). Thus, the photochemical model predicts the Baltimore Area will not reach the 84 ppb concentration level needed to show attainment of the ozone standard by the 2009 ozone season.

EPA's photochemical modeling guidance is divided into two parts. One part describes how to use a photochemical grid model for ozone to assess whether an area will come into attainment of the air quality standard. The second part of EPA's photochemical modeling guidance recommends that states complement the photochemical air quality modeling with "aggregate supplemental analyses," i.e., WOE analyses, if the modeling results predict the area to be close to (within several parts per billion either above or below) the ozone standard. A WOE analysis is any set of alternative methods or analyses that, when considered together, and in combination with the modeling analysis, supports the conclusion that the NAAQS has been attained, even in instances when the modeling results alone do not predict attainment.

The Baltimore Area photochemical grid modeling predicts a 2009 projected design value just above the air quality health standard (85 ppb vs. 84 ppb). Because the modeling alone did not predict attainment by the applicable deadline, Maryland would need to provide a WOE analysis that in the aggregate provides evidence that the model is overestimating future ozone concentrations. As set forth at length in the TSD at pages 8 through 13, the modeling and air quality studies cited by Maryland do not support claims that the model over-predicts concentrations in 2009. Maryland has suggested that additional emission reduction strategies that were not included in the modeling may reduce ozone in the Baltimore Area, but many of these reductions are not yet in place or are voluntary and mostly unquantifiable. EPA does not believe these are likely to reduce ozone enough to reach the standard by June

2010. Furthermore, Maryland has not committed to implement the voluntary measures by the 2009 ozone season. Consequently, EPA cannot attribute much in the way of reduction to these measures. This issue is discussed further in the TSD, in the section entitled "Benefits of Alternative/Voluntary Control Strategies."

Air quality data through 2007 are far above the level needed for attainment and it is unlikely Maryland will be able to implement enough emission controls to reach the standard by 2010. The present air quality (2007 design value 94 ppb, 2008 preliminary design value 91 ppb) also does not support the hypothesis presented in the Maryland WOE analysis that the models are over-predicting the 2009 ozone design values. Present air quality concentrations should be closer to the standard since the Baltimore Area is only two years from when it should be attaining the standard.

The WOE analysis presented in the Maryland SIP revision for the Baltimore Area includes the following:

- An analysis of ambient air monitoring measurements and trends;
- An analysis of the regional nature of ozone transport;
- An analysis of model sensitivity to emission changes; and
- An analysis of the potential benefits of alternative control strategies (e.g., an aggressive telecommuting strategy).

The information and calculations provided in the Baltimore Area SIP emphasizes methods or data that support the claim that the nonattainment area could attain the standard by the deadline. EPA's review of the WOE analyses must evaluate a spectrum of likely alternative calculations, not only those that tend to show the area will attain the ozone standard. The method recommended by EPA's guidance and other reasonable variations on EPA's methods predict the area will not attain the ozone standard by 2010.

Maryland has provided considerable information in their WOE analysis they believe supports their case that attainment of the ozone standard in 2010. For example, the Maryland SIP revision cites a study of the 2003 Northeast Blackout (Marufu et al., 2004) that suggests the model under-predicts the amount of ozone reduction that actually occurred during the electrical blackout. During the blackout, measured ozone was lower than expected because some power plants and some other major sources of ozone-forming compounds were shut down. There are at least two ways to determine what ozone concentrations would have been

if the major sources of ozone-forming compounds operated on that day. One way is to model the changes with the power plants operating, and with the power plants not operating and comparing the results. The other is by comparing the blackout day with a past high ozone day with similar weather and wind patterns, when the power plants operated. The research cited by Maryland compared the blackout episode with days in the past with ostensibly similar meteorology, when the sources were operating. However, EPA concludes that the past episode when the power plants operated is not similar enough to the blackout day to draw a valid comparison. The comparison day had winds coming from areas that were not the ones most affected by the blackout, so the comparison is not convincing. There may be other days that were more similar to the meteorological patterns on the blackout day, but the fact remains that no two days are the same.

The emissions precursors, ozone, and meteorological patterns on the day of and the days preceding the blackout will never occur the same way twice.

Maryland cited the work of other researchers (Hu et al., 2006) who ran a photochemical grid model on the blackout day with and without the blacked-out emissions. Based on this work and the work cited above (Marufu et al., 2004) Maryland observed the modeled change in ozone was smaller than the change in ozone measured between the comparison day and the blackout day. As a result, Maryland then concluded that the model did not reduce ozone as much between the blackout and non-blackout emissions. Thus, this may be a sign that the model is not responsive enough to emission reductions. However, the differences between the modeled change and the change between monitored days may be because a sufficiently similar day was not found to determine how much ozone was really reduced on the blackout day. Another point is that these studies did not look at the effect of the blackout on air quality in the urban nonattainment areas like those featured in this notice. There is no comparison using modeling of these blackout days and similar days with the goal of determining the effect of blacked out sources on ozone in the northeast corridor's urban areas or other studies that would have attempted to explain and perhaps quantify the extent of the transport issue in the states' application of the photochemical grid model.

After careful review of these studies, EPA has determined that there are significant uncertainties in the

Maryland SIP revision technical analysis and therefore does not accept Maryland's conclusion that the modeling system under-predicts changes in ozone as emissions change. Arguments in the Maryland SIP revision that the model may not give full credit for emission reductions are supported by limited modeling work. Maryland has not tested this hypothesis with its own modeling. EPA believes any additional ozone reduction, beyond what is predicted by the photochemical modeling, is likely to be far less than the 6 to 8 ppb claimed in the Maryland SIP revision. Therefore, EPA believes that Maryland's adjustment to the photochemical grid modeling results is not supported by the information provided.

EPA has determined this information does not demonstrate that the proposed adjustments to the photochemical grid model's attainment year forecast will give a more accurate answer than the calculations based on EPA's recommendations in its modeling guidance. Monitored air quality data seem to indicate that the model is under-predicting the 2009 ozone design value for the Baltimore Area.

The result of the photochemical grid modeling analysis using EPA's recommended methods predicts that Baltimore Area will not attain the standard in the attainment year of 2009. In response to this, Maryland has offered a number of alternative methods of using the modeling information and additional control strategies that when taken together might plausibly demonstrate attainment.

In general, EPA's conclusions concerning the modeled attainment demonstration and WOE analysis provided in the Baltimore Area SIP can be summarized as follows:

- The Baltimore Area modeling applies an appropriate photochemical grid model and follows EPA's guidance methods, but does not predict attainment in June 2010.

- Regardless of the issues raised by Maryland regarding the performance of EPA's recommended air quality models, the air quality measured during 2007 exceeded the ozone standard by a significant margin. Even a linear comparison of the percentage of additional emission reductions planned by the state with the needed improvement in air quality between 2007 and 2009 indicates it is unlikely that air quality will improve enough to meet the ozone standard by 2010. Additionally, preliminary air quality data from the 2008 ozone season does not support demonstration of attainment by 2010.

- When comparing the measured ozone concentrations in 2007 and (preliminary) 2008 data to concentrations predicted for 2009, using EPA's recommended application of the photochemical grid modeling, the photochemical grid model does not exhibit the magnitude of inaccuracies suggested in the Baltimore Area attainment demonstration.

- In order to insure attainment, Maryland suggests that there are additional measures that will achieve emission reductions which were not included in the original photochemical modeling analysis. These measures are mainly voluntary and are not committed to by Maryland as part of its attainment demonstration. The amount of potential air quality benefit from these measures is difficult to estimate with any degree of certainty. Based on EPA's and Maryland's evaluation of the potential ozone benefits these additional measures may provide for the Baltimore Area, attainment of the ozone standard in 2010 cannot be achieved through the adoption of these measures.

- The Baltimore Area attainment demonstration greatly relied on research which evaluated the impact of a widespread power blackout to develop an alternative approach to estimating anticipated air quality improvements from upwind power plants. While EPA believes that this approach provides some insight into the transport of ozone precursors, a critical review of all the research available to EPA leads EPA to disagree with Maryland's premise that the 2009 modeled design values should be adjusted downward for alleged model under-predictions of ozone concentration reductions from emission reductions.

A detailed discussion of the EPA's evaluation of the modeled attainment demonstration and WOE analysis contained in the Maryland SIP revision for the Baltimore Area is located in the TSD entitled "Technical Support Document for the Modeling and Weight of Evidence (WOE) Portions of the Document Entitled *Baltimore Nonattainment Area 8-Hour Ground Level Ozone State Implementation Plan (SIP) and Base Year Inventory, June 15, 2007*."

EPA has carefully evaluated the information provided by Maryland and other information it deems relevant to help predict what the air quality is likely to be by the 2009 ozone season. After careful consideration of all the relevant information, EPA finds that there is not sufficiently convincing evidence that the Baltimore Area will attain the 8-hour ozone NAAQS in 2010. The Maryland SIP revision for the

Baltimore Area does not satisfy the Clean Air Act requirement that State Implementation Plans provide for attainment of the NAAQS by the applicable attainment date of June 2010.

## V. What Are the Consequences of a Disapproved SIP?

This section explains the consequences of a disapproval of a SIP under the CAA. The CAA provides for the imposition of sanctions and the promulgation of a Federal Implementation Plan if states fail to submit a plan that corrects any deficiencies identified by EPA in its disapproval.

### A. What Are the CAA Provisions for Sanctions?

If EPA disapproves a required SIP or component of a SIP for an area designated nonattainment, such as the Attainment Demonstration SIP, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP if a State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds.

### B. What Are the CAA's FIP Ramifications if a State Fails To Submit an Approvable Plan?

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

### C. What Are the Ramifications Regarding Conformity?

One consequence of EPA's disapproval of a control strategy SIP is a conformity freeze whereby affected Metropolitan Planning Organizations (MPOs) cannot make new conformity determinations on long range transportation plans and transportation improvement programs (TIPs). If we finalize the disapproval of the attainment demonstration SIP, a

conformity freeze will be in place as of the effective date of the disapproval without a protective finding of the budget. *See*, 40 CFR 93.120(a)(2). This means that no transportation plan, TIP, or project not in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of 40 CFR 93.104(f) during a 12-month lapse grace period<sup>2</sup> may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budgets are found adequate or the attainment demonstration is approved. In addition, if the highway funding sanction is implemented, the conformity status of the transportation plan and TIP will lapse on the date of implementation of the highway sanctions. During a conformity lapse, only projects that are exempt from transportation conformity (e.g., road resurfacing, safety projects, reconstruction of bridges without adding travel lanes, bicycle and pedestrian facilities, etc.), transportation control measures that are in the approved SIP and project phases that were approved prior to the start of the lapse can proceed during the lapse. No new project-level approvals or conformity determinations can be made and no new transportation plan or TIP may be found to conform until another attainment demonstration SIP is submitted and the motor vehicle emissions budget is found adequate.

## VI. What Is EPA's Conclusion?

EPA is proposing to disapprove the 8-hour ozone attainment demonstration plan for the Baltimore moderate nonattainment area submitted by MDE on June 4, 2007, because Baltimore's demonstration does not in the aggregate provide sufficient evidence for EPA to conclude that the Baltimore Area will attain the NAAQS by the June 2010 deadline in spite of modeling results that do not predict attainment. EPA is deferring action at this time on other SIP elements submitted by Maryland that are related to the attainment demonstration, specifically, the RFP plan, reasonably available control measures analysis, contingency measures, on-road motor vehicle emission budgets, and the 2002 base year emissions inventory, which will be addressed in separate rulemakings. EPA is soliciting public comments on the issues discussed in this document.

These comments will be considered before taking final action.

## VII. Statutory and Executive Order Reviews

### A. Executive Order 12866, Regulatory Planning and Review

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

### B. Paperwork Reduction Act

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

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in and of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less

burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

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

### D. Unfunded Mandates Reform Act

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

### E. Executive Order 13132, Federalism

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

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

<sup>2</sup> Additional information on the implementation of the lapse grace period can be found in the final transportation conformity rule published on January 24, 2008 (73 FR 4423–4425).

the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

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

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

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

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

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

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 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 the Office of Management and Budget, explanations

when the Agency decides not to use available and applicable voluntary consensus standards.

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

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

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

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in and of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

In addition, this proposed rule pertaining to the Baltimore 8-hour ozone attainment demonstration plan does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

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

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

Dated: April 28, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. E9-10682 Filed 5-7-09; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R03-OAR-2008-0930; FRL-8901-6]

**Approval and Promulgation of Air Quality Implementation Plans; Delaware; Attainment Demonstration for the Philadelphia-Wilmington-Atlantic City Moderate 8-Hour Ozone Nonattainment Area**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove the ozone attainment demonstration portion of a comprehensive State Implementation Plan (SIP) revision submitted by the State of Delaware to meet the Clean Air Act (CAA) requirements for attaining the 8-hour ozone national ambient air quality standard (NAAQS) for the Delaware portion of the Philadelphia-Wilmington-Atlantic City moderate nonattainment area (Philadelphia Area). EPA is proposing to disapprove Delaware's attainment demonstration of the 8-hour ozone NAAQS for the Philadelphia Area because EPA has determined that the photochemical modeling does not demonstrate attainment, and the weight of evidence analysis that Delaware uses to support the attainment demonstration does not provide the sufficient evidence that the Delaware portion of the Philadelphia nonattainment area will attain the NAAQS by the June 2010 deadline.

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

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2008-0930 by one of the following methods:

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

B. *E-mail:* fernandez.cristina@epa.gov.

C. *Mail:* EPA-R03-OAR-2008-0930, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such