

## ATTACHMENT A

### **Comments from the Northeast States for Coordinated Air Use Management (NESCAUM) on the U.S. Environmental Protection Agency (EPA's) Proposed Regulatory Text for Implementing the 8-hour Ozone National Ambient Air Quality Standard (NAAQS) <sup>1</sup>**

1. **Different modeling standards and criteria for attainment demonstrations :**
  - a. In its proposed regulatory text, EPA allows different modeling standards for attainment demonstrations. In Sec. 51.904(b)(2), EPA allows an attainment demonstration that “must include modeling results and analyses that the State is relying on to support its claim. Such modeling must be consistent with EPA guidance and must be appropriate for the area.” In Sec. 51.908(d), EPA requires an attainment demonstration to be “consistent with Appendix W of this part and EPA’s most recent modeling guidance at the time the modeled attainment demonstration is performed.” NESCAUM believes that any discrepancies between the two requirements are unacceptable and that modeling components of all attainment demonstrations should be subject to the same rigorous standards to which attainment demonstrations have historically been subject.
  - b. In Sec. 51.908(d), EPA states that “Local, regional and national modeling developed to support Federal or local controls may be used, provided the modeling is consistent with EPA’s modeling guidance” for attainment demonstrations. We are concerned with any approach that allows national modeling to be used for State Implementation Plan (SIP) submittals. We expect any EPA or other national modeling allowed for SIP submissions to be subject to and meet the same rigorous standards to which states’ SIP attainment modeling are currently subject. Such standards should apply to episode selection, gridding size, base year inventories, application of design value year periods, and assumed controls. The national modeling that we have seen thus far is clearly not designed for attainment demonstrations and does not meet those standards.
2. **Addressing transport when dealing with a request for a lower classification:** In Sec. 51.903(b), when reclassifying an area to a lower classification, EPA proposes that it will “take into account the extent to which the area significantly contributes to nonattainment or interferes with maintenance in a downwind area.” This language is vague and EPA must clarify its meaning, including what actions would result from such an assessment. NESCAUM believes that, when a finding of significant contribution to nonattainment or interference with maintenance is made, EPA must ensure the provisions of section 110(a)(2)(d) of the Clean Air Act (CAA) are met.

---

<sup>1</sup> The NESCAUM states believe that EPA’s approach, as delineated in the proposed regulatory text, violates the Clean Air Act. To the extent that NESCAUM’s comments address sections of the proposed regulatory text that pertain to implementing the 8-hour ozone NAAQS under Title I, Part D, Subpart 1 of the Clean Air Act, they should not be construed as supporting such an approach.

EPA must clearly delineate how contributions to downwind nonattainment areas will be addressed in this context.

3. **Attainment dates:**

- a. In the proposed regulatory text, EPA does not define the term “requested attainment date.” As written, it seems that a jurisdiction may request an alternative attainment date at any time and, in making such a request, is automatically subject to less stringent CAA requirements. While we do not support this approach, should EPA choose to adopt this program element, EPA must define the term “requested attainment date,” delineate the timeframes by when such requests must be made to EPA, and define the process by which EPA would approve or deny such requests.
- b. In Sec. 51.904(b)(1), the language is not clear. It appears that EPA is allowing the five-year attainment date clock to start when the Administrator approves an attainment demonstration. If this is the case, the NESCAUM strongly disagrees with EPA’s approach. CAA Section 172(a)(2)(A) is clear that an attainment date should be set within five years of the area being designated. EPA’s regulatory language must be consistent with the CAA and should clearly reflect it.

4. **Reasonable Further Progress (RFP) requirement dates:**

- a. In Sec. 51.910(b)(2)(i), we believe EPA inadvertently used the term “with a requested attainment date no later than 6 years...” We believe EPA meant to propose “For each area with a requested attainment date *greater than three but no later than five years* after the effective date of the area’s designation for the 8-hour NAAQS,” as we believe EPA is proposing to address those areas by requiring them to comply with CAA section 172(a)(2).
- b. In Sec. 51.910(b)(2)(ii), we believe EPA inappropriately and inadvertently used the term “with a requested attainment date more than 6 years,” and should replace that wording with “For each area *that the Administrator has determined an attainment date of greater than five years* after the effective date of the area’s designation for the 8-hour NAAQS...” This section refers to areas for which EPA has determined more time is needed to attain the standard. Pursuant to CAA section 172(a)(2), EPA, not the states, must make that determination, and any regulatory language pursuant to this section should reflect as such.

5. **Reasonably Available Control Technology (RACT):**

- a. In Sec. 51.912(b)(4), EPA proposes that “A state may meet the NO<sub>x</sub> RACT requirement by showing that the weighted average emission rate from sources in the nonattainment area subject to RACT- including sources subject to the NO<sub>x</sub> SIP Call requirements- meet RACT requirements.” As NESCAUM believes that RACT should be redefined, given the new technology developments over the past decade, we believe that a weighted average approach to RACT is tantamount to a blanket exemption to RACT, and is misguided and inappropriate.

- b. In Sec. 51.912 (b)(2)(iii), EPA proposes that “The exemption in paragraph (b)(i) of this section shall not apply where a State concluded that no additional controls would apply...” We would like EPA to clarify what is intended by this section.
6. **Disincentives for larger 8-hour ozone nonattainment areas**: In Sec. 51.910 (a)(1)(ii), EPA proposes that for an area classified “as moderate or higher that has the same boundaries as an area for which EPA fully approved a 15 percent plan for the 1-hour NAAQS is not subject to section 182(b)(1) of the Act for the 8-hour NAAQS, but instead...” is subject to less stringent requirements of subpart 1 with later submittal dates. As written, this approach creates a significant disincentive for states to enlarge their nonattainment area boundaries under the more protective 8-hour NAAQS.
7. **Attainment year ozone season**: NESCAUM believes that ozone controls should be in place during the ozone season immediately preceding a nonattainment area’s attainment date.
8. **Anti-backsliding RFP provisions**: In Sec. 51.905(a)(1)(ii), EPA proposes RFP requirements of 10% from the base year by 2007 for areas that did not meet attainment obligations under the 1-hour ozone NAAQS. In Sec. 51.905(a)(3)(ii) (B)(1), EPA proposes that areas that violate the 1-hour ozone NAAQS and are attainment/unclassifiable for the 8-hr ozone NAAQS, but subsequently violate the 8-hour NAAQS, be subject to an RFP requirement of 10% reduction in emissions within 3 years after publication of the violation. NESCAUM is not clear why such areas would not instead be subject to the emission reduction requirements under subpart 2, and would like EPA to explain the rationale behind a 10% reduction requirement.
9. **Creation of a new subsection E in 40 CFR Part 81**: NESCAUM believes that it is important to keep a record in the Code of Federal Regulations of all areas’ designations and classifications for the 1-hour ozone standard in place at the time when EPA decides that the one-hour standard no longer applies to each area. Such a record is important for a variety of reasons including assessing whether or not there is backsliding on CAA commitments.