6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OAR-2003-0083; FRL-]

[RIN 2060-]

Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas with Deferred Effective Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule sets forth the air quality designations and classifications for every area in the United States, including Indian country, for the 8-hour ozone national ambient air quality standard. We are issuing this rule so that citizens will know whether the air where they live and work is healthful or unhealthful and to establish the boundaries and classifications for areas designated as nonattainment. Children are at risk when exposed to ozone pollution because their lungs are still developing, people with existing respiratory disease are at risk, and even healthy people who are active outdoors can experience difficulty breathing when exposed to ozone pollution. In this document, EPA is also promulgating the first deferral of the effective date, to September 30, 2005, of the

nonattainment designation for Early Action Compact areas that have met all milestones through March 31, 2004. Finally, we are inviting States to submit by July 15, 2004, requests to reclassify areas if their design value falls within five percent of a high or lower classification. This rule does not establish or address State and Tribal obligations for planning and control requirements which apply to nonattainment areas for the 8-hour ozone standard. Two separate rules, one of which is also published today, set forth the planning and control requirements which apply to nonattainment areas for this standard.

EFFECTIVE DATE: This final rule is effective on June 15, 2004.

ADDRESSES: EPA has established dockets for this action under Docket ID No. OAR-2003-0083 (Designations) and OAR-2003-0090 (Early Action Compacts). All documents in the docket are listed in the EDOCKET index at http://www.epa.gov/edocket. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or

in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742. In addition, we have placed a copy of the rule and a variety of materials regarding designations on EPA's designation web site at: http://www.epa.gov/oar/oaqps/glo/designations and on the Tribal web site at: http://www.epa.gov/air/tribal. Materials relevant to Early Action Compact (EAC) areas are on EPA's web site at: http://www.epa.gov/ttn/naaqs/ozone/eac/wl040218_eac_resources.pdf. In addition, the public may inspect the rule and technical support at the following locations.

Regional Offices	States
Dave Conroy, Acting Branch Chief, Air Programs Branch, EPA New England, I Congress Street, Suite 1100, Boston, MA 02114-2023, (617) 918-1661.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007-1866, (212) 637-4249.	New Jersey, New York, Puerto Rico, and Virgin Islands.

Makeba Morris, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2187, (215) 814-2187.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
Richard A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, 12th Floor, Atlanta, GA 30303, (404) 562-9033.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
Pamela Blakley, Acting Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 886-4447.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Donna Ascenzi, Acting Associate Director, Air Programs, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 665-2725.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101-2907, (913) 551-7606.	Iowa, Kansas, Missouri, and Nebraska.
Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, 999 18th Street, Suite 300, Denver, CO 80202-2466, (303) 312-6005.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Steven Barhite, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3980.	Arizona, California, Guam, Hawaii, and Nevada.
Bonnie Thie, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code OAQ-107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553-1189.	Alaska, Idaho, Oregon, and Washington.

FOR FURTHER INFORMATION CONTACT:

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Mr. Barry Gilbert, Technical Issues, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-5238 or by e-mail at: gilbert.barry@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

The following is an outline of the preamble.

I. Preamble Glossary Of Terms And Acronyms

The following are abbreviations of terms used in the preamble.

CAA Clean Air Act

CFR Code of Federal Regulations

CBI Confidential Business Information

CMAQ Congestion Mitigation Air Quality

CMSA Consolidated Metropolitan Statistical Area

D.C. District of Columbia

EAC Early Action Compact or Compact

EPA Environmental Protection Agency or Agency

FR Federal Register

MPO Metropolitan Planning Organization

MSA Metropolitan Statistical Area

NAAQS National Ambient Air Quality Standard or Standard

NOx Nitrogen Oxides

NOA Notice of Availability

NPR Notice of Proposed Rulemaking

NSR New Source Review

OMB Office of Management and Budget

PPM Parts Per Million

RFG Reformulated Fuel

RTC Response to Comment

SIP State Implementation Plan

TAR Tribal Authority Rule

TEA-21 Transportation Equity Act for the 21st Century

TPY Tons Per Year

TSD Technical Support Document

U.S. United States

VOC Volatile Organic Compounds

II. What is the Purpose of this Document?

The purpose of this document is to announce and promulgate designations, classifications, and boundaries for areas of the country with respect to the 8-hour ground-level ozone National Ambient Air Quality Standard (NAAQS) in accordance with the requirements of the CAA. We took several steps to announce that this rule was available. We posted the rule on several EPA web sites and provided a copy of the rule, which was signed by the Administrator on April 15, 2004, to States and Tribes.

III. How is Ground-Level Ozone Formed?

Ground-level ozone (sometimes referred to as smog) is formed by the reaction of volatile organic compounds (VOCs) and oxides of nitrogen (NOx) in the atmosphere in the presence of sunlight. These two pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, including on-road and off-road motor vehicles and engines, power plants and industrial facilities, and smaller sources, collectively referred to as area sources. Ozone is predominately a summertime air pollutant. Changing weather patterns contribute to yearly

differences in ozone concentrations from region to region. Ozone and the pollutants that form ozone also can be transported into an area from pollution sources found hundreds of miles upwind.

IV. What are the Health Concerns Addressed by the 8-Hour Ozone Standard?

During the hot summer months, ground-level ozone reaches unhealthy levels in several parts of the country. Ozone is a significant health concern, particularly for children and people with asthma and other respiratory diseases. Ozone has also been associated with increased hospitalizations and emergency room visits for respiratory causes, school absences, and reduced activity and productivity because people are suffering from ozone-related respiratory symptoms.

Breathing ozone can trigger a variety of health problems. Ozone can irritate the respiratory system, causing coughing, throat irritation, an uncomfortable sensation in the chest, and/or pain when breathing deeply. Ozone can worsen asthma and possibly other respiratory diseases, such as bronchitis and emphysema. When ozone levels are high, more people with asthma have attacks that require a doctor's attention or the use of additional medication. Ozone can reduce lung function and make it more

difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. In addition, breathing ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower quality of life if the inflammation occurs repeatedly over a long time period (months, years, a lifetime). People who are particularly susceptible to the effects of ozone include children and adults who are active outdoors, people with respiratory disease, such as asthma, and people with unusual sensitivity to ozone.

More detailed information on the health effects of ozone can be found at the following web site: www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html.

V. What is the Chronology of Events Leading Up to this Rule?

This section summarizes the relevant activities leading up to today's rule, including promulgation of the 8-hour ozone NAAQS and litigation challenging that standard. The CAA establishes a process for air quality management through the NAAQS. Area designations are required after promulgation of a new or revised NAAQS. In 1979, we promulgated the 0.12 parts per million (ppm) 1-hour ozone standard, (44 Federal Register 8202, February 8, 1979). On

July 18, 1997, we promulgated a revised ozone standard of 0.08 ppm, measured over an 8-hour period, i.e., the 8-hour standard (62 FR 38856). The 8-hour standard is more protective of public health and more stringent than the 1-hour standard. The NAAQS rule was challenged by numerous litigants and in May 1999, the U.S. Court of Appeals for the D.C. Circuit issued a decision remanding, but not vacating, the 8-hour ozone standard. Among other things, the Court recognized that EPA is required to designate areas for any new or revised NAAQS in accordance with the CAA and addressed a number of other issues, which are not related to designations. American Trucking Assoc. v. EPA, 175 F.3d 1027, 1047-48, on rehearing 195 F.3d 4 (D.C. Cir., 1999). We sought review of two aspects of that decision in the U.S. Supreme Court. In February 2001, the Supreme Court upheld our authority to set the NAAQS and remanded the case back to the D.C. Circuit for disposition of issues the Court did not address in its initial decision. Whitman v. American Trucking Assoc., 121 S.Ct. 903, 911-914, 916-919 (2001) (Whitman). The Supreme Court also remanded the 8-hour implementation strategy to EPA. In March 2002, the D.C. Circuit rejected all remaining challenges to the 8-hour ozone standard. American Trucking Assoc. v. EPA, 283 F.3d 355 (D.C. Cir. 2002).

The process for designations following promulgation of a NAAQS is contained in section 107(d)(1) of the CAA. For the 8-hour NAAQS, the Transportation Equity Act for the 21st Century (TEA-21) extended by 1 year the time for EPA to designate areas for the 8-hour NAAQS.[1] Thus, EPA was required to designate areas for the 8-hour NAAQS by July 2000. However, HR3645 (EPA's appropriation bill in 2000) restricted EPA's authority to spend money to designate areas until June 2001 or the date of the Supreme Court ruling on the standard, whichever came first. As noted earlier, the Supreme Court decision was issued in February 2001. In 2003, several environmental groups filed suit in district court claiming EPA had not met its statutory obligation to designate areas for the 8-hour NAAQS. We entered into a consent decree, which requires EPA to issue the designations by April 15, 2004.

VI. What are the Statutory Requirements for Designating Areas and What is EPA's Policy and Guidance for Determining Nonattainment Area Boundaries for the 8-Hour Ozone NAAQS?

This section describes the statutory definition of nonattainment and EPA's guidance for determining air quality attainment and nonattainment areas for the 8-hour ozone

[1]CAA §107(d)(1); TEA-21 §6103(a).

NAAQS. In March 2000[2] and July 2000[3] we issued designation guidance on how to determine the boundaries for nonattainment areas. In that guidance, we rely on the CAA definition of a nonattainment area that is defined in section 107(d)(1)(A)(i) as an area that is violating an ambient standard or is contributing to a nearby area that is violating the standard. If an area meets this definition, EPA is obligated to designate the area as nonattainment.

In making designations and classifications, we use the most recent 3 years of monitoring data.[4] Therefore, today's designations and classifications are generally based on monitoring data collected in 2001-2003 although other relevant years of data may have been used in certain circumstances. Once we determine that a monitor is recording a violation, the next step is to determine if there are any nearby areas that are contributing to the violation and include them in the designated nonattainment area.

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[2]Memorandum of March 28, 2002, from John S. Seitz, "Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards."

[3]Memorandum of July 18, 2000, from John S. Seitz, "Guidance on 8-Hour Ozone Designations for Indian Tribes."

[4]To determine whether an area is attaining the 8-hour ozone NAAQS, EPA considers the most recent 3 consecutive years of data in accordance with 40 Code of Federal Regulations (CFR) part 50, appendix I.

For guidance on determining the nonattainment boundary for the 8-hour ozone standard, we look to CAA section 107(d)(4) that established the Consolidated Metropolitan Statistical Area (CMSA) or Metropolitan Statistical Area (MSA) presumptive boundary for more polluted areas when we promulgated our designation actions in 1991 for the 1-hour ozone standard. In our guidance on determining nonattainment area boundaries for the 8-hour ozone standard, we advised States that if a violating monitor is located in a CMSA or MSA (as defined by the Office of Management and Budget (OMB) in 1999), the larger of the 1-hour ozone nonattainment area or the CMSA or MSA should be considered in determining the boundary of a nonattainment area. The actual size of the nonattainment area may be larger or smaller, depending on air quality-related technical factors contained in our designation guidance. We start with counties in the CMSA or MSA because that area, defined by OMB, generally shares economic, transportation, population and other linkages that are similar to air quality related factors that produce ozone pollution. Also, many CMSAs and MSAs generally are associated with higher levels of ozone concentrations and ozone precursor emissions than areas that are not in or near CMSAs or MSAs.

In June 2003, OMB released a new list of statistical

areas. This release was so late in the designation process that we determined that it would be disruptive and unfair to the States and Tribes to revise our guidance. However, we believe it is necessary to evaluate all counties in and around an area containing a monitor that is violating the standard, pursuant to our guidance to consider nearby areas that are contributing to a violation in determining the boundaries of the nonattainment area.

Once a CMSA, MSA or single county area is determined to contain a monitor that is violating the standard, the area can be evaluated using all applicable suggested air quality related factors in our guidance. The factors can be used to justify including counties outside the CMSA or MSA or excluding counties in the CMSA or MSA. The factors were compiled based on our experience in designating areas for the ozone standard in March 1978 and November 1991 and by looking to the CAA, section 107(d)(4), which states that the Administrator and the Governor shall consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport. State and local agencies also had extensive input into compiling the factors.

The factors are: 1) emissions and air quality in

adjacent areas (including adjacent CMSAs and MSAs),

2) population density and degree of urbanization including commercial development (significant difference from surrounding areas),

3) monitoring data representing ozone concentrations in local areas and larger areas (urban or regional scale),

4) location of emission sources (emission sources and nearby receptors should generally be included in the same nonattainment area),

5) traffic and commuting patterns,

6) expected growth (including extent, pattern and rate of growth),

7) meteorology (weather/transport patterns),

8) geography/topography (mountain ranges or other air basin boundaries),

9) jurisdictional boundaries (e.g., counties, air districts, existing 1-hour nonattainment areas, Reservations, etc.),

10) level of control of emission sources, and,

11) regional emissions reductions (e.g., NOx State Implementation Plan (SIP) Call or other enforceable regional strategies).

When evaluating the air quality factors for individual areas, we took into account our view that data recorded by an ozone air quality monitor in most cases represents air

quality throughout the area in which it is located. In addition, we used the county (or in the case of parts of New England, the township) as the basic jurisdictional unit in determining the extent of the area reflected by the ozone monitor data. As a result, if an ozone monitor was violating the standard based on the 2001-2003 data, we designated the entire county as nonattainment. There were some exceptions to this rule: in cases where a county was extremely large as in the West; where a geographic feature bifurcated a county, leading to different air quality in different parts of the county; and where a mountain top monitor reflected the air quality data only on the mountain top and not in lower elevation areas.

After identifying the counties with violating monitors, we then determined which nearby counties were not monitoring violations but were nonetheless contributing to the nearby violation. We considered each of the 11 factors in making our contribution assessment, including emissions, traffic patterns, population density, and area growth. In some cases, in considering these factors, as well as information and recommendations provided by the State, we determined that only part of a county was contributing to the nearby nonattainment area. In addition, in certain cases, we determined that a county without an ozone monitor should be

designated nonattainment because contiguous counties have monitors that are violating the standard. In at least two instances, we determined that a part of a county with no monitor, but with a large emission source that did not have state-of-the-art controls, contributes to a nearby violation. In some instances, if a State had requested that we continue to use the 1-hour ozone nonattainment boundary for an area, we continued to use that boundary in determining the size of the 8-hour nonattainment area.

The EPA cannot rely on planned ozone reduction strategies in making decisions regarding nonattainment designations, even if those strategies predict that an area may attain in the future. We recognize that some areas with a violating monitor may come into attainment in the future without additional local emission controls because of State and/or national programs that will reduce ozone transport. While we cannot consider these analyses in determining designations, we intend to expedite the redesignation of the areas to attainment once they monitor clean air. We also intend to apply our policy which streamlines the planning process for nonattainment areas that are meeting the NAAQS.[5]

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[5]Memorandum of May 10, 1995, from John S. Seitz, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard."

We believe that area-to-area variations must be considered in determining whether to include a county as contributing to a particular nonattainment problem. Thus, our guidance does not establish cut-points for how a particular factor is applied, e.g., it does not identify a set amount of VOC or NOx emissions or a specific level of commuting population that would result in including a county in the designated nonattainment area. For example, a county with a large source or sources of NOx emissions may be considered as a contributing county if it is upwind, rather than downwind, of a violating monitor. Additionally, a county with VOC emissions of 5,000 tons per year (tpy) might be viewed differently if the total VOC emissions of the area are 15,000 tpy rather than 30,000 tpy. We analyzed the information provided by each State or Tribe in its recommendation letter, or subsequently submitted, along with any other pertinent information available to EPA, to determine whether a county should be designated nonattainment. We evaluated each State or Tribal designation recommendation in light of the 11 factors, bringing to bear our best technical and policy judgement. If the result of the evaluation is that a county, whether inside or outside of the CMSA or MSA, is contributing to the violation, we designated the area as nonattainment.

VII. What are the CAA Requirements for Air Quality Designations and what Actions has EPA Taken to Meet the Requirements?

In this part, we summarize the provisions of section 107(d)(1) of the CAA that govern the process States and EPA must undertake to recommend and promulgate designations. Following promulgation of a standard, each State Governor or Tribal leader has an opportunity to recommend air quality designations, including appropriate boundaries, to EPA. No later than 120 days prior to promulgating designations, we must notify States or Tribes if we intend to make modifications to their recommendations and boundaries as we deem necessary. States and Tribes then have an opportunity to provide a demonstration as to why the proposed modification is inappropriate. Whether or not a State or Tribe provides a recommendation, EPA must promulgate the designation it deems appropriate.

In June 2000, we asked each State and Tribal Governor or Tribal leader to submit their designation recommendations and supporting documentation to EPA. Because of the uncertainties due to the ongoing litigation on the ozone standard, we did not notify States and Tribes of any intended modifications and did not designate areas at that time. After the legal challenges to the ozone NAAQS were

resolved, we requested that States and Tribes provide updated recommendations and any additional supporting documentation by July 15, 2003. EPA published a Notice of Availability (NOA) announcing the availability of the State and Tribal recommendations in the FR on September 8, 2003 (68 FR 52933). After carefully evaluating each recommendation and the supporting documentation, on December 3, 2003, we wrote a letter to each State and Tribe notifying them if we intended to make a modification to their recommendation and indicating the area with which we agreed with their recommendation. We provided an opportunity until February 6, 2004, for a demonstration as to why our modification was not appropriate. A NOA announcing the availability of our letters was published in the FR on December 10, 2003 (68 FR 68805). In response to our December 3, 2003 letters, we received letters and demonstrations from many States and Tribes on why our modifications were not appropriate. We evaluated each letter and all of the timely technical information provided to us before arriving at the final decisions reflected in today's rule. Some of the designations reflect our modifications to the State or Tribes' recommendations. Throughout the designation process, we have received letters from other interested parties. We have placed these letters

and our responses to the substantive issues raised by them in the docket. Responses to significant comments received on EAC areas are summarized in this document.

Tribal designation activities are covered under the authority of section 301(d) of the CAA. This provision of the Act authorizes us to treat eligible Indian Tribes in the same manner as States. Pursuant to section 301(d)(2), we promulgated regulations known as the Tribal Authority Rule (TAR) on February 12, 1999, that specify those provisions of the CAA for which it is appropriate to treat Tribes as States, (63 FR 7254), codified at 40 CFR 49 (1999). Under the TAR, Tribes may choose to develop and implement their own CAA programs, but are not required to do so. The TAR also establishes procedures and criteria by which Tribes may request from EPA a determination of eligibility for such treatment. The designations process contained in section 107(d) of the CAA is included among those provisions determined appropriate by us for treatment of Tribes in the same manner as States. As authorized by the TAR, Tribes may request an opportunity to submit designation recommendations to us. In cases where Tribes do not make their own recommendations, EPA, in consultation with the Tribes, will promulgate the designation we deem appropriate on their behalf. We invited all Tribes to submit recommendations to

us. We worked with the Tribes that requested an opportunity to submit designation recommendations. Eligible Tribes could choose to submit their own recommendations and supporting documentation. We reviewed the recommendations made by Tribes and, in consultation with the Tribes, made modifications as deemed necessary. Under the TAR, Tribes generally are not subject to the same submission schedules imposed by the CAA on States. However, we worked with Tribes in scheduling interim activities and final designation actions because of the consent decree obligating us to have a signed rule designating areas by April 15, 2004.

Today's designation action is a final rule establishing designations for all areas of the country. Today's action also sets forth the classifications for subpart 2 ozone nonattainment areas. Section 181(a) provides that areas will be classified at the time of designation. This rulemaking fulfills those requirements. Classifications are discussed below.

A. Where can I find information forming the basis for this rule and exchanges between EPA, States, and Tribes related to this rule?

Discussions concerning the basis for today's actions and decisions are provided in the technical support document

(TSD). The TSD, along with copies of all of the above mentioned correspondence, other correspondence between the States, Tribes, interested parties, and EPA regarding this process and guidance memoranda are available for review in the EPA Docket Center listed above in the addresses section of this document and on our designation web site at: www.epa.gov/oar/oaqps/glo/designations. State specific information is available at the EPA Regional Offices.

VIII. What are the CAA Requirements for Air Quality Classifications?

The CAA contains two sets of provisions subpart 1 and subpart 2 that address planning and control requirements for nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which we refer to as "basic" nonattainment contains general, less prescriptive, requirements for nonattainment areas for any pollutant including ozone governed by a NAAQS. Subpart 2 (which we refer to as "classified" nonattaiment) provides more specific requirements for ozone nonattainment areas.[6] Some areas will be subject only to the provisions of subpart 1. Other areas will be subject to the provisions of subpart 2.

[6]State Implementation Plans; General Preamble for the Implementation of Title I of the CAA Amendments of 1990; Proposed Rule." April 16, 1992 (57 FR 13498 at 13501 and 13510).

Section 172(a)(1) provides that EPA has the discretion to classify areas subject only to subpart 1. Under subpart 2, areas will be classified based on each area's design value. Control requirements are linked to each classification. Areas with more serious ozone pollution are subject to more prescribed requirements. The requirements are designed to bring areas into attainment by their specified attainment dates.

Under our 8-hour ozone implementation rule, signed on April 15, 2004, an area will be classified under subpart 2 based on its 8-hour design value[7] if it has a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas will be covered under subpart 1. Section 172(a)(1) provides EPA with discretion whether to classify areas under subpart 1 and we are not classifying subpart 1 areas, with one exception. As noted in EPA's final rule on implementing the 8-hour ozone standard (Phase 1 implementation rule), we are creating an overwhelming transport classification that will be available to subpart 1 areas that demonstrate they are affected by overwhelming transport of ozone and its precursors and demonstrate they meet the definition of a rural transport

[7] For the 1-hour ozone NAAQS, design value is defined at 40 CFR 51.900(c). For the 8-hour ozone NAAQS, design value is defined at 40 CFR 51.900(d).

area in section 182(h). No subpart 1 areas are being classified in today's action; however, for informational purposes, 8-hour ozone nonattainment areas covered under subpart 1 are identified as such in the classification column in 40 CFR part 81.

Any area with a 1-hour ozone design value (based on the most recent 3 years of data) that meets or exceeds the statutory level of 0.121 ppm that Congress specified in Table 1 of section 181 is classified under subpart 2 and is subject to the control obligations associated with its classification.[8] Subpart 2 areas are classified as marginal, moderate, serious, or severe based on the area's 8-hour design value calculated using the most recent 3 years of data.[9] As described in the Phase 1 implementation rule, since Table 1 is based on 1-hour design values, we promulgated in that rule a regulation translating the thresholds in Table 1 of section 181 from 1-hour values to 8-hour values. (See Table 1, below, "Classification for 8-Hour NAAQS" from 40 CFR 51.903.)

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[8] In the Phase 2 implementation rule, we will address the control obligations that apply to areas under both subpart 1 and subpart 2.

[9]At this time, there are no areas with design values in the extreme classification for the 8-hour ozone standard.

Table 1. Classification for 8-Hour Ozone NAAQS			
Area class		8-hour design value (ppm ozone)	Maximum Period for Attainment Dates in State Plans (years after effective date of nonattainment designation for 8-hour NAAQS)
Marginal	from	0.085	3
	up to*	0.092	
Moderate	from	0.092	6
	up to*	0.107	
Serious	from	0.107	9
	up to*	0.120	
Severe-15	from	0.120	15
	up to*	0.127	
Severe-17	from	0.127	17
	up to*	0.187	
Extreme	equal to or above	0.187	20
* but not including			

Five Percent Bump Down

Under section 181(a)(4), an ozone nonattainment area may be reclassified "if an area classified under paragraph (1) (Table 1) would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based." The section also states that "In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas,

including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

As noted in the November 6, 1991, FR on designating and classifying areas, the section 181(a)(4) provisions grant the Administrator broad discretion in making or determining not to make, a reclassification (56 FR 56698). As part of the 1991 action, EPA developed criteria (see list below) to evaluate whether it is appropriate to reclassify a particular area. In 1991, EPA approved reclassifications when the area met the first requirement (a request by the State to EPA) and at least some of the other criteria and did not violate any of the criteria (emissions, reductions, trends, etc.). We intend to use this method and these criteria once again to evaluate reclassification requests under section 181(a)(4), with the minor changes noted below. Because section 181(b)(3) provides that an area may request a higher classification and EPA must grant it, these criteria primarily focus on how we will assess requests for a lower classification. We further discuss bump ups below.

Request by State: The EPA does not intend to exercise its authority to bump down areas on EPA's own initiative. Rather, EPA intends to rely on the State to submit a request for a bump down. A Tribe may also submit such a request and, in the case of a multi-state

nonattainment area, all affected States must submit the reclassification request.

Discontinuity: A five percent reclassification must not result in an illogical or excessive discontinuity relative to surrounding areas. In particular, in light of the area-wide nature of ozone formation, a reclassification should not create a "donut hole" where an area of one classification is surrounded by areas of higher classification.

Attainment: Evidence should be available that the proposed area would be able to attain by the earlier date specified by the lower classification in the case of a bump down.

Emissions reductions: Evidence should be available that the area would be very likely to achieve the appropriate total percent emission reduction necessary in order to attain in the shorter time period for a bump down.

Trends: Near- and long-term trends in emissions and air quality should support a reclassification. Historical air quality data should indicate substantial air quality improvement for a bump down. Growth projections and emission trends should support a bump down. In addition, we will consider whether vehicle

miles traveled and other indicators of emissions are increasing at higher than normal rates.

Years of data: For the 8-hour ozone standard, the 2001-2003 period is central to determining classification. This criterion has been updated to reflect the latest air quality data available to make the determinations within the statute's 90 day limitation.

Limitations on Bump Downs

An area may only be reclassified to the next lower classification. An area cannot present data from other years as justification to be reclassified to an even lower classification. In addition, section 181(a)(4) does not permit moving areas from subpart 2 into subpart 1.

The EPA applied these criteria in 1991. For example, our action to bump down one area from severe to serious considered trends in population and emissions data, similarities to a nearby serious area, disparity with a nearby moderate area, the logical gradation of attainment deadlines proceeding outward from large metropolitan areas upwind, and the likelihood that the area would be able to attain the NAAQS in the shorter time frame. In approving a bump down to marginal, we noted that air quality trends

showed improvement and recent air quality data indicated a marginal status. In denying a bump down, we analyzed local air quality trends and emission sources and considered long range transport from an area with a much later attainment deadline, which together made it unlikely the candidate area could attain the standard in the shorter time frame associated with the lower classification. Requests to bump down areas were also denied due, in part, to concern that transport of emissions from these areas would make it less likely that downwind nonattainment areas could attain the standards in a timely fashion. For additional information, see section 5, "Areas requesting a 5% downshift per §181(a)(4) and EPA's response to those requests," of the Technical Support Document, October 1991 for the 1991 rule. [Docket A-90-42A.]

Five Percent Bump Up

An ozone nonattainment area may also be reclassified under section 181(a)(4) to the next higher classification. For the reasons described below ("Other Reasons to Consider Bump Ups"), we believe some areas with design values close to the next higher classification may not be able to attain within the period allowed by their classification. We encourage States to request reclassification upward where the State finds that an area may need more time to attain

than their classification would permit. In addition, EPA will consider bumping up areas subject to the five percent provision on our own initiative where there is evidence that an area is unlikely to attain within the period allowed by their classification. In making this determination, EPA would consider criteria similar to that listed above (adjusted to consider bump ups rather than bump downs) regarding discontinuity, attainment, emissions reduction and trends. The following areas have design values based on 2001-2003 data that fall within five percent of the next higher classification:

Marginal areas within five percent of Moderate:

Portland, ME; Atlanta, GA; Beaumont-Port Arthur, TX; and Norfolk, VA.

Moderate areas within five percent of Serious:

New York-New Jersey-Long Island, NY-NJ-CT; Los Angeles-San Bernardino Counties(W. Mojave), CA; Baltimore, MD; Cleveland-Akron-Lorain, OH; and Houston-Galveston-Brazoria, TX.

Serious areas within five percent of Severe-15:

San Joaquin Valley, CA.

Calculation of Five Percent

For an area to be eligible for a bump down (or bump up) under section 181(a)(4), the area's design value must be

within five percent of the next lower (or higher) classification. For example, an area with a moderate design value of 0.096 ppm (or less) would be eligible to request a bump down because five percent less than 0.096 ppm is 0.091 ppm, a marginal design value.[10] An area with a moderate design value of 0.102 ppm (or more) would be eligible for a bump up because five percent more than 0.102 ppm is 0.107 ppm, a serious design value. As a result, the following areas may be eligible to request a bump down: moderate areas with a design value of 0.096 ppm or less; serious areas with a design value of 0.112 ppm or less; and severe-17 areas with a design value of 0.133 ppm or less. Similarly, for bump ups, the following areas may be eligible: marginal areas with a design value of 0.088 ppm or more; moderate areas with a design value of 0.102 ppm or more; and serious areas with a design value of 0.115 ppm or more.

Timing of the Five Percent Reclassifications

The notice of availability for this rule permits States to submit five percent reclassification requests within 30 days of the effective date of the designations and classifications. The effective date is June 15 which means that reclassification requests must be submitted by July 15,

[10] See EPA's "Guideline on Data Handling Conventions for the 8-Hour Ozone NAAQS" (12-98) and appendix I to 40 CFR part 50.

2004. This relatively short time frame is necessary because section 181(a)(4) only authorizes the Administrator to make such reclassifications within 90 days after the initial classification. Thus, the Governor or eligible Tribal governing body of any area that wishes to pursue a reclassification should submit all requests and supporting documentation to the EPA Regional office by July 15, 2004. We will make a decision by September 15, 2004.

Other Reasons to Consider Bump Ups

We encourage States to consider a voluntary bump up in cases where the State finds that an area may need more time to attain the 8-hour NAAQS than its classification would permit. In addition to the reclassification provision of section 181(a)(4), a State can request a higher classification under section 181(b)(3) of the CAA. This provision directs EPA to grant a State's request for a higher classification and to publish notice of the request and EPA's approval. In addition, we are interpreting section 181(b)(3) to allow a State with an area covered under subpart 1 to request a reclassification to a subpart 2 classification.

We note that it is difficult to determine when an area will be able to attain the NAAQS in advance of State development of attainment plans. These plans are based on

high-resolution local air quality modeling, refined emissions inventories, use of later air quality data, and detailed analyses of the impacts and costs of potential local control measures. As noted earlier, we are classifying nonattainment areas subject to subpart 2 based on the most recent ozone design values at the time of designation, the 2001-2003 period. Because of year-to-year variations in meteorology, this snapshot in time may not be representative of the normal magnitude of problems that some areas may face.

The EPA's analysis in the proposed Interstate Air Quality Rule (IAQR) uses design values taken from the 2000-2002 period, rather than the 2001-2003 data used in the classification process. At the time the IAQR modeling was completed, 2000-2002 was the latest period which was available for determining designation compliance with the NAAQS. Concentrations of ozone in 2010 were estimated by applying the relative change in model predicted ozone from 2001 to 2010 with the 8-hour ozone design values (2000-2002). The IAQR base case analysis (which assumes existing control requirements only) projects ozone values in 2010 for several areas- for example, Baltimore, Houston, New York and Philadelphia -that are high enough to suggest that the areas may be unable to attain by 2010, given our current

information on the potential for additional controls. Yet, as a result of their classification, these areas are required to adopt a plan to attain the 8-hour ozone standard earlier than the 2010 ozone season. Atlanta has a projected 2010 ozone value much closer to the standard, but has an attainment date prior to the 2007 ozone season. Thus, the IAQR analysis, based on the 2000-2002 period, suggests that States should evaluate whether certain areas may need more time to attain. States should consider in their local air quality modeling whether an area's projected air quality level would be higher if the projection were based on different three-year base periods. While we recognize that future local analyses for specific nonattainment areas may show different results than the regional IAQR analysis, we encourage States to consider requesting a higher classification for areas that the State believes need more time to attain, especially in cases where existing modeling analysis and information on potential controls suggests more time is needed than their classification would permit.

IX. What Action is EPA Taking to Defer the Effective Date of Nonattainment Designations for EAC Areas?

This section discusses EPA's final action with respect to deferring the effective date of nonattainment designations for areas of the country that do not meet the

8-hour ozone NAAQS and are participating in the EAC program. By December 31, 2002, we entered into compacts with 33 communities. To receive this deferral, these EAC areas have agreed to reduce ground-level ozone pollution earlier than the CAA would require. This final rule for compact areas addresses several key aspects of the proposed rule, including deferral of the effective date of nonattainment designation for certain compact areas; progress of compact areas toward completing their milestones; final action for compact areas; EPA's schedule for taking further action to continue to defer the effective date of nonattainment designations, if appropriate; and consequences for compact areas that do not meet a milestone. In this action, we have added regulatory text to clarify specific requirements in part 81 for compact areas and to identify actions that we will take to address any failed milestones. Finally, we have responded to the significant comments on the proposed rule.

A. When did EPA propose the first deferred effective date of nonattainment designations?

On December 16, 2003 (68 FR 70108), we published a proposed rule to defer the effective date of air quality nonattainment designations for EAC areas that do not meet the 8-hour ozone NAAQS. The proposal also described the

compact approach, the requirements for areas participating in the program, and the impacts of the program on these areas. Compact areas have agreed to reduce ground-level ozone pollution earlier than the CAA would require. Please refer to the proposed rule for a detailed discussion and background information on the development of the compact program, what compact areas are required to do, and the impacts of the program.

Table 2 describes the milestones and submissions that compact areas are required to complete to continue eligibility for a deferred effective date of nonattainment designation for the 8-hour ozone standard.

Table 2. Early Action Compact Milestones

Submittal Date	Compact Milestone
December 31, 2002	Submit Compact for EPA signature
June 16, 2003	Submit preliminary list and description of potential local control measures under consideration
March 31, 2004	Submit complete local plan to State (includes specific, quantified and permanent control measures to be adopted)
December 31, 2004	State submits adopted local measures to EPA as a SIP revision that, when approved, will be federally enforceable
2005 Ozone Season (or no later than December 31, 2005)	Implement SIP control measures
June 30, 2006	State reports on implementation of measures and assessment of air quality improvement and reductions in NOx and VOC emissions to date

B. What progress are compact areas making toward completing their milestones?

In this section we describe the status of the compact areas' progress toward meeting their compact milestones. In general, these areas have made satisfactory progress toward timely completion of their milestones. As reported in the December 16, 2003 proposal, all 33 communities met the June 16, 2003 milestone, which required areas to submit a list and description of local control measures each area considered for adoption and implementation. A compiled list, as well as highlights, of these local measures is found on EPA's website for compact areas at http://www.epa.gov/ttn/naaqs/ozone/eac/index.htm#EACsummary. By December 31, 2003, compact areas reported the status of these measures by identifying the local measures still under consideration at that time, the estimated emissions reductions expected from these measures, and the schedule for implementation. A summary of the local measures as reported in December 2003 is presented on EPA's EAC website at http://www.epa.gov/ttn/naaqs/ozone/eac/20031231_eac_measures_full_list.pdf.

By March 31, 2004, compact areas submitted local plans,

which included measures for adoption that are specific, quantified, and permanent, and if approved by EPA, will be federally enforceable as part of the SIP. These plans also included specific implementation dates for the local controls, as well as a technical assessment of whether the area could attain the 8-hour ozone NAAQS by the December 31, 2007 milestone, which is described in Table 2. The local plans for all compact areas are posted on the EAC website at: http://www.epa.gov/ttn/naaqs/ozone/eac/#List.

The EPA reviewed all of the local plans submitted by March 31, 2004 and determined that most of the plans were acceptable. With respect to control strategies, a number of areas are relying on measures to be adopted by the State, and are committed to implement these measures by 2005. In many cases, particularly in the southeast, the EAC areas demonstrated that they can attain the 8-hour ozone standard by December 2007 without implementation of local controls. In general, the technical demonstrations of attainment were acceptable; however, some of the 33 communities did not project attainment in 2007 (the attainment test) based on modeling, unless they considered additional factors to supplement their analysis (i.e., weight of evidence). In evaluating a State's weight of evidence determination for an area, we consider the results of the modeled, attainment

test--for all EAC areas, a demonstration of attainment in 2007--along with additional information, such as predicted air quality improvement, meteorological influences, and additional measures not modeled. Our modeling guidance indicates that the farther an area is from the level of the standard, the more compelling the additional information needs to be in order to demonstrate that the area will attain the standard. Based on our analysis of the technical information provided, we believe that some areas did not present as strong a case as other areas to demonstrate attainment by December 2007. Three areas in Tennessee, Knoxville, Memphis and Chattanooga each developed attainment demonstrations that generally conform to our modeling guidance. However, in reviewing and analyzing the local plans for these areas, we determined that Knoxville, Memphis and Chattanooga did not pass the modeled attainment test and the predicted air quality improvement test. In addition, our review of meteorological influences for the three areas was inconclusive; and these areas did not provide additional measures not already modeled. In addition to the technical analysis, we reviewed the strength of the control stragies each EAC area proposed in their March 31, 2004 plans. We determined that the control measures submitted by these three areas could have been strengthened, and the Agency

expected more local measures. Therefore, EPA determined that the States' technical assessments for each of these areas and their suite of measures were not acceptable. The only other two compact areas that did not pass the modeled attainment test, the Denver, Colorado area and the Triad (Greensboro-Winston-Salem-High Point), North Carolina area, provided more meaningful local control measures than the three Tennessee compact areas.

Based on our review and evaluation of these local plans, we have determined that Knoxville, Memphis and Chattanooga do not meet the March 31, 2004 milestone. In accordance with the Early Action Protocol and agency guidance, all EAC areas must meet all compact milestones, including this most recent one, to be eligible for the deferred effective date of designation. Consequently, today, these three areas are being designated nonattainment, effective June 15, 2004, and are subject to full planning requirements of title I, part D of the CAA. For the other EAC areas not meeting the 8-hour ozone standard, which we determined have complied with the March 2004 milestone, are being designated nonattainment with a deferred effective date of September 30, 2005. By that date, we intend to take notice and comment rulemaking and promulgate approval or disapproval of these plans as SIP revisions. The local

plans that are approved at that time will be eligible for an extension of the deferred effective date. If EPA disapproves any local plans at that time, the nonattainment designation will become effective immediately. Our evaluations of all local plans submitted by March 31, 2004, are included in the TSD for this rulemaking.

Table 3 lists the EAC areas and their air quality designation for the 8-hour ozone standard by county. The table in Part 81 lists 8-hour ozone designations for all areas of the country.

Table 3. Designation of Counties Participating in Early Action Compacts

NOTE: Ozone designations for EAC counties are either "Unclassifiable/Attainment" (effective June 15, 2004); "Nonattainment" (effective June 15, 2004, if EAC area fails to meet the March 31, 2004 milestone); or "Nonattainment" (effective date deferred until September 30, 2005). Name of designated 8-hour ozone nonattainment area is in parentheses.

State	**Compact Area** (Designated Area)	County	Designation	Effective Date
	EPA Region 3			
VA	**Northern Shenandoah Valley Region** (Frederick County, VA), adjacent to Washington, DC-MD-VA	Winchester City	Nonattainment-deferred	9/30/2005
		Frederick County	Nonattainment-deferred	9/30/2005
VA	**Roanoke Area** (Roanoke, VA)	Roanoke County	Nonattainment-deferred	9/30/2005
		Botetourt County	Nonattainment-deferred	9/30/2005
		Roanoke City	Nonattainment-deferred	9/30/2005
		Salem City	Nonattainment-deferred	9/30/2005

State	**Compact Area** (Designated Area)	County	Designation	Effective Date
MD	**Washington County** (Washington County (Hagerstown), MD), adjacent to Washington, DC-MD-VA	Washington County	Nonattainment-deferred	9/30/2005
WV	**The Eastern Pan Handle Region** (Berkeley & Jefferson Counties, WV), Martinsburg area	Berkeley County	Nonattainment-deferred	9/30/2005
		Jefferson County	Nonattainment-deferred	9/30/2005
	EPA Region 4			
NC	**Mountain Area of Western NC** includes Asheville	Buncombe County	Unclassifiable/ Attainment	6/15/2004
		Haywood County (part)	Unclassifiable/ Attainment	6/15/2004
		Henderson County (opt out) [1]	Unclassifiable/ Attainment	6/15/2004
		Madison County	Unclassifiable/ Attainment	6/15/2004
		Transylvania County (opt out) [1]	Unclassifiable/ Attainment	6/15/2004
NC	**Unifour** (Hickory-Morganton-Lenoir, NC)	Catawba County	Nonattainment-deferred	9/30/2005
		Alexander County	Nonattainment-deferred	9/30/2005
		Burke County (part)	Nonattainment-deferred	9/30/2005
		Caldwell County (part)	Nonattainment-deferred	9/30/2005
NC	**Triad** (Greensboro-Winston-Salem-High Point, NC)	Surry County	Unclassifiable/ Attainment	6/15/2004
		Yadkin County	Unclassifiable/ Attainment	6/15/2004
		Randolph County	Nonattainment-deferred	9/30/2005
		Forsyth County	Nonattainment-deferred	9/30/2005
		Davie County	Nonattainment-deferred	9/30/2005
		Alamance County	Nonattainment-deferred	9/30/2005
		Caswell County	Nonattainment-deferred	9/30/2005
		Davidson County	Nonattainment-deferred	9/30/2005
		Stokes County	Unclassifiable/ Attainment	6/15/2004
		Guilford County	Nonattainment-deferred	9/30/2005

State	Compact Area (Designated Area)	County	Designation	Effective Date
		Rockingham County	Nonattainment-deferred	9/30/2005
NC	**Fayetteville** (Fayetteville, NC)	Cumberland County	Nonattainment-deferred	9/30/2005
SC	**Appalachian - A** (Greenville-Spartanburg-Anderson, SC)	Cherokee County	Unclassifiable/ Attainment	6/15/2004
		Spartanburg County	Nonattainment-deferred	9/30/2005
		Greenville County	Nonattainment-deferred	9/30/2005
		Pickens County	Unclassifiable/ Attainment	6/15/2004
		Anderson County	Nonattainment-deferred	9/30/2005
		Oconee County	Unclassifiable/ Attainment	6/15/2004
SC	**Catawba - B** Part of York County, SC is in the Charlotte-Gastonia-Rock Hill NC-SC nonattainment area	York County (part) [2]	Nonattainment	6/15/2004
		Chester County	Unclassifiable/ Attainment	6/15/2004
		Lancaster County	Unclassifiable/ Attainment	6/15/2004
		Union County	Unclassifiable/ Attainment	6/15/2004
SC	**Pee Dee - C** Florence area	Florence County	Unclassifiable/ Attainment	6/15/2004
		Chesterfield County	Unclassifiable/ Attainment	6/15/2004
		Darlington County	Unclassifiable/ Attainment	6/15/2004
		Dillon County	Unclassifiable/ Attainment	6/15/2004
		Marion County	Unclassifiable/ Attainment	6/15/2004
		Marlboro County	Unclassifiable/ Attainment	6/15/2004
SC	**Waccamaw - D** Myrtle Beach area	Williamsburg County	Unclassifiable/ Attainment	6/15/2004
		Georgetown County	Unclassifiable/ Attainment	6/15/2004
		Horry County	Unclassifiable/ Attainment	6/15/2004
SC	**Santee Lynches - E** Sumter area	Clarendon County	Unclassifiable/ Attainment	6/15/2004
		Lee County	Unclassifiable/ Attainment	6/15/2004
		Sumter County	Unclassifiable/ Attainment	6/15/2004

State	Compact Area (Designated Area)	County	Designation	Effective Date
		Kershaw County	Unclassifiable/ Attainment	6/15/2004
SC	**Berkeley-Charleston-Dorchester - F** Charleston-North Charleston area	Dorchester County	Unclassifiable/ Attainment	6/15/2004
		Berkeley County	Unclassifiable/ Attainment	6/15/2004
		Charleston County	Unclassifiable/ Attainment	6/15/2004
SC	**Low Country - G** Beaufort area	Beaufort County	Unclassifiable/ Attainment	6/15/2004
		Colleton County	Unclassifiable/ Attainment	6/15/2004
		Hampton County	Unclassifiable/ Attainment	6/15/2004
		Jasper County	Unclassifiable/ Attainment	6/15/2004
SC/GA	**Lower Savannah-Augusta** part of Augusta-Aiken, GA-SC area	Aiken County, SC	Unclassifiable/ Attainment	6/15/2004
		Orangeburg County, SC	Unclassifiable/ Attainment	6/15/2004
		Barnwell County, SC	Unclassifiable/ Attainment	6/15/2004
		Calhoun County, SC	Unclassifiable/ Attainment	6/15/2004
		Allendale County, SC	Unclassifiable/ Attainment	6/15/2004
		Bamberg County, SC	Unclassifiable/ Attainment	6/15/2004
		Richmond County, GA	Unclassifiable/ Attainment	6/15/2004
		Columbia County, GA	Unclassifiable/ Attainment	6/15/2004
SC	**Central Midlands - I** Columbia area	Richland County (part)	Nonattainment-deferred	9/30/2005
		Lexington County (part)	Nonattainment-deferred	9/30/2005
		Newberry County	Unclassifiable/ Attainment	6/15/2004
		Fairfield County	Unclassifiable/ Attainment	6/15/2004
SC	**Upper Savannah** Abbeville-Greenwood area	Abbeville County	Unclassifiable/ Attainment	6/15/2004
		Edgefield County	Unclassifiable/ Attainment	6/15/2004
		Laurens County	Unclassifiable/ Attainment	6/15/2004
		Saluda County	Unclassifiable/ Attainment	6/15/2004
		Greenwood County	Unclassifiable/ Attainment	6/15/2004

State	Compact Area (Designated Area)	County	Designation	Effective Date
TN/GA	**Chattanooga** (Chattanooga, TN-GA)	Hamilton County,TN	Nonattainment	6/15/2004
		Meigs County, TN	Nonattainment	6/15/2004
		Marion County, TN	Unclassifiable/ Attainment	6/15/2004
		Walker County, GA	Unclassifiable/ Attainment	6/15/2004
		Catoosa County, GA	Nonattainment	6/15/26/15/20046
TN	**Knoxville** (Knoxville, TN)	Knox County	Nonattainment	6/15/2004
		Anderson County	Nonattainment	6/15/2004
		Union County	Unclassifiable/ Attainment	6/15/2004
		Loudon County	Nonattainment	6/15/2004
		Blount County	Nonattainment	6/15/2004
		Sevier County	Nonattainment	6/15/2004
		Jefferson County	Nonattainment	6/15/2004
TN	**Nashville** (Nashville, TN)	Davidson County	Nonattainment-deferred	9/30/2005
		Rutherford County	Nonattainment-deferred	9/30/2005
		Williamson County	Nonattainment-deferred	9/30/2005
		Wilson County	Nonattainment-deferred	9/30/2005
		Sumner County	Nonattainment-deferred	9/30/2005
		Robertson County	Attainment	6/15/2004
		Cheatham County	Attainment	6/15/2004
		Dickson County	Attainment	6/15/2004
TN/AR / MS	**Memphis** (Memphis, TN-AR-MS)	Shelby County, TN	Nonattainment	6/15/2004
		Tipton County, TN	Unclassifiable/ Attainment	6/15/2004
		Fayette County, TN	Unclassifiable/ Attainment	6/15/2004
		DeSoto County, MS	Unclassifiable/ Attainment	6/15/2004
		Crittenden County, AR	Nonattainment	6/15/2004
TN	**Haywood County** adjacent to Memphis & Jackson areas	Haywood County	Unclassifiable/ Attainment	6/15/2004
TN	**Putnam County** central TN, between Nashville and Knoxville	Putnam County	Unclassifiable/ Attainment	6/15/2004
TN	**Johnson City-Kingsport-Bristol Area** (TN portion only)	Sullivan Co, TN	Nonattainment-deferred	9/30/2005

State	Compact Area (Designated Area)	County	Designation	Effective Date
		Hawkins County, TN	Nonattainment-deferred	9/30/2005
		Washington Co, TN	Unclassifiable/ Attainment	6/15/2004
		Unicoi County, TN	Unclassifiable/ Attainment	6/15/2004
		Carter County, TN	Unclassifiable/ Attainment	6/15/2004
		Johnson County, TN	Unclassifiable/ Attainment	6/15/2004
	EPA Region 6			
TX	**Austin/San Marcos**	Travis County	Unclassifiable/ Attainment	6/15/2004
		Williamson County	Unclassifiable/ Attainment	6/15/2004
		Hays County	Unclassifiable/ Attainment	6/15/2004
		Bastrop County	Unclassifiable/ Attainment	6/15/2004
		Caldwell County	Unclassifiable/ Attainment	6/15/2004
TX	**Northeast Texas** Longview-Marshall-Tyler area	Gregg County	Unclassifiable/ Attainment	6/15/2004
		Harrison County	Unclassifiable/ Attainment	6/15/2004
		Rusk County	Unclassifiable/ Attainment	6/15/2004
		Smith County	Unclassifiable/ Attainment	6/15/2004
		Upshur County	Unclassifiable/ Attainment	6/15/2004
TX	**San Antonio**	Bexar County	Nonattainment-deferred	9/30/2005
		Wilson County	Unclassifiable/ Attainment	6/15/2004
		Comal County	Nonattainment-deferred	9/30/2005
		Guadalupe County	Nonattainment-deferred	9/30/2005
OK	**Oklahoma City**	Canadian County	Unclassifiable/ Attainment	6/15/2004
		Cleveland County	Unclassifiable/ Attainment	6/15/2004
		Logan County	Unclassifiable/ Attainment	6/15/2004
		McClain County	Unclassifiable/ Attainment	6/15/2004
		Oklahoma County	Unclassifiable/ Attainment	6/15/2004

State	Compact Area (Designated Area)	County	Designation	Effective Date
		Pottawatomie Co	Unclassifiable/ Attainment	6/15/2004
OK	**Tulsa**	Tulsa County	Unclassifiable/ Attainment	6/15/2004
		Creek County	Unclassifiable/ Attainment	6/15/2004
		Osage County	Unclassifiable/ Attainment	6/15/2004
		Rogers County	Unclassifiable/ Attainment	6/15/2004
		Wagoner County	Unclassifiable/ Attainment	6/15/2004
LA	**Shreveport-Bossier City**	Bossier Parish	Unclassifiable/ Attainment	6/15/2004
		Caddo Parish	Unclassifiable/ Attainment	6/15/2004
		Webster Parish	Unclassifiable/ Attainment	6/15/2004
NM	**San Juan County** Farmington area	San Juan County	Unclassifiable/ Attainment	6/15/2004
	EPA Region 8			
CO	**Denver** (Denver-Boulder-Greeley-Ft. Collins-Love, CO)	Denver County	Nonattainment-deferred	9/30/2005
		Boulder County (includes part of Rocky Mtn National Park)	Nonattainment-deferred	9/30/2005
		Jefferson County	Nonattainment-deferred	9/30/2005
		Douglas County	Nonattainment-deferred	9/30/2005
		Broomfield	Nonattainment-deferred	9/30/2005
		Adams County	Nonattainment-deferred	9/30/2005
		Arapahoe County	Nonattainment-deferred	9/30/2005
		Larimer County (part)	Nonattainment-deferred	9/30/2005
		Weld County (part)	Nonattainment-deferred	9/30/2005

1 Henderson and Transylvania Counties opted out of the Mountain Area of Western NC compact and are no longer participating.

2 The part of York County, SC that includes the portion within the Metropolitan Planning Organization (MPO) is designated nonattainment and is part of the Charlotte-Gastonia-Rock Hill, NC-SC nonattainment area, effective June 15, 2004. The remaining part of York County, SC is

designated unclassifiable/attainment.

C. What is today's final action for compact areas?

Today, we are issuing the first of three deferrals of the effective date of the nonattainment designation for any compact area that does not meet the 8-hour ozone NAAQS and would otherwise be designated nonattainment, but has met all compact milestones through the March 31, 2004 submission.[11] We are deferring until September 30, 2005, the effective date of the 8-hour ozone nonattainment designation for these compact area counties which are listed in 40 CFR part 81 (included at the end of this document).

As described earlier in this notice, we analyzed information provided by the States to determine whether a county should be included as part of a designated nonattainment area. This information included such factors as population density, traffic congestion, meteorological conditions, and pollution transport. We analyzed the factors for each county participating in an EAC to determine whether a county should be included in the nonattainment area. Therefore, some portions of compact areas are designated unclassifiable/attainment and some are designated

[11]In a few instances, some of the counties participating in EACs were determined not to be part of the nonattainment area and were designated attainment. In such cases, the effective date of the attainment designation is not deferred.

nonattainment.

The EAC areas that EPA is designating in today's rule as attainment for the 8-hour ozone NAAQS have agreed to continue participating in their compacts and meet their obligations on a voluntary basis. However, two of the five counties in the compact for the Mountain Area of Western North Carolina have decided to withdraw because the area is monitoring attainment. The remaining three counties are continuing to participate in the agreement.

D. What is EPA's schedule for taking further action to continue to defer the effective date of nonattainment designation for compact areas?

As discussed in the proposed rule, prior to the time the first deferral expires, we intend to take further action to propose and, as appropriate, promulgate a second deferred effective date of the nonattainment designation for those areas that continue to fulfill all compact obligations. Prior to the time the second deferral expires, we would propose and, as appropriate, promulgate a third deferral for those areas that continue to meet all compact milestones. Before the third deferral expires shortly after December 31, 2007, we intend to determine whether the compact areas have attained the 8-hour ozone NAAQS and have met all compact milestones. By April 2008, we will issue our determination.

If the area has not attained the standard, the nonattainment designation will take effect. If it has attained the standard, EPA will issue an attainment designation for the area. Any compact area that has not attained the NAAQS and has an effective nonattainment designation will be subject to full planning requirements of title I, part D of the CAA, and the area will be required to submit a revised attainment demonstration SIP within 1 year of the effective date of the designation.

E. What action will EPA take if a compact area does not meet a milestone?

As described in the December 16, 2003 proposed rule (68 FR 70111), the compact program was based on a number of principles as described in the EAC protocol.[12] One of these principles is to provide safeguards to return areas to traditional SIP requirements for nonattainment areas should an area fail to comply with the terms of the compact. For example, if a compact area with a deferred effective date fails to meet one of the milestones, we would take steps immediately to remove the deferred effective date of its

[12]"Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-hour Ozone Standard", Texas Commission on Environmental Quality (TCEQ), March 2002 (Protocol). The EPA endorsed the Protocol in a letter dated June 19, 2002, from Gregg Cooke, Administrator, EPA Region VI, to Robert Huston, TCEQ. The Protocol was revised December 11, 2002 based on comments from EPA.

nonattainment designation.

Today, we are promulgating regulatory text, which specifies the milestones that EAC areas are required to complete to be eligible for the deferred effective date, as well as certain actions that the Administrator will take when EAC areas either comply, or do not comply, with the terms of the compact.

F. What comments did EPA receive on the December 16, 2003 proposal and on the June 2, 2003 proposed implementation rule specific to compacts?

We received a number of comments on the proposed rule for compact areas. We have responded to the significant comments in this section. Our responses address various aspects of the compact program: (1) legal concerns; (2) the designations process for EAC areas, including the anticipated schedule for removal of the deferred effective date of the nonattainment designation for any compact area that fails to meet a milestone; (3) concerns about the compact process; (4) transportation/fuels-related comments; and (5) need for regulatory language. Other compact-related comments not addressed in this document are included in the RTC document, which is located in the docket for this rulemaking (OAR-2003-0090) and on EPA's technical website for early action compacts at:

http://www.epa.gov/ttn/naaqs/ozone/eac/#RMNotices.

In addition, we received a number of EAC-related comments on the June 2, 2003 proposal for implementing the 8-hour ozone standard. We have addressed these comments in the same EAC RTC document, which may be found at the location noted above.

1. Support for and Opposition to Early Action Compacts

Comment: Many commenters expressed support for the compact process, the goal of clean air sooner, the incentives and flexibility the program provides for encouraging early reductions of ozone-forming pollution, and the deferred effective date of nonattainment designation. However, a number of commenters opposed the EAC program. Several of these commenters expressed concern about the legality of the program and primarily about the deferral of the effective date of the nonattainment designation for these areas. Although all of these commenters were supportive of the goal of addressing proactively the public health concerns associated with ozone pollution, the commenters state that the EAC program is not authorized by the CAA. All of these commenters indicated that EPA lacks authority under the CAA to defer the effective date of a nonattainment designation. In addition, these commenters state that EPA lacks authority to enter into EACs with areas and lacks authority to allow

areas to be relieved of obligations under title I, part D of the CAA while these areas are violating the 8-hour ozone standard or are designated nonattainment for that standard.

Response: We continue to believe that the compact program, as designed, gives local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard, provided the participating communities are serious in their commitment to control emissions from local sources earlier than the CAA would otherwise require. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizens' groups, a number of communities are discussing for the first time the need for regional cooperation in solving air quality problems that affect the health and welfare of its citizens. People living in these areas that realize reductions in pollution levels sooner will enjoy the health benefits of cleaner air sooner than might otherwise occur. In today's rule we are codifying the specific requirements in part 81 of the CFR to clarify what is required of compact areas to be eligible for deferral of the effective date of their nonattainment designation and what actions EPA intends to take in response to areas that meet the milestones and areas that do not meet the milestones.

As discussed earlier in this notice, EPA and nine

environmental organizations entered into a Consent Decree on March 13, 2003, which requires EPA to issue the designations by April 15, 2004. Related to that agreement, we have been discussing with these parties the actions that compact areas have committed to take to implement measures on an accelerated schedule to attain the 8-hour ozone standard by December 31, 2007. On April 5, 2004, these environmental organizations and EPA entered into a joint stipulation to modify the deadline in the consent decree. The parties agreed to extend the deadline for the effective date of designations with respect to each area which EPA determines meets the requirements of the Protocol and EPA guidance.

Comment: One commenter expressed concern about the health impact and the effect on air quality of delaying the effectiveness of nonattainment.

Response: The compact areas that are violating the standard are designated nonattainment (with deferred effective date), which means EPA is acknowledging the air quality problem of the area and the health impact on the community. However, these areas are committed to early reductions and early implementation of control measures that make sense for the local area. The Agency believes this proactive approach involving multiple, diverse stakeholders is beneficial to the citizens of the area by raising awareness of the need to

adopt and implement measures that will reduce emissions and improve air quality.

2. Designations Process for Compact Areas

Comment: Several commenters expressed concern about EPA's process for designating areas that are participating in a compact. In addition, a number of commenters also were confused about the following statement in the June 2, 2003 proposed 8-hour implementation rule: "States are advised that if EPA determines that any portion of a compact area should become part of an 8-hour ozone nonattainment area, that portion would no longer be eligible for participation in the Early Action Compact, and the effective date of the nonattainment designation would not be deferred" (68 FR 32860, June 2, 2003). Some of these commenters noted that the language, as written, could be interpreted to mean if any EAC area becomes designated as nonattainment for the 8-hour ozone standard, the EAC is no longer valid. A number of commenters submitted recommendations to EPA for either including or excluding certain participating EAC counties from the designated area.

Response: In determining the boundary for the designated area, we applied the same procedure as we did for areas that are not participating in an EAC, as described elsewhere in this document. The commenters are referring to language in

section VIII.A.3 of the June 2, 2003 proposed rule for implementing the 8-hour ozone standard at 68 FR 32860. At the time we entered into compact agreements with the local communities by December 2002, and at the time we proposed the 8-hour implementation rule, we had not made a decision as to which participating counties would be included in a nonattainment area. Therefore, at that time we were not able to determine the appropriate boundary for the area that would be eligible for a deferral of the effective date of nonattainment designation. We agree with the commenters that the preamble language in the proposed 8-hour implementation rule is not clear. The language was intended to be applied to a portion of a compact area that is adjacent to or part of an area that is violating the 1-hour ozone standard (or otherwise did not qualify for participation in a compact), and subsequently is designated nonattainment for the 8-hour ozone standard.

An example is the Catawba EAC, which includes York County, SC, as well as Chester, Lancaster and Union Counties, SC. York County, which has one monitor that is attaining the 8-hour standard, is in the Charlotte-Gastonia-Rock Hill MSA. We have examined all applicable air quality-related factors in our guidance and concluded that part of the county is contributing to a violation in the MSA. Based

on our analysis, therefore, we are designating this county as a partial county nonattainment area, in the 8-hour ozone nonattainment area for Charlotte-Gastonia-Rock Hill. As we noted earlier, nonattainment is defined in the CAA as an area that is violating the NAAQS or is contributing to a nearby area that is violating the NAAQS. York County ranks high in population growth (25 percent) and the predicted growth from 2000 to 2010 is 12 percent, approximately 20,000 additional population. York County ranks second and third for VOC and NOx emissions in the CMSA, and 94 percent of its population of workers drives to work within the CMSA. York County may continue in the Catawba compact along with the other three counties as a voluntary participant; however, the nonattainment portion of York County is not eligible for a deferred effective date. Moreover, because the other counties in the Charlotte-Gastonia-Rock Hill nonattainment area are not participating in the EAC process, the Charlotte area, which includes York County, is not eligible for a deferred effective date. In no way does EPA intend for the Catawba compact to be revoked. For EPA's responses to comments regarding designation and boundary issues for specific EAC areas, see the RTC document and the TSD for this rulemaking.

Comment: A number of commenters recommended that EPA

clarify exactly when a compact area would be designated nonattainment if it fails to meet a milestone.

Response: Today, we have determined that a number of compact areas have met the March 31, 2004 milestone (plan of local measures); therefore, the effective date of nonattainment designation for these areas is deferred until September 30, 2005. In Table 3 we have listed the air quality designations and the effective dates for all counties participating in EACs. In addition, today, we have determined that some compact areas have not met the March 31, 2004 milestone. A discussion of our assessment of these local plans is provided elsewhere in this document. We are designating these areas as nonattainment, which is effective June 15, 2004.

In another section of this document, we are promulgating regulatory text that clarifies the actions we would take in the event a compact area does not meet subsequent milestones. We have summarized those actions below.

If an EAC area fails to meet a milestone, in accordance with our guidance, we intend to take action as soon as practicable to remove the deferral, which would trigger the effective date of the nonattainment designation. If a State fails to submit a SIP revision for a compact area,

consisting of the adopted local plan and the demonstration of attainment by December 31, 2004, we intend to take action as soon as practicable (e.g., January 2005) to remove the deferral for that area, which would trigger the effective date of the nonattainment designation and, thus, also the classification, rather than letting the designation take effect automatically on September 30, 2005. The State would be required to submit a revised attainment demonstration within 1 year of the effective date of the nonattainment designation.

Assuming EPA takes rulemaking action to continue to defer the effective date of the nonattainment designation for compact areas, if a compact area fails the December 31, 2005 milestone (complete implementation of local measures), we would take action as soon as practicable (e.g., by March 31, 2006) to remove the deferral which would trigger the effective date of their nonattainment designation and, thus, also their classification, rather than letting the designation take effect automatically at the next deferred date. The State would be required to submit a revised attainment demonstration within 1 year of the effective date of the nonattainment designation.

Similarly, for any area that does not meet the June 30, 2006 milestone (assessment of air quality improvement and

emissions reductions from implementation of measures), we would take action as soon as practicable (e.g., by September 30, 2006) to remove the deferral which would trigger the effective date of their nonattainment designation and, thus, also their classification. If the area, based on the most recent 3 years of quality-assured monitoring data, is not attaining the 8-hour ozone standard by December 31, 2007, we would take action by April 15, 2008, to remove the deferral which would trigger the effective date of their nonattainment designation and, where applicable, classification.

Comment: Some commenters strongly recommended that if the compact measures fail to be implemented or fail to achieve targeted emissions reductions, the compact area should immediately be designated as nonattainment with a subpart 2 classification and be required to comply with all applicable obligations within the original timeframe.

Response: In another section of this document, we are promulgating regulatory text that clarifies the actions we intend to take in the event a compact area does not meet subsequent milestones. Compact areas are designated as nonattainment and the effective date of that designation is deferred. The deferral for any areas that do not meet or fail any milestone will be removed as soon as practicable

which would trigger the effective date of their nonattainment designation and, thus, also the classification consistent with the final 8-hour implementation rule. If called for by the area's classification, these areas will be required to submit a revised attainment demonstration within 1 year of the effective date of designation and will be subject to all applicable requirements of title I, part D of the CAA, to be implemented within a time frame consistent with the area's classification.

Comment: One commenter believes the second rolling deferred effective date is not necessary and should be eliminated. According to the commenter, there should be only two separate deferral dates promulgated for nonattainment designations for areas where controls would be implemented by September 30, 2005, and no other milestones (the June 2006 progress assessment) would be needed between implementation of controls and attainment.

Response: The June 2006 milestone, which is one of the compact requirements that would be subject to the second deferred effective date (December 31, 2006), provides that States report progress of EAC areas in implementing adopted measures and assess improvements in air quality and reductions in NOx and VOC emissions. The second deferral is

a checkpoint that is needed to ensure that areas are making progress toward attainment. This milestone can be one of the progress reports, but it is considered a milestone because EPA believes it is important to have a checkpoint between implementation of measures by December 2005 and attainment in December 2007.

Comment: A number of commenters were concerned about EPA's statement in the proposal that the Agency would commit to not redesignate areas that subsequently violate the 8-hour ozone NAAQS to nonattainment, provided the area continues to meet all compact milestones and requirements.

Response: In the proposed rule at FR 68 70113, EPA did state its intention to commit to not redesignate EAC areas to nonattainment that are designated attainment in April 2004. We realize that our shorthand phrasing did not properly convey our intent. To clarify, in deciding whether to redesignate an EAC area to nonattainment, EPA will consider the factors in section 107(d)(3)(a) of the CAA. If an EAC area continues to meet its compact milestones, EPA believes those factors should weigh in favor of not redesignating the area to nonattainment immediately, but rather waiting to see if the programs the area puts in place will bring it back into attainment.

3. Transportation/Fuels-related Comments

Comment: The EPA received a number of comments expressing concern that lack of transportation conformity in EAC areas will negatively impact air quality in these areas. In addition, several commented that since EAC areas are not eligible to receive Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, projects to reduce congestion and, thereby, reduce mobile source emissions, would not occur. Another commenter suggested that EPA work with the U.S. Department of Transportation (DOT) to revise the TEA-21 so that EAC areas are eligible to receive CMAQ funding.

Response: The commenters are correct that EAC areas violating the 8-hour ozone standard, which would otherwise have a nonattainment date effective June 1, 2004, will not be subject to transportation or general conformity requirements for the 8-hour standard in 2005. The EAC protocol does not require EAC areas to meet CAA transportation conformity requirements, since, as noted, these requirements apply one year after the 8-hour nonattainment designation becomes effective.

However, continuing to defer 8-hour conformity requirements is contingent upon the area's ability to demonstrate adherence to the compact. Consistent with 40 CFR 93.102(d) and CAA section 176(c)(6), conformity for the

8-hour ozone standard will not apply, provided the area meets all of the terms and milestones of its compact between 2004 and 2007. At any point, if a milestone is missed, the nonattainment designation becomes effective and conformity for the 8-hour standard will be required one year after the effective date of EPA's nonattainment designation.

The EAC areas that are maintenance areas for the 1-hour standard will be subject to conformity until 1 year after the effective date of designation of the 8-hour standard. At that time the 1-hour standard will be revoked. Thus, for an EAC area that meets all of its milestones and whose deferral is lifted in April 2008, the 8-hour attainment designation would become effective in April 2008, and the 1-hour standard would be revoked 1 year later or, April 2009. For an EAC area that is also a 1-hour maintenance area under §175A, the area would be subject to both its 1-hour maintenance plan and 1-hour transportation conformity until April 2009.

Finally, EPA would like to clarify that transportation conformity is not a control measure similar to voluntary control programs funded through CMAQ dollars. Rather, it establishes a process for state and local governments to consider the broader emissions impacts of planned highway and transit activities to ensure that federal funding and

approval goes to those transportation activities that are consistent with air quality goals.

Comment: One commenter stated that they were reluctant to enter into a compact agreement knowing that they would not receive CMAQ funds. Several commenters also suggested that EPA provide EAC areas with tangible financial incentives to proactively improve their air quality, as well as work with the DOT to revise the Transportation Efficiency Act (TEA) so that it allows EAC areas to receive CMAQ funding.

Response: The commenters are correct that EAC areas are not eligible to receive CMAQ funding under current law. The CMAQ apportionment formula in TEA-21 contains no provisions to allow inclusion of EAC areas into the formula and thus into the authorized CMAQ levels for each state. Thus, until and unless the 8-hour ozone nonattainment designation is effective, areas cannot be eligible for CMAQ funding, absent a change in the law.

The primary incentive for many areas entering into an EAC is deferral of a nonattainment designation and major requirements, such as transportation conformity and NSR. It is true that compact areas are subject to SIP requirements, but not to other such major requirements. The EPA's interpretation is that Congress intended to link the obligations that come with a nonattainment designation to

CMAQ funding. The purpose of the CMAQ program is to help those areas burdened with the significant obligations of the CAA attain the NAAQS as expeditiously as possible. Under the current CMAQ program, an EAC area would not be able to receive CMAQ funds because it would not be designated as a nonattainment or maintenance area.

Since TEA-21 has not been reauthorized as of this writing, EPA cannot postulate on whether it will contain a new provision allowing compact areas to receive CMAQ funding. The reauthorization bills passed by the Senate and House contain no such provision.

Comment: A number of EAC areas are considering the addition of cetane additives to fuel for increased fuel efficiency. Several commenters expressed concern about the focus on diesel cetane. They have expressed these concerns in detail in earlier correspondence with both the Agency and the Ozone Transport Commission.

Response: Clean fuel programs have been an integral part of the nation's strategy to reduce smog-forming emissions and other harmful pollutants, including air toxics from our nation's air. For example, the federal reformulated gasoline program (RFG) and lower volatility fuels have been cost effective and have provided significant and immediate reductions in air pollution levels throughout the nation.

The CAA also allows States, under specified circumstances, to design and implement their own clean fuel programs. Several EAC areas are considering such programs including cetane improvement programs. Cetane improvement programs have the potential to contribute emission reductions needed for progress toward attainment and maintenance of the NAAQS. (See EPA Technical Report entitled, "The Effect of Cetane Number Increase Due to Additives on NOx Emissions from Heavy-Duty Highway Engines", EPA-420-R-03-002, February 2003. This document can be downloaded from: http://www.epa.gov/otaq/models/analysis.htm. The EPA is now in the process of developing guidance to help States properly quantify the benefits of cetane improvement programs for their areas.

In selecting possible clean fuel programs and other potential ozone control measures, states will engage in a careful and extensive process. It is during this process that States should properly consider and evaluate their air quality needs, the air quality benefits of specific measures, costs, ease of implementation, enforceability and other issues and factors like those the commenter raises with respect to cetane programs. In addition, the States must involve the public in the selection of control

measures, through hearings and opportunities to comment.

4. Regulatory Text

Comment: Several commenters strongly recommended that EPA include regulatory text in the final rule. One commenter, in particular, suggested that EPA do the following:

1. codify the rolling deferred effective date so that it is enforceable and that areas are held accountable if they miss a milestone;

2. include in the final rule all deadlines and milestones specified in our EAC guidance;

3. codify the September 30, 2005 deadline for EPA action to approve/disapprove SIP submittals;

4. codify the December 31, 2008 deadline for States to submit a revised attainment demonstration SIP for EAC areas that fail to attain by December 31, 2007.

Response: Based on the recommendations of several commenters, we have added regulatory text to the final rule. This language codifies the EAC program into part 81 of the CFR. In addition, the regulatory text clarifies what is required of compact areas and the consequences to these areas if they do not meet a milestone.

X. How Do Designations Affect Indian Country?

All counties, partial counties or Air Quality Control Regions listed in the table at the end of this document are

designated as indicated, and include Indian country geographically located within such areas, except as otherwise indicated.

As mentioned earlier in this document, EPA's guidance for determining nonattainment area boundaries presumes that the larger of the 1-hour nonattainment area, CMSA or MSA with a violating monitor forms the bounds of the nonattainment area but that the size of the area can be larger or smaller depending on contribution to the violation from nearby areas and other air quality-related technical factors. In general, and consistent with relevant air quality information, EPA intends to include Indian country encompassed within these areas as within the boundaries of the area for designation purposes to best protect public health and welfare. The EPA anticipates that in most cases relevant air quality information will indicate that areas of Indian country located within CMSAs or MSAs should have the same designation as the surrounding area. However, based on the factors outlined in our guidance, there may be instances where a different designation is appropriate.

A state recommendation for a designation of an area that surrounds Indian country does not dictate the designation for Indian county. However, the conditions that support a State's designation recommendation, such as air

quality data and the location of sources, may indicate the likelihood that similar conditions exist for the Indian county located in that area. States generally have neither the responsibility nor the authority for planning and regulatory activities under the CAA in Indian country.

XI. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate areas as attaining or not attaining that NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. In this final rule, we assign designations to areas as required. We also indicate the classifications that apply as a matter of law for areas designated nonattainment. This rule also provides flexibility for areas that have entered into a compact and take early action to achieve emissions reductions necessary to attain the 8-hour ozone standard. This action defers the effective date of the nonattainment designation for these areas and establishes regulations governing future actions with respect to these areas.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to OMB

review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the above factors applies. As such, this final rule was not formally submitted to OMB for review.

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. This rule responds to the requirement to promulgate air quality designations after promulgation of a NAAQS. This requirement is prescribed in the CAA section 107 of Title 1. The present final rule does not establish any new information collection burden apart from that required by law. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) a small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (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.

The portion of this rule designating areas for the 8-hour ozone NAAQS indicating the classification for each subpart 2 area designated nonattainment, is not subject to the RFA because it was not subject to notice and comment rulemaking requirements. See CAA section 107(d)(2)(B). This rule also defers the effective date of the

nonattainment designation for areas that implement control measures and achieve emissions reductions earlier than otherwise required by the CAA in order to attain the 8-hour ozone NAAQS. The deferral of the effective date will not impose any requirements on small entities. States and local areas that have entered into compacts with EPA have the flexibility to decide which sources to regulate in their communities.

After considering the economic impacts of today's final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written

statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any one year by either State, local,

or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. It does not create any additional requirements beyond those of the 8-hour National Ambient Air Quality Standards (NAAQS) for Ozone (62 FR 38894; July 18, 1997), therefore, no UMRA analysis is needed. This rule establishes the application of the 8-hour ozone standard and the designation for each area of the country for the 8-hour NAAQS for Ozone. The CAA requires States to develop plans, including control measures, based on their designations and classifications. In this rule, EPA is also deferring the effective date of nonattainment designations for certain areas that have entered into compacts with us and is promulgating regulations governing future actions with respect to these areas.

One mandate that may apply as a consequence of this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of Federal actions to SIPs. These rules apply to Federal agencies and Metropolitan Planning Organizations (MPOs) making conformity determinations. The EPA concludes that such conformity determinations will not cost $100 million or more in the aggregate.

The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate $100 million or more annually. Thus, this Federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any one year.

Nonetheless, EPA carried out consultations with governmental entities affected by this rule, including States, Tribal governments, and local air pollution control agencies.

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 final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the

States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

Although Executive Order 13132 does not apply to this rule, EPA discussed the designation process and compact program with representatives of State and local air pollution control agencies, and Tribal governments, as well as the Clean Air Act Advisory Committee, which is also composed of State and local representatives. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule for deferring the effective date of nonattainment designations from State and local officials. The portion of this rule that assigns designations is not subject to notice and comment under section 107(d)(2)(B) of the CAA and, therefore, no proposed rulemaking was prepared which specifically solicited comment on the designations. However, section 107(d)(1)(A) establishes a process whereby States first

recommends the designations for areas in their States. In addition, the Agency has consulted extensively with representatives of State, Tribal and local governments, including elected officials regarding the designations. The EPA also notified national organizations of State and local officials and made EPA staff available to discuss the action with the organization staff and their members.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have "Tribal implications" as specified in Executive Order 13175. This rule concerns the classification and designation of areas as attainment or nonattainment of areas for the 8-hour ozone standard and deferral of the effective date of the nonattainment designation for areas participating in the early action compact process and that have met all milestones. The CAA provides for States to develop plans to regulate emissions of air pollutants within their jurisdictions. The TAR gives Tribes the opportunity to

develop and implement CAA programs such as programs to attain and maintain the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt. Early Action Compact areas that would be affected by this final rule would be required to develop and submit local plans for adoption and implementation of the 8-hour ozone standard earlier than the CAA requires. These plans would be submitted to EPA as SIP revisions in December 2004. No early action compact areas include Tribal land.

This final rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time or has participated in a compact. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this

rule, EPA did outreach to Tribal representatives regarding the designations and to inform them about the compact program and its impact on designations. The EPA supports a national "Tribal Designations and Implementation Work Group" which provides an open forum for all Tribes to voice concerns to EPA about the designation and implementation process for the NAAQS, including the 8-hour ozone standard. These discussions informed EPA about key Tribal concerns regarding designations as the rule was under development.

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

Executive Order 13045: "Protection of Children From Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The final rule is not subject to Executive Order 13045

because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this risk assessment are contained the National Ambient Air Quality Standards for Ozone, Final Rule (62 FR 38855-38896; specifically, 62 FR 38854, 62 FR 38860 and 62 FR 38865).

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

This rule is not subject to Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, *Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard,* prepared by the Innovative Strategies and Economics Group, Office of Air

Quality Planning and Standards, Research Triangle Park, N.C. April 24, 2003.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) 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 VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United

States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 15, 2004.

K. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This Section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This rule designating areas for the 8-hour ozone standard is "nationally applicable" within the meaning of section 307(b)(1). This rule establishes designations for

all areas of the United States for the 8-hour ozone NAAQS. At the core of this rulemaking is EPA's interpretation of the definition of nonattainment under section 107(d)(1) of the Clean Air Act. In determining which areas should be designated nonattainment (or conversely, should be designated unclassifiable/attainment), EPA used a set of 11 factors that it applied consistently across the United States.

For the same reasons, the Administrator also is determining that the final designations are of nationwide scope and effect for purposes of section 307(b)(1). This is particularly appropriate because in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect beyond a single judicial circuit." H.R. Rep. No. 95-294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402-03. Here, the scope and effect of this rulemaking extend to numerous judicial circuits since the designations apply to all areas of the country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of "nationwide scope or effect" and for venue to be in the D.C. Circuit.

Thus, any petitions for review of final designations

must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the Federal Register.

LIST OF SUBJECTS in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

APR 15 2004

Dated:

Michael O. Leavitt
Administrator

Subpart C - Section 107 Attainment Status Designations

PART 81 - [Amended]

1. The authority citation for part 81 continues to read as follows:

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

2. Section 81.300 is amended by adding paragraph (e) to read as follows:

§81.300 Scope

* * * * *

(e) Provisions for Early Action Compact Areas with Deferred Effective Date of Nonattainment Designation.

(1) Definitions. The following definitions apply for purposes of this subpart. Any term not defined herein shall have the meaning as defined in 40 CFR 51.100 and §81.1

(i) Early Action Compact. The term "early action compact" ("compact") means an agreement entered into on or before December 31, 2002, by

(A) The Administrator;

(B) A State;

(C) An official of a county, parish, or town that--

(*1*) Is designated attainment for the 1-hour national ambient air quality standard for ozone;

(*2*) Has monitored data representing the most recent 3 years

of quality-assured data that meets the 1-hour national ambient air quality standard for ozone; and

(*3*) May or may not be meeting the 8-hour national ambient air quality standard for ozone.

(ii) State. The term "State" has the meaning given the term in section 302 of the Clean Air Act (42 U.S.C. 7602).

(iii) Area. The term "area" means one or more counties, parishes, or towns that are participating in an early action compact.

(iv) State Implementation Plan. The term "State implementation plan" ("SIP") means a plan required to be submitted to the Administrator by a State under section 110 of the Clean Air Act (42 U.S.C. 7410).

(v) 8-hour National Ambient Air Quality Standard means the air quality standards under the Clean Air Act (42 U.S.C. 7401 et seq.) codified at 40 CFR 50.10.

(2) What are early action compact areas required to do?

(i) Not later than June 16, 2003, the local area shall

(A) Submit to the Administrator a list identifying and describing the local control measures that are being considered for adoption during the local planning process; and

(B) Provide to the public clear information on the measures under consideration;

(ii) Not later than March 31, 2004, the local plan shall be completed and submitted to the State (with a copy of the local plan provided to the Administrator), which shall include

(A) One or more locally adopted measures that are specific, quantified, and permanent and that, if approved by the Administrator, will be enforceable as part of the State implementation plan;

(B) Specific implementation dates for the adopted control measures;

(C) Sufficient documentation to ensure that the Administrator will be able to make a preliminary technical assessment based on control measures demonstrating attainment of the 8-hour ozone national ambient air quality standard under the Clean Air Act not later than December 31, 2007;

(iii) Not later than December 31, 2004, the State shall submit to the Administrator a revision to the SIP consisting of the local plan, including all adopted control measures, and a demonstration that the applicable area will attain the 8-hour ozone national ambient air quality standard not later than December 31, 2007;

(iv) The area subject to the early action compact shall implement expeditiously, but not later than December 31, 2005, the local control measures that are incorporated in the

SIP;

(v) Not later than June 30, 2006, the State shall submit to the Administrator a report describing the progress of the local area since December 31, 2005, that includes

(A) A description of whether the area continues to implement its control measures, the emissions reductions being achieved by the control measures, and the improvements in air quality that are being made; and

(B) sufficient information to ensure that the Administrator will be able to make a comprehensive assessment of air quality progress in the area; and

(vi) Not later than December 31, 2007, the area subject to a compact shall attain the 8-hour ozone national ambient air quality standard.

(3) What action shall the Administrator take to promulgate designations for an Early Action Compact area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the 8-hour ozone national ambient air quality standard?

(i) General. Notwithstanding clauses (i) through (iv) of section 107(d)(1)(B) of the Clean Air Act (42 U.S.C. 7407(d)(1)(B)), the Administrator shall defer until September 30, 2005 the effective date of a nonattainment designation of any area subject to a compact that does not meet (or that

contributes to ambient air quality in a nearby area that does not meet) the 8-hour ozone national ambient air quality standard if the Administrator determines that the area subject to a compact has met the requirements in paragraphs (e)(2)(i) and (ii) of this section.

(ii) Requirements Not Met.

(A) If the Administrator determines that an area subject to a compact has not met the requirements in paragraphs (e)(2)(i) and (ii) of this section, the nonattainment designation will become effective June 15, 2004.

(B) Prior to expiration of the deferred effective date on September 30, 2005, if the Administrator determines that an area or the State subject to a compact has not met either requirement in paragraphs (e)(2)(ii) and (iii) of this section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

(C) If the Administrator determines that an area subject to a compact and/or State has not met any requirement in paragraphs (e)(2)(iii)-(vi) of this section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

(D) Not later than 1 year after the effective date of the

nonattainment designation, the State shall submit to the Administrator a revised attainment demonstration SIP.

(iii) All Requirements Met. If the Administrator determines that an area subject to a compact has met all of the requirements under subparagraph (e)(2) of this section--

(A) The Administrator shall designate the area as attainment under section 107(d)(1)(B) of the Clean Air Act; and

(B) The designation shall become effective no later than April 15, 2008.

(4) What action shall the Administrator take to approve or disapprove a revision to the SIP submitted by a compact area on or before December 31, 2004?

(i) Not later than September 30, 2005, the Administrator shall take final action to approve or disapprove a revision to the SIP, in accordance with paragraph (e)(2)(iii) of this section, that is submitted by a compact area on or before December 31, 2004.

(ii) If the Administrator approves the SIP revision, the area will continue to be eligible for a deferral of the effective date of nonattainment designation.

(iii) If the Administrator disapproves the SIP revision, the nonattainment designation shall become effective on September 30, 2005.

(iv) If the area's nonattainment designation applies, the

State shall comply with paragraph (e)(3)(ii)(D) of this section.